

City of Chicago
COMMISSION ON HUMAN RELATIONS
740 N. Sedgwick, 4th Floor, Chicago, IL 60654
(312) 744-4111 [Voice], (312) 744-1081 [Facsimile], (312) 744-1088 [TTY]

IN THE MATTER OF:

Mildred Virella
Complainant,
v.

Target Corporation
Respondent.

Case No.: 17-P-50

Date of Ruling: February 13, 2020

FINAL RULING ON LIABILITY AND RELIEF

I. INTRODUCTION

Complainant Mildred Virella filed this Complaint against Respondent Target Corporation alleging that Respondent subjected her to disability discrimination in violation of the Chicago Human Rights Ordinance (“CHRO”). Specifically, Complainant alleges that Respondent violated Chapter 2-160 of the Chicago Municipal Code, which prohibits, among other things, disability discrimination involving the full use of a public accommodation. (CHRO §2-160-070).

II. PROCEDURAL HISTORY

The Complaint was filed on November 28, 2017, and a Response was filed on February 20, 2018. The Commission entered an Order Finding Substantial Evidence on June 27, 2018. After several attempts to settle this matter were unsuccessful, on November 14, 2018, the Commission issued an Order Appointing Hearing Officer and Commencing Hearing Process to both parties.

The administrative hearing was held on July 30, 2019. On October 7, 2019, the hearing officer issued her Recommended Ruling on Liability and Relief. On December 9, 2019, Complainant filed objections to the Recommended Ruling on Liability and Relief. On January 10, 2020, Respondent filed its Responses to Complainant’s objections. Both submissions have been considered in reaching this Final Ruling.

III. FINDINGS OF FACT

1. Ms. Virella was born with a disability and had her left leg amputated in 2013. (Tr. 15) She has open wounds on her leg and cannot walk far without assistance. (Tr. 13)

2. On November 25, 2017, Ms. Virella, several family members, and friends went to the Target store located on Elston and Logan Boulevard. (Tr. 13, 14) Jose Virella, Complainant’s husband, dropped her off at the front door and went to find parking. (*Id.*) Ms. Virella walked into the store using a cane. (Tr. 39) At the time, Ms. Virella was wearing a prosthetic leg and pants. (Tr. 38-39)

3. Ms. Virella got into a motorized shopping cart and proceeded to the bathroom with her friend Judy Alberdteson.¹ (Tr. 15-16)
4. The motorized cart was difficult to maneuver through the bathroom door. Ms. Virella kept hitting the corner of the entrance with the cart. (Tr. 16) There was no sign on the door that prohibited the use of carts in the bathroom. (Tr. 21)
5. Ms. Virella testified that after several attempts to get into the bathroom, she heard a man yell at her, “Ma’am you can’t go in there with that cart.” The second time he said it, Ms. Virella turned around and looked directly at him. (Tr. 16 -17)
6. Ms. Virella testified that the man was a Target employee at the register. He was tall, looked Hispanic, and had black hair. (*Id.*) Ms. Virella’s friend, Alberdteson, also testified that a man yelled at Ms. Virella several times and mumbled something about it to a customer he was serving. (Tr. 93-94, 120, 121) Alberdteson testified that the customer at the register also yelled at Ms. Virella and said she could not go into the bathroom with the cart. (Tr. 120, 121)
7. Ms. Virella was embarrassed because of the comments, but was finally able to get the cart into the bathroom and she used the facilities. (Tr. 22) Ms. Virella testified that none of the Target employees offered to assist her. (Tr. 74)
8. After leaving the bathroom, Ms. Virella went to customer service to complain. (Tr. 23) She was upset. Ms. Virella spoke to Matthew Morsovillo, Guest Services Assistant, and explained that when she was trying to enter the bathroom with the cart, a male cashier “screamed” at her. (Tr. 23, 49, 175, 183-184) Ms. Virella asked to speak to a supervisor. She did not tell Morsovillo that she was an amputee or that she has a disability. (Tr. 49, 50, 221)
9. Morsovillo testified that before Ms. Virella came over to him, he heard a Target customer tell someone in the general direction of the bathroom that they could not take the motorized cart into the bathroom. (Tr. 179) Morsovillo stated that it was a female customer, not a Target employee who made the comments to Ms. Virella. (Tr. 178-179) Morsovillo also testified that the statement was not true. There was no rule against taking the carts into the bathroom, the carts could be used throughout the store and they could, in fact, fit in the bathroom. (Tr. 203-204, 217) Morsovillo testified further that anyone is entitled to use the motorized shopping carts for any reason. (Tr. 219)
10. Nevertheless, Morsovillo apologized to Ms. Virella because she had a bad experience in the store. (Tr. 184-185) He agreed to get a supervisor and, according to Ms. Virella, Morsovillo told her that he had a family member or relative that “goes through the same thing.” (Tr. 23) Morsovillo did not testify to making this later statement to Ms. Virella.
11. The store supervisor at the time, Casey Shirrells, arrived a few minutes after Morsovillo called for him. (Tr. 185-186)² He and Morsovillo stepped away to discuss Ms. Virella’s

