UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

January 23, 1991

Marian Ryba, Complainant v. Tempel Steel Company, Respondent; 8 U.S.C. 1324b Proceeding; Case No. 90200206.

DECISION

Appearances: **MARIAN RYBA**, pro se;
MICHAEL FOGARTY, Esquire, Tempel Steel Company, Niles, Illinois, for respondent.

Before: Administrative Law Judge McGuire

Background

This proceeding involves the complaint of Marian Ryba (Complainant) against a former employer, Tempel Steel Company (Respondent), in which Complainant has alleged that Respondent terminated his employment based upon his national origin, in violation of the pertinent provisions of the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3359.

On February 15, 1990, Complainant timely filed a complaint with the United States Department of Justice's Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC), in which he alleged that Respondent had engaged in an unfair immigration-related employment practice namely, that Respondent had terminated his employment on October 23, 1989, solely because of his Polish national origin. (Complainant's Exhibit 3 at 1, 2, 3, 9).

On June 8, 1990, following its investigation of the allegations set forth in that complaint, OSC notified Complainant that no complaint was being filed on his behalf against Respondent because after investigating Complainant's charge, OSC had determined that ``there is no reasonable cause to believe that you were discharged because of your citizenship status.'' (Complainant's Exhibit 3 at 11).

In its June 8, 1990 correspondence, OSC also advised Complainant of his right to pursue the matter by filing a complaint directly with the Office of the Chief Administrative Hearing Officer (OCAHO) no later than September 13, 1990. Complainant was also informed in that communication that his charge was being referred to the Chicago Office of the Equal Employment Opportunity Commission, since that agency, it was explained, ``has the power to investigate whether you were discharged because of your national origin.''

On June 28, 1990, Complainant timely filed a complaint with OCAHO, in which he asserted the same allegations of national origin discrimination and requested that the matter be assigned to an administrative law judge for hearing. (Complainant's Exhibit 3 at 11 through 15).

On August 27, 1990, Respondent filed its answer, which consisted of a two-page letter from Respondent firm's Gully Walter, and four documentary attachments consisting of 110 pages of detailed personnel records and information covering both of Complainant's periods of employment at Respondent firm.

On September 20, 1990, following repeated attempts to conduct a routine pre-hearing telephonic conference, which were unsuccessful because of Complainant's failure to respond to several telephone messages, a written notice of hearing was mailed to the parties.

On October 23, 1990, that hearing, at which a fully fluent Polish interpreter was present throughout, was conducted before the undersigned in Chicago, Illinois.

Summary of Evidence

Complainant's hearing evidence consisted of his testimony and the receipt of some 20 documentary exhibits which were marked and entered into evidence as Complainant's Exhibits 1 through 20.

Respondent's hearing evidence was comprised solely of the testimony of its employee, Ms. Gully Walter, Manager, Government Affairs and Affirmative Action. Those sources, together with the pleadings, have provided the following facts.

Complainant, age 35, is a Polish national who was born in Gdansk, Poland on July 12, 1955, and lived there until 1986 or so. Educationally, he completed an 8-year grade school education in 1970. That was immediately followed by his having spent three years in a ``cardinal school'', which involved working with machinery. He then spent four years at a technical high school involved in the same curriculum, ending in 1977. From 1980 until 1982, he un-

dertook and completed a course in computer programming, an activity that has become his hobby. He also testified that he had been self employed in an undisclosed manner while in Poland.

On an unspecified date, and while still a resident of Gdansk, he accompanied a group on a foreign tour which included Italy, where he defected, sought asylum and eventually came to the United States on July 30, 1986. He settled in the Chicago area and secured the status of permanent resident alien.

Shortly after arriving in Chicago, he was referred to the Respondent firm by the Polish Welfare Association of Chicago (PWA) for possible employment in Respondent's headquarters and manufacturing facility located in Niles, Illinois, a suburb of Chicago.

