

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John F. Peoples	:	
	:	
v.	:	C-2018-3000667
	:	
Lyft, Inc.	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal complaint of John F. Peoples against Lyft, Inc. because he failed to carry his burden of proving that Lyft, Inc. discriminated against him when it permanently deactivated him from its platform.

HISTORY OF THE PROCEEDING

On March 13, 2018, John F. Peoples (Mr. Peoples or Complainant) filed a formal Complaint (Complaint) against Lyft, Inc. (Lyft or Company or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Mr. Peoples stated his reason for the Complaint was “[Lyft] refuses to provide service because I have complained about non-English speaking drivers to other drivers.” The Complainant requested that Lyft be ordered to provide him service.

By Hearing Notice dated June 25, 2018, an in-person hearing was scheduled for September 6, 2018, and the matter was assigned to me.

A Prehearing Order was issued on June 28, 2018, advising the parties of the date and time of the scheduled hearing and informing them of the procedures applicable to this proceeding.

On July 30, 2018, Lyft filed an *Answer Nunc Pro Tunc* to the Complaint. Lyft admitted that it permanently deactivated the Complainant from its platform. Lyft denied that it deactivated the Complainant only because of his complaints about non-English speaking drivers. Lyft averred that it deactivated him because the Company's Safety team received several complaints regarding the Complainant's aggressive behavior and racially-charged comments towards drivers. Lyft further averred that the Company's Safety team also gave the Complainant multiple warnings about his behavior before permanently deactivating him. Finally, Lyft averred that the Complainant's actions were a violation of the Company's terms of service.

On August 30, 2018, the Respondent filed a motion for a 30-day continuance in order to allow it time to make arrangements for its witnesses to appear in person, as well as, work on a settlement offer. I granted the request by Order issued on September 4, 2018.

By Hearing Cancellation/Reschedule Notice dated September 7, 2018, an in-person hearing was rescheduled for October 22, 2018.

The hearing convened as scheduled on October 22, 2018. The Complainant appeared and was represented by Kiersty DeGroot, Esquire. The Complainant offered no exhibits.

The Respondent appeared and was represented by Devin Ryan, Esquire, who presented the testimony of Jessica Taylor, Senior Counsel for Regulatory Compliance at Lyft, Inc. During the hearing, the Respondent offered the following four exhibits, all of which were entered into the record:

Lyft 1: Lyft Terms of Service (41 pages)

- Lyft 2: Printout of Driver Reviews/Ratings (10 pages)¹
- Lyft 3: Zendesk Interactions Report (1 page)
- Lyft 4: Lyft Anti-Discrimination Policies (3 pages)

During the hearing, an issue arose regarding Lyft Exhibit 3, which essentially was just a list of dates when warnings were given to the Complainant. As a result, I requested a copy of the actual warnings sent, as well as any responses received, to be submitted as a late-filed exhibit by October 27, 2018. Tr. 56-57. I received Lyft's late-filed Exhibit 5 on October 26, 2018. The Complainant filed timely objections to Lyft Exhibit 5 on November 1, 2018. The Complainant objected to Exhibit 5 based primarily on its failure to conform to my request at the hearing and resultant lack of authentication. I agree. Instead of a copy/printout of the actual warnings sent, it appears the Respondent simply cut and pasted portions of the warnings sent into Lyft Exhibit 3. As Counsel for the Complainant points out, the document submitted lacks any of the traditional authentication features of an original document or email such as original formatting, timestamps, sender's and recipient's addresses, or even complete employee names of who sent the warnings. Accordingly, the Complainant's objection to Lyft Exhibit 5 is sustained and it is excluded from the record.

It should be noted that in his Complaint, Mr. Peoples stated his reason for the Complaint was "[Lyft] refuses to provide service because I have complained about non-English speaking drivers to other drivers." As a result, at the outset of the hearing I requested clarification from the Complainant regarding the reason for his Complaint. After a brief discussion, I allowed Counsel for the Complainant to orally amend the Complaint to add a claim of discrimination, alleging that Lyft deactivated the Complainant's account because he was blind. Tr. 5.

The record closed on December 6, 2018, when I received a copy of the transcript.

¹ Lyft Exhibit 2 contains hearsay statements but was admitted not for the truth of the matters asserted therein, but to establish the Company's intent in deactivating the Complainant. Tr. 26-27, 41-42. In other words, Lyft Exhibit 2 was not entered to show that Mr. Peoples actually made the racist remarks he is accused of making, but rather, to show that Lyft received multiple negative reviews about Mr. Peoples that were not related to him being blind.