¹ Judy’s full name is Maria J. Alberdteson.

² Shirrells had worked at Target for approximately 16 years at the time of the incident. His title was Executive Team Lead of Asset Protection. (Tr. 254) On the night in question, Shirrells was the leader on duty responsible for 52 direct reports. (Tr. 257) During the hearing, Shirrells was Target’s corporate representative. He was also a fact witness. Complainant’s counsel made several motions to exclude Shirrells from hearing other witness testimony and to bar his testimony. (See, e.g., Tr. 10, 252-253) These objections were overruled because Target was entitled to have corporate representation during the course of the hearing. Further, Shirrells was a manager with 16 years of experience at Target with sufficient authority to fulfill the corporate representative role. Further, there is no

concerns. Morsovillo told Shirrells that Ms. Virella had complained that a cashier yelled at her for trying to take the motorized cart into the bathroom. (Tr. 186-187, 260-261) To address the complaint, Morsovillo and Shirrells prepared a gift card for Ms. Virella and planned to give her the number for the corporate office. (*Id.*)

12. While Ms. Virella waited for Morsovillo to return, her husband, Jose, entered the store. Ms. Virella was visibly distraught. Ms. Virella told her husband about her difficulty getting into the restroom and that a Target employee “humiliated her and screamed at her in front of everyone.” She pointed the employee out. (Tr. 25-26, 138, 140-141)

13. Mr. Virella confronted the cashier. He testified that he “let it be known” that he was not happy with the way the cashier addressed his wife. Mr. Virella was loud and pointed his finger in the cashier’s face. (Tr. 188) Mr. Virella testified that he “wanted to let [the cashier] know how it felt being humiliated by other people.” (Tr. 143)

14. Shirrells heard and observed the confrontation between Mr. Virella and the cashier. (*Id.*) Shirrells confronted Mr. Virella and said, “You can’t talk to my boy like that.” (Tr. 27, 144, 146) This irritated Mr. Virella even more because it appeared that Shirrells and the cashier were friends instead having an employee/supervisor relationship. (Tr. 146-147)

15. At the hearing, Shirrells testified that he never referred to the cashier as “my boy;” that he told Mr. Virella he could not talk to his cashier that way and tried to direct him over to the side to continue their conversation. (Tr. 265-266) Ms. Virella joined the exchange between her husband and Shirrells and explained her complaint—that the cashier yelled at her for trying to take the motorized cart into the bathroom. (Tr. 266-67)

16. Shirrells testified that at that point, Ms. Virella told him she was an amputee. (Tr. 269) However, Ms. Virella testified that she did not know if Morsovillo or Mr. Shirrells were aware of her disability. (Tr. 70-71) She testified, “That’s personal. I mean I shouldn’t have to go telling everyone I’ve got a disability.” (*Id.*)

17. Shirrells’ version of events cast him as trying to resolve Ms. Virella’s complaint. (Tr. 266-268) Nevertheless, things escalated and angry words were exchanged between Shirrells and the Virellas. (Tr. 146-147)

18. Ms. Virella testified that Shirrells appeared uninterested in helping her—that he was not professional in handling the matter. (Tr. 29) Seeing that she would not get help from him, Ms. Virella called Shirrells a “nobody” and told him that he should not be in leadership. (Tr. 67, 147) Shirrells testified that he felt disrespected and violated by the exchange. (Tr. 273)

19. At that point, Shirrells told Ms. Virella that “if he was a nobody, then there was nothing to give her,” and he tore up the corporate number in her face. (Tr. 67, 194) She did not receive the gift card. (Tr. 196)

20. After the exchange of words between Shirrells and Ms. Virella, Shirrells called security, who then escorted the Virellas out of the store. (Tr. 196, 198)

evidence that Shirrells changed his testimony based on prior witness testimony at the hearing. Finally, even if Shirrells’ testimony was excluded, the recommended ruling would be the same. The remaining testimony and evidence failed to establish a violation of the CHRO.