Respondent firm produces magnetic steel laminations for the electronic and electrical industries at three plants in the Chicago area, those being located at its headquarters in Niles, as well as in Libertyville, Illinois and in Chicago, its largest production facility.

At all times relevant herein, Respondent employed between 1,000 and 1,200 persons, some 40 to 50% of whom were members of minority groups principally Afro-Americans and Hispanic-Americans, together with a significant number of Polish-Americans, together with a significant number of Polish-Americans, who comprised about 25% of the total work force.

During the 1980's, PWA referred and Respondent firm hired hundreds of Polish-Americans to work in its plants, many of whom, like Complainant, were also permanent resident aliens. As noted earlier, PWA was the organization through which Complainant learned of job openings at Respondent firm in 1986.

During the 1980's, also, Respondent routinely utilized newspaper employment advertisements and its contacts with PWA, among other sources, in order to provide the necessary workers for its then periodically expanding work force.

Advertisements of that type were placed in daily newspapers of general circulation, such as the Chicago Tribune, which are distributed within the English speaking community. Similar advertisements were also placed in other newspapers, such as Zgoda, which are printed in Polish and are circulated widely within the Polish-American community. The latter daily newspaper was chosen for the placement of semi-weekly advertisements in order to attract employment applications from that ethnic group because it was Respondent's experience that many of those persons had previously worked in factories in Poland, both in level-entry positions as well as in skilled positions. During periods in which Respondent was hiring, an average of some 5 or 6 Polish-American job applicants were hired each workday.

Complainant began working at Respondent's Niles, Illinois plant as a press operator on September 22, 1986 and remained until July 30, 1987, when he voluntarily resigned for unspecified personal reasons, without having been granted rehire privileges. According to Respondent, the withholding of such privileges was based upon Complainant's unsatisfactory work performance.

On September 23, 1988, some 14 months later, Complainant sought to be rehired at Respondent firm but was advised that he was not eligible for reemployment because his prior work performance had not been satisfactory.

On August 1, 1989, shortly over 10 months later, Complainant filed a written application for employment at Respondent's then newly-opened plant in Libertyville, Illinois, which is a one-hour drive north of Chicago. In that signed application, Complainant stated that he had been employed at a firm he identified as Fox Tool Company from August 1986 to March 1988 and at another firm which he described as being known as Major Die and Engineering from March 1988 until July 1989, when in fact, as previously noted, he had been employed at Respondent's Niles plant during a majority of that same 19-month period namely, from September 22, 1986 until quitting on July 30, 1987. (Complainant's Exhibit 12 at 3).

That four-page job application contained the following admonition, which was in the certification section of the form and was positioned immediately above the line upon which applicants were required to affix their signatures, ``I certify that the facts set forth above in my application for employment are true and complete. I understand that if employed, false statements or any omission on this application shall be considered sufficient cause for dismissal.'' (Complainant's Exhibit 12 at 4).

On August 3, 1989, or two days after filing that application, Complainant was hired as a press operator and assigned to run 125-ton and 250-ton minster presses on the third shift at Respondent's Libertyville plant. On September 11 and 12, 1989, presumably during or following a probationary period, Complainant was given a favorable job performance rating by his foreman and general foreman. (Complainant's Exhibit 20 at 2).

On Wednesday, October 18, 1989, Complainant sent a letter to Respondent in which he purportedly made false accusations against coworkers as well as a supervisor, and made racial remarks about Afro-American coworkers. That resulted in Complainant having been immediately ordered to meet with officials of Respondent firm.

That meeting took place on Monday, October 23, 1989 and Complainant attended that meeting, which was conducted in the offices of the Personnel Department of Respondent's corporate headquarters in Niles. A Polish speaking interpreter was present for the entire meeting and Complainant's prior written statements and allegations were discussed, but there was no discussion concerning Complainant's national origin. In that meeting, Complainant admitted his statements concerning his supervisor and coworkers and also admitted having falsified his record of past employment in the course of having filed the written and signed application for re-employment on August 1, 1989.

