

**EQUAL OPPORTUNITIES COMMISSION
CITY OF MADISON
210 MARTIN LUTHER KING, JR. BOULEVARD
MADISON, WISCONSIN**

Brent Smith
1810 Willow Drive
Hudson, WI 54016

Complainant

v.

SPi CRM, Inc. n/k/a Inspiro
200 West Hanley Avenue, Suite 13
Coeur d'Alene, ID 83815

Respondent

HEARING EXAMINER'S RECOMMENDED
FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER

CASE NO. 20192154

On July 13, 2021, the Equal Opportunities Commission Hearing Examiner, Clifford E. Blackwell, III, held a public hearing in Room 206 of the Madison Municipal Building, 215 Martin Luther King, Jr. Boulevard in Madison, Wisconsin. The Complainant, Brent Smith, appeared in person and by his attorney Richard Rice. The Respondent, SPi CRM, Inc. n/k/a Inspiro, appeared by its representative Kristina Glascock, and by its attorneys Erin Rome and Nicolas Rydell. Based upon the record of the proceedings, the Hearing Examiner now enters his Recommended Findings of Fact, Conclusions of Law, and Order.

RECOMMENDED FINDINGS OF FACT

1. Complainant, Brent Smith, is a male whose date of birth is September 6, 1961.
2. Complainant was employed with SPi CRM, Inc. n/k/a Inspiro from April 13, 2014 through March 27, 2018.
3. Complainant was employed as a Product Training Specialist from April 13, 2014, until January 14, 2017.
4. On January 14, 2017, Complainant was promoted to Trainer.
5. On December 1, 2017, Complainant was promoted to Operations Manager.
6. Complainant's employment with SPi CRM, Inc. n/k/a Inspiro was terminated on March 27, 2018.
7. Complainant's age at the time of his termination was 56 years old.
8. Complainant learned of his termination in a meeting with Kari Knox Kreger, Human Resources Manager, and Neal Stake, Senior Operations Manager.

9. Complainant received a letter at the March 27, 2018 meeting with Kari Knox Kreger and Neal Stake, signed by Kari Knox Kreger stating Complainant's employment was being terminated "at-will" and "without notice and without reason."
10. Complainant filed a complaint of discrimination with the Madison Equal Opportunities Division on March 27, 2018, alleging age discrimination in his termination from SPi CRM, Inc. n/k/a Inspiro in case 20182140. This complaint was pending on January 3, 2019, but was ultimately dismissed for a failure to demonstrate that there was probable cause to believe that discrimination had occurred.
11. Respondent, SPi CRM, Inc. n/k/a Inspiro, is a customer relationship management service that operates a call center located in Madison, Wisconsin, and employs 15 or more employees. Respondent's Madison call center opened in the spring of 2013.
12. Respondent's, SPi CRM, Inc. n/k/a Inspiro, business is headquartered in the Philippines.
13. Respondent, SPi CRM, Inc. n/k/a Inspiro, operates to provide business process outsourcing services for DISH Network.
14. In March 2018, Kari Knox Kreger was a Human Resources Manager for SPi CRM, Inc. n/k/a Inspiro.
15. In March 2018, Neal Stake was a Senior Operations Manager with SPi CRM, Inc. n/k/a Inspiro.
16. Kristina Glascock is a Human Resources Assistant Manager with SPi CRM, Inc. n/k/a Inspiro.
17. Kristina Glascock began her employment with SPi CRM, Inc. n/k/a Inspiro in 2016 as a Human Resources Assistant. She was promoted to Human Resources Business Partner in 2018 and to Human Resources Assistant Manager in 2019.
18. JP Meris was the Vice President of Operations in March 2018 and was in charge of international operations.
19. JP Meris was located in the Manila, Philippines office of SPi CRM, Inc. n/k/a Inspiro.
20. Ryan Laureano was the Chief Administrative Officer and the general counsel for SPi CRM, Inc. n/k/a Inspiro in March 2018.
21. At any point in time, SPi CRM, Inc. n/k/a Inspiro would employ approximately 120 to 160 employees at the Madison office.
22. Beginning in 2015, SPi CRM, Inc. n/k/a Inspiro employed two to four individuals to staff the Talent Acquisition Department. This department was responsible for soliciting job applications, posting positions, screening applications or resumes, interviewing and hiring desirable candidates.

