

FILED
April 8, 2024
State of Nevada
E.M.R.B.

STATE OF NEVADA
GOVERNMENT EMPLOYEE-MANAGEMENT
RELATIONS BOARD

ROSA MYERS,

Complainant,

v.

CITY OF RENO AND RENO FIRE
DEPARTMENT,

Respondents.

Case No. 2023-013

NOTICE OF ENTRY OF ORDER

PANEL B

ITEM NO. 896

TO: Complainant, by and through her attorney, Ronald J. Dreher, Esq.; and

TO: Respondents, by and through their attorneys, Jonathan Shipman, Assistant City Attorney, and Chandeni K. Sendall, Deputy City Attorney.

PLEASE TAKE NOTICE that the **DECISION, FINDINGS OF FACT AND CONCLUSIONS OF LAW** was entered in the above-entitled matter on April 8, 2024.

A copy of said order is attached hereto.

DATED this 8th day of April 2024.

GOVERNMENT EMPLOYEE-
MANAGEMENT RELATIONS BOARD

BY 
MARISU ROMUALDEZ ABELLAR
Executive Assistant

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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Government Employee-Management Relations Board, and that on the 8th day of April 2024, I served a copy of the foregoing **NOTICE OF ENTRY OF ORDER** by mailing a copy thereof, postage prepaid to:

Ronald J. Dreher, Esq.
P.O. Box 6494
Reno, NV 89513

Jonathan D. Shipman, Esq.
Assistant City Attorney
Chandeni K. Sendall, Esq.
Deputy City Attorney
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Reno, Nevada 89505



MARISU ROMUALDEZ ABELLAR
Executive Assistant

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ROSA MYERS,

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CITY OF RENO AND RENO FIRE
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Case No. 2023-013

**DECISION, FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

PANEL B

ITEM NO. 896

The State of Nevada, Government Employee-Management Relations Board (“Board”) held a hearing on this matter on March 19-20, 2024, pursuant to the provision of the Government Employee-Management Relations Act (“EMRA”), NRS Chapter 288, and NAC Chapter 288. The Board deliberated on the matter on March 20, 2024.

I. BACKGROUND

Rosa Myers (hereafter “Complainant”) filed a Complaint on June 6, 2023, alleging that Respondents had engaged in discrimination under NRS 288.270(1)(d) and (1)(f). Respondents filed a Motion to Dismiss on July 10, 2023, and this Motion was denied by the Board on September 22, 2023. On August 15, 2023, a Commissioner’s Order was entered which required the parties to provide documentation regarding the status of a related grievance filed by Complainant. On October 26, 2023, Complainant filed a Motion for Default regarding Respondents’ failure to file an Answer. The Board denied the Motion for a Default on November 16, 2023, although in the same Order, the Board did grant Complainant’s request to bar Respondents’ affirmative defenses.

...
...

1 **II. DISCUSSION**

2 **A. Statute of Limitations.**

3 The Board may not consider, and must dismiss, any complaint filed more than six months after
4 the occurrence which is the subject of the complaint. NRS 288.110(4). *Service Employees International*
5 *Union, Local 1107 v. Clark County*, Case No. 2021-018, Item No. 877 (EMRB, June 8, 2022); *Eleni*
6 *Konsolakis Garcia v. Service Employees International Union, Local 1107*, Case No. 2021-006, Item No.
7 873 (EMRB, Aug. 19, 2021). The six-month window in which to file a complaint begins once a
8 complaining party has unequivocal notice of the occurrence. *Id.*, see also *City of N. Las Vegas v. EMRB*,
9 127 Nev. 631, 639 (2011) (“indicating that the six-month period is triggered when the complainant
10 becomes aware that a prohibited practice actually happened”) (citation omitted). The notice requirement
11 is satisfied by either actual or constructive notice of the facts giving rise to the complaint. See *Service*
12 *Employees International, Local 1107 v. Clark County, supra*. In cases of employee discipline, those
13 operative facts are deemed to be known at the point in time of discipline and when the employee learns
14 of the adverse action. *Service Employees International, Local 1107 v. Clark County, supra* (citation
15 omitted). However, the statute of limitations period set forth in the EMRA is subject to the doctrine of
16 equitable tolling. *Id.*, see also *City of N. Las Vegas* at 640. Thus, regardless of the merits of an underlying
17 case, this Board, by statute, may not decide a case that falls outside of the six-month statute of limitations
18 set out in NRS 288.110(4) unless equitable tolling is present. The Board will first address the facts related
19 to the statute of limitations and then determine whether equitable tolling is applicable.

