

STATE OF ILLINOIS     )  
                                  )  ss  
COUNTY OF COOK     )

FILE NO (S) 2015SF0335

**AFFIDAVIT OF SERVICE**

Benetta M. Davies, deposes and states that she served a copy of the attached **NOTICE OF DISMISSAL FOR LACK OF SUBSTANTIAL EVIDENCE** on each person named below by depositing same this 2<sup>nd</sup> day of March, 2015, in the U.S. Mail Box at 100 West Randolph Street, Chicago, Illinois, properly posted for FIRST CLASS MAIL, addresses as follows:

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Patrick Bott  
3406 W. Lincoln Ave.  
Peoria, IL 61604

J. Christopher Hesse  
Hesse Martone, PC  
13354 Manchester Rd.  
Suite 100  
St. Louis, MO 63131

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

  
Benetta M. Davies

**PLEASE NOTE:**

The above-signed person is responsible only for mailing these documents. If you wish a review of the findings in this case you must complete the Request for Review form attached. Department staff are not permitted to discuss the investigation findings once a Notice of Dismissal has been issued.

STATE OF ILLINOIS  
DEPARTMENT OF HUMAN RIGHTS

IN THE MATTER OF:

PATRICK BOTT,	)	
	)	
COMPLAINANT,	)	CHARGE NO. 2015SF0335
	)	EEOC NO. 21BA42277
AND	)	
	)	
KEYSTONE CONSOLIDATED	)	
INDUSTRIES, INC.,	)	
	)	
RESPONDENT.	)	

**NOTICE OF DISMISSAL**  
**FOR LACK OF SUBSTANTIAL EVIDENCE**

Patrick Bott  
3406 W. Lincoln Ave.  
Peoria, IL 61604

J. Christopher Hesse  
Hesse Martone, PC  
13354 Manchester Rd.  
Suite 100  
St. Louis, MO 63131

DATE OF DISMISSAL: March 2, 2015

1. YOU ARE HEREBY NOTIFIED that based upon the enclosed investigation report, the DEPARTMENT OF HUMAN RIGHTS (DHR) has determined that there is NOT substantial evidence to support the allegations of the charge(s). Accordingly, pursuant to Section 7A-102(D) of the Human Rights Act (775 ILCS 5/1-101 et. seq.) and its Rules and Regulations (56 Ill. Adm. Code. Chapter II, Section 2520.560), the charge is HEREBY DISMISSED.
2. If Complainant disagrees with this action, Complainant may:
  - a) Seek review of this dismissal before the Illinois Human Rights Commission, 100 West Randolph Street, Suite 5-100, Chicago, Illinois, 60601, by filing a "Request for Review" with the Commission by the request for review filing date below. Respondent will be notified by the Human Rights Commission if a Request for Review is filed.

**REQUEST FOR REVIEW FILING DEADLINE DATE: June 5, 2015**

Or,

- b) Commence a civil action in the appropriate state circuit court within ninety (90) days after receipt of this Notice. A complaint should be filed in the circuit court in the county where the civil rights violation was allegedly committed.

If you intend to exhaust your State remedies, please notify the Equal Employment Opportunity Commission (EEOC) immediately. The EEOC generally adopts the Department's findings. The Appellate Courts in Watkins v. Office of the State Public Defender, \_\_\_ Ill.App.3d \_\_\_, 976 N.E.2d 387 (1<sup>st</sup> Dist. 2012) and Lynch v. Department of Transportation, \_\_\_ Ill.App.3d \_\_\_, 979 N.E.2d 113 (4<sup>th</sup> Dist. 2012), have held that discrimination complaints brought under the Illinois Human Rights Act ("IHRA") against the State of Illinois in the Illinois Circuit Court are barred by the State Lawsuit Immunity Act. (745 ILCS 5/1 et seq.). Complainants are encouraged to consult with an attorney prior to commencing a civil action in the Circuit Court against the State of Illinois.

**Please note that the Department cannot provide any legal advice or assistance. Please contact legal counsel, your city clerk, or your county clerk with any questions.**

3. Complainant is hereby notified that the charge(s) will be dismissed with prejudice and with no right to further proceed if a timely request for review is not filed with the Commission, or a written complaint with the appropriate circuit court.
  
4. If an EEOC charge number is cited above, this charge was also filed with the Equal Employment Opportunity Commission (EEOC). If this charge alleges a violation under Title VII of the Civil Rights Act of 1964, as amended, or the Age Discrimination in Employment Act of 1967, Complainant has the right to request EEOC to perform a Substantial Weight Review of this dismissal. Please note that in order to receive such a review, it must be requested in writing to EEOC within fifteen (15) days of the receipt of this notice, or if a request for review is filed with the Human Rights Commission, within fifteen days of the Human Rights Commission's final order. Any request filed prior to your receipt of a final notice WILL NOT BE HONORED. Send your request for a Substantial Weight Review to EEOC, 500 West Madison Street, Suite 2000, Chicago, Illinois 60661. Otherwise, EEOC will generally adopt the Department of Human Rights' action in this case.

