

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )  
FOR REVIEW BY: )

**GARY PIERCE,** )

Petitioner. )

CHARGE NO.: **2019SA0778**

EEOC NO.: **21BA90232**

ALS NO.: **19-0587**

**ORDER**

This matter coming before the Commission on May 27, 2020 by a panel of three, Chair James A. Ferg-Cadima, Vice-Chair LeDeidre S. Turner, and Panel Chair Robert A. Cantone presiding, upon the Request for Review (“Request”) of Gary Pierce (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)<sup>1</sup> of Charge No. 2019SA0778, and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent’s dismissal of Petitioner’s charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.<sup>2</sup>

**DISCUSSION**

On November 14, 2018, Petitioner filed a charge of discrimination with the Respondent alleging that Health Plus Inc. (“Employer”) subjected him to unequal terms and conditions of employment due to his age (Count A), his race (Count B), his sex (Count C), and in retaliation for complaining of unlawful discrimination (Count D), and constructively discharged him due to his age (Count E), his race (Count F), his sex (Count G), and in retaliation for complaining of unlawful discrimination (Count H) in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”). On September 23, 2019, the Respondent dismissed Petitioner’s charge for lack of substantial evidence. Petitioner filed a timely Request.

The Commission concludes that the Respondent properly dismissed Petitioner’s charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent’s investigation of a charge, the charge must be dismissed. 775 ILCS 5/7A-102(D). Under the Act, substantial evidence is “evidence which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance.” 775 ILCS 5/7A-102(D)(2).

---

<sup>1</sup> In a request for review proceeding, the Illinois Department of Human Rights is the “Respondent.” The party to the underlying charge requesting review of the Illinois Department of Human Rights’s action shall be referred to as the “Petitioner.”

<sup>2</sup> This order is entered pursuant to a 3-0-0 vote by the Commissioners.

Petitioner was hired by the Employer in August 2017 as a Program Technician. Based on the written job description provided by the Employer, patient assessment is one of the main duties of this position. Petitioner stated during the investigation that the duties of this position were patient assessment and outpatient counseling. Petitioner stated that he met expectations on his most recent performance evaluation. Petitioner was issued a verbal counseling and was placed on an action plan on June 21, 2018 for not filling out all of the necessary forms correctly.

Petitioner's charge alleges that he was subjected to unequal terms and conditions of employment when Amy Daum, Petitioner's coworker and Lead Counselor at his location, who was outside of all of his protected classes, was allowed to change scheduled activities in order to monitor Petitioner's work, to change scheduled activities in order to give Petitioner the majority of the assessment work, which was more labor intensive than other duties, to follow up with clients to find errors Petitioner may have made, to instruct coworkers to scrutinize Petitioner's work more closely, and to go through Petitioner's desk and demand the return of personal materials. Petitioner also alleged that Daum was allowed to change her schedule to fit her needs but that Petitioner was not allowed to do the same.

On August 30, 2018, Petitioner submitted his resignation to the Employer. During the investigation, Petitioner stated that after Raymond Mosby, a coworker in all of Petitioner's protected classes, was terminated in or around July 2018, Petitioner believed he would be next.

#### Counts A through D: Unequal Terms and Conditions of Employment

To establish a *prima facie* case of discrimination, Petitioner must show: (1) he is a member of a protected class; (2) he was performing his job satisfactorily; (3) he was subject to an adverse action; and (4) the Employer treated a similarly situated employee outside his protected class more favorably under similar circumstances. *Marinelli v. Illinois Human Rights Comm'n*, 262 Ill. App. 3d 247, 253 (2d Dist. 1994).

To prove a *prima facie* case of retaliation, the Petitioner must prove the following three elements: (1) Petitioner engaged in a protected activity, (2) the employer took an adverse action against him, and (3) there was a causal nexus between the protected activity and the adverse action. *Carter Coal Co. v. Illinois Human Rights Comm'n*, 261 Ill. App. 3d 1, 7 (5th Dist. 1994).

For all of the Petitioner's first four counts, he must show that he was subjected to an adverse action. For Counts A through C, this means he must allege a "tangible employment action...such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 761 (1998). For Count D, the retaliation charge, the adverse action must be "materially adverse, which...means it well might have dissuaded a reasonable worker from making or supporting a charge of discrimination." *Burlington Northern and Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006), adopted by *Hoffelt v. Illinois Dep't of Human Rights*, 367 Ill. App. 3d 628, 635 (1st Dist. 2006).

Petitioner has not provided evidence to support any of his counts of unequal terms and conditions, as none of the allegations described in the charge or the investigation constitute materially adverse actions under the Act. Petitioner described conditions of employment which, if accepted as true, indicated personality conflicts between him and his immediate supervisor and could have created a difficult work environment. However, none of them rose to the level of materially adverse actions. Petitioner's job description states that patient assessment is one of his main duties, and he does not dispute that Daum had a clinical license and that he did not, which enabled her to provide counseling services that he could not provide. Therefore, being assigned primarily patient assessments is not a materially adverse action. And further, being closely monitored by one's supervisor also does not constitute an adverse action under the Act. *In re Request for Review by: Louis Chavez, IHRC, ALS No. 19-0046, 2019 WL 5069042, \*2 (Sept. 10, 2019).*

#### Counts E through H: Constructive Discharge

Petitioner's charge states that he was forced to resign because "no action was going to be taken to stop the discriminatory behavior against me." During the investigation he stated that he resigned because after Mosby was terminated, "he believed he was next in line for terminating."

The Commission recognizes two types of constructive discharge. The first "occurs when an employer deliberately makes an employee's working conditions so intolerable that the employee is forced to resign involuntarily." *Steele v. Illinois Human Rights Comm'n*, 160 Ill. App. 3d 577, 581 (3d Dist. 1987). The second "occurs when an employer acts in a manner so as to have communicated to a reasonable employee that she will be terminated." *Wright v. Illinois Dep't of Children and Family Servs.*, 798 F.3d 513, 527 (7th Cir. 2015).

As described in the above section, the treatment Petitioner alleged he was subjected to was not so severe as to have forced him to resign involuntarily. Further, though Petitioner stated he believed he was next to be terminated after Mosby, he did not give any support for this belief. Mere speculation or conjecture cannot constitute substantial evidence of discrimination. *Folbert v. Dep't of Human Rights*, 303 Ill. App. 3d 13, 25 (1st Dist. 1999).

Accordingly, Petitioner has not presented sufficient evidence to show that the Respondent's dismissal of the charge was not in accordance with the Act.

#### **THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The dismissal of Petitioner's charge is hereby **SUSTAINED**.
2. This is a final Order. A final Order may be appealed to the Illinois Appellate Court by filing a Petition for Review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Health Plus Inc. as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

**STATE OF ILLINOIS**                    )  
                                                  )  
**HUMAN RIGHTS COMMISSION**        )

**Entered this 10th day of June 2020.**

Chair James A. Ferg-Cadima

Vice-Chair LeDeidre S. Turner

Commissioner Robert A. Cantone