20 1. Statute of Limitations Factual Analysis.

21 The Claimant’s case primarily relied on the following for proof that Respondents had engaged in
22 discrimination:¹

- 23 a. The use of the term “hold off” by Chief Cochran during a discussion with
24 Complainant about her promotion on November 9, 2019. Complainant’s Opening
25 Brief at p. 2; lines 25-26.
- 26 b. The five (5) grievances filed by Complainant and the resolution of such. Hearing
27

28 ¹ To the extent any issue is not referenced herein, it is only because the Board found such issues irrelevant to the claims.

1 Exhibits 4 – 8 (hereafter “Exhibits.”).

2 c. The use of the term “optics” was allegedly used during the March 3, 2021, meeting
3 where Complainant, Chief Cochran, Captain Briant and Reno City attorney
4 Dunagan were present.

5 d. Other accidents involving Reno Fire Department personnel to include:
6 Ms. Bruno, Mr. Price and Mr. Wheatley. Exhibits 19 – 21.

7 A discussion of the four (4) issues is set forth below.

8 a. Use of the Words “Hold Off.”

9 Chief Cochran testified that he told Complainant on November 9, 2019, that he would “hold off”
10 on promoting Complainant until he had received a copy of the investigative report. The Chief’s
11 recollection is bolstered by Complainant’s opening brief which states in relevant part: “[o]n November
12 6, 2019, Fire Chief David Cochran (Chief Cochran), advised FF Myers that he would hold off on her
13 promotion until the results of the investigation were known...” Complainant’s Opening Brief at 2. Chief
14 Cochran testified that his use of the words “hold off” meant that he would wait, or “hold off,” on making
15 a decision whether he would promote Complainant at all until after he saw the investigative report.
16 Complainant thought the Chief would promote her regardless of the outcome of the investigative report.
17 *Id.* at 2-3. The Board finds it would be unreasonable for Complainant to think she would be promoted if
18 the investigation determined that she was at fault or otherwise charged criminally for her conduct – which
19 was the case. *See* Exhibits 27, 32 and 38. Regardless, it was apparent to Complainant that she would
20 not be promoted once the investigative report was provided to Chief Cochran in 2021 and she was not
21 promoted even after the 4th grievance was filed in September of 2021. Furthermore, it was obvious that
22 Chief Cochran’s statement related solely to the investigative report and not the outcome of any criminal
23 case that resulted from the report.

24 b. The Grievances.

25 Claimant filed five (5) grievances from December 2019 through February of 2023. The first four
26 (4) grievances were primarily related to Chief Cochran’s decisions to prohibit Complainant from
27 operating certain vehicles or otherwise seeking to impose discipline on Complainant for the accident in
28 question. Grievance number four (4) filed in September of 2021, made no reference to any

1 discrimination. In fact, only the last grievance that was filed in February of 2023 mentioned any
2 discrimination claims. Furthermore, the discriminatory practices grievance, and the claims that are
3 currently before this board are really the direct result of Complainant's January 9, 2023, e-mail to Chief
4 Cochran asking to be promoted and Chief Cochran's reasonable denial of this request. *See Exhibit 72.*
5 Furthermore, the 5th grievance that was filed on February 9, 2023, specifically states that it was in relation
6 to the Chief's decision to not promote Complainant. Exhibit 8 at 252. Notably, the Complainant's own
7 union declined to participate in the final grievance due to a lack of evidence to support her claim. Exhibit
8 73 at 584. It is also clear from the facts provided that Chief Cochran could not have lawfully promoted
9 Complainant after the promotional list expired.

10 c. Use of the Term "Optics."

