

**DISTRICT OF COLUMBIA
COMMISSION ON HUMAN RIGHTS**

In the Matter of:

COMPLAINANT
Complainant,

v.

Docket Number 14-142-P (CNTR)
Docket Number 14-143-P (CNTR)

AUTO ZONE,
Respondent.

PROPOSED DECISION AND ORDER

1. STATEMENT OF THE CASE

Complainant (“ ” or “Complainant”) is a 63 year old man of Jamaican national origin, who is employed by Auto Zone (“AutoZone” or “Respondent”) as a Parts Sales Manager (“PSM”). AutoZone is a national auto parts chain and operates several stores in the Washington Metropolitan Area. Complainant was hired by AutoZone on April 27, 1999 as a Manager in Training (“MIT”) and assigned to work in one of its Washington, D.C. stores.

On May 21, 2000, AutoZone promoted Complainant to Store Manager of its Store 5237 located in Northeast Washington, D.C. In 2010, Supervisor (“ . Supervisor”) became Complainant’s immediate supervisor. Complainant alleges Supervisor discriminated against him on the basis of his age (59) and national origin (Jamaican).

In February 2011, Complainant made a complaint of discrimination against Supervisor with Manager 1 , a Regional Manager for AutoZone. An investigation was conducted by AutoZone’s Human Resources Manager, Manager 2 of

Complainant's allegations of discrimination and Manager 2 determined there was no evidence Supervisor had discriminated against Complainant. Manager 2 did determine Supervisor made an inappropriate remark to Complainant concerning his age and Supervisor was counseled by AutoZone management for this incident.

One year later on April 21, 2013, AutoZone demoted Complainant to the position of PSM which he alleges was an act of retaliation for his complaint of discrimination against Supervisor. AutoZone contends that Complainant was demoted for poor job performance citing his long history of failure to comply with the company's policies regarding the upkeep of his store and requiring his staff to follow the AutoZone mandatory dress code.

Procedural History of the Case

On May 15, 2013, Complainant filed a complaint of discrimination with OHR against AutoZone alleging the company had discriminated against him on the basis of his age (59) and his national origin (Jamaican) in violation of the District of Columbia Human Rights Act ("DCHRA"). On September 11, 2014, Complainant amended his complaint to include claims of discrimination on the basis of race and retaliation.

The Office conducted an investigation of Complainant's complaint and on December 9, 2014, issued a Letter of Determination ("LOD") finding probable cause that the Respondent discriminated against the Complainant based on his age and national origin. OHR further determined there was probable cause the Respondent engaged in retaliation against Complainant when they demoted him following his making a complaint of discrimination against his immediate supervisor.

Following the issuance of the LOD, the matter was referred to OHR's

Mediation Department for conciliation, but efforts to conciliate the case proved unsuccessful. On August 15, 2015, OHR certified the case to the Commission for a public hearing. The parties conducted full discovery in this case. The Respondent filed a Motion for Summary Judgment which was opposed by the Complainant. The Motion for a Summary Judgment was denied by the undersigned judicial officer on July 29, 2016. There was a three-day hearing held from August 22 to August 24, 2016. The parties have submitted their post-hearing briefs for consideration in this matter.

II. ISSUES

1. Whether AutoZone subjected Complainant to disparate treatment on the basis of his age (59) and national origin (Jamaican).
2. Whether AutoZone retaliated against Complainant for bringing a complaint of discrimination against his immediate supervisor when they demoted him from Store Manager to Parts Sales Manager.

III. FINDINGS OF FACT

1. Complainant was born on February 8, 1954, in Jamaica, West Indies and was 59 years of age at the time the events that give rise to his allegations of discrimination took place. Respondent's Exhibit [Hereafter referred to as Resp. Ex.] 55(a) at page 51.
2. On December 24, 1982, Complainant migrated to the United States from Jamaica and in 2006 he became a United States citizen. Resp. Ex. 55(a) at page 51.
3. On April 27, 1999, Complainant was hired to work for AutoZone as a MIT. Transcript [Hereafter referred to as Tr.] of EH 8/23/16 at 152:9–153:1, 156:

15-157:1.

