

BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

IN RE OFFICE OF ADMINISTRATIVE HEARINGS CASE NO. 1346-2017:

KIONDRA BULLOCK,)	HRB Case No. 0160575
)	
Charging Party,)	
)	HEARING OFFICER DECISION
vs.)	ON REMAND AND NOTICE OF
)	ISSUANCE OF ADMINISTRATIVE
TELETECH CORPORATION,)	DECISION
)	
Respondent.)	

* * * * *

I. PROCEDURAL HISTORY

On June 17, 2019, the Human Rights Commission directed the Hearing Officer in its remand order to conduct further proceedings on the issue of whether Bullock experienced a hostile work environment based upon her race during her employment with Teletech Corporation (TTEC).

Due to a variety of issues, the hearing in this matter was significantly delayed. On June 3, 2021, Hearing Officer Caroline A. Holien conducted a contested case hearing in this matter. Kiondra Bullock appeared personally and was represented by Josh Van de Wetering, Attorney at Law. TTEC appeared through its designated representative, Emily Pastorius, Vice President and Chief Counsel for TTEC. Michelle Gomez, Attorney at Law, represented TTEC. Bullock, Alex Goodnight, Tomi Peterson, and Vanessa Oden testified at hearing. Exhibits 1, 7 through 10, 13, 14, and 15 were admitted.

The parties submitted post-hearing briefs and the matter was deemed submitted for determination after the timely filing of the final brief. Based on the evidence adduced at hearing and the arguments of the parties in their post-hearing briefing, the following hearing officer decision is rendered.

II. ISSUE

1. Did TTEC discriminate against Kiondra Bullock based upon race by creating a hostile work environment, in violation of the Montana Human Rights Act, Title 49, Chapter 2, Mont. Code Ann.?

2. If TTEC did illegally discriminate against Kiondra Bullock as alleged, what harm, if any, did she sustain as a result and what reasonable measures should the department order to rectify such harm?

3. If TTEC did illegally discriminate against Kiondra Bullock as alleged, what should the department require to correct and prevent similar discriminatory practices?

III. FINDINGS OF FACT

1. TTEC, formerly TeleTech, is a third-party outsource business processing center providing customer service management and overall support for a multitude of clients globally. 04/19/2018 Hrg. Tr. 12:2-6; 156:23-157:2.

2. TTEC has a harassment and discrimination prevention policy, which Kiondra Bullock reviewed and had access to during her employment. 04/19/2018 Hrg. Tr. 116:25-117:12; 04/19/2018 Hrg. Ex. 6.

3. Bullock is an African American woman who has lived in Kalispell, Montana since May 2014. Bullock grew up in Jonesville, Missouri, and previously lived in Spokane, Washington. 06/03/2021 Hrg. Tr. 9:25-23.

4. There were large, vibrant African American communities where Bullock lived prior to moving to Kalispell. Kalispell is a less diverse community than those communities where Bullock previously lived. 06/03/2021 Hrg. Tr. 10:6-12:5.

Bullock's Employment with TTEC

5. Beginning January 13, 2015, Bullock worked as a service delivery supervisor for TTEC. Bullock essentially served as a team lead for a team of customer service representatives. 06/03/2021 Hrg. Tr. 14:17-22.

6. Unit Managers Tomi Peterson and Vanessa Oden interviewed Bullock for the position. Peterson and Oden chose Bullock for the position, because she interviewed very well; she had a strong background; she had call center leadership experience; and she left her prior jobs on positive standing. 06/03/2021 Hrg. Tr. 87:20-88:20, 99:20-23, 100:7-14; 04/19/2018 Hrg. Tr. 91:13-92:1; 159:22-160:6.

7. Peterson and Oden were aware of Bullock's race when they interviewed her. 06/03/2021 Hrg. Tr. 51:24-52:4, 88:21-23.

8. Bullock's duties included taking phone calls, actually looking at their outcomes, looking at their statistics, measuring their quality, coaching them to actually improve in their job, handling any issues of people's absences, tardies, and team morale. 06/03/2021 Hrg. Tr. 14:15-15:4; 04/19/2018 Hrg. Tr. 12:16-13:2, 14:8-10, 15:4-8

9. Bullock worked on a call center floor, a "huge room" holding "a couple hundred customer service representatives" who worked in cubicles. "Everybody can hear what you're doing in your cubicle." 04/19/2018 Hrg. Tr. 17:2-23; 18:2-5.

10. Bullock received positive mid-year and end-of-year reviews. Bullock was the "number one team lead" throughout much of her employment based upon the lack of attrition in her group and the attendance of her people. 06/03/2021 30:21-31:12.

Workplace Incidents

11. When Site Director Jo Bowman met Bullock for the first time soon after Bullock was hired, she held her phone up to Bullock's face to show her a picture of her biracial son, and asked her what it was like being black and living in Kalispell. This was the first question that Bowman asked Bullock, and Bullock did not know who Bowman was at the time. Bowman then introduced herself to Bullock. 06/03/2021 Hrg. Tr. 25:16-26:14.

12. In February 2015, Bullock overheard a couple of coaches telling "you might be a black person if" jokes. None of the coaches involved were Bullock's supervisors or managers. 06/03/2201 Hrg. Tr 15:19-16:5

13. Bullock found the jokes offensive and emailed Peterson to inform her of the behavior. 06/03/2021 Hrg. Tr. 16:19-17:4. Peterson emailed Bullock back letting her know that she had spoken with the coaches. Peterson also personally spoke with Bullock about the incident. Bullock applauded TTEC for its handling of the situation. 06/03/2201 Hrg. Tr 19:7-15; 54:14-19.

14. In March 2015, Bullock reported to Peterson that Team Lead Sandi Cowden had complained loudly in front of other employees about duties that were assigned to Bullock that she thought should have been assigned to her. Bullock reported that she found Cowden's behavior disrespectful. Bullock did not think Cowden's reaction was racially motivated but, rather, was "Sandi's issue." Bullock had observed Cowden have unprofessional interactions with white employees for a long time. 06/03/2201 Hrg. Tr 19:20-20:14; 54:21-25; 04/19/2201 Hrg. Tr 96:5-12.