**PLEASE NOTE: BUILDING SECURITY PROCEDURES PRESENTLY IN PLACE DO NOT PERMIT ACCESS TO EEOC WITHOUT AN APPOINTMENT. IF AN APPOINTMENT IS REQUIRED, CALL 312-869-8000 OR 1-800-669-4000.**

DEPARTMENT OF HUMAN RIGHTS

STATE OF ILLINOIS  
DEPARTMENT OF HUMAN RIGHTS  
INVESTIGATION REPORT

**Complainant:** Patrick Bott

**IDHR No.:** 2015SF0335

**Respondent:** Keystone Consolidated Industries, Inc.

**EEOC No.:** 21BA42277

**Investigator:** VVM

**Supervisor:** *njk*

**Date:** 2/11/15

**Issue/Basis:**

- A. Discharge/retaliation
- B. Loss of Wages/retaliation
- C. Loss of Benefits/retaliation

**Finding:**

- A. Lack of Substantial Evidence
- B. Lack of Substantial Evidence
- C. Lack of Substantial Evidence

**Jurisdiction:**

Alleged violation:

June 26, 2014

Charge filed:

August 13, 2014

Charge perfected:

August 22, 2014

Amendments:

Number of employees:

877

**Verified Response:**

Due: 10/31/2014

Received: 10/14/2014

Timely:  Untimely:

**Group Exhibit A**

If untimely, good cause shown: Yes  No

**Employment Data:**

Respondent provided their EEO-3 Report indicating they employ 877 employees.

**Uncontested Facts:**

1. Respondent is a company that manufactures steel and wiring.
2. Complainant was employed by Respondent on May 16, 2011.
3. Complainant sent the text "I understand that Clyde "know it all" Schall was being a total FUCK. I hate that mother fucker", to Clyde Schall, General Foreman Steelmaking Maintenance on June 26, 2014.
4. Complainant was discharged on June 30, 2014.

**Complainant's Allegations-Count A-C:**

Complainant alleges he was discharged, suffered loss of wages and loss of benefits on June 26, 2014 due to retaliation.

**Respondent's Defenses-Count A-C:**

Respondent admits Complainant was discharged on June 26, 2014, for violating Respondent's Plant Conduct Rules and denies it was due to retaliation. Respondent admits Complainant suffered loss of wage and loss of benefits as he was terminated and Respondent does not pay wages or benefits to discharged employees.

**Investigation Summary-Count A-C:**

**A. Complainant's Evidence.**

1. According to Complainant, on/or about March 17, 2013, a Hispanic friend of his applied for a job with Respondent and Schall went up to Complainant and told him not to be telling his "wetback" friends to apply at Respondent. Complainant stated he believed Schall is racist against Hispanic individuals and did not like Complainant because Schall believed Complainant to be trying to get Hispanics hired at Respondent. Complainant stated since Schall did not like Hispanics he did not want Complainant working at Respondent.
2. According to Complainant, on June 16, 2014, he text some pictures to Schall to show him the photos of the yard where 13 capacitors had blown up.
3. According to Complainant, on June 18, 2014, he had just worked his third, sixteen hour shift in a row and was exhausted.
3. According to Complainant, on June 18, 2014, he reported to work at about 1:30PM for his 2:00PM shift, when coworker Chris Cooper told him that Schall was being abusive toward coworker Bill Hosbrough.
4. According to Complainant, he was sending a text to Hosbrough to console him and accidently sent the text to Schall that said "I understand that Clyde "know it all" Schall was or being a total FUCK. I hate that mother fucker". Complainant stated he never meant to send the text to Schall (**Exhibit C**).
5. According to Complainant, Schall responded to the text with "Text me with business only".
6. According to Complainant, Tom Dewitt, Superintendent, called him in for a meeting with Complainant and Roy Griffith, Union Representative. Complainant stated Dewitt told Complainant he would talk to Schall about what he wanted done regarding the text.

7. According to Complainant, on June 26, 2014, Complainant attended a disciplinary hearing and was discharged.
8. According to Complainant, Dan Ford drove an earth mover to look at deer and got it stuck and was suspended for 6 months in 2013.
9. According to Complainant, Bill Evans cussed out a supervisor and was suspended for 6 months sometime in November or December of 2012.
10. According to Complainant when he was discharged he no longer received wages and benefits from Respondent.