4. AutoZone is a national auto parts chain based in the United States with a number of stores in the Washington, D.C. Metropolitan Area. Resp. Ex. 6 at page 3.
5. AutoZone has a written employee handbook that contains a policy that prohibits discrimination on the basis of age and national origin. Resp. Ex. 6 at 72.
6. AutoZone employees and managers are responsible for immediately reporting to management any conduct that violates the company policy prohibiting discrimination. Tr. of EH 8/22/16 at 74:9-16, 160: 9-13.
7. In 2000, Complainant was promoted to the position of store manager of AutoZone's Store 5237 located at 519-525 Rhode Island Avenue, N.E., Washington, D.C. Complainant held the job of store manager from 2000 until April 21, 2013 when he was demoted and reassigned to work as a PSM at Store 1833 in Lanham, Maryland. Tr. of EH 8/23/16 at 246:19-247:1.
8. During his tenure with Store 5237, Complainant worked under the supervision of seven district managers. Complainant's Deposition [Hereafter referred to as Dep.] at 73.
9. AutoZone has a three-tier management system where the store manager reports to his or her district manager and the district manager reports to their assigned regional manager. Manager 1 Dep. at 7-8.
10. In 2009, Supervisor was hired to work for AutoZone as a district manager and he became Complainant's immediate supervisor. Complainant's Dep. at 114.

11. Supervisor's national origin is Senegalese and he was 42 years old at the time of the hearing. Tr. of EH 8/24/16 at 101:7-8.
12. The duties of an AutoZone manager are to maintain inventory management, follow and enforce the employee dress code, follow and enforce the company attendance policy, complete next-day reports, open and close the store, ensure that the parking lot to the store is clean and trash is picked up, make sure the store shelves are fully stocked, prevent shrinkage or loss of product or money in the store, and make sure the interior of the store is clean. Tr. of EH 8/23/16 at 282:4-7.
13. The store manager is considered to be the highest ranking member of the management in the store. Tr. of EH 8/24/16 at 31:9-11.
14. The duties of an AutoZone district manager are to ensure that the store managers are in compliance with the AutoZone policies and procedures and that their stores meet the standards of the company. Tr. of EH 8/23/16 at 290:12–291:1, 205:16–296:3.
15. The district manager does not have the authorization to fire or demote employees under their supervision, that authority rests with the regional manager. Manager 1 was ^{COMPLAINANT}'s regional manager. Tr. of EH 8/24/16 at 123:1-7.
16. AutoZone also has a policy printed in its employee handbook that states the company stores are to be kept clean, well-organized, and fully stocked with merchandise. Resp. Ex. 6 at page 3.
17. Employees of AutoZone are required to follow a dress code: red or gray shirt,

black pants, black or white socks, black shoes, nametags, and company pins.

This policy is stated in the employee handbook. Resp. Ex. 6 at pages 11 - 12.

18. During Complainant's 13-year tenure as store manager of Store 5237, he was verbally counseled on numerous occasions and issued several fix-it lists by management noting deficiencies in the upkeep of his store that needed to be corrected. He was placed on Performance Improvement Plans (PIP) on two occasions by the management for failure to follow the company guidelines concerning: the cleanliness and upkeep of his store, his failure to follow and enforce the dress code with his staff, and to keep the store shelves stocked. Tr. of EH 8/24/16 at 41:4-9, Tr. of EH 8/24/16 at 476:17-22, Tr. of EH 8/23/16 at 21:15-19; Resp. Ex. 22.
19. Complainant was issued 10 Corrective Action Forms by AutoZone managers for deficiencies in the upkeep of his store and his staff's failure to adhere to the company dress code policy. Resp. Ex. 1, 2, 10, 11, 12, 19, 20, 23, 24 and 29. Some of these write-ups were issued by Supervisor and some were issued by other supervisors. *Id.*
20. There was overwhelming testimony offered at the hearing that the upkeep of Store 5237 during Complainant's tenure as store manager was not in compliance with the company's standards and policies. Tr. of EH 8/24/16 at 339:20-341:21. Supervisor; Manager 1; Manager 3, AutoZone Human Resources Manager; and Manager 2, Divisional Human Resources Manager for AutoZone testified credibly that they regularly visited Store 5237 when Complainant was manager and could attest to its conditions during