23. After his termination in March 2018, Complainant sent messages to team leads who had worked under him telling them to watch out for themselves.
24. After his termination in March 2018, Complainant sent a message to Ryan Laureano expressing disgruntlement and stating "Don't worry, you'll be hearing from me again."
25. After his termination, Complainant sent a message to JP Meris criticizing the decision to terminate an employee whose spouse was suffering from illness.
26. Kari Knox Kreger was terminated from her position with SPi CRM, Inc. n/k/a Inspiro in November 2018.
27. After Kari Knox Kreger was terminated, Kristina Glascock was the most senior member of the HR department present at the Madison office for SPi CRM, Inc. n/k/a Inspiro in January 2019.
28. In January 2019, Robert Kern was the most senior member of the Talent Acquisition department present at the Madison office for SPi CRM, Inc. n/k/a Inspiro.
29. Neal Stake was terminated from his position as Senior Operations Manager with SPi CRM, Inc. n/k/a Inspiro in November 2018.
30. In January 2019, Kyle Frake was the Senior Operations Manager at the Madison office for SPi CRM, Inc. n/k/a Inspiro.
31. On January 3, 2019, Complainant applied for the position of Call Center Operations Manager with SPi CRM, Inc. n/k/a Inspiro via Indeed.
32. Complainant's age at the time of his application was 57 years old.
33. The previous complaint of discrimination with the Department of Civil Rights was ongoing at the time of the Complainant's application for the position of Call Center Operations Manager.
34. Complainant was never contacted regarding his application for the Call Center Operations Manager position. Robert Kern was responsible for not forwarding the Complainant's application because he understood from Human Resources that the Complainant was not eligible for rehire.
35. In 2019, Joshua Frishman (DOB 06/08/1989) was hired as a Call Center Operations Manager.
36. In 2019, David Dickson (DOB 04/21/1990) was hired as a Call Center Operations Manager.
37. Both Frishman and Dickson possessed qualities and experience that made them more highly qualified for the Operations Manager position than the Complainant.
38. The Complainant was deemed not eligible for rehire due to the nature of the reasons for his termination and due to his conduct subsequent to his termination.

CONCLUSIONS OF LAW

1. The Complainant is a member of the protected class Age and is entitled to the protections of the City of Madison Equal Opportunities Ordinance 39.03.
2. The Complainant previously filed a complaint with the City of Madison Department of Civil Rights against the Respondent and is protected against retaliation under the City of Madison Equal Opportunities Ordinance 39.03.
3. The Respondent is an employer within the meaning of the City of Madison Equal Opportunities Ordinance 39.03 and is subject to its terms and conditions.
4. The Respondent did not discriminate against the Complainant on the basis of his age in violation of the Equal Opportunities Ordinance by failing to hire the Complainant.
5. The Respondent did not discriminate against the Complainant on the basis of retaliation in violation of the Equal Opportunities Ordinance by failing to hire the Complainant.

ORDER

The complaint is dismissed. The parties shall bear their own costs and fees.

MEMORANDUM DECISION

The Complainant alleges that the Respondent discriminated against him on the basis of retaliation when the Respondent failed to re-hire the Complainant as an Operations Manager. The Complainant began his original employment as a Product Training Specialist with the Respondent, SPi CRM, Inc. n/k/a Inspiro ("Inspiro") on April 13, 2014 and was terminated while in the role of Operations Manager on March 27, 2018. The Complainant re-applied for employment with the Respondent for a Call Center Operations Manager position on January 3, 2019. Inspiro operates a call center providing business process outsourcing for DISH Network, selling its products and services, and providing customer support.

Call Center Operations Managers ("Operations Manager") for Inspiro are responsible for ensuring productivity standards and customer satisfaction in the operations department. The Operations Manager works with other Operations Managers and the Senior Operations Manager, as well as the team supervisors, to ensure team members are meeting their objectives. The Operations Manager also is responsible for coaching the workforce on the Operations team and aiding in their development. Operations Managers also give feedback to the Vice President of Operations regarding performance on the Operations team. Operations Managers also strategize to improve performance, and conduct performance reviews of team members.

The Complainant previously held the position of Operations Manager before being terminated from employment with Inspiro. After his termination, the Complainant filed a complaint of discrimination with the City of Madison Department of Civil Rights on the basis of age. This complaint was dismissed with a finding of no probable cause. However, before a determination was made in that case, the role of Operations Manager was posted as an opening on Indeed, and the Complainant decided to apply, given that he fit many of the qualifications that were listed in the job posting as well as the fact that he had held the position prior to his termination from the Respondent. The fact that two people the Complainant believed were involved in the decision to

terminate him, Kari Knox Kreger and Neal Stake, had since been terminated from their own positions with the Respondent, also factored into the Complainant's decision to reapply with the Respondent.