FINDINGS OF FACT

1. The Complainant is John F. Peoples.
2. The Complainant is blind. Tr. 8.
3. The Respondent is Lyft, Inc., a transportation network service under the jurisdiction of and licensed by the Pennsylvania Public Utility Commission. Tr. 21.
4. Lyft is a platform that connects passengers and drivers through a smartphone application (App). Tr. 20-21.
5. A prospective passenger can sign up for Lyft by downloading the Lyft App and creating an account. Tr. 21.
6. In order to create an account, a passenger must agree to Lyft's Terms of Service. Tr. 21.
7. The Complainant created a passenger account with Lyft in 2015. Lyft 2.
8. Lyft permanently deactivated the Complainant from its platform on August 23, 2017. Tr. 38; Lyft 3.
9. Subsection 9 of Lyft's Terms of Service states, in relevant part:

9. Restricted Activities

With respect to your use of the Lyft Platform and your participation in the Services, you agree that you will not:

- b. stalk, threaten, or otherwise harass any person, or carry any weapons;

...

- o. discriminate against or harass anyone on the basis of race, national origin, religion, gender, gender identity, physical or mental disability, medical condition, marital status, age or sexual orientation...

Lyft 1.

10. The Lyft App has a mechanism where drivers can rate passengers between one star and five stars (one being the lowest and five being the highest) as well as leave comments. Tr. 40; Lyft 2.

11. Lyft received one-star and two-star reviews from its drivers alleging the Complainant made racist comments on September 15, 2016, February 19, 2017, June 17, 2017, June 26, 2017, July 1, 2017, and July 29, 2017. Tr. 37-39; Lyft 2.

12. On September 16, 2016, March 17, 2017, and June 28, 2017, Lyft sent warning emails to the Complainant regarding his behavior. Tr. 35-39; Lyft 3.

13. The Complainant responded to each warning email and apologized. Tr. 54; Lyft 3.

14. The Complainant admits to the behavior alleged in the warnings. Tr. 54.

15. Lyft deactivated the Complainant from the platform as a result of the Complainant's continuing rude and racist behavior which is a violation of Lyft's Terms of Service. Tr. 38-39, 41, 52.

DISCUSSION

In this case, the Complainant alleges Lyft unlawfully discriminated against him in violation of 66 Pa.C.S. § 2604.3(a)², by deactivating his account because he is blind, and it was too difficult to accommodate him.

² **66 Pa.C.S. § 2604.3. Service standards.**

As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving by substantial evidence that he is entitled to the requested relief. 66 Pa.C.S. §§ 332(a), 2603(b)(1). To satisfy this burden, the Complainant must show that the Respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100

(a) General. – Where transportation network services are offered, a transportation network company must take reasonable steps to ensure that the service provided by each transportation network company driver who utilizes the digital network is safe, reasonable and adequate. A transportation network company may not unlawfully discriminate against a prospective passenger or unlawfully refuse to provide service to a certain class of passengers or certain localities.

(b) Disabled individuals. – Each licensed transportation network company must:

(1) Adopt a policy of nondiscrimination regarding individuals with disabilities in accordance with this subsection. The following information shall be provided on the transportation network company's publicly accessible Internet website:

(i) Notice of the nondiscrimination policy.

(ii) Procedures to report a complaint to the commission about a transportation network company driver's alleged violation of this subsection.

(2) Within one year of the effective date of this section, the digital network used by a transportation network company to connect drivers and passengers must be accessible to consumers who are blind, visually impaired, deaf and hard of hearing.

(3) A transportation network company driver must transport a service animal when accompanying a passenger with a disability for no additional charge unless the transportation network company driver has a documented medical allergy on file with the transportation network company. Service animals shall be permitted to ride in the passenger compartment of a vehicle. It shall be a violation of this chapter for a transportation network company driver to place a service animal in any part of a vehicle other than the passenger compartment.

(4) A transportation network company may not impose additional charges for service to an individual with a disability.

(5) A transportation network company shall, in an area where wheelchair-accessible service is available, provide passengers with disabilities requiring the use of mobility equipment an opportunity to indicate on its digital network whether they require a wheelchair-accessible vehicle. A transportation network company or an affiliated entity must, if wheelchair-accessible service is available, facilitate transportation service for passengers who require a wheelchair-accessible vehicle by doing one of the following:

(i) connecting the passenger to an available transportation network company driver or other driver operating a wheelchair-accessible vehicle; or

(ii) if connection under subparagraph (i) is not available, directing the passenger to an alternative provider with the legal authority and ability to dispatch a wheelchair-accessible vehicle to the passenger.

(Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. 1984).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001). Thus, in cases involving discrimination, such as this one, the ultimate question for the Commission is whether, on *all* the evidence produced, the Complainant has persuaded the Commission by a preponderance of the evidence that he was unlawfully discriminated against. *Allegheny Hous. Rehab. Corp. v. Pa. Human Relations Comm'n*, 532 A.2d 315, 318 (Pa. 1987).

Here, the only evidence presented by the Complainant was his own testimony, which is not unusual for discrimination claims since the Respondent is usually in the better position to keep data, records, etc. Mr. Peoples testified that when he calls for rides from Uber or Lyft, the Lyft drivers pull away once they find out he is blind. Tr. 9. Mr. Peoples further alleged that this has happened “dozens and dozens of times.” Tr. 9. Based on this testimony, the Complainant has made a *prima facie* case of discrimination, which if unrebutted, may have satisfied his burden of proof. See *Allegheny* at 317. However, in this case, I find that Lyft was

able to present substantial evidence of a non-discriminatory basis for deactivating the Complainant from its platform.