15. In March 2015, Site Director Tory Graham asked Bullock whether it was true that black women did not like to swim because of their hair – a question Bullock found offensive. 06/03/2021 Hrg. Tr. 25:6-9.

16. In May 2015, Bullock began a “Rah-Rah” meeting, which is morale building event for team members without her partner, Harlan Fredenberg, who “kind of ran the Rah-Rahs.” 06/03/2021 Hrg. Tr. 20:16-24. When Fredenberg arrived at the meeting, he said, “You people literally think you can just take over everything.” 06/03/2021 Hrg. Tr. 21:5-14.

17. Bullock sent an email reporting Fredenberg’s comment to Andre Mehan, Human Resources. 06/03/2021 Hrg. Tr. 55:3-4. Mehan came to the worksite and met personally with Bullock to discuss her concerns. 06/03/2021 Hrg. Tr. 21:15-24.

18. Bullock told Mehan that she thought Harlan felt comfortable making his comment because she was black. Bullock told Mehan that she had not heard Fredenberg make a similar comment to anyone else. 06/03/2021 Hrg. Tr. 21:18-22:2. Mehan advised Bullock that Fredenberg would be transitioning to a different position and they would monitor the situation. 06/03/2021 Hrg. Tr. 22:3-13.

19. Fredenberg’s comment included no specific reference to race, and Bullock had never heard him use a racist phrase. 06/03/2021 Hrg. Tr. 55:7-10; Bullock Dep. Tr. 102:3-5, 103:5-7; 04/19/2018 Hrg. Tr. 97:4-24.

20. Bullock sent an email to Peterson shortly after the incident with Fredenberg. Bullock did not mention Fredenberg using the phrase “you people” in her email. 06/03/2021 Hrg. Tr. 55:13-56:7; 06/03/2021 Hrg. Ex. 14.

21. Bullock and Fredenberg later reconciled. 06/03/2021 Hrg. Tr. 55:3-6. Fredenberg was Bullock’s peer, not her supervisor or manager. 06/03/2021 Hrg. Tr. 55:11-12.

22. Bullock was dissatisfied with TTEC’s response to her concerns about Fredenberg’s conduct, but she took no further action on the issue. 06/03/2021 Hrg. Tr. 22:17-25.

23. In June or July 2015, a story was in the news about a white woman, Rachel Dolezal, claiming she was black. Bullock knows Dolezal and considers her a friend. 06/03/2021 Hrg. Tr. 23:10-20.

24. Peterson, who grew up with Dolezal, called Bullock to her office and asked how she felt about a white woman pretending to be black. 06/03/2021 Hrg. Tr. 23:11-13, 89:15-25; 04/19/2018 40:12-25. Bullock told Peterson that she found the question offensive and challenged why she did not ask how a white woman felt about

a white woman pretending to be black. Bullock told Peterson that Dolezal was her friend. 06/03/2021 Hrg. Tr. 23:11-24.

25. Bullock did not report her exchange with Peterson. Bullock felt her relationship with Peterson, who was her supervisor at the time, became strained after the incident. Bullock felt they previously had a close and friendly working relationship. 06/03/2021 Hrg. Tr. 24:2-14.

26. On July 30, 2015, Bullock sent an e-mail to Susan Frye, Vice-President for Customer Service, detailing the various incidents that had occurred over the past several months. Bullock wrote that she did not feel like a team lead in the call center anymore, but, instead, felt like the “black” team lead. 06/03/2021 Hrg. Tr. 24:22-25:4, 29:2-5, 59:3-16; 06/03/2021 Hrg. Ex. 15.

27. Bullock did not report the Graham incident or the Bowman incident in her email to Frye. 06/03/2021 Hrg. Tr. 25:5-26:24.

28. Frye responded to Bullock’s e-mail a little over an hour after Bullock e-mailed Frye. Frye told Bullock that she would investigate Bullock’s concerns. The following day, Frye spoke with Bullock by telephone and Bullock shared her concerns. 06/03/2021 Hrg. Tr. 29:85-9; 59:23-60:1; 60:2-5.

29. Bowman approached Bullock after Bullock had sent her email to Frye. Bowman asked Bullock if she wanted to move from Peterson’s team to Oden’s team. Bullock accepted the offer and transitioned to Oden’s team. 06/03/2021 Hrg. Tr. 30:13-22;

30. Oden became Bullock’s supervisor in September 2015. 06/03/2021 Hrg. Tr. 99:12-15, 100:21-23; 04/19/2018 Hrg. Tr. 160:10-13. Bullock liked Oden, considered Oden to be a good supervisor, believed Oden wanted to help her grow in her role, and told Oden she enjoyed her management and working under her. 06/03/2021 Hrg. Tr. 60:16-61:4; 04/19/2018 Hrg. Tr. at 101:5-102:1.

The April 11, 2016 Incident and TTEC’s Investigation

31. Alex Goodnight has worked for TTEC for approximately 13 years and was a Production Coach in April 2016. 06/03/2021 Hrg. Tr. 15-22. As a production coach, Goodnight was effectively a subordinate of Bullock’s. 06/03/2021 Hrg. Tr. 62:4-7.

32. On April 11, 2016, Goodnight was speaking with Crystal Smyth at the beginning of their shift, which began at approximately 6:00 a.m. Smyth had recently moved to a home that had a large garden. Goodnight commented that kids make good slave labor. Goodnight intended his comment as a joke and meant that kids can

be put to work if they think it is play time. 06/03/2021 Hrg. Tr. 76:14-79:17; *see also* 04/19/2018 Hrg. Tr. 138:3-140:8, 143:22-144:2 (Goodnight did not want to offend anybody with his actions), 149:9-15 (“I was going to explain simply that my point of reference is that children make excellent, easy gardeners; that you don’t have to do anything to reciprocate their work.”), 150:4-11 (“[W]hether I wanted to understand her point of reference or not, there wasn’t an opportunity.”); 04/19/2018 Hrg. Ex. 10 at p. 1.

33. It is unlikely Goodnight used the word “plantation.” Goodnight did not consider a four acre lot, which was the approximate size of Smyth’s property, to constitute a plantation. 06/03/2021 Hrg. Tr. 83:3-84:2.