those visits. *Id.*

21. The witnesses recounted that the store parking lot was found to be littered with trash, the store trashcans were overflowing with refuse, the receptacles' decals were tattered and torn and the grass on the property's premises was in need of cutting. Tr. of EH at 469:21-470:14. Upon entering the store there was an offensive odor of dead rats that permeated the store. Tr. of EH 8/24/16 at 130:3-132:10. The store personnel, including Complainant, were observed not to be in compliance with the company's dress code. *Id.* The store shelves were not fully stocked and there were shelves that were empty. *Id.* Products that were on the shelves were dusty and in some instances covered with dirt. *Id.* The store restrooms were dirty and were not stocked with toilet paper, paper towels, or soap. Tr. of EH 8/24/16 at 360:2-5. The store windows were smudged, the store floor was dirty, and rat feces were evident throughout the store. Tr. of EH 8/23/16 at 128:1-131:12.
22. Complainant, as store manager was responsible for requesting the services of the exterminator that AutoZone contracted with to exterminate vermin. Tr. of EH 8/23/16 at 239:5-240:13. He was also responsible for hiring someone to cut the grass when needed. *Id.*
23. Although Complainant received numerous reprimands and directives to clean up his store and enforce the company dress code with his staff, he only showed minimal improvement and the problems he was directed to correct persisted. Tr. of EH 8/24/16 at 30:3-14, 406:12-22.
24. Complainant contended that his store was not the only store with issues of

cleanliness and staff that failed to follow the company dress code. Witnesses for AutoZone concurred with Complainant's testimony that his store was not the only with these problems, but noted that the difference was the other store managers corrected their store deficiencies after being written up, while Complainant did not. Tr. of EH at 406:12-22, Tr. of EH 411:5-412:3.

25. On February 17, 2012, Complainant lodged a complaint of discrimination against Supervisor with Manager 1 stating he believed his supervisor was trying to terminate his employment because he believed he was too old to do the job. Resp. Ex. 3.
26. Complainant informed Manager 1 during this meeting that Supervisor referred to him and other managers in his age group as being older employees during a training session of the store managers. Tr. of EH 8/24/16 at 230:3.
27. In February 2012, Manager 1 assigned Manager 2 to conduct an investigation into Complainant's discrimination complaint against Supervisor. Resp. Ex. 3.
28. As a part of his investigation, Manager 2 interviewed Complainant and his two witnesses, Witness 1 and Witness 2. Manager 2 also interviewed Supervisor. Tr. of EH 8/23/16 at 395:14-20, Tr. of EH 8/24/16 at 424:9-426:15.
29. Complainant gave a written statement giving his account of the incident. Resp. Ex. 15.
30. On April 13, 2012, Manager 2 completed his investigation and Supervisor was counseled by AutoZone for his remark referring to some of the store managers including Complainant in a training session as being older employees. Manager 2 informed Complainant of the outcome of his investigation and that management

had reprimanded Supervisor for his remarks concerning older employees.

Complainant was advised of the company's anti-retaliation policy and told to contact Manager 2 if he had any problems concerning retaliation or discrimination with his supervisor. Tr. of EH. 8/23/16 at 239:10-240:3, Tr. of EH 8/24/16 at 431:16-432:4, Tr. of EH 8/24/16 at 226:17-228:5.