A one-page Incident Report, setting forth those facts, was prepared and Complainant voluntarily signed that document, in which he acknowledged that that report contained a truthful and complete statement of facts (Complainant's Exhibit 1).

Following that meeting and on the same date, Complainant was discharged for, among other reasons, having made false written statements on his August 1, 1989, re-employment application and for having made false accusations against his coworkers and supervisors, in violation of Respondent's policies, as well as the pertinent provisions of Respondent's employee handbook. (Complainant's Exhibit 3 at 7; Complainant's Exhibit 12 at 4; Complainant's Exhibits 18 and 19).

Between December 1989 and August 1990, Complainant, through the use of newspaper advertisements, obtained four level-entry positions. For different reasons involving his work performance, he was discharged from all of those jobs, also, following varying periods of employment which lasted between eight days and 2\1/2\-months.

Ms. Walter testified that Complainant had been discharged from Respondent firm in October 1989, while then a probationary employee, because his work performance was unsatisfactory, because he had resisted supervisory direction, because he had falsified his August 1, 1989 re-employment application, and because he had made malicious statements and false accusations about his coworkers and supervisory personnel.

She also stated that when Complainant visited Mr. Canning, Respondent's personnel director, on June 18, 1990 in order to inquire about re-employment, Respondent firm was not hiring. Instead, it was then laying off employees.

On February 15, 1990, as noted earlier, Complainant filed his initial immigration-related discrimination complaint with OSC, resulting in the previously descried sequential events.

Issue

The primary issue presented for adjudication under these disputed facts is that of determining whether, as Complainant has alleged, Respondent violated the pertinent provisions of IRCA by having engaged in an unfair immigration-related employment practice in the course of terminating his employment on October 23, 1989 namely, by having discharged him because of his national origin.

Discussion, Findings, and Conclusions

Recognizing that job opportunities, either singly or in combination with appreciably higher wage rates in the United States were the principal attractions accounting for the then unprecedented numbers of undocumented aliens entering this country, immigration reform legislation, in the form of the Simpson-Mazzoli Bills, was jointly introduced in Congress on March 17, 1982.

Those bills contained provisions which, for the first time, prohibited employers from knowingly hiring undocumented aliens and provided for a tiered system of civil money penalties, based upon prior violations of the person or entity cited. In addition, the proposed legislation also imposed unprecedented verification responsibilities upon employers' hiring activities and provided for attendant civil money penalties for paperwork violations, also.

Proponents of those so-called ``employer sanctions'' provisions urged that by imposing those requirements employers would be effectively deterred from hiring unauthorized aliens, and the resultingly fewer available job openings would discourage illegal aliens in search of employment from entering the Untied States for that purpose.

Those features of the proposed legislation elicited opposition from civil liberties and ethnic groups, especially those representing Hispanic-American, Asian-American, and other minority constituencies, who expressed concern that the sanctions would be utilized as a pretext by employers in order to refuse to hire all foreign-looking and foreign-sounding applicants, despite their being United States citizens or otherwise eligible to be hired.

Those concerns resulted in the remedial antidiscrimination provisions set forth in an amendment which became known as ``the Frank Amendment,'' the provisions of which were include in the final wording of Section 102 of IRCA.

Section 102 of IRCA, (Pub. L. 99-603, 100 Stat. 3374 (Nov. 6, 1986)), 8 U.S.C. § 1324b, amended Chapter 8 of Title II of the Immigration and Nationality Act of 1952 (INA), 66 Stat. 163; 8 U.S.C. § 1101, et seq., by adding after section 274A the following new section in pertinent part:

