

WOMAN CLAIMS SECURITY CARD RECORDS CAN'T PROVE WORK ABSENCES



An administrative officer at the Department of Health and Human Services (HHS) alleged that her EEOC (Equal Employment Opportunity Commission) complaints resulted in gender and racial discrimination when she was suspended and later held to an “unrealistic performance standard” – including being asked to swipe her security card. The woman, an African American, first received a letter stating that her supervisor was recommending a three-day suspension. His reason was that, within a two-month period, the employee had left work early by more than 40 minutes on 18 separate occasions and had arrived more than 10 minutes late on 17 other occasions. She argued that a pass card for access to the secured entrance/exit could be swiped if a person followed someone else who’d used their own card – in other words, pass card records weren’t sufficient proof of her absences. An HHS assistant inspector general wasn’t swayed by her argument but did change the suspension to two days in lieu of three since she’d had no prior disciplinary actions. She filed an EEOC charge, asserting that her supervisor’s suspension proposal was based on her sex and race. More than a year later – before the EEOC had made its decision on her complaint – the woman’s position was phased out. She applied and was hired for an investigations analyst position in the same office. Her new supervisor was a man that the employee already knew. Two years earlier, he’d ask her to sit in on a disciplinary meeting involving another African American woman, but the employee refused because she believed that she was being asked only because of her race. She credits this incident for the supervisor’s resulting discrimination. Three months later, the woman filed a second EEOC complaint, this time alleging that the supervisor was retaliating against her for her previous EEOC charge and discriminating against her by demanding an unreasonable amount of work, scrutinizing the work she was doing, threatening a performance-improvement plan and requiring her to swipe her pass card. Shortly thereafter, a letter from the supervisor indicated that he was proposing a five-day suspension for more than a dozen instances of tardiness. The HHS assistant inspector general approved only three days since, in four of those occurrences, the woman was late by less than seven minutes. The employee amended her EEOC complaint to include the



suspension.

The HHS assessed the EEOC charges and determined that there was no discrimination or retaliation. The woman’s subsequent EEOC appeal was denied. She then filed suit against the Secretary of the HHS, claiming violations of the Civil Rights Act. The district court ruled in favor of the defendant since the plaintiff could not support her claims with any evidence. On appeal, the woman focused only on her first suspension as discrimination based on her race and gender. She again alleged that the security card records could not prove that she was genuinely leaving early or arriving late. She, however, had no evidence that she was in fact at the office during those gaps in time – appellate judges suggested email as potential proof. As she likewise could not name a similarly-situated employee receiving the same treatment (and even admitted in court that there was no such employee), the appeals court dismissed both of her claims and affirmed the district court’s decision.