31. Complainant did not lodge any further discrimination complaints against Supervisor with AutoZone nor did he ever complain to the company he believed he was being discriminated against on the basis of his national origin until he filed his formal complaint with OHR . Tr. of EH 8/24/16 at 434:18-435:19.

32. Complainant did not offer any evidence at the hearing to support a finding Supervisor had discriminated against him on the basis of his national origin. AutoZone offered the testimony of two managers, Witness 3 and Witness 4 , who are of Jamaican national origin and were hired and recommended for promotion by Supervisor . Both witnesses said they got along well with Supervisor and never experienced any discriminatory treatment from him on the basis of their national origin. Witness 3 is a District Manager and Witness 4 is a Hub Manager. Tr. of EH 8/23/16 at 501:2-7, Tr. of EH 8/23/16 at 503:17-504:3, Tr. of EH 8/23/16 at 504:11-505:9, Tr. of EH 8/24/16 at 23:14-21, Tr. of EH 8/24/16 at 31:16-22, Tr. of EH 8/24/16 at 64:5-7.

33. Complainant called three witnesses to corroborate his testimony that Supervisor had commented to them that Complainant was too old to be a store manager. Witness 5 , former manager in training; Witness 6 , former store manager and Witness 1 , former assistant store manager each testified that

they heard Supervisor state Complainant was too old to continue to run the Store 5237.

34. Witness 5's testimony was not found to be credible because he provided contradictory testimony at his deposition in this matter and at the hearing. He has also acknowledged lying under oath. Tr. of EH 8/23/16 at 34:1-37:7, Tr. of EH 8/23/16 at 41:13-42:7, Tr. of EH 8/23/16 at 43:7-44:2, Tr. of EH 8/23/16 at 46:4-14, Tr. of EH 8/23/16 at 47:13-48:2. Tr. of EH 8/23/16 at 48:3-50:7, Resp. Ex. 49. Resp. Ex. 50. Witness 5 further admitted falsifying documents. *Id.*
35. Witness 6 acknowledged in his testimony that he was aware of the AutoZone policy that requires employees and managers to report acts of discrimination to management, but admitted he had not reported Supervisor's alleged remarks concerning Complainant being too old to management. Witness 6 also made it clear that he had a grievance with Supervisor for not approving his vacation time. Based on these findings the undersigned does not find Witness 6's allegations to be credible. Tr. of EH 8/22/16 at 130:17-131:19.
36. Witness 1 made contradictory statements at the hearing concerning whether Supervisor told him he would like to promote him to the position of store manager. Tr. of EH 8/22/16 at 61:19-62:18, Tr. of EH 8/22/16 at 66:19-67:20, Tr. of EH 8/22/16 at 81:17-22, Tr. of EH 8/22/16 at 86:4-15. He also testified he was fired by AutoZone because he had complained to the Human Resources Department about unfair treatment his coworkers, Complainant and experienced from management. Tr. of EH 8/22/16 at 34:1-6; Tr. of EH 8/22/16 at 41:1-16. However on cross-examination Witness 1 admitted he

was fired after he was discovered stealing candy and sodas from his assigned store. Tr. of EH 8/22/16 at 56:16-58:1. For these reasons his testimony is not found to be credible.

37. Complainant testified that Supervisor informed him he was too old for his job as Store Manager on at least four occasions. Tr. of EH 8/23/16 at 207:19-209:1. Supervisor denied ever making such comments. Tr. of EH 8/24/16 at 184:7-185:1. Both persons are found to be equally credible.
38. On April 21, 2013, Complainant was informed by Manager 3 and Supervisor that he was being demoted from his position as store manager to the position of a parts sales manager due to his failure to successfully complete the second Performance Improvement Plan he had been put on by management. Tr. of EH 8/24/16 at 182:1-9.
39. The decision to demote Complainant was made by Manager 1 and the only recommendations Manager 1 considered in making his decision came from ^{Manager 2}. Tr. of EH 8/24/16 at 483:10-18.
40. Manager 1 decided to demote Complainant rather than fire him because he considered Complainant to be a good salesman with a wealth of experience and knowledge of auto parts. He said Complainant was demoted because he was not a good store manager. Tr. of EH 8/24/16 at 488:4-14.

