

IN THE IOWA CIVIL RIGHTS COMMISSION

Mark Maxwell Martianson,)	
Complainant)	CP#09-1234567
)	
vs.)	
)	
Earth Industries, Inc.,)	
Respondent)	

Earth Industries, Inc. (hereinafter "Earth") provides its position statement in response to the above-referenced charge of discrimination as follows:

Mark Martianson has filed this charge alleging he was discriminated against based on his race and national origin and that he was retaliated against for opposing a discriminatory practice. Specifically, Mr. Martianson claims Earth did not properly discipline employees who made derogatory comments regarding his race and national origin then disciplined him for complaining about the comments. He further alleges he was terminated when he complained about the unwarranted disciplinary action and because he is Martian and his skin is green.

Earth does not tolerate discrimination or harassment including any such treatment based on race, national origin or any other protected category. Earth's Employee Handbook which is distributed to all employees when their employment commences clearly states such behavior will not be tolerated and provides a clear procedure for reporting and investigation of such incidents. See Earth's Employee Handbook attached hereto as "Respondent's Exhibit A" and Mr. Martianson's acknowledge of receipt of the same as "Respondent's Exhibit B".

Earth's Employee Handbook also explains in detail its employee discipline policy. Earth uses a step-up step-down disciplinary system. The policy warns not all possible infractions warranting discipline are delineated in the handbook but does list tardiness and failing to properly clean and store work equipment as examples of such infractions. The first incident of an employee violating policy draws a verbal warning; the second identical or substantially similar incident within three months warrants a written warning; and employees are terminated for the third identical or substantially similar infraction within three months after the written warning. If employees work three months without an identical or substantially similar incident for which they received a warning, the process starts fresh and any subsequent infraction after three months warrants a verbal warning. See "Respondent's Exhibit A".

Mr. Martianson began working at Earth in October, 2006. His performance was satisfactory and he reported to work on time until September 17, 2007 when he arrived to work twenty minutes late. Mr. Martianson was counseled regarding his tardiness and a verbal warning form was placed in his personnel file. On November 20, 2007, Mr. Martianson did not properly clean and store his digging equipment at the end of his shift and therefore, he received a verbal warning for this infraction. Because failing to properly clean and store equipment is not identical or substantially similar to tardiness, this infraction earned Mr. Martianson a verbal and not a written warning. On December 5, 2007, Mr. Martianson was fifteen minutes late for work and since three months had not passed since his past incident of tardiness, he received a written warning. On March 20, 2008, Mr. Martianson was again tardy for work but since it had been longer than three months since his prior tardiness incident, he was again given a verbal warning. Similarly, Mr. Martianson was given a verbal warning for failing to properly clean and store his equipment on March 30, 2008. See disciplinary documents from Mr. Martianson personnel file attached hereto as "Respondent's Exhibit C".

Mr. Martianson was late for work on July 12, 2008 and October 2, 2008 so received verbal and written warnings, respectively, for tardiness. Mr. Martianson received a verbal warning for violating the equipment cleaning and storing policy on December 24, 2009. Then on March 12, 2009 and August 3, 2009, Mr. Martianson was tardy for work and earned verbal warnings for both infractions. On October 15, 2009, Mr. Martianson arrived thirty minutes late for work and he left his dirty digging equipment in the field at the end of his shift; therefore, he received written warnings for each infraction. On November 30, 2009, Mr. Martianson arrived fifteen minutes late for work. Because Mr. Martianson received a written warning less than three months prior, the second step in the disciplinary process, his employment with Earth was terminated on December 1, 2009. See "Respondent's Exhibit C".

On August 29, 2007, Mr. Martianson reported to his supervisor, Chris Cheetah, his co-workers, Alex Aardvaark and Billy Buffalo, harassed him and made derogatory comments because his skin glowed as they neared the Earth's inner layers while digging. On this date Mr. Martianson also mentioned it was not the first time these coworkers had made comments about his green colored skin and the fact his home planet was Mars. August 29, 2007 was the first time anyone in Earth's management heard or learned about any of Earth's employees making negative comments based on anyone's race or national origin, including Mr. Martianson's. Immediately after receiving Mr. Martianson's complaint, Chris Cheetah started an investigation into the incidents pursuant to company policy.

When Mr. Cheetah spoke with Mr. Aardvaark and Mr. Buffalo, they admitted to making the comment regarding Mr. Martianson's glowing green skin when it heated up as they neared the inner core of the planet. Mr. Aardvaark and Mr. Buffalo indicated they were so struck by Mr. Martianson's glowing skin they could not help themselves but upon further discussion conceded their behavior was unbecoming and unprofessional. Both expressed remorse for hurting Mr. Martianson's feelings. Mr. Aardvaark and Mr. Buffalo denied making any negative statements about Mr. Martianson's skin color or origin except for the above incident. Because of the seriousness of this infraction, Mr. Aardvaark and Mr. Buffalo received written warnings for their behavior. They were also informed the step-down process would not apply to this issue; therefore, any incidents wherein either made any negative comments about anyone's race, national origin, or other protected characteristic at any time would result in immediate termination. Mr. Aardvaark and Mr. Buffalo signed their written warnings signifying their acceptance of the discipline and disciplinary plan. See Mr. Aardvaark's and Mr. Buffalo's written warnings from this incident with personal information redacted attached hereto as "Respondent's Exhibit D". No other incidents where either employee made any such further negative comments have been reported by Mr. Martianson or anyone else.

On or about October 22, 2009 Mr. Martianson approached Mr. Cheetah in his office and asked for a meeting. Mr. Cheetah placed what he was working on aside and invited Mr. Martianson to meet immediately. Mr. Martianson stated he noticed he began to receive numerous discipline actions against him since he'd reported the above-referenced incident involving Mr. Aardvaark and Mr. Buffalo in 2007. He wondered if he had been disciplined because he had complained about the incident or because his skin is green and he originated from Mars. Mr. Martianson also mentioned he never heard of anything happening as a result of his complaint and noted Mr. Aardvaark and Mr. Buffalo were still employed at Earth.

Mr. Cheetah explained to Mr. Martianson his discipline had nothing to do with his skin color, planet of origin or because he complained about any unfair or harassing treatment. Mr. Cheetah showed Mr. Martianson his personnel file documents demonstrating to him how his warnings were provided pursuant to company policy. Upon further discussion, Mr. Martianson admitted he did not recall ever being late for work or failing to properly clean and store his equipment prior to his first written warnings for those infractions.

Mr. Cheetah further explained to Mr. Martianson the confidentiality involved in any investigations at Earth. He told Mr. Martianson just as his disciplinary action was not discussed with or divulged to other employees so were Mr. Aardvaark's and Mr.

Buffalo's. Mr. Cheetah assured Mr. Martianson Mr. Aardvaark and Mr. Buffalo were treated appropriately pursuant to company policy. Mr. Martianson confirmed Mr. Aardvaark and Mr. Buffalo had made no further comments about his skin color or planet of origin since the incident in 2007.

Clearly Earth did not discriminate against Mr. Martianson on any basis and did not retaliate against him in any manner. All incidents Mr. Martianson reported were investigated swiftly in accordance with company policy and the offenders were disciplined appropriately. Earth's discipline of Mr. Martianson was appropriate and in line with its' policies and procedures. It had nothing to do with Mr. Martianson's race, national origin or his complaint against Mr. Aardvaark and Mr. Buffalo. Therefore, for these reasons, Earth respectfully requests this commission enter a finding of "no probable cause" and dismiss this case in its entirety.