The Complainant applied to the position in question in January 2019. He did not hear back regarding his application on Indeed. The Respondent instead hired two other candidates: David Dickson, an internal candidate, and Joshua Frishman, who came to Inspiro on a recommendation from their client DISH Network, having previously worked for DISH. Based on the testimony of Human Resources representative, Kristina Glascock; former Talent Acquisition representative, Robert Kern; and Senior Operations Manager, Kyle Frake, it is difficult to ascertain whose responsibility it was to determine if a candidate was eligible for rehire and to move forward in the hiring process. It seems that Talent Acquisition determines if candidates are moved forward in the interview or hiring process, but that they need some sort of feedback from Human Resources and/or Operations to determine if a candidate who had been previously terminated would be eligible for rehire. It is unclear if a discussion took place regarding the Complainant, and if a discussion took place, if the previous discrimination complaint was brought into any discussion.

Kristina Glascock stated in her testimony that Human Resources had nothing to do with the hiring process unless there was a candidate applying to be rehired, at which time the Human Resources team would use software to determine if the candidate was eligible for rehire from the Human Resources perspective.

Robert Kern stated that during the process of reviewing applications, he could not remember seeing the Complainant's application. He also stated that only internal candidates were considered for the role of Operations Manager. When questioned as to whether or not Human Resources was involved in the hiring process, Mr. Kern stated that his team involved the Human Resources team during the process when a candidate was presented for rehire in order to evaluate whether or not that candidate was eligible for rehire. Mr. Kern gave the same answer for the question of whether or not Operations was involved at the early stages of the hiring process. Mr. Kern could not definitively state if Human Resources, in the person of Kristina Glascock, or Operations, in the person of Kyle Frake, had been made aware that the Complainant had applied for the Operations Manager position.

Cases of discrimination can be proven by either the direct or indirect method. In the direct method, the parties present their cases, and the Hearing Examiner examines the facts and, without reliance on inference, reaches a determination of liability or not. Cases utilizing the direct method usually have convincing testimony of discriminatory language or conduct. In a case presented by the indirect method, the parties present their facts and apply those facts, be they inferential or direct to the respective burdens of proof and production that the law places on the parties. The indirect method of demonstrating discrimination is also known as the burden-shifting approach and derives from McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) and Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981) and the cases that follow those decisions.

The Hearing Examiner finds that the proof in this matter is best analyzed using the indirect method. When analyzing a case using the indirect method, the Hearing Examiner must first determine if the Complainant has established a *prima facie* claim for each allegation of discrimination. The Complainant claims he was discriminated against on the bases of his age and in retaliation for making a complaint of discrimination when the Respondent failed to hire the Complainant for the Call Center Operations Manager position. To establish a *prima facie* indirect

case of discrimination, the Complainant must establish that 1) he belonged to a protected class; 2) he experienced an adverse employment action, and 3) the adverse employment action experienced was causally connected to his protected class(es). Greenslade v. Chicago Sun-Times, Inc., 112 F.3d 853, 863 (7th Cir. 1997); Puetz Motor Sales, Inc. v. LIRC, 126 Wis. 2d 168, 173, 376 N.W.2d 372 (Ct. App. 1985).

Presuming the Complainant meets this burden of proof, the burden then shifts to the Respondent to present a legitimate, nondiscriminatory explanation for its actions. This is a burden of production and not one of proof.

If the Respondent carries its burden of production, the Complainant might still prevail if he can point to evidence in the record demonstrating that the Respondent's proffered explanation is either not credible or represents a pretext for an otherwise discriminatory motive.

The Hearing Examiner will address each claim by protected class.

First, the Hearing Examiner will determine whether the Complainant has demonstrated that he has met the first element of the *prima facie* claim for age discrimination. The Complainant filed a complaint alleging age discrimination. The Complainant's date of birth is September 6, 1961, and he was 57 years old on the date of his application; thus, the Complainant meets the first element of the *prima facie* claim, that he is a member of the protected class "age".

Next, the Hearing Examiner must examine the second element: whether the Complainant experienced an adverse employment action. The Complainant did not hear back from the Respondent regarding his application for the Call Center Operations Manager position and was not hired for the role. Complainant did experience an adverse action in the Respondent's failure to hire Complainant for the Call Center Operations Manager position.

Finally, the Hearing Examiner will examine the issue of whether there was a causal link between the Complainant's membership in the protected class "age" and the Respondent's failure to hire the Complainant, by determining if the Complainant was passed over for someone not within the protected class.

After examining the testimony and evidence before him, the Hearing Examiner cannot find much evidence of a causal link between the protected class of age and the Respondent's failure to hire the Complainant. While Ms. Glascock did acknowledge that the Complainant appeared to be a "gray-haired gentleman", and while it was established that both candidates who were hired for the position were younger than the Complainant when hired, nothing in the record indicates that any of the people involved in the hiring process were aware of the Complainant's actual age.