IV. LEGAL ANALYSIS

Under the District of Columbia Human Rights Act (“DCHRA”) it shall be an unlawful discriminatory practice to do any of the following acts, wholly or partially for a discriminatory reason based upon the actual or perceived: age or national origin

of any individual: (1) *By an employer*- To fail or refuse to hire, or to discharge, any individual or otherwise discriminate against any individual, with respect to his compensation, terms, conditions, or privileges of employment, including promotion; or to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect his status as an employee; D.C. CODE 2-1401.11(a)(1). Age is defined for the DCHRA as 18 years old or over. D.C. CODE §2-1401.02(2).

Complainant proffered that he had direct evidence that Supervisor, his immediate supervisor, wanted to terminate him because he believed he was too old. He offers as direct evidence of this allegation his testimony that Supervisor told him face to face that he thought he was too old for the job. He also presented the testimony of three former employees of AutoZone, who stated Supervisor had said the same thing to them.

Supervisor denied the allegations. Both Complainant and Supervisor are found equally credible. There was credible evidence that Supervisor made a statement about a group of store managers being “older” during a training session which included Complainant. AutoZone counselled Supervisor for this remark after Complainant complained to Manager 1.

In *EEOC v. Alton Packaging Corp.*, 901 F.2d 920, 923 (11th Cir. 1990) the Court held that the standard for meeting the burden of proof set forth in *McDonnell Douglas v. Green*, 411 U.S. 792, 802 (1973) does not apply in direct evidence of discrimination cases. ‘Cases involving direct evidence of discrimination are analyzed under a ‘mixed motives’ analysis articulated by the Supreme Court in *Price Waterhouse v. Hopkins*, 490 U.S. 228, 258 (1989). “[A] racial slur made by a person in charge of making employee evaluations

and rehiring suggestions constitute[s] direct evidence of discrimination.” *Alton Packaging*, 901 F.2d at 924. “Absent a causal link between the references and the conduct complained of, such epithets become stray remarks that cannot support a discrimination verdict.”

Boyd v. State Farm Insurance Cos., 158 F. 3d 326, 330 (5th Cir. 1998) *cert. denied*, 526 U.S. 1051. In *Hollins v. Federal Mortgage Association*, 760 A.2d 563, 575 (D.C. 2000), the D.C. Court of Appeals held that a single comment could not rise to the level of direct evidence in an employment action particularly, when the person making the remark had no authority to fire or demote.

Supervisor referring to Complainant as an older employee is considered to be a stray comment that was made once by a person who had no authority to fire or demote Complainant. After the one time incident, AutoZone counseled Supervisor and there were no further incidents of this type. The undersigned judicial officer did not find Complainant’s witnesses to be credible that Supervisor made similar remarks to them about Complainant’s being too old for his job. The reasons for these findings are listed in the findings of Fact at ¶¶ 32, 33 and 34.

Complainant also claims that AutoZone has retaliated against him when they demoted him following his making a complaint of discrimination against his immediate supervisor. The DCHRA prohibits retaliation against individuals who participate in enforcing the rights protected under the Act and provides,

[i]t shall be an unlawful discriminatory practice to coerce, threaten, retaliate against, or interfere with any person in the exercise or enjoyment of, or on account of having [either] exercised or enjoyed or aided or encouraged any other person in the exercise or enjoyment of any right granted or protected [under this Act].

D.C. Code § 2-1402.61. The District of Columbia Court of Appeals set forth the elements

of a *prima facie* case of retaliation in *Arthur Young & Co. v. Sutherland*, 631 A.2d 354 (D.C. 1993); *See Goos v. Nat'l Ass'n of Realtors*, 715 F. Supp. 2 (D.D.C. 1989). A complainant must establish the three elements of the *prima facie case*:

- 1) complainant engaged in a protected activity;
- 2) respondent took materially adverse action against complainant; and
- 3) a causal relationship between the protected activity and the materially adverse action.