34. Bullock gave a “long soliloquy speech” about how offensive Goodnight’s comments were and directed him to walk away from her desk. When Goodnight tried to say something, Bullock told him to leave and not to return unless she called him. 06/03/2021 Hrg. Tr. 32:19-33:9.

35. Bullock had never heard Goodnight make any racist comments prior to the April 11, 2016 incident. 06/03/2021 Hrg. Tr. at 64:4-7; 04/19/2018 Hrg. Tr. 110:25-111:4.

36. Goodnight was caught off guard by Bullock’s yelling at him and her angry reaction. Goodnight returned to his desk and sent a message to his supervisor, Kalee Haxby, Coach of the Team Leads, advising her of the situation with Bullock. Hrg. Tr. 79:13-17.

37. Goodnight later went to Bowman’s office to email his statement to human resources. Bowman was not in the office when Goodnight wrote his statement. Goodnight went to Bowman’s office to send the email, because he could not send emails outside of the network due to a client restriction on his computer. TTEC employees often work on individual client’s network and not TTE’s network. 06/03/2021 Hrg. Tr. 80:1-25.

38. Bowman later spoke with Goodnight about the incident and advised him that he needed to be more mindful of what he said, which he thought was a fair instruction. 06/03/2021 Hrg. Tr. 81:7-18. TTEC had not received any complaints that Goodnight had made discriminatory comments prior to the April 11, 2016, incident. 06/03/2021 Hrg. Tr. 81:22-24.

39. Upon arriving at work, Oden had some employees come to her office asking if she had heard about an altercation between Bullock and Goodnight. Oden found an email from Sandi Cowden sent to her at approximately 6:40 a.m.

06/03/2021 Hrg. Tr. 107:2-108:7; 04/19/2018 Hrg. Tr. 163:14-165:2; 04/19/2018 Ex. 10 at p. 5.

40. Cowden reported in her email “that she overheard Bullock yelling you will not talk to me that way and you need to walk away. That is so inappropriate. You will not stand here, you will not talk to me that way. You need to walk away. Leave. Just walk away.” 06/03/2021 Hrg. Tr. 107:11-25; 04/19/2018 Ex. 10 at p. 5.

41. After reading Cowden’s email, Oden asked Bullock to come to her office. Oden observed Bullock was upset and very agitated when she arrived at her office. Bullock did not want to sit down and kept shifting from foot to foot. Oden told Bullock that she had gotten “a whole bunch of emails that you were yelling at somebody on the call center floor.” Oden asked Bullock to help her understand why she was receiving reports that she was yelling on the production floor. 06/03/2021 Hrg. Tr. 33:25-34:5; 108:17-25.

42. Bullock immediately became upset and raised her voice. Bullock told Oden that Goodnight had made a racial comment and Oden would never understand because she is not a person of color. When Bullock suggested she needed to get her lawyer involved, Oden asked her to leave her office and told her they would talk later with Mehan and Bowman. 06/03/2021 Hrg. Tr. 108:15-109:15; 04/19/2018 Hrg. Tr. 163:14-165:2; 181:15-182:15; 183:25-184:21; 185:1-12.

43. Oden later spoke with Bowman and Mehan and documented her interaction with Bullock in a statement. 06/03/2021 Hrg. Tr. 111:5-12; 04/19/2018 Hrg. Tr. 165:7-11.

44. After leaving Oden’s office, Bullock spoke with Bowman, who told Bullock that they would look into her concerns. 06/03/2021 Hrg. Tr. 34:20-25. Bullock then observed a series of TTEC employees going in and out of Bowman’s office that day. 06/03/2021 Hrg. Tr. 34:25-35:6.

45. Oden helped Bowman gather witness statements. Because the witnesses were unable to use their TTEC computers to communicate with Human Resources, they were asked to type their statements using Bowman’s computer. Neither Bowman nor Oden were in the office when the witnesses typed their statements. 06/03/2021 Hrg. Tr. 112:3-20; 04/19/2018 Hrg. Tr. 165:23-166:9.

46. Smyth submitted a statement that said Goodnight had commented that she could have the kids come help on the property with gardening and bring back slave labor. Smyth noted she did not think he intended it offensively and was not given a chance to explain or to apologize. 06/03/2021 Hrg. Tr. 112:21-113:11; 04/19/2018 Hrg. Ex. 13.

47. Peterson reported in her statement that her coaches were terrified of Bullock and “walk on eggshells. They feel that she is targeting coaches.” 06/03/2021 Hrg. Tr. 113:19-23. Oden later spoke with some of Peterson’s coaches, who confirmed they felt bullied by Bullock and disrespected by her. 06/03/2021 Hrg. Tr. 114:3-16.

48. TTEC management had previously received several complaints from employees regarding Bullock’s communication style. On at least two occasions, TTEC management received reports that Bullock had used discriminatory language when speaking with co-workers and people who reported to her as a team lead. 06/03/2021 Hrg. Tr. 102:7-11, 105:14-17. Employees reported feeling bullied and that Bullock would talk down to them. 06/03/2021 Hrg. Tr. 102:18-25. Two employees reported concerns that she was creating an uncomfortable environment for them by suggesting they were involved in a romantic relationship, saying “they were taking their bro-mance to a romance.” 06/03/2021 Hrg. Tr. 103:2-10. Another employee advised TTEC that she resigned because Bullock had told her that she was bipolar and an emotional drain to the team. 06/03/2021 Hrg. Tr. 103:11-17.

49. Bullock met with Bowman at the end of the day and told her what had happened between her and Goodnight. Bullock felt Bowman did not really hear what she was saying or understand how she was feeling because she thought the comment was a joke. 06/03/2021 Hrg. Tr. 35:7-25.

50. Bullock declined to make a statement when requested during TTEC’s investigation. 06/03/2021 Hrg. Tr. 64:11-25; 04/19/2018 Hrg. Tr. 182:20-183:10.