A prospective passenger can sign up for Lyft by downloading the Lyft App and creating an account, but in order to create an account, a passenger must also agree to Lyft's Terms of Service. Subsection 9 of Lyft's Terms of Service states, in relevant part:

9. Restricted Activities

With respect to your use of the Lyft Platform and your participation in the Services, you agree that you will not:

...

- b. stalk, threaten, or otherwise harass any person, or carry any weapons;

...

- o. discriminate against or harass anyone on the basis of race, national origin, religion, gender, gender identity, physical or mental disability, medical condition, marital status, age or sexual orientation...

Lyft 1.

The Lyft App has a mechanism where drivers can rate passengers between one star and five stars (one being the lowest and five being the highest) as well as leave comments. Lyft received one-star and two-star reviews from its drivers alleging the Complainant made racist comments on September 15, 2016, February 19, 2017, June 17, 2017, and June 26, 2017. Acting on those reviews from its drivers, on September 16, 2016, March 17, 2017, and June 28, 2017, Lyft sent warning emails to the Complainant regarding his behavior. Rather than deny the behavior, the Complainant responded to each warning email with an apology. Nevertheless, Lyft received two more negative reviews from its drivers alleging racist behavior by the Complainant on July 1, 2017 and July 29, 2017. As a result, Lyft permanently deactivated the Complainant from its platform on August 23, 2017.

Since Lyft Exhibit 2 was not admitted to prove the truth of the matters asserted therein, it cannot be relied upon to establish that the Complainant actually engaged in the behavior alleged. However, this became unnecessary when the Complainant admitted to the behavior at the hearing during the following testimony:

JUDGE BRADY: Mr. Peoples, let me ask my question. Do you refute that you acknowledged the warnings and issued an apology?

MR. PEOPLES: Yes, I did.

JUDGE BRADY: So, you are acknowledging this behavior?

MR. PEOPLES: Yes.

Tr. 54.

In addition to the foregoing admission, the Complainant demonstrated throughout his testimony that he, rather than Lyft, is the one who is discriminating. For example, during the hearing, the Complainant made the following statements while testifying:

“[The drivers] don’t know where they are going, and they don’t ever get out of the car and help you. I mean the foreign drivers; not the American drivers. They are really nice. I have trouble with the foreign drivers.” Tr. 9.

“I had it today in the cab. The guy is an Indian and he didn’t speak English and he took me to the wrong place and that goes on all the time.” Tr. 9.

“All I can tell you is that what I notice is that the foreign drivers are just interested in making money and some of them don’t understand but a lot of them don’t care.” Tr. 11.

“Anyway, I get in and I have so much trouble with these foreign drivers and I would say to the Americans, "do you guys have trouble with the foreign drivers because they drive me nuts." I said, "they don't understand; they pull away and they whine," and they said "well, we don't have too much but a lot of the people don't really have problems with the foreign drivers. Amongst other things, they proposition the women. That's one of the things that they do but the Americans don't do it." It's just not me that has

trouble with them. I mean, that's why Trump won the election.”
Tr. 13.

“I haven't had much trouble with the Americans. It's the middle Eastern people – the Africans. They give me a hard time. They just don't care.” Tr. 15.

Based on the foregoing, it is clear that Lyft deactivated the Complainant from the platform, not because he is blind, but because of the Complainant's continuing rude, harassing, and racist behavior, which is a violation of Lyft's Terms of Service. As a result, I find that Lyft presented substantial evidence of a non-discriminatory reason for deactivating the Complainant and thus, the Complainant failed to carry his burden of proof that Lyft discriminated against him. Accordingly, Mr. Peoples' Complaint shall be dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 2603(b)(1).

2. The burden of proof in this case is upon the Complainant, who must establish by a preponderance of evidence which is substantial and legally credible that the Respondent violated the Commission's regulations. 66 Pa.C.S. §§ 332(a), 2603(b)(1); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).

3. While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

4. A transportation network company may not unlawfully discriminate against a prospective passenger or unlawfully refuse to provide service to a certain class of passengers or certain localities. 66 Pa.C.S. § 2604.3(a).

5. Each licensed transportation network company must adopt a policy of nondiscrimination regarding individuals with disabilities. 66 Pa.C.S. § 2604.3(b)

6. In cases involving discrimination, the ultimate question for the Commission is whether, on all the evidence produced, the Complainant has persuaded the Commission by a preponderance of the evidence that he was unlawfully discriminated against. *Allegheny Hous. Rehab. Corp. v. Pa. Human Relations Comm'n*, 532 A.2d 315, 318 (Pa. 1987).

7. The Complainant failed to meet his burden of proving that Lyft discriminated against him when it deactivated his account from the platform.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of John F. Peoples against Lyft, Inc. at Docket No. C-2018-3000667 is dismissed; and

2. That Docket No. C-2018-3000667 be marked closed.

Date: January 14, 2019

/s/
F. Joseph Brady
Administrative Law Judge