Arthur Young, 631 A2d at 368, n. 28; *accord Burlington Northern & Santa Fe Ry. v. White*, 548 U.S. 53 (2006).

A “protected activity” for purposes of the DCHRA need not take the form of a lawsuit or of a formal complaint to an enforcement agency. The protections of the Act extend even to an employee’s informal complaints of discrimination to his superiors within the organization or to an enforcement agency. *Carter-Obayuwana v. Howard Univ.*, 764 A.2d 779, 790 (D.C. 2001).

Under the DCHRA, Title VII and related case law, the prohibited materially adverse employment action in retaliation cases not only includes tangible action affecting the terms and conditions of employment but also extends to any employment action that may dissuade a reasonable worker from making or supporting a charge of discrimination. *Arthur Young*, 631 A. 2d at 368, n. 31 (citing *Mitchell v. Baldrige*, 759 F2d. 80, 86 (D.C. Cir. 1985).

An employee may establish a causal link between his protected activity and the adverse action, *i.e.*, the inference of retaliation, by showing that his employer was aware of his protected activity and that the adverse action occurred shortly thereafter. *Mitchell*,

759 F.2d at 86. The temporal proximity between the statutorily protected activity and the adverse action must be “very close” to establish a causal connection. *Hammond v. Chao*, 383 F. Supp. 2d 47, 59 (D.D.C. 2005) (quoting *Clark County School Dist. V. Breeden*, 532 U.S. 268 (2001)). For example, “courts generally have accepted [as a causally sufficient] time periods of a few days up a few months and seldom have accepted lapses outside of a year in length.” *Davis v. Ashcroft*, 355 F. Supp. 2d 330, 352 (quoting *Brodetski*, 141 F. Supp. 2d at 35, 43). In *Davis*, the Court stressed the lengths of time that are far too great, without other evidence, fail to demonstrate a causal link.

Complainant has established the first element of his *prima facie* case, he had engaged in a protected activity. He complained to his district manager about his supervisor discriminating against him. He also established the second element of a *prima facie* case of retaliation, a material adverse action was taken against him by AutoZone. Complainant was demoted from store manager to parts sale manager.

Complainant also established the third element of the *prima facie* case of retaliation, establishing a causal relationship between the protected activity and the materially adverse action. However, there was a year between the protected behavior and the material adverse act after the investigation.

If an employee successfully establishes a *prima facie* case of retaliation, the burden of production shifts to the employer to articulate a legitimate nondiscriminatory reason for taking the adverse action. AutoZone denied that they retaliated against Complainant for making his complaint of discrimination against Supervisor. AutoZone has articulated a legitimate nondiscriminatory reason for the adverse action – Complainant was demoted for repeated failures to adhere to the company

policies and standards for the upkeep of his store and making sure his staff followed the AutoZone dress code policy. Based on the overwhelming evidence presented at the hearing by way of testimony and documentation, it is determined that Complainant was demoted for not maintaining the upkeep of his store in compliance with company policies. Accordingly, AutoZone is found to have demoted Complainant for a legitimate, nondiscriminatory reason. After repeated warnings, coaching sessions, and two performance improvement plans, Complainant still showed minimal improvement in following the company's policies for managing his store.

V. CONCLUSIONS OF LAW

1. Based upon the foregoing Findings of Fact and Legal Analysis it is hereby concluded as a matter of law that AutoZone did not subject Complainant to disparate treatment on the basis of his age (59) and national origin (Jamaican).
2. It is further concluded as a matter of law that AutoZone did not retaliate against Complainant for bringing a complaint of discrimination against his immediate supervisor when they demoted him from Store Manager to Parts Sales Manager.