> ``Unfair Immigration-Related Employment Practices''
>
> SEC. 274B. (a) PROHIBITION OF DISCRIMINATION BASED ON NATIONAL ORIGIN OR CITIZENSHIP STATUS._(1) GENERAL RULE._It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien, as defined in section 274A(h)(3)) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the following investigations discharging of the individual from employment_
>
> (A) because of such individual's national origin, or
>
> (B) in the case of a citizen or intending citizen (as defined in paragraph (3)), because of such individual's citizenship status. (Emphasis Added) * * * * *

The provisions of 8 U.S.C. § 1324b also created OSC, vesting the Special Counsel with investigatory and administrative litigating authority, based upon his own initiative or in connection with charges filed by persons alleging that they had been discriminated against on the basis of national origin or citizenship status. Upon completing his investigation within 120 days of his receipt of the charge, and determining that there is reasonable cause to believe that the charge is true, the Special Counsel is authorized to file a complaint before a specially designated administrative law judge.

In the event that upon completion of his investigation of the complain OSC has not filed a charge within the 120-day period, the person making the charge may file a complaint directly before such an administrative law judge. Complainant herein timely filed such a private action on June 28, 1990 in the course of having filed his previously mentioned complaint with OCAHO.

Before discussing the merits of Complainant's allegations; the matter of subject matter jurisdiction must be considered. That because the wording of Complainant's complaint, as well as his hearing testimony, raises doubts as to whether his claim of immigration-related discrimination is based upon his national origin, upon his citizenship status, or both.

The wording of the complaint at issue, as originally filed with OSC on February 15, 1990, alleged that Complainant had been discriminated against because he had allegedly been discharged by Respondent ``for my nationality of Polish.'' (Complainant's Exhibit 3, at 1, 2, 3, 9).

And when filing his private action with OCAHO on June 28, 1990, Complainant again provided information which leads one to

be believe that his claim of discrimination is based upon his Polish national origin.

In addition, a portion of his hearing testimony, as elicited through an interpreter, also supports that premise: ``The most important is the firing of a person, firing me, a person who is an efficient, hard-working person a Pole. And it wasn't important that I was hard-working. It was my nationality that was important, my language, the way I look, my history, background.'' (Tr. 27).

Elsewhere in his hearing testimony, however, Complainant's testimony alludes to his citizenship status:

> I'm going to be a Polish citizen as long as I am not an American citizen. That just the process.
>
> If I would have American citizenship, there would be no problem because there's a preference for American citizens. But until I have that citizenship I have to take care of what I have and be happy with what I have, since that's the basis for any further discussion, that which I have. You can't put me in between. I am for sure a Pole. (Tr. 69)

Determining whether Complainant's private action is based upon national origin discrimination or upon citizenship status discrimination is critically important because of the effect which that determination has upon OCAHO's jurisdiction to entertain Complainant's private action in this proceeding.

In the event that it is found that his complaint is grounded upon national origin discrimination, Complainant's action must be dismissed because OCAHO lacks jurisdiction under IRCA to hear complaints of that character unless the employer involved employs between four and 14 employees.

Those numerical restraints are determined in the following manner. The threshold level of four employees results from the fact that IRCA specifically exempts persons or other entities that employ three or fewer employees. 8 U.S.C. § 1324b(a)(2)(A); 28 C.F.R. 44.200(b)(1)(i). The pertinent provisions of IRCA, at 8 U.S.C. § 1324b(a)(2)(B), further provide for protection against discrimination based upon national origin unless that conduct, as under these facts, is also covered under the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. (1982) (Title VII), which confers national origin jurisdiction on the Equal Employment Opportunity Commission (EEOC).

Since Complainant's charge is covered under Title VII, the numerical employee threshold to be applied for jurisdictional purposes is 15 or more employees ``for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.'' 42 U.S.C. § 2000e(b).