May 16, 2018 Final Written Warning

51. Approximately one month after the Goodnight incident, Bowman and Oden presented Bullock with a Final Written Warning. Hrg. Ex. 7. TTEC Human Resources had concluded that Bullock incorrectly handled the situation, based on her role as a leader, and a final written warning was warranted for violating the code of conduct. 06/03/2021 Hrg. Tr. 114:17-115:16

52. Oden agreed with the Final Written Warning:

We would have the same expectations for any associate or any employee on the floor, but as a leader, we would expect that Ms. Bullock would handle the situation differently. If there was a problem, versus yelling at someone on the floor, raising their voice, especially in front of peers or other employees, we would expect that that would be taken, you know, to a nonpublic place, or that I be contacted as her manager directly so that I could come on site immediately and address it. None of those precautionary steps or behaviors of a leader were exhibited, and based off the results of the investigation and continuing supporting feedback, I did support the decision.

06/03/2021 Hrg. Tr. 115:3-16.

[A]s a leader in the building, we expected Kaye to hold to higher standards and definitely uphold our code of conduct guidelines, which is very clear on professionalism in the workplace, and this is not how the situation should have been handled. It should have either been escalated to myself or another manager, or taken off the floor and discussed

04/19/2018 Hrg. Tr. 168:10-24; 172:18-173:14

53. The Final Written Warning included:

On 4/11/16, a comment was made from Alex Goodnight to which Kaye acted unprofessionally in her response. Kaye raised her voice “you will not talk to me like that, you need to just go, get away from me.” This was loud enough for agents across the production area to file complaints for Kaye’s behavior. In addition, we have multiple terminations since this time citing Kaye as the reason for leaving along with her lack of professionalism. One agent stated “Kaye is telling everyone about my personal life and encouraging others to talk about me.” Another agent stated “Kaye told us that we are an emotional drain to her and she pulls associates aside while they are doing their jobs to talk about me. Her unprofessional actions make it hard for me to go to work and feel comfortable.” It is imperative that we treat all employees and customers with dignity and respect per our Code of Conduct Guidelines.

04/19/2018 Hrg. Ex. 7.

54. Bullock disagreed with the Final Written Warning. Bullock felt it was unfair she was being punished for expressing her feelings about Goodnight's comment when he was the one who made the offensive joke. 06/03/2021 Hrg. Tr. 40:2-16.

Bullock's Previous Performance Improvement Plans (PIPs)

55. Attrition was something that Bullock was expected to work on preventing. 06/03/2021 Hrg. Tr. 31:4-8; 04/19/2018 Hrg. Tr. 44:20-23. When Bullock moved from checking accounts to credit cards, her attrition levels worsened and they were "not very good." 04/19/2018 Hrg. Tr. 60:8-61:3.

56. In the last six to eight months of Bullock's employment, Oden received feedback that Bullock's direct reports felt that there was some potential favoritism or potential bullying going on, and some team members were leaving and not returning to work because they did not feel comfortable voicing concerns with Bullock because they were afraid of retaliation. 06/03/2021 Hrg. Tr. 102:7-103:24; 04/19/2018 Hrg. Tr. 160:17-161:22.

57. On April 4, 2016, Bullock received a PIP, which was approximately one week prior to the Goodnight incident. 06/03/2021 Hrg. Tr. 61:23-62:3; 04/19/2018 Hrg. Tr. 124:13-16; 125:10-25; 04/19/2018 Hrg. Ex. 8.

58. The April 4, 2016 PIP specifically noted that one of the requirements was "[c]ommunicating with a Can Do message and following and supporting full company guidelines without vocal/behavioral recourse of dissatisfaction." 04/19/2018 Hrg. Ex. 8.

59. The April 4, 2016 PIP was not the first time Bullock had been counseled for unprofessional behavior at TTEC. Bullock had received a PIP in September 2015. 06/03/2021 Hrg. Tr. 61:5-11; 04/19/2018 Hrg. Tr. 126:10-24; 161:23-162:14; 04/19/2018 Hrg. Ex. 9.

60. When the September 2015 PIP was delivered, Bullock was counseled about needing to refrain from expressing criticisms in a nonprofessional and unproductive manner and needing to maintain a professional demeanor at work. 06/03/2021 Hrg. Tr. 61:16-22; 04/19/2018 Hrg. Tr. 128:5-10; 16-18. The September 2015 PIP specifically noted Bullock was failing in expressing criticisms in a professional and productive manner. 04/19/2018 Hrg. Ex. 9.

61. On May 26, 2016, Bullock submitted a We Hear You complaint regarding the April 11, 2016 incident, and she was notified that Amy Conley, senior ethics legal advisor, was investigating her complaint. 06/03/2021 Hrg. Tr. 64:11-25; 04/19/2018 Hrg. Tr. 57:25-58:24; *see also* 04/19/2018 Hrg. Ex. 5.

62. During the first week of June 2016, Bullock gave notice that she was resigning with June 23, 2016 being her last day. 06/03/2021 Hrg. Tr. 65:12-17; 04/19/2018 Hrg. Tr. 117:6-12. Nobody told Bullock she had to resign. 06/03/2021 Hrg. Tr. at 65:11-17; 04/19/2018 Hrg. Tr. at 128:23-25.

63. Bullock wrote in her resignation letter, “I want to take a moment to say that Vanessa Oden was one of the reasons I stayed as long as I did. She is a caring, compassionate leader and I truly appreciate her.” 04/19/2018 Hrg. Ex. 12; *see also* 06/03/2021 Hrg. Tr. 61:2-4.

64. Until she received her Final Written Warning, Bullock wanted to stay at TTEC, and she had even expressed interest in mentoring others. 04/19/2018 Hrg. Tr. 207:19-24. Oden was surprised by Bullock’s resignation, because Bullock had indicated she wanted to continue growing in her role at TTEC. 06/03/2021 Hrg. Tr. 118:4-15.

65. After Bullock’s We Hear You complaint and Bullock’s resignation, TTEC held discrimination and sensitivity training. 06/03/2021 Hrg. Tr. at 118:16-119:4; 04/19/2018 Hrg. Tr. 177:7-21.

66. Bullock confirmed at hearing that during her employment with TTEC, she never complained of any employee using a racial slur or of any employee ever physically touching her in any aggressive or threatening way. 06/03/2021 Hrg. Tr. at 53:3-9.

67. The incidents described by Bullock were sporadic in nature. The incidents did not amount to conduct so severe or pervasive that it created a work environment that a reasonable person would consider intimidating, hostile or abusive.

