

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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

MARJORIE MORRIS,)

Petitioner.)

CHARGE NO.: **2021CA1204**
EEOC/HUD NO.: **21BA10588**
ALS NO.: **21-0402**

ORDER

This matter coming before the Commission on July 20, 2022 by a panel of three, Panel Chair Robert A. Cantone, Commissioners Barbara R. Barreno-Paschall and Janice M. Glenn presiding, upon the Request for Review (“Request”) of Marjorie Morris (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2021CA1204, and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 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**.²

DISCUSSION

On September 1, 2020, Petitioner filed a charge of discrimination with the Respondent (perfected on March 12, 2021) alleging that Grief Packaging, LLC (“Employer”) discharged her due to her race (Count A), her age (Count B), and her sex (Count C), in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On September 2, 2021, the Respondent dismissed Petitioner’s charge for lack of substantial evidence. Petitioner filed a timely Request.

Factual Background

Petitioner began working for Employer in 2011 as a general labor employee and was promoted to the position of forming press operator in 2016. Petitioner’s job duties were to operate a forming press to shape steel. Petitioner was required to follow written lock out/tag out (“LOTO”) procedures when disabling the press for maintenance. LOTO procedure includes insertion of a cinder block to ensure that the press cannot be powered on during maintenance.

On December 10, 2019, Petitioner’s press had to be powered down so that she and Eloy Gonzalez (White, 40’s, male), group leader, could perform maintenance on the press. After shutting down the press, Petitioner placed a block from a nearby press into her press. After performing the

¹ 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.”

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

required maintenance, Gonzalez powered Petitioner's press back on, causing the die to drop and damage the cinder block.

Following this incident, Petitioner and Gonzalez were both suspended pending investigation. On December 17, 2019, Employer discharged Petitioner for violating LOTO procedures. The final decision-maker in her discharge was Dave Tomaszewski (white, 67, male), former plant manager. Gonzalez received a written warning but was not discharged.

Petitioner alleged that she was discharged due to her race, Black (Count A), her age, 56 (Count B), and her sex, female (Count C). Petitioner alleged that Gonzales was equally responsible for the incident but was not discharged. Petitioner also alleged that an unnamed supervisor gave her documentation showing that Gonzalez was also responsible for the incident, but she did not provide this documentation to the Respondent. Petitioner did not allege that anyone at Employer made any direct statements about her race, age, or sex.

Tomaszewski stated that Employer generally uses a progressive disciplinary system, but the Employee Handbook states that LOTO violations may result in immediate discharge. Tomaszewski stated that Petitioner used a cinder block from a nearby Komatsu press, rather than the correct block from her Bliss press during the December 10 incident. According to Tomaszewski, this is a violation of LOTO procedures and Gonzalez would not have been able to power on the press had Petitioner used the correct block. Tomaszewski also stated that the die dropping could have resulted in serious injury to Petitioner or Gonzalez. Tomaszewski stated that he made the decision to discharge Petitioner after the investigation revealed that she, not Gonzalez, was responsible for using the wrong cinder block. Employer provided documentation showing that Kevin Boyle (White, 57, male), unknown title, was discharged on June 14, 2019, for violating LOTO procedures.

Analysis

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).

Generally, to establish a *prima facie* case of discrimination, the Petitioner must show: (1) that she is a member of a protected class; (2) that she was performing her work satisfactorily; (3) that she was subject to an adverse action; (4) and that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. *Marinelