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**UTAH LABOR COMMISSION**

**CHAD DWAYNE ABBOTT,**

**Petitioner,**

vs.

**WALMART,**

**Respondent.**

**ORDER AFFIRMING  
ALJ'S DECISION**

**Case No. 8050761**

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Chad Dwayne Abbott asks the Utah Labor Commission to review Administrative Law Judge Lima's decision to grant Walmart's motion for summary judgment and dismiss his charge of retaliation in violation of the Utah Antidiscrimination Act, Title 34A, Chapter 5, Utah Code Annotated.

The Labor Commission exercises jurisdiction in this matter pursuant to §63G-4-301 of the Utah Administrative Procedures Act and §34A-5-107(11) of the Utah Antidiscrimination Act.

**BACKGROUND AND ISSUE PRESENTED**

Mr. Abbott claims that Walmart retaliated against him because he helped another employee with an employment discrimination complaint. Judge Lima found that there was no genuine issue of material fact to show that Walmart had retaliated against Mr. Abbott. Specifically, Judge Lima concluded that Mr. Abbott had not proffered any evidence that he was engaged in protected opposition to discrimination, and had not shown that Walmart's reason for terminating him was a pretext for retaliation.

Mr. Abbott challenges the decision that there is no genuine issue of material fact to establish that Walmart retaliated against him because: 1) he engaged in protected activity when he searched for the Commission's telephone number; and 2) Walmart's reason for terminating him was a pretext for retaliation because it was false.

**FINDINGS OF FACT**

Having considered the evidence within the record, the Commission agrees with Judge Lima's assessment that there is no genuine issue of material fact in dispute with respect to the following information. On August 23, 2005, Mr. Abbott and another employee, Yesid Hernandez, met with Pete Daniels, the manager of Walmart's store in Draper, Utah. After the meeting, Mr. Abbott stopped on his way out of the store to look up the Commission's telephone number and told Mr. Daniels that he intended to contact the Commission. Mr. Abbott did not say anything about a complaint of employment discrimination.

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On August 24, 2005, Walmart terminated Mr. Abbott for violating its policy against dishonesty and compromised integrity. Mr. Abbott later filed a complaint with the Commission alleging that Walmart terminated him in retaliation for assisting Mr. Hernandez to complain of employment discrimination.

Judge Lima found that even when viewing the evidence in the light most favorable to Mr. Abbott, he had not engaged in protected opposition to discrimination, and had not shown that Walmart's reason for terminating him was a pretext for retaliation. Based on these findings, Judge Lima granted Walmart's motion for summary judgment and dismissed Mr. Abbott's charge.

**DISCUSSION AND CONCLUSION OF LAW**

Walmart's motion for summary judgment is based on the undisputed fact that Mr. Abbott did not say anything about discrimination prior to his termination. In the light most favorable to him, the evidence shows that Mr. Abbott looked up the Commission's telephone number and informed Walmart that he intended to contact the Commission, however, this does not qualify as protected opposition to discrimination. Mr. Abbott also admits that he failed to mention anything about discrimination prior to his termination. By failing to complain about or otherwise mention discrimination before Walmart terminated him, Mr. Abbott did not engage in protected opposition to discrimination as a matter of law. Because Mr. Abbott has not established this threshold requirement, there is no need to consider the issue of pretext.

For the foregoing reasons, the Commission agrees with Judge Lima that Walmart is entitled to summary judgment because there is no genuine issue of material fact regarding whether Mr. Abbott was engaged in protected opposition to discrimination. The Commission concurs with Judge Lima's determination that Mr. Abbott's complaint should be dismissed.

**ORDER**

The Commission affirms Judge Lima's decision of September 23, 2008, on this matter. It is so ordered.

Dated this 19<sup>th</sup> day of October, 2009.

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Sherrie Hayashi  
Utah Labor Commissioner

**IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.**

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**NOTICE OF APPEAL RIGHTS**

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.