11 Based on the evidence presented to the Board, the term "optics" was only used once and that was
12 during a meeting held on March 3, 2021. Chief Cochran testified that he never used the word "optics"
13 during the March meeting and indicated that it may have been used by Reno City Attorney Dunagan.
14 Captain Briant also testified that attorney Dunagan may have used the word "optics." Regardless of who
15 said the word, it was used in March of 2021. Thus, Complainant knew, or should have known, the word
16 was discriminatory at the time the word was used, i.e., more than two years prior to the filing of the
17 discrimination claims with this Board.

18 d. The Other Reno Fire Department Accidents.

19 In examining the comparative accidents by Reno Fire Department personnel that Complainant
20 provided in support of her claims, the Board notes the incidents either predate the grievance by several
21 years or the accidents occurred after the filing of both grievance number five (5) and the Complaint in
22 this case which was filed in June of 2023. Specifically, the claim involving Ms. Bruno occurred prior to
23 November 2019 (Exhibit 19); the claim involving Mr. Price was included in a report dated June 2020
24 (Exhibit 20); and the claim involving Mr. Wheatley occurred more than two (2) months after the
25 Complaint in this case was filed (Exhibit 21). The Board finds the above incidents were known to
26 Claimant years prior to the filing the Complaint in this case or after it was filed, in either event the prior
27 accidents used by Complainant fell well outside of the 6-month statute of limitations. Furthermore, the
28 Wheatley accident was obviously not the basis for the discrimination complaint since it occurred after

1 the Complaint was filed.

2 2. Equitable Tolling Legal and Factual Analysis.

3 The Nevada Supreme Court has defined equitable tolling as “[t]he doctrine that the statute of
4 limitations will not bar a claim if the plaintiff, despite diligent efforts, did not discover the injury until
5 after the limitations period had expired.” *City of N. Las Vegas v. EMRB*, 127 Nev. 631, 640 (2011).
6 Furthermore, “the following factors, among any other relevant considerations, should be analyzed when
7 determining whether equitable tolling will apply: (a) knowledge of the relevant facts; (b) the claimant’s
8 diligence; (c) reliance on misleading authoritative agency statements and/or misleading employer
9 conduct; (d) and any prejudice to the employer.” *Id. (citation omitted)*. Importantly, “the law does not
10 permit equitable tolling when a party simply did not realize the extent of his claim.” *Jeffrey Charles v.*
11 *City of Henderson*, 132 Nev. 954 at 1 (2016).

12 a. Knowledge of Relevant Facts.

13 As discussed above, almost all of the facts that Complainant relied upon for the hearing occurred
14 in 2021 or prior.² Thus, the Complainant knew or should have known about the facts giving rise to the
15 Complaint by September of 2021 when the 4th grievance was filed.

16 b. Diligence.

17 In previous cases, the Board has found a lack of diligence when the Complainant waited 8 months
18 to around one year to press claims. *See Eleni Konsolakis Garcia, supra; see also Bantz v. Washoe County*
19 *Sch. Dist.*, Case No. 2017–028, Item No. 832 (EMRB, Sept. 13, 2018). The Board has determined that
20 Claimant knew or should have known about the facts giving rise to the Complaint by September of 2021.
21 In sum, the Complainant sat on her allegations for almost two years which cannot be described as diligent
22 in any way.

23 c. Misleading Statements or Conduct.

24 The Board finds that Claimant did not provide any proof of misleading statements or conduct on
25 the part of Respondents. As such, this part of the tolling analysis fails.

26
27 ² The Wheatley accident used by the Complainant occurred after the Complaint in this case was
28 filed and could not form the basis of a discrimination Complaint. The Board also finds that it was not
probative or useful as additional proof of discrimination since the facts and outcome are not comparable
to Complainant’s accident.

1 d. Prejudice to Respondents.

2 The Respondents would be greatly prejudiced if the Board decided to allow the claim to proceed
3 given the discussion above.