21. Subsequently, Shirrells spoke to the cashier about the incident. He denied making the statement to Ms. Virella and claimed that he was just helping a customer. He claimed further that all of a sudden “a guy was in his face making him feel uncomfortable.” (Tr. 274, 277) Shirrells believed the cashier’s version of events. (Tr. 274)

22. At the hearing, Ms. Virella testified that she felt humiliated. After the incident, she did not want to go out or go to stores. She was depressed. Ms. Virella discussed the incident with her therapist and though she received treatment, she still feels the effects of the incident. (Tr. 33-35)

23. In the Complaint, Ms. Virella stated, “I charge Target with denying my full and equal enjoyment of its services, in that its employees humiliated me, ignored me and treated me and my husband rudely and unprofessionally based on my disability.” (Resp. Ex. 1)

IV. APPLICABLE LEGAL STANDARDS

Section 2-160-070 of the CHRO makes it unlawful for any person who operates or manages a public accommodation to withhold, deny, curtail, limit, or discriminate concerning the full use of such public accommodation because of an individual’s disability.

Commission Regulations further provide that discriminatory acts include, but are not limited to: denying admittance to persons in a Protected Class; using different terms for admittance of persons in a Protected Class; harassing persons in a Protected Class (whether or not allowed admittance); and failing to accommodate the needs of a person with a disability. CCHR Reg. 520.100(a).

Based on these provisions, to prove a *prima facie* case here, Complainant must show that she (1) is a person with a disability within the meaning of the CHRO; (2) is a qualified individual in that she satisfied all non-discriminatory standards for service; and (3) did not have full use of the Target store as other customers did because of her disability. See *Maat v. String-A-Strand*, CCHR No. 05-P-05, at 4 (Feb. 20, 2008), citing *Doering v. Zum Deutchen Eck*, CCHR No. 94-PA-35 (Sept. 29, 1995). “Qualification” is minimal and requires only the desire to utilize and pay for services offered to the public. *Russell v. Chicago Transit Authority*, CCHR No. 16-P- 49 (Aug. 9, 2018).

In weighing the evidence where parties have strongly held and sometimes contradictory statements, such as in this case, the hearing officer must determine the credibility of witnesses and is free to disregard, in whole or in part, the testimony of witnesses found to lack credibility. *Poole v. Perry & Assoc.*, CCHR No. 02-E-161 (Feb. 15, 2006); *Lanham v. Logan Square Chamber of Commerce*, CCHR No. 16-P-12 (June 8, 2017).

V. DISCUSSION

Ms. Virella’s complaint alleges that she was denied the full and equal enjoyment of Target’s services because its employees humiliated, ignored and treated her and her husband rudely and unprofessionally based on her disability. (Resp. Ex. 1 at p.2) Yet, during the hearing, Ms. Virella appeared to assert that Target violated the CHRO because she had difficulty accessing the bathroom. Additionally, in her objections to the Recommended Ruling, Ms. Virella continues to argue that she was unable to access the bathroom at the Target store due to her disability.

Regarding the “lack of access” claim, Ms. Virella did not raise this claim in her complaint. The complaint only describes the treatment she received in the Target store. It does not state that she could not access the bathroom. Ms. Virella did not amend her complaint to include this claim prior to the Commission’s determination as to substantial evidence, or prior to the commencement of the hearing in this matter. Since this claim had not been considered during the Commission’s investigation, Complainant cannot raise it during the administrative hearing. See CCHR Reg. 210.150.

Concerning the treatment Ms. Virella received, there was contradictory testimony regarding who made the comment to Ms. Virella as she was attempting to enter the bathroom. The hearing officer determined that both the cashier and the customer made the comments to Ms. Virella. Ms. Virella testified that a male Target cashier made the comment. Complainant’s witness, Judy Alberdteson, testified that the male cashier and a Target customer made the comments. Guest Services Assistant Matthew Morsovillo testified that only the Target customer made the comment. The hearing officer found that Ms. Virella credibly testified that she turned and looked at the cashier when he made the comment. She identified him as a tall, Hispanic male. Alberdteson also credibly testified that she was standing next to Ms. Virella and that both the cashier and a customer made comments to Ms. Virella.