68. TTEC responded appropriately when Bullock complained of her co-workers’ comments. No individual named in the incidents outlined by Bullock were involved in more than one incident.

IV. OPINION¹

Bullock argues TTEC discriminated against her on the basis of race by subjecting her to a hostile work environment through the words and actions of her co-workers and TTEC’s failure to properly address her concerns.

¹ Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

A. Events Occurring Prior to August 28, 2015

TTEC argues only those events that occurred within the 300 days prior to the date of Bullock's Charge of Discrimination are relevant to the issue of whether she was subjected to a hostile work environment based on race. TTEC argues events occurring prior to August 28, 2015, are outside the statute of limitations and cannot be relied upon by Bullock in arguing her case.

The Supreme Court has held that the statute of limitations for filing a claim under Title VII of the Civil Rights Act of 1964 does not "bar an employee from using the prior acts as background evidence in support of a timely claim." *Nat'l Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002). In *Morgan*, the Supreme Court held that "[h]ostile environment claims are different in kind from discrete acts. Their very nature involves repeated conduct. (Citations omitted). The 'unlawful employment practice' therefore cannot be said to occur on any particular day." *Id.* at 115. The Court further found that "[i]t is precisely because the entire hostile work environment encompasses a single unlawful employment practice that we do not hold, as have some of the Circuits, that the plaintiff may not base a suit on individual acts that occurred outside the statute of limitations. . ." *Id.* at 117. Therefore, since the incidents comprising a hostile work environment are part of one unlawful employment practice, the employer may be liable for all acts that fall within this single claim as long as the plaintiff files a timely complaint in connection with any act that forms the basis of the hostile work environment. *Id.* at 118.

A claim of hostile work environment is different than discrimination claims that typically arise from discrete acts, all of which must occur during the limitations period. Evidence regarding events occurring outside the statute of limitations is relevant as background evidence in supporting a timely claim. Further, provided that an act outside the relevant period contributing to the claim occurred within the filing period, the entire time period of the hostile environment must be considered. *Id.* Therefore, Bullock is free to rely upon the prior acts as background evidence in support of her timely claim.

B. Hostile Work Environment

The Montana Human Rights Act prohibits discrimination in the terms and conditions of employment on the basis of race. Mont. Code Ann. §§ 49-2-303(1)(a) and 49-3-201. The anti-discrimination provisions of the Montana Human Rights Act closely follow a number of federal anti-discrimination laws, including Title VII of the Federal Civil Rights Act of 1964, 42 U.S.C. §2000 *et seq.* Montana courts have examined and followed federal case law that appropriately illuminates application of

the Montana Act. *Crockett v. City of Billings*, 234 Mont. 87, 761 P.2d 813, 816 (1988).

Bullock must prove (1) she was subjected to verbal or physical conduct of a harassing nature based on her race; (2) that it was unwelcome; and (3) the conduct was sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment. *Surrell v. California Water Serv. Co.*, 518 F.3d 1097, 1108 (9th Cir. 2008). "Courts have long recognized that a workplace in which racial hostility is pervasive constitutes a form of discrimination." *Woods v. Graphic Communications*, 925 F.2d 1195, 1200 (9th Cir. 1991).

A work environment must be both subjectively and objectively hostile. *McGinest v. GTE Serv. Corp.*, 360 F.3d 1103, 1113 (9th Cir. 2004). "Simply causing an employee offense based on an isolated comment is not sufficient to create actionable harassment." *McGinest*, 360 F.3d at 1113. However, it is sufficient to show that the conduct "pollute[d] the [plaintiff's] workplace, making it more difficult for her to do her job, to take pride in her work, and to desire to stay on in her position." *Id.* (quotations omitted). In short, the "conduct must be extreme to amount to a change in the terms and conditions of employment." *Faragher*, 524 U.S. at 788.

Subjective hostility has clearly been established based upon Bullock's testimony regarding the various incidents and her complaints to her supervisors at TTEC. See *Nichols v. Azteca Rest. Enters.*, 256 F.3d. 864, 873 (9th Cir. 2001).

In evaluating the objective hostility of a work environment, the Ninth Circuit uses a "totality of the circumstances test to determine whether a plaintiff's allegations make out a colorable claim of hostile work environment," considering factors such as "frequency, severity and level of interference with work performance." *Id.* at 1113; *Brooks v. City of San Mateo*, 229 F.3d 917, 924 (9th Cir. 2000). In addition, "[w]hen assessing the objective portion of a plaintiff's claim, [the court] assume[s] the perspective of the reasonable victim." *Brooks*, 229 F.3d at 924 (citations omitted); *McGinest*, 360 F.3d at 1115 ("We now state explicitly . . . that allegations of a racially hostile workplace must be assessed from the perspective of a reasonable person belonging to the racial or ethnic group of the plaintiff.").

The evidence shows Bullock was subjected to seven comments or situations that she believed to be racially motivated throughout her 18 months of employment. One of those incidents – the Cowden incident – Bullock did not believe to be racially motivated, but rather "Sandi's issue." 06/03/2201 Hrg. Tr 19:20-20:14; 04/19/2201 Hrg. Tr 96:5-12. None of the comments or situations involved the use of racial epithets or physical violence or the threat of physical violence.

Bullock rightly points out in her brief that the Hearing Officer has never personally experienced racial discrimination being a white woman living and working in a less diverse state. However, the Hearing Officer is mindful of her professional responsibility to judge the facts of this case from the perspective of a reasonable African American person. It is worth noting the Supreme Court's consideration of this responsibility in *McGinest*:

Racially motivated comments or actions may appear innocent or only mildly offensive to one who is not a member of the targeted group, but in reality be intolerably abusive or threatening when understood from the perspective of a plaintiff who is a member of the targeted group. "The omnipresence of race-based attitudes and experiences in the lives of black Americans [may cause] even nonviolent events to be interpreted as degrading, threatening, and offensive." *Harris v. International Paper Co.*, 765 F. Supp. 1509, 1516 (D. Me. 1991) (noting that "instances of racial violence or threatened violence which might appear to white observers as mere 'pranks' are, to black observers, evidence of threatening, pervasive attitudes"), vacated in part on other grounds, 765 F. Supp. 1529 (D. Me. 1991); *see also id.* (discussing "racial jokes, comments or nonviolent conduct which white observers are . . . more likely to dismiss as nonthreatening isolated incidents"); *Dickerson v. State of New Jersey Dep't of Human Serv.*, 767 F. Supp. 605, 616 (D.N.J. 1991) ("The mere mention of the KKK invokes a long and violent history sufficient to detrimentally affect any reasonable person of the same race as the plaintiff.") (emphasis in original). "Title VII tolerates no racial discrimination, subtle or otherwise." *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 801, 36 L. Ed. 2d 668, 93 S. Ct. 1817 (1973). By considering both the existence and the severity of discrimination from the perspective of a reasonable person of the plaintiff's race, we recognize forms of discrimination that are real and hurtful, and yet may be overlooked if considered solely from the perspective of an adjudicator belonging to a different group than the plaintiff.