**B. Respondent's Evidence.**

1. According to Dewitt, on June 18, 2014, Complainant sent the text "I understand that Clyde "know it all" Schall was or being a total FUCK. I hate that mother fucker", to Schall.
2. According to Dewitt, sending that text to Schall is a violation of Respondent's General Plant Conduct Rules and Regulations (**Exhibit D**).
3. According to Dewitt, on or about June 19, 2014, he met with Complainant and Griffith, to talk about the text but nothing was resolved.
4. According to Dewitt, on June 26, 2014, Complainant attended a disciplinary meeting. Dewitt stated the decision was made to discharge Complainant.
5. According to Jerry Burdess, Director Labor Relations, Complainant signed an acknowledgement on May 16, 2011 that he had received a Copy of Respondent's General Plant Conduct Rules and Regulations (**Exhibit E**).
6. According to Burdess, Complainant violated Section III, Article 11, 15, and 19 of Respondent's General Plant Conduct Rules and Regulations (**Exhibit F**). Burdess stated conduct or behaviors under these articles are punishable by immediate discharge.
7. According to Burdess, Respondent was following their own policy in discharging Complainant (**Exhibit G**).
8. According to Burdess, once they discharge an employee they no longer pay them a wage nor do they provide them with ongoing benefits.
9. According to Burdess, Respondent provided comparative data of several employees that were discharged in the relevant time frame as Complainant (**Group Exhibit H**).
10. According to Burdess, Complainant stated Ford was his comparative. Burdess stated Ford was disciplined on November 5, 2012, after he drove a haul truck to a

location outside the normal operating area and it became stuck. Burdess stated the conduct was not even remotely similar to Complainant and Ford was not disciplined under the same Articles of Respondent's General Plant Conduct Rules and Regulation nor was he disciplined by the same supervisor. Burdess stated Ford was not a comparative.

11. According to Burdess, Complainant pointed to Bill Evans as his comparative but there is no one by that name at Respondent. Burdess stated Myrl Evans cussed out a supervisor and received a three month suspension. Evans was issued a written warning on February 28, 2011, prior to Complainant even becoming employed by Respondent, for violating Respondent's Smoking Policy as well as Section III, Article 15, Disobedience or Insubordination for uttering profanities when he was reprimanded for smoking. The infraction was revised on March 2, 2011 to a Section III, Article 11 and Evans received a three month suspension. Burdess stated Evans was not a comparative because Evans had been employed at Respondent since August 18, 1969, and had 42 years of service and was not supervised or disciplined by the same supervisor (**Exhibit I**).
12. According to Burdess, Respondent does not provide benefits or wages to discharged employees.

**C. Complainant's Rebuttal.**

1. Complainant did not provide any additional information other than what was previously identified in the Complainant's Evidence Section.

**Analysis:**

The Department's investigation did not reveal and Complainant did not show that he was discharged, suffered loss of wages, and suffered loss of benefits due to retaliation. Complainant stated he opposed discrimination on/or about March 19, 2013. Retaliation must show a time nexus between Complainant's act of opposition and the adverse action that happened to them; in this case, there is not a good nexus for retaliation because Complainant stated he opposed discrimination on/or about March 19, 2013, and was discharged, suffered loss of wages and suffered a loss of benefits on June 26, 2014. The difference in time between Complainant filing his charge of discrimination and the adverse action that happened to him is one year and three months, which is too long of a period of time to support a nexus of retaliation. However it is uncontested Complainant sent the text of "I understand that Clyde "know it all" Schall was or being a total FUCK. I hate that mother fucker" to Schall. Complainant violated Respondent's General Plant Conduct Rules and Regulations Section III., Article 11, 15, and 19 and was subject to immediate dismissal. Complainant named Ford as a comparative but he did not have the same supervisor nor did he engage in the same type of activity as Complainant. Complainant also pointed to Evans, who uttered profanity when he was told to not smoke in the plant on March 2, 2011 prior to Complainant being hired by Respondent. Evans also had 42 years of service, not three like Complainant and Evans, was not supervised or disciplined by the same supervisor. Respondent provided the comparative data of several employees who were discharged in the relevant time frame as Complainant who did not receive wages or benefits as they were no

longer employed by Respondent and Respondent's policy is to not pay wages or issue benefits to discharged employees.

**Findings and Conclusion-Count A-C:**

A finding of lack of substantial evidence is recommended because Respondent followed their General Plant Conduct Rules and Regulations Section III., Article 11, 15, and 19 when they discharged Complainant. Respondent followed their practice of not paying wages benefits to discharged employees.

**Witness List:**

- A. Complainant  
3406 west Lincoln Ave.  
Peoria, Il 61604  
309-229-4993
  
- B. Jerry Burdess  
C/o J. Chris Hesse  
13354 Manchester Road Suite 100  
St. Louis, MO 63131  
314-862-0300
  
- C. Tom Dewitt  
C/o J. Chris Hesse  
13354 Manchester Road Suite 100  
St. Louis, MO 63131  
314-862-0300
  
- D. Dan Doetzel  
13354 Manchester Road Suite 100  
St. Louis, MO 63131  
314-862-0300
  
- E. Roy Griffith Coworker  
Phone Interview 309-472-6951
  
- F. David Dennis, Coworker  
Phone Interview 309-642-5421

**Exhibits:**

- A. Verified Response Good Cause Determination
- B. Respondent's EEO-3 Report
- C. Copy of Text
- D. Signed Acknowledgement of General Plant Rules and Regulations
- E. General Plant Rules and Regulations



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- F. Section III, Article 11, 15, and 19.
- G. Complainant's Discharge Notice
- H. Comparative Data
- I. Evans Disciplinary Records

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