Given the fact that at all times relevant to this factual scenario Respondent employed 15 or more employees namely, between 1,000 and 1,200, the exempting provisions of 8 U.S.C. 1324b(a)(2)(B) apply and preclude Complainant from maintaining an action under IRCA against Respondent based upon a claim of national origin discrimination. Fordjour v. General Dynamics, OCAHO Case No. 90200146 (January 11, 1991) (Decision and Order Dismissing Complaint, at 3); Williams v. Lucas Associates, Inc., OCAHO Case No. 89200552 (October 22, 1990) (Decision and Order Granting in Part Respondent's Motion to Dismiss, and Order to Show Cause, at 3); Williamson v. Autorama, OCAHO Case No. 89200540 (May 16, 1990); Akinwande v. Erol's, OCAHO Case No. 89200263 (March 23, 1990); Bethishou v. Ohmite Mfg. Co., OCAHO Case No. 89200175 (August 2, 1989); Wisniewski v. Douglas County School District, OCAHO Case No. 88200037 (October 17, 1988). Instead, Complainant's action against Respondent on that ground must be brought under the provisions of Title VII.

In view of the foregoing, it is readily apparent that in those instances in which national origin discrimination is asserted the provisions of Title VII apply and preempt the parallel provisions of IRCA, exempt in those cases in which the employer's work force numbers between 4 and 14 employees. Thus, the national origin discrimination coverage under IRCA effectively supplements rather than duplicates the corresponding coverage extended under Title VII and in that manner extends such coverage to a significantly greater number of employees, specifically those employed by small employers.

In view of finding that Complainant's national origin discrimination complaint must be dismissed because of jurisdictional deficiencies, and in order to extend to Complainant the widest ambit of administrative review, Complainant's private action will be viewed as one based upon citizenship status discrimination, instead.

With limited inapplicable exceptions, the provisions of IRCA ban employer discrimination against an individual, other than an unauthorized alien, based upon either national origin or citizenship status, subject to the previously mentioned numerical parameters affecting jurisdiction. Those prohibitions apply in the areas of hiring, discharge or firing, and recruitment or referral for a fee.

Meanwhile, the provisions of Title VII cover much broader claims of discrimination, those which are based upon national origin, race, color, religion and sex, but do not expressly apply to discrimination which is based solely upon citizenship status, or alienage. Espinoza v. Farah Mfg. Co., 414 U.S. 86, 88 (1973).

In that connection, it is noted that at all times relevant herein, the pertinent provisions of IRCA which prohibited citizenship status discrimination applied only to an individual whose status was that of citizen or intending citizen. 8 U.S.C. § 1324b(a)(1)(B). The term ``citizen or intending citizen'' was further defined in 8 U.S.C. § 1324b(a)(3), in pertinent part, as
meaning an individual who:

> (A) is a citizen or nation of the United States, or
>
> (B) is an alien who_
>
> (i) is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under section 245A(a)(1), is admitted as a refugee under section 207, or is granted asylum under section 208, and
>
> (ii) evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen; * * * * *

In view of that statutory expression Complainant, as a legal resident alien, would qualify as an intending citizen only in the event that he had completed a declaration of intention to become a citizen. Specifically, that status could only have been attained by his having completed and filed an INS form captioned Declaration of Intending Citizen, to which INS has assigned the numerical designation Form I-772.

Complainant's evidence discloses that he did not complete and file a Form I-772, in the mistaken belief that he was not required to do so until 1994 or so. In that posture, Complainant's citizenship status discrimination complaint would ordinarily have been required to have been dismissed, also, but for very recent and significant Congressional legislation, the enactment of which has occurred within the brief period in which this proceeding has been pending.

On November 29, 1990, Congress enacted the Immigration Act of 1990 (Act), Pub. L. No. 101-649, 104 Stat. 4978. The provisions of Section 553 of that statute has eliminated the requirement that permanent resident aliens must have filed a Declaration of Intending Citizen (Form I-772) in order to file a complaint based upon citizenship status discrimination under IRCA. Resultingly, Complainant has been further favored in this proceeding because that provision was granted retroactive, rather than the customary prospective, effectivity and thus Complainant's ability to maintain this private action upon that statutory basis can no longer be questioned on that ground, at least.