Id. at 116.

In *McGinest*, the Supreme Court found there is no other act that can so quickly alter the workplace than the use of a racial epithet regarding a particular racial group. Obviously inflammatory and intended to express a racial hatred, such language is not a "mere offensive utterance." *Id.* Such language was not used in the incidents pointed to by Bullock. Arguably, the term, "you people," could be considered to be a code word or phrase suggesting a racial animus. *Aman v. Cort Furniture Rental Corp.*,

85 F.3d 1074, 1083 (3d Cir. 1996). However, the term is evaluated based upon the intent of the speaker. *Id.*

There is no evidence showing Fredenberg had displayed any racial animus toward Bullock before or after the incident. Further, according to Bullock, she and Fredenberg later reconciled their relationship. 06/03/2021 Hrg. Tr. 55:3-6. While the term “you people” could be interpreted as being racially hostile, Bullock has not shown Fredenberg intended it as such when he made the statement toward a group after discovering Bullock had started a meeting he normally ran without him.

Bullock also points to Bowman’s question asking what it was like living in Kalispell as a black woman after showing her a picture of her bi-racial grandchild. While boorish, the evidence does not show Bowman displayed any racial animus toward Bullock at any time before or after the incident or subjected Bullock to less favorable treatment because of her race. Rather, Bowman facilitated Bullock’s transfer to Oden’s team after it became clear Bullock could not successfully continue working with Peterson.

Similarly, Peterson’s questioning of Bullock regarding her feelings about Dolezal was presumptuous, but asking for an opinion about a current event that Bullock may have an opinion on does not constitute an act of racial animus as contemplated by the court in *McGinest*.

Objectively, a reasonable person in Bullock’s position would find the “you might be a black person if” jokes and Graham’s question about black women not liking swimming due to their hair offensive. The jokes were wholly inappropriate and, given the description of the physical space in which the employees worked, the individuals involved were most likely aware their “jokes” could be heard by Bullock. Further, Graham’s question was clearly intended to single Bullock out as a black woman. There was no evidence showing the context of the question or the nature of the women’s relationship. Given the nature of their work, there appears to be no reason to ask such a question other than to single out or to embarrass Bullock based upon her race.

The Goodnight incident is similar in nature to the incidents involving the “jokes” and the swimming question. The Hearing Officer had the opportunity to observe Goodnight at hearing. Goodnight was soft-spoken and direct in his testimony. There was very little dissembling in his testimony as he answered some rather tough questions by counsel. Goodnight’s testimony that he did not use the word plantation or indicate that Bullock’s grandchildren could be the first slaves is deemed credible. However, it is undisputed that Goodnight used the term “slave,” a term that invokes a grotesque era in this country’s history. While Goodnight may

not have appreciated the implication of the term or how offensive that term may be to another person – black or white – the fact remains a reasonable person in Bullock’s position would most likely have interpreted the comment as being racially motivated. *Aman*, 85 F.3d at 1083.

Bullock has shown that the February 2015 incident involving coaches making inappropriate jokes; the Graham incident in March 2015; and the final incident on April 15, 2016 involving Goodnight were objectively hostile. Clearly, they were unwelcome by Bullock. Therefore, Bullock has satisfied the first two elements of the hostile work environment claim. The question that remains is whether the conduct was sufficiently severe or pervasive to alter the conditions of her employment and create an abusive working environment. *Manatt v. Bank of Am. N.A.*, 339 F.3d 792, 798 (9th Cir. 2003).

Bullock’s co-workers’ behavior was clearly boorish and distressing for Bullock. However, the MHRA, like Title VII and Section 1981, is not a “general civility code.” *Campbell v. Garden City Plumbing & Heating, Inc.*, 2004 MT 231, ¶30, 322 Mont. 434, 97 P3d 546. Properly applied, they will filter out complaints attacking “the ordinary tribulations of the workplace, such as the sporadic use of abusive language, gender-related jokes, and occasional teasing.” *Faragher v. City of Boca Raton*, 524 U.S. 775, 778 141 L. Ed. 2d 662, 118 S. Ct. 2275 (1998)(citations omitted). "Simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment.'" *Id.* (internal citation omitted); *see also Jordan v. Clark*, 847 F.2d 1368, 1374-75 (9th Cir. 1988) (finding no hostile work environment where "off-color" jokes were told in workplace). The Supreme Court made clear that the "'mere utterance of an . . . epithet which engenders offensive feelings in an employee' does not sufficiently affect the conditions of employment to implicate Title VII." *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 23, 114 S. Ct. 367, 126 L. Ed. 2d 295 (1993)). “[C]onduct must be extreme to amount to a change in the terms and conditions of employment.” *Farragher*, 524 U.S. at 788.

