Case 4:07-cv-02677   Document 53-4   Filed 10/24/2007   Page 1 of 3

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Houston District Office

460-2006-00439

Ms. Tracy Barker
316 Ray St.
Fort Bragg, NC 28307

Kellogg, Brown & Root
4100 Clinton
Houston, TX 77020
Attn: Ms. Celia Balli

Determination

Under the authority vested in me, by the Commission’s Procedural Regulations, I issue on behalf of the Commission the following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended.

All requirements for coverage have been met. On February 3, 2006, Charging Party Tracy Barker filed a charge of discrimination alleging that she was harassed, sexually harassed, and retaliated against by her employer while she was working at a few different locations in Iraq. She also contends that an employee of the U.S. State Department sexually harassed her and attempted to sexually assault her and that the respondent did not adequately handle that complaint.

The Commission’s investigation revealed sufficient evidence to establish that Charging Party acted in good faith when she raised complaints of sexual harassment and that respondent’s agents impermissibly tried to discourage her from making and pursuing her complaints about their own employees and the State Department employee. The efforts to discourage her from pursuing her complaints constitute retaliatory conduct against her by her employer, Kellogg Brown and Root (KBR). Furthermore, KBR staff empowered to investigate her complaints impermissibly initiated efforts to aid her manager in better documenting her purported performance shortcomings. In so doing, additional retaliation occurred under Title VII of the Civil Rights Act of 1964.

The charging party’s sexual harassment complaints primarily concern five junctures, a) her initial treatment by a supervisor; b) the alleged hostile environment sex harassment at that site; c) an alleged pervasive sexually hostile environment in Basra, characterized as the company’s allowing access to pornography, visuals of animals copulating, and co-workers engaging in sexual banter and propositioning the charging party; d) an alleged effort on the part of a State Department employee to sexually attack the charging party; and e) her Basra supervisor’s inappropriate remarks and solicitation of an affair with her. Her complaint of retaliation includes assertions that she was subjected to additional scrutiny and disparagement because of her initial complaint and her subsequent complaints about improper behavior in Basra. A review of documentation and witness interviews demonstrate a lack of professionalism on the part of the
charging party's initial manager, but, as that manager's conduct appeared nearly equally abusive to both male and female subordinates and was not sexual in nature, this investigation does not sustain a charge that that manager sexually harassed the charging party. The evidence does sustain the assertions that respondent retaliated against charging party as a direct result of her good faith complaints against that initial manager, that there was a pervasive sexually hostile environment in the Basra placement and that retaliatory conduct against charging party continued there. There is documentation that respondent's human resources staff actively abetted the mistreatment of the charging party by coalescing in an effort to unfairly claim that charging party's performance warranted severe consequences. At the same time, confronted with clear evidence of the arbitrary mistreatment of subordinates by a manager, that human resources staff appeared to be mute but championed mistreatment of the charging party. Evidence supports the fact that Respondent made plans to discipline Charging Party after her complaint of harassment. Following this incident, evidence indicates that Respondent allowed a sexually hostile environment to exist which was severe and pervasive. The evidence is equivocal regarding whether or not the State Department employee and her Basra supervisor sexually harassed her. As a result of Charging Party reporting a sexual assault Charging Party was again threatened and faced further intimidation from another of Respondent's officials.

Based on the weight of the evidence, the Commission concludes that the Respondent retaliated against Charging Party by intimidating her following her complaint of harassment by a member of management and attempting to orchestrate her termination. The Commission also concludes that Charging Party was forced to endure a sexually hostile environment in Basra. As the purported misconduct of the State Department employee and her supervisor's claimed sexual improprieties were not witnessed, no other tangible evidence was presented, and other indicia could not be assessed, no dispositive decision as to the occurrence and/or severity of those accusations can be made at this time. Though it has been suggested by respondent that it could not investigate the complaint about a non-employee's alleged sexual misconduct, its efforts to retaliate against the charging party undermine confidence in its other assertions. Finally, the Commission finds that Respondent retaliated against Charging Party following her report of an allegation of sexual assault by threatening Charging Party's employment and ordering her to refrain from elevating her complaint because it might negatively impact her supervisors. Respondent is, therefore, in violation of Title VII of the Civil Rights Act of 1964, as amended.

This determination does not conclude the processing of this charge. The Commission will begin conciliation efforts to resolve all matters where there is reason to believe that a violation has occurred. Therefore, the Commission now invites the parties to join with it in reaching a just resolution of this matter. The confidentiality provisions of Title VII apply to information obtained during the conciliation.
If the Respondent declines to discuss settlement or when, for any other reason, a settlement acceptable to the Director of the Houston District Office is not obtained, the Director will inform the parties and advise them of the court enforcement alternatives available to aggrieved persons and the Commission. A Commission representative will contact each party to begin conciliation.

On Behalf of the Commission:

8/16/2007
Date

R.J. Ruff, Jr.
District Director

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