The Court in the appeal of Cronk v. Reynolds Transfer and Storage, Reynolds Transfer & Storage, Inc. v. City of Madison Department of Civil Rights, Equal Opportunities Commission, 2000-CV-1100 (Dane Cty. Cir. Ct. 10/19/2007) indicates that where a terminated employee is replaced by a substantially younger applicant, that there is almost a per se presentation of a *prima facie* case of discrimination based upon age. Such an age differential appears to be present in this case. Dickson was 29 years old (DOB 04/21/1990) at his date of hire and Frishman was 30 (DOB 06/08/1989), a difference of greater than 25 years from that of the Complainant.

While this differential creates an inference of discrimination, the Hearing Examiner must look at the record as a whole before concluding that discrimination has occurred or not.

Given the record as a whole, the inference raised by the differences in the ages of the successful candidates and the Complainant is the only evidence in support of a finding of discrimination on the basis of age. On the other hand, the Respondent's presentation of the reasons for the Complainant's termination in March of 2018 and his conduct subsequent to his termination present a legitimate, nondiscriminatory basis for the Respondent's determination not to consider the Complainant for rehire. From the record, the Complainant's post-termination conduct represents a good example of "bridge burning" that would keep an employer from wanting to rehire a terminated employee.

The Complainant might overcome the Respondent's articulation of a legitimate, nondiscriminatory reason for failing to rehire the Complainant if he can demonstrate that the reason proffered by the Respondent is either not credible or represents a pretext for an otherwise discriminatory reason. The Hearing Examiner concludes that the Complainant fails to do so.

The Complainant does raise questions about the extent to which the Respondent followed its own processes and procedures in reviewing his application for rehire. The record is in fact fairly muddled as to whether someone in Human Resources told someone in Talent Acquisition that the Complainant as a formerly terminated employee was not subject to rehire.

The Hearing Examiner is convinced that despite certain inconsistencies in the testimony about the exact process, that the Complainant's age was not a factor in the decision of the Respondent.

The Complainant also contends that Dickson and Frishman lacked the necessary job experience while the Complainant met this requirement. Kyle Frake presented clear and convincing testimony as to why the successful candidates, Dickson and Frishman, were more qualified for the positions especially with respect to their qualifications in the areas of team building and employee management and retention. Given the underlying reasons for the Complainant's termination in 2018, these would be highly desirable characteristics in an applicant.

Given this record, the Hearing Examiner concludes that the Complainant has failed to carry his burden of proof with respect to his claim of discrimination on the basis of his age.

The Hearing Examiner will next address the claim of retaliation. The Complainant does meet the first prong of the *prima facie* claim. He is a member of a protected class because he previously filed a complaint with the Equal Opportunities Division. As previously established, the Complainant did suffer an adverse action when the Respondent did not hire him for the Call Center Operations Manager role, therefore, the second prong of establishing *prima facie* has been met. What remains is whether there is a link between the protected class of retaliation and the adverse action.

Because the previous complaint was still in process when the Complainant re-applied to work for the Respondent, the timing provides a causal link, i.e. Complainant had an ongoing complaint of discrimination when he applied to be rehired. Given the Complainant has established a causal connection, the burden then shifts to the Respondent to show its actions were motivated by legitimate, non-discriminatory reasons. This is a burden of production, not of proof.

The Respondent's representatives gave conflicting stories regarding who knew what within its organization about the previous complaint from the Complainant. Ms. Glascock claimed

not to have discussed the complaint with Mr. Kern. Kern testified that he knew of the complaint, but as Human Resources indicated that the Complainant was not eligible for rehire due to the reason for his termination and post-termination behavior, he did not pass the Complainant's application on. Kyle Frake indicated that he knew of the complaint, but was not given an opportunity to review the Complainant's application as it was not passed on by Talent Acquisition given Complainant's ineligibility for rehire.

It is clear that the three most important individuals in Respondent's management structure were aware of the Complainant's complaint of discrimination at or around the time of the decision not to process the Complainant's application for rehire. However, knowledge of the complaint, in and of itself, is insufficient to find that the Respondent acted upon that knowledge in refusing to process the Complainant's application. While it is true that the Complainant's original complaint of discrimination was in process at the time of his January 2019 application, the record is devoid of facts or evidence from which the Hearing Examiner can conclude that the Respondent retaliated against the Complainant for the filing of his complaint by refusing to hire him in 2019.

The allegations of the complaint are dismissed.

Signed and dated this 12th day of December, 2022.

EQUAL OPPORTUNITIES COMMISSION

A handwritten signature in black ink, appearing to read "Clifford E. Blackwell, III". The signature is written in a cursive style with a large initial "C" and "B".

Clifford E. Blackwell, III
Hearing Examiner

Cc: Attorney Richard Rice
Attorney Erin Rome