In *Manatt*, the Ninth Circuit identified various cases in which the court found the conduct complained of was neither severe nor pervasive enough to alter the employment conditions:

Vasquez v. County of Los Angeles, 307 F.3d 884, 893 (9th Cir. 2002) (finding no hostile environment discrimination where the employee was told that he had "a typical Hispanic macho attitude," that he should work in the field because "Hispanics do good in the field" and where he was yelled at in front of others); *Kortan v. Cal. Youth Auth.*, 217 F.3d 1104, 1111 (9th Cir. 2000) (finding no hostile work environment where the supervisor referred to females as "castrating bitches," "Madonnas," or

"Regina" in front of plaintiff on several occasions and directly called plaintiff "Medea"). *Compare Kang v. U. Lim Am., Inc.*, 296 F.3d 810, 817 (9th Cir. 2002) (finding that a Korean plaintiff suffered national origin harassment where the employer verbally and physically abused the plaintiff because of his race); *Nichols v. Azteca Rest. Enters.*, 256 F.3d 864, 872-73 (9th Cir. 2001) (finding a hostile work environment where a male employee was called "faggot" and "fucking female whore" by co-workers and supervisors at least once a week and often several times per day); *Anderson v. Reno*, 190 F.3d 930 (9th Cir. 1999) (finding a hostile work environment where a supervisor repeatedly referred to the employee as "office sex goddess," "sexy," and "the good little girl" and where he humiliated the employee in public by drawing a pair of breasts on an easel while the employee was making a presentation and then told the assembled group that "this is your training bra session," and where the employee received vulgar notes and was patted on the buttocks and told she was "putting on weight down there"), abrogated on other grounds in *Morgan*, 536 U.S. 101, 153 L. Ed. 2d 106, 122 S. Ct. 2061; *Draper v. Coeur Rochester*, 147 F.3d 1104, 1109 (9th Cir. 1998) (finding hostile work environment where plaintiff's supervisor made repeated sexual remarks to her, told her of his sexual fantasies and desire to have sex with her, commented on her physical characteristics, and asked over a loudspeaker if she needed help changing her clothes).

Manatt, 339 F.3d at 798.

The facts of this case do not show that the comments made occurred repeatedly or that any of the individuals involved were involved in multiple incidents. The incidents occurred over a span of approximately 16 months. There was no evidence showing the incidents adversely affected her ability to successfully perform her job duties. In fact, Bullock testified she considered herself a successful team leader and a top team lead. Bullock had excellent mid-year and annual performance reviews. Hrg. Tr. 51:5-24.

None of the incidents other than the Peterson incident involved Bullock's supervisors. When Frye learned of Bullock's concerns regarding Peterson questioning her about Dolezal, she was given the option of transferring to Oden's team. TTEC management addressed each issue involving Bullock's co-workers when it was brought to their attention. Therefore, while the conduct of Bullock's co-workers was offensive to her, Bullock has not shown the incidents were not so severe or pervasive as to change her working conditions. Further, Bullock has failed to show TTEC ratified or acquiesced in the conduct of her co-workers by failing to take appropriate action upon learning of the complained conduct. *See Puskas v. Pine Hills Youth Corr. Facility*,

2013 MT 223, ¶ 34, 371 Mont. 259, 307 P.3d 298 (“[O]nce a plaintiff establishes the initial elements of a sexual harassment claim or a hostile work environment claim, the employer’s liability attaches only after it negligently responds, or fails to respond...”).

Bullock also alleges the corrective actions she received created a hostile working environment. The 2015 PIP addressed the need for Bullock to maintain a professional demeanor at work and to refrain from expressing criticisms in a nonprofessional and nonproductive manner. 06/03/2021 Hrg. Tr. 61:16-22. The 2016 PIP, which Bullock received approximately one week prior to the Goodnight incident, addressed attrition and noted that one of the requirements of job was “[c]ommunicating a Can Do message and following and supporting full company guidelines without vocal/behavioral recourse of dissatisfaction.” 04/19/2018 Hrg. Ex. 8. The final written warning was issued after Bullock admittedly yelled at Goodnight while on the floor. *See* Hrg. Ex. 7.

After Bullock resigned, Oden found McDonald’s applications in Bullock’s desk, supporting allegations previously made by employees that she would offer employees McDonald’s applications if they disagreed with her directions. Oden had also received feedback that Bullock’s communication style was aggressive and abrupt. 06/03/2021 Hrg. Tr. 105:14-106:2. The Goodnight incident resulted in several employees reporting that Bullock was heard yelling at Goodnight to not talk to her and walk away. *See* 06/03/2021 Hrg. Tr. 106:13-108:14.

There is no evidence showing the corrective actions issued to Bullock were intended to harass or to intimidate her due to her race. Further, it has been held that "Criticisms of a subordinate's work and expressions of disapproval (even loud expressions of disapproval) are the kinds of normal strains that can occur in any office setting [T]hey do not demonstrate a work environment that was pervaded by discrimination." *Singh v. U.S. House of Representatives*, 300 F. Supp. 2d 48, 56 (D.D.C. 2004). "A write-up alone, without any indication that it was accompanied by a reduction in pay, benefits, responsibilities, or some other adverse effect, is insufficient to establish an adverse employment action." *Kubiak v. S.W. Cowboy, Inc.*, 164 F. Supp. 3d 1344, 1367 (M.D. Fla. 2016). *Cf. Saville v. Int'l Bus. Machines Corp.*, 188 Fed. Appx. 667, 670 (10th Cir. 2006) (citation omitted) (agreeing that "criticism in performance reviews and institution of performance improvement plans, alone, do not constitute objectively intolerable conditions").

Similarly, the failure to keep Bullock’s identity secret during the investigation into her complaints has not been shown to be related to her race. There has been no showing that her complaints and the subsequent investigations in which her identity

was revealed changed the terms and conditions of her employment. *See Craig v. M&O Agencies Inc.*, 496 F.3d 1047, 1055 (9th Cir. 2007) (the conduct must be sufficiently severe or pervasive as to alter the working conditions). Therefore, Bullock's argument that the corrective actions and manner of investigation caused a hostile work environment is not persuasive.

When considering the totality of the circumstances, Bullock has not shown the incidents outlined at hearing were sufficiently severe or pervasive as to alter the working conditions. Therefore, Bullock has failed to show TTEC subjected her to a hostile work environment based on her race.

C. TTEC Liability

Even if Bullock had succeeded in showing TTEC had subjected her to a hostile work environment based on her race, she has failed to show TTEC failed to take adequate measures to stop the behavior. *See Nichols*, 256 F.3d at 875.