4 Given the discussion above, the Board further finds that equitable tolling is not applicable to the
5 facts in this case because Complainant knew or should have known her discrimination claims were tied
6 to these same facts, she was not diligent in pursuing her claims and there was no evidence of any
7 misleading conduct by the Respondents and allowing such claims would be prejudicial to Respondents.
8 Thus, given all the evidence presented to the Board, as well as the discussion contained herein, the Board
9 finds that all of Claimants claims are barred under NRS 288.110(4).

10 Notwithstanding the fact that all of the claims set forth in the Complaint are barred by the Statute
11 of Limitations, the Board conducted an analysis of the discrimination claims as set forth below to provide
12 more guidance to the parties and others who may find themselves in similar situations.³

13 **B. Discrimination under NRS 288.270(1)(d).**

14 The Complainant alleges that Respondents impermissibly discriminated against her pursuant to
15 NRS 288.180(1)(d) which states:

16 1. It is a prohibited practice for a local government employer or its
17 designated representative willfully to:

18 * * *

19 (d) Discharge or otherwise discriminate against any employee because the
20 employee has signed or filed an affidavit, petition or complaint or given any
information or testimony under this chapter, or because the employee has
formed, joined or chosen to be represented by any employee organization.

21 The analytical framework the Board must use for discrimination claims was established in *Reno*
22 *Police Protective Ass'n v. City of Reno*, 102 Nev. 98, (1986) and later modified in *Bisch v. Las Vegas*
23 *Metro Police Dep't*, 129 Nev. 328 (2013). Under this framework, an aggrieved employee must make
24 a *prima facie* showing sufficient to support the inference that the protected conduct was a motivating
25 factor in the employer's decision. Once this is established. the burden shifts to the employer to
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27 _____
28 ³ The Board's normal practice is to simply dismiss the case on the grounds the Board lacks
jurisdiction. However, the Board feels it would be helpful to the parties and the public for the Board to
discuss the discrimination claims and analysis.

1 demonstrate by a preponderance of the evidence that the same action would have taken place even in the
2 absence of the protected conduct. *Bisch* at 340. The aggrieved employee may then offer evidence that
3 the employer’s proffered legitimate explanation is merely pretextual and thus conclusively restore the
4 inference of unlawful motivation. *Id.* Moreover, the Nevada Supreme Court has adopted the modified
5 “*Transportation Management*” test, which states that “it is not enough for the employee to simply put
6 forth evidence that is capable of being believed; rather, this evidence must actually be believed by the
7 factfinder. *Id. (citations omitted).* Finally, the analysis for a discrimination claim brought under NRS
8 288.270(1)(d) is the same as a discrimination claim brought under
9 NRS 288.270(1)(f). *Tammy Bonner and Bachera Washington v. City of North Las Vegas*, Case No.
10 2015-027, Item No. 820 (EMRB, Feb 8, 2017).

11 As stated above, the first four (4) grievances were primarily related to Chief Cochran’s decisions
12 to prohibit Complainant from operating certain vehicles or otherwise seeking to impose discipline on
13 Complainant for the accident and as noted above. Only the last grievance that was filed in February of
14 2023, related to discrimination claims. Again, the Complainant’s own union declined to participate in
15 the final grievance due to a lack of evidence to support her claim. Exhibit 73 at 585.

16 The evidence in this case clearly shows that Respondents actions were reasonable in light of the
17 facts and circumstances known to them. For example, despite having been found at fault for killing a
18 pedestrian who was lawfully within the crosswalk, and having ignored a traffic signal while doing so,
19 Claimant was not terminated, demoted or suspended without pay. *See* Exhibit 32 at 457. This is also
20 despite having been criminally charged for the same conduct.⁴ *See* Exhibit 38. The Board finds that
21 Respondents took reasonable actions with respect to Claimant in an effort to protect public safety and to
22 impose discipline after the Chief was provided evidence that Claimant was at fault in an incident that led
23 to someone’s death. There were also no e-mails, notes or testimony provided by Complainant showing
24 that Respondents were taking any action based on the Complainant filing grievances. Thus, based on all
25 of the evidence presented, the Board finds that there is no evidence that the grievances filed by
26 Complainant were a motivating factor in any decision made by the Respondents relative to Complainant’s

27 ⁴ The Claimant asserted that she had been exonerated when the criminal case was dismissed.
28 This assertion is simply incorrect. In fact, the criminal case was not dismissed due to lack of evidence,
rather it was due to an application made under NRS 178.566. Exhibits 15 through 17.