However, there was no credible evidence that the comments were made *because of* Ms. Virella’s disability. Ms. Virella testified that she was wearing her prosthetic leg and pants at the time of the incident. She was seated in a motorized shopping cart, not a wheelchair. Her disability was not readily apparent. The hearing officer further determined that Ms. Virella did not tell any of the Target employees at the time the comments were made that she has a disability. Ms. Virella testified herself that she did not know if they were aware of her disability at the time. Shirrells testified that Ms. Virella did not mention her disability until later— after their confrontation was already underway, and well after the initial statement was made. Given this testimony, the hearing officer found that Ms. Virella’s disability was not the cause of the cashier’s statement, the customer’s statement, or the subsequent exchange with Shirrells. Further, Morsovillo and Shirrells credibly testified that any Target customer can use the motorized carts for any reason. They do not automatically assume that the person using the cart has a disability.

In her objections, Complainant argues that the Commission should strike the testimony of Shirrells because Shirrells was allowed to remain in the hearing during the testimony of all other witnesses. Complainant objected to Shirrells’ testimony during the hearing, which was overruled. However, as noted by the hearing officer, even if Shirrells’ testimony was stricken, the evidence presented during the hearing does not show that the comments made to Complainant during her visit to Respondent’s store were based on her disability.

Finally, regarding the argument between the Virellas and Shirrells, Mr. Virella’s instinct to protect his wife by verbally confronting the cashier caused the matter to escalate. The evidence shows—indeed Mr. Virella admitted—that he was loud and yelled in the cashier’s face. Shirrells, a long-time store manager, made things worse by failing to de-escalate the matter and tearing up the corporate number in Ms. Virella’s face. Calling security on the Virellas was also unnecessary and extreme. The entire matter could have and should have been handled more professionally. Nevertheless, disrespectful behavior alone is not actionable under the CHRO in the absence of discrimination based on a protected class. See, e.g., *Blakemore v. Antojitos Guatemaltecos Rest.*, CCHR No. 01-PA-5 (Apr. 20, 2005) finding that treating an African American customer in an impolite manner without using overtly discriminatory language was a nuisance, but not sufficiently substantial or material to be considered an adverse action; *Maat v. Chicago Police Dep’t*, CCHR No. 04-P-54 (Dec. 30, 2005) finding no denial of full use of a

public accommodation where police officers called a complainant “crazy” because the term “crazy” is not inherently derogatory; that officers were disapproving, argumentative, or discourteous does not create hostile environment; *Anguiano v. Abdi*, CCHR No. 07-P-30 (Sept. 16, 2009) finding that exchanging personal insults during the course of an argument was not sufficiently separating or belittling to create hostile environment.

For all of these reasons, the hearing officer recommended a finding that Ms. Virella failed to prove that she was discriminated against due to her disability concerning the use of a public accommodation in violation of the CHRO.

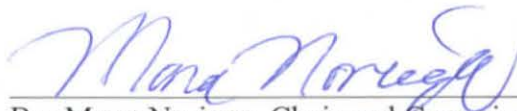
As provided in §2-120-510(l) of the Chicago Municipal Code, the Commission must and does adopt the findings of fact recommended by a hearing officer if they are not contrary to the evidence presented at the hearing. The Commission will not re-weigh a hearing officer’s recommendation as to witness credibility unless it is against the manifest weight of the evidence. *Stovall v. Metroplex et al.*, CCHR No. 94-H-87 (Oct. 16, 1996). Determining credibility of witnesses and the reliability of their testimony and related evidence is a key function of hearing officers, who have the opportunity to observe the demeanor of those who testify. *Poole, supra*.

The hearing officer’s findings in this case are consistent with the admitted evidence and adequately supported in the hearing record. The hearing officer explained the reasons for her findings and the Commission does not find them to be against the weight of the evidence. In fact, the hearing officer did not solely rely on the testimony of Shirrells in reaching the recommended finding in this matter. As stated above, disregarding his testimony would not result in a different conclusion. The Commission agrees with the hearing officer that the evidence brought out in the hearing does not support a determination that Complainant was subjected to discriminatory treatment in Respondent’s store because of her disability.

VII. CONCLUSION

Complainant Mildred Virella has not proved by a preponderance of the evidence that Respondent Target Corporation discriminated against her concerning the use of a public accommodation based on her disability in violation of the Chicago Human Rights Ordinance. Accordingly, the Commission finds in favor of Respondent, and the Complaint in this matter is hereby DISMISSED.

CHICAGO COMMISSION ON HUMAN RELATIONS



By: Mona Noriega, Chair and Commissioner

Entered: February 13, 2020