In *Nichols*, the Ninth Circuit recognized, "An employer is liable for the hostile work environment created by a co-worker unless "the employer . . . takes adequate remedial measures in order to avoid liability." *Id.* Remedies should be reasonably calculated to end the harassment. "The reasonableness of the remedy depends on its ability to: (1) stop harassment by the person who engaged in harassment; and (2) persuade potential harassers to refrain from unlawful conduct. When the employer undertakes no remedy, or where the remedy does not end the current harassment and deter future harassment, liability attaches for both the past harassment and any future harassment. *Id.* at 875-876 (internal quotations and citations omitted).

Bullock conceded she did not report the Bowman or Graham incident to TTEC management. Bullock further conceded she did not think the Cowden incident was racially motivated, but rather attributable to "Sandi's issues." 06/03/2021 Hrg. Tr 19:20-20:14; 04/19/2201 Hrg. Tr 96:5-12. Bullock did report the February 2015 incident involving the coaches; the May 2015 Fredenberg incident; the Dolezal incident in June or July 2015; and the April 2016 Goodnight incident.

When Bullock reported the February 2015 incident to Peterson, Peterson followed up and confirmed for her that she had spoken with the coaches. 06/03/2021 Hrg. Tr. 19:7-10. No evidence was offered to show Bullock experienced similar behavior with those employees or any other TTEC employees. Similarly, the evidence shows Mehan responded to Bullock's complaint regarding Fredenberg, and it turned out the comment was made as a result of a difference of opinion regarding the team building meeting. 06/03/2021 Hrg. Tr. 93:1-5. Bullock testified Fredenberg, "came to [her] very apologetic, for any comments he made, for how he

said them, or anything. . . .” Fredenberg and Bullock ultimately repaired their relationship. 06/03/2021 Hrg. Tr. 71:19-25.

Peterson testified Dolezal was a family friend and it came out during a conversation at work that Bullock knew Dolezal as an adult. 06/03/2021 Hrg. Tr. 89:17-25. Peterson’s question, if it was asked exactly as Bullock described, was inappropriate but understandable given the context of their conversation about a national news story in which they both had a personal interest based upon their relationships with Dolezal. 06/03/2021 Hrg. Tr. 89:17-25; 96:2097:3. However, Bullock was allowed to transfer to Oden’s team after she shared her concerns with Frye. 06/03/2021 Hrg. Tr. 30:13-25. There was no evidence showing Bullock had any further issues with Peterson after the Dolezal incident.

The evidence further shows that TTEC investigated the Goodnight incident by taking statements from those employees involved in the incident. After concluding its investigation, TTEC conducted a two-day training in July 2016, that Oden described:

“It was sensitivity training, and all of [TTEC’s] coach-level employees and higher within the site received sensitivity training that covered racial, ethics, diversity, sexual orientation, and it was a two-day training.”

06/03/2021 Hrg. Tr. 118:21-119:4.

The evidence shows each time Bullock reported her concerns to management, TTEC addressed the situation and it did not reoccur. Therefore, even if Bullock had succeeded in showing TTEC subjected her to a hostile work environment due to her race, her claim fails because she has not shown TTEC failed to properly address her concerns and act promptly to end the alleged harassment.

V. CONCLUSIONS OF LAW

1. The Department of Labor and Industry has jurisdiction over this matter. Mont. Code Ann. § 49- 2-509(7).

2. The MHRA prohibits discrimination in employment based upon race. Mont. Code Ann. § 49-2-303(1)(a).

3. Kiondra Bullock failed to prove that TTEC either discriminated against her illegally because of race or retaliated against her for engaging in protected activity. Mont. Code Ann. §§ 49-2-301, -303(1). *See Hearing Officer Decision, Vanisko, C.* (issued 11/29/2018).

4. Kiandra Bullock has failed to prove TTEC retaliated against her for engaging in protected activity. Mont. Code Ann. § 49-2-30I; Admin. R. Mont. 24.9.603(2).

5. For purposes of Mont. Code Ann. § 49-2-505(8), TTEC is the prevailing party.

VI. ORDER²

Judgment is granted in favor of Teletech Corporation and against Kiandra Bullock. Bullock's complaint is dismissed with prejudice as lacking merit.

Dated: November 1, 2021.

/s/ CAROLINE A. HOLIEN

Caroline A. Holien, Hearing Officer
Office of Administrative Hearings
Montana Department of Labor and Industry

² This order is not intended to replace the original Hearing Officer Decision issued in this matter but is issued in accordance with the Montana Human Rights Commission Order of Remand.

* * * * *

NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: Josh Van De Wetering, attorney for Kiondra Bullock, Charging Party; and Michelle Gomez, Attorney for Teletech Corporation, Respondent:

The decision of the Hearing Officer, above, which is an administrative decision appealable to the Human Rights Commission, issued today in this contested case. **Unless there is a timely appeal to the Human Rights Commission, the decision of the Hearing Officer becomes final and is not appealable to district court.** Mont. Code Ann. § 49-2-505(3)(c)

TO APPEAL, YOU MUST, WITHIN 14 DAYS OF ISSUANCE OF THIS NOTICE, FILE A NOTICE OF APPEAL, Mont. Code Ann. § 49-2-505 (4), WITH ONE DIGITAL COPY, with:

**Human Rights Commission
c/o Annah Howard
Human Rights Bureau
Department of Labor and Industry
P.O. Box 1728 Helena, Montana 59624-1728**

You must serve ALSO your notice of appeal, and all subsequent filings, on all other parties of record.

ALL DOCUMENTS FILED WITH THE COMMISSION MUST INCLUDE THE ORIGINAL AND ONE DIGITAL COPY OF THE ENTIRE SUBMISSION.

The provisions of the Montana Rules of Civil Procedure regarding post decision motions are NOT applicable to this case, because the statutory remedy for a party aggrieved by a decision, timely appeal to the Montana Human Rights Commission pursuant to Mont. Code Ann. § 49-2-505 (4), precludes extending the appeal time for post decision motions seeking relief from the Office of Administrative Hearings, as can be done in district court pursuant to the Rules.

The Commission must hear all appeals within 120 days of receipt of notice of appeal. Mont. Code Ann. § 49-2-505(5).

IF YOU WANT THE COMMISSION TO REVIEW THE HEARING TRANSCRIPT, include that request in your notice of appeal. The original transcript is in the contested case electronic file.