1 promotion or discipline. As a result, Complainant has failed to meet her burden showing that the actions
2 taken by Respondents were discriminatory under NRS 288.270(1)(d).

3 **C. Discrimination under NRS 288.270(1)(f).**

4 Complainant also alleged that Respondents engaged in political and personal discrimination
5 against Complainant. It is impermissible for a local government employer to discriminate against an
6 employee under NRS 288.270(1)(f) because of "...race, color, religion, sex, sexual orientation, gender
7 identity or expression, age, physical or visual handicap, national origin or because of political or personal
8 reasons or affiliations." *See Steven B. Kilgore v. City of Henderson*, Case No. A1-045763, Item No.
9 550H (EMRB, March 30, 2005). Moreover, the analytical framework for discrimination complaints
10 brought under NRS 288.270(1)(f) are the same as set forth above in Section A above. *See also Bisch*,
11 *supra*.

12 Complainant argued that she was treated differently from others who had accidents while
13 employed at the Reno Fire Department due to political and personal reasons. However, not one of the
14 other referenced accidents involved a death, nor was anyone in the other matters ever criminally charged.
15 In addition, one of the accidents presented by Complainant arose more than two months after the
16 Complaint in this case was filed, and as such, it really had no bearing on this case or Complainant's
17 claims. Moreover, the comparisons provided by Complainant regarding the accidents of other Reno Fire
18 Department employees and the facts related to each stand in stark contrast to Complainant's case and are
19 simply not comparable. For example, there is no indication that Ms. Bruno was ever criminally charged
20 or even cited regarding her accident involving a pedestrian which occurred in her privately owned vehicle
21 and the same can be said for all of the other cases cited by Complainant. In fact, there was ample evidence
22 presented to the Board showing that Complainant is the only Reno Fire Department employee who has
23 ever killed a member of the public while on duty, and this fact alone is sufficient to warrant different
24 treatment regarding promotional opportunities and discipline.

25 Complainant also asserted Reno Fire Chief ("Chief Cochran") stated that the "optics" related to
26 her accident was the basis for his decision to hold off on Complainant's promotion. However, Chief
27 Cochran testified that never used the word "optics" during the March 3, 2021, meeting between
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1 Complainant, Chief Cochran, Capt. Briant and Reno City Attorney Dunagan.⁵ The Board finds that Chief
2 Cochran's testimony was very credible overall, including on this point. The Board also finds that
3 Complainant's testimony was sometimes less than credible. Furthermore, Captain Briant indicated that
4 either Chief Cochran or Attorney Dunagan had used the term "optics" during the March 3, 2021, meeting
5 which tends to corroborate Chief Cochran's testimony.

6 The Board further finds that it was very reasonable for Chief Cochran to have delayed
7 Complainant's promotion pending the outcome of the accident investigation. However, by the time Chief
8 Cochran had been given a copy of the report early 2021, the promotional list had expired and the Reno
9 Civil Service Rules preclude Chief Cochran from promoting Complainant.⁶ The Board also finds that
10 the fact Ms. Bruno was promoted is not a valid basis for Complainant to demand a promotion given the
11 huge gap in facts between their respective accidents as noted above.⁷

12 The Board also finds Respondents' actions which initiated Complainant's grievances after 2019
13 were reasonable because those actions were based on the investigative reports and criminal charges which
14 clearly indicating that Complainant acted unlawfully and was at fault for the death of the pedestrian. *See*
15 *generally* Exhibits 27, 32 and 38. In sum, there was more than sufficient evidence indicating that Chief
16 Cochran's decisions were prudent and in line with public safety concerns and prudent fire department
17 operations.