Having granted Complainant expanded consideration by viewing his request for relief to be based upon a claim of citizenship status discrimination rather than one which involves national origin discrimination, the evidentiary record will be examined in order to de-

termine whether Complainant has successfully borne his statutory burden of proof, that of having to establish by a preponderance of the evidence that Respondent has engaged in that unfair immigration-related employment practice. 8 U.S.C. § 1324b(g)(2)(A); Adatsi v. Citizens Southern National Bank of Georgia (C&S), et al., OCAHO Case No. 89200482 (July 23, 1990); Jones v. DeWitt Nursing Home, OCAHO Case No. 88200202 (June 29, 1990); Akinwande v. Erol's, OCAHO Case No. 89200263 (March 23, 1990); U.S. v. Marcel Watch, OCAHO Case No. 89200085 (March 22, 1990).

Should Complainant fail to meet that evidentiary burden, an appropriate order dismissing the complaint must be issued. 8 U.S.C. § 1324b(g)(3); 28 C.F.R. § 68.50(c)(1)(iv); Adatsi v. Citizens, Etc., et al., supra; Akinwande v. Erol's, supra.

IRCA's legislative history is most instructive in demonstrating that permanent resident aliens, such as Complainant, as well as aliens in other categories, were clearly intended to be protected against employment discrimination based upon non-citizen status, or alienage, and that since the provisions of Title VII did not extend citizenship status discrimination to those groups, it was the clear mandate of Congress that the pertinent provisions of IRCA, those found at 8 U.S.C. § 1324b, were to serve that purpose.[1]

Accordingly, we look to those decisions arising out of the enforcement of the provisions of Title VII for guidance in determining the nature and quantum of evidence required of an IRCA complainant upon whom the same evidentiary burden is imposed.

In deciding the two leading Title VII decisions, the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973) and in Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 252-53 (1981), held that plaintiffs in analogous discrimination case settings must establish a prima facie case of discrimination. In order to do so, the plaintiff is required to prove by a preponderance of the evidence: ``(i) that he belongs to a racial minority; (ii) that he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite his qualifications, he was rejected; and (iv) that, after his rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.'' 411 U.S. at 802.

The ruling in Texas Department of Community Affairs further announced that in the event that the plaintiff establishes a prima facie case of discrimination by a preponderance of the evidence, the burden then shifts to the defendant to articulate with specificity a legitimate, non-discriminatory reason for having rejected the plain-

[1]H.R. Rep. No. 99-682, 99th Cong., 2d Sess. 87, 88 (1986).

tiff. That having been demonstrated, the plaintiff must then have the opportunity to prove, again by a preponderance of the evidence, that the legitimate reasons offered by the defendant were not its true reasons, but were in effect a pretext for intentional discrimination. 450 U.S. at 249.

Although the factual scenario in McDonnell Douglas involved a refusal to hire setting, the order and allocation of proof adopted in the ruling are equally applicable in this action in which a discriminatory discharge has been alleged.

Adapting the McDonnell Douglas rationale to these disputed facts, the Complainant, in order to establish a prima facie case of discriminatory discharge in violation of IRCA, must show (1) that he was a member of the group of individuals protected by IRCA; (2) that he was discharged; and (3) that there was disparate treatment from which to infer a casual connection between his protected status and the discharge. Wisniewski v. Douglas County School District, supra at 5.

Complainant's evidence has clearly established that he is a permanent resident alien and therefore that he is a member of a group of persons protected by the pertinent provisions of IRCA, and secondly, that he was discharged by Respondent firm on October 23, 1989. The remaining evidentiary element, that of demonstrating a casual connection between his citizenship status and his discharge, presents a much closer question.

After reviewing all the evidence addressed to that critical element, and for the following reasons, I find that Complainant has failed to meet that evidentiary burden.

In attempting to show that Respondent discharged him solely because of his citizenship status, Complainant relies upon his unfounded assertions that Respondent in some unexplained manner planned or participated in a conspiracy of sorts, with the active assistance of other minority group employees, to harass him in his work place and to falsify plant production records in order to improperly blame him for unsatisfactory tasks performed by other workers.

Even when viewing these disputed facts in the light most favorable to Complainant, when attempting to resolve all doubts concerning contested questions of fact in his favor, and when assigning to his testimony that weight which it credibility and his demeanor demand. I find Complainant's case-in-chief to have been glaringly deficient in content and credibility.

As noted earlier, in the vent that the Complainant fails to establish a prima facie case that the Respondent has engaged in unfair immigration-related employment practice, the administrative law

judge will dismiss the complaint without requiring the Respondent to show a legitimate, nondiscriminatory reason for the Complainant's discharge. Adatsi v. Citizen's & Southern National Bank of Georgia, OCAHO Case No. 89200482 (July 23, 1990).

Because Complainant has failed to establish a prima facie case of citizenship status discrimination, I find that Complainant has failed to prove, by the required quantum of proof, that the alleged unfair immigration related practice has occurred.

Assuming arguendo that Complainant's evidence had presented a prima facie case, I find that Respondent has presented legitimate, nondiscriminatory reasons for Complainant's discharge which Complainant has failed to provide are only a pretext for intentional discrimination. For that reason, also, Complainant has simply failed to successfully carry the required burden of proof.

According to the hearing testimony, as well as the admitted facts set forth in the pertinent Incident Report (Complainant's Exhibit 1), Complainant was discharged for, among other reasons, admittedly having made false statements on his August 1, 1989 re-employment application and for having admittedly made false and malicious statements concerning coworkers and supervisors.

Further, this evidentiary record simply does not disclose that Respondent firm discriminated against Complainant because of his citizenship status. Instead, it reveals that Complainant concluded his initial 10-month employment period at Respondent firm on July 30, 1987 and voluntarily quit for personal reasons. His work performance was such that Respondent did not wish to rehire him and, accordingly, did not extend rehire privileges.

Complainant sought to be rehired at Respondent firm on September 23, 1988 and learned, probably for the second time, that Respondent did not wish to rehire him.

It has not been documented whether Complainant worked, or how many jobs he may have held during the two-year period before he reapplied for employment at Respondent firm on August 1, 1989.

What has been documented, however, and convincingly so, is that Complainant filed a written and signed application for re-employment on that date which contained patently false information in order to conceal his prior employment at Respondent firm, thus misleading the persons making the hiring decision on his application.

That conduct violated written policy directives of Respondent, and standing alone would have supported Respondent's decision to terminate Complainant, without considering the other grounds which Respondent has asserted in this proceeding.

In summary, this evidentiary record clearly discloses that rather than having been discriminated against because of his citizenship status, Complainant is unwilling and/or unable to accept the most basic disciplines of the work place in even entry-level settings.

With equal clarity, that same record reveals that Respondent firm over the years has displayed an exemplary record of having hired a very substantial number of workers from several minority groups, including hundreds of persons of Polish-American heritage, many of whom, like Complainant, are also permanent resident aliens and has consistently maintained a 25% share of its 1,000 to 1,200-person workforce from that ethnic group.

For the foregoing reasons, Complainant's request for administrative relief must be dismissed.

Order

Complainant's June 28, 1990 complaint regarding alleged unfair immigration-related employment practices, based upon national origin discrimination and/or citizenship status, allegedly in violation of the provisions of 8 U.S.C. § 1324b, is hereby ordered to be dismissed.

JOSEPH E. MCGUIRE
Administrative Law Judge

Appeal Information

This decision and order, upon issuance and service upon the parties, shall, in accordance with the provisions of 8 U.S.C. § 1324b(g)(1), become final unless, as set forth in the provisions of 8 U.S.C. § 1324b(i), any person aggrieved by such final order seeks a timely review of such order, specifically no later than 60 days after the entry of such final order, in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.