18 Complainant has completely failed to prove that political or personal reasons were the motivating
19 factor in any decisions made by Respondents. In fact, the evidence showed that Respondents' actions
20 were motivated almost entirely by the facts related to the accident, the police investigative reports
21 regarding the accident and the criminal complaint involving Complainant related to the accident. Such
22 conduct cannot reasonably be described as politically motivated nor was there any proof provided that
23 Respondents' conduct was due to personal animus or discriminatory intent. Logically, if personal animus

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25 ⁵ Chief Cochran noted that it may have been Reno city attorney Dunagan who made the statement
regarding optics.

26 ⁶ Chief Cochran is the only person who could have lawfully promoted Complainant from the
27 valid promotional list which expired on September 26, 2020. Exhibit 39 at 476.

28 ⁷ This also includes the initial mistake in scoring relative to Ms. Bruno and Complainant for the
promotion list.

1 had been a factor in this case, Complainant would have probably faced far more severe discipline than
2 what Chief Cochran meted out. As such, the Board finds that neither political nor personal discrimination
3 served as a motivating factor in any conduct undertaken by the Respondents.

4 III. FINDINGS OF FACT

5 1. The Board has determined the following facts based on a preponderance of evidence, this
6 includes facts set forth in the Discussion above that are not included in the listing below.

7 2. The following constitute the majority of the evidence presented by Complainant in support
8 of the discrimination claims:

9 a. The use of the term “hold off” by Chief Cochran during a discussion with
10 Complainant about her promotion on November 9, 2019. Complainant’s Opening
11 Brief at p. 2; lines 25-26.

12 b. The five (5) grievances filed by Complainant and the resolution of such. Hearing
13 Exhibits 4 – 8 (hereafter “Exhibits.”).

14 c. The use of the term “optics” was allegedly used during the March 3, 2021, meeting
15 where Complainant, Chief Cochran, Captain Briant and Reno City attorney
16 Dunagan were present.

17 d. Other accidents involving Reno Fire Department personnel to include:
18 Ms. Bruno, Mr. Price and Mr. Wheatley. Exhibits 19 – 21.

19 3. Chief Cochran testified that he never used the word “optics” during the March meeting
20 and indicated that it may have been used by Reno City Attorney Dunagan and the Board believed
21 this testimony.

22 4. Regardless of who used the term “optics,” the evidence indicated that the term was used
23 only once during a meeting in March of 2021.

24 5. Chief Cochran’s testimony was very credible.

25 6. The testimony of Complainant was sometimes less than credible.

26 7. The first four grievances filed by Complainant mentioned nothing about discrimination
27 on the part of Respondents.

28 8. The final grievance filed by Complainant was the first mention of discriminatory conduct

1 Respondents.

2 9. The Complainant's own union declined to participate in the final grievance due to a lack
3 of evidence to support her claim.

4 10. Complainant knew, or should have known, of her discrimination claims by September of
5 2021 when the 4th grievance was filed because almost all of the evidence presented by Complainant for
6 her discrimination claims arose on or before this date.

7 11. There was insufficient evidence presented to support the claims of discrimination.

8 12. The Complainant's accident was not relevant to supporting the discrimination claims
9 given the death that resulted, the finding that Claimant was at fault in the accident report and the
10 subsequent criminal charges filed.

11 13. Claimant was not exonerated for the criminal charges as she suggested, rather the case
12 was dismissed in a civil compromise under NRS 178.566.

13 14. Chief Cochran's actions relative to Claimant's grievances and discrimination claims were
14 reasonable and taken to ensure public safety.

15 15. The Board found no evidence to support any of the discrimination claims as
16 discussed herein.

17 16. To the extent a conclusion of law may be deemed a conclusion of fact, it shall be
18 considered as such.

19 IV. CONCLUSIONS OF LAW

20 1. The Board has exclusive jurisdiction over claims of unfair labor practices and prohibited
21 practices under NRS Chapter 288.

22 2. NRS 288.110(4) contains a six-month statute of limitations and the Board may not hear
23 claims filed outside of this statute of limitations.

24 3. Since the Claimant knew, or should have known, the facts that gave rise to the claims as
25 discussed above by September of 2021, the Board lacks jurisdiction to hear this matter.

26 4. Equitable tolling does not apply to this matter as discussed herein.

27 5. The Complainant failed to make a *prima facie* showing that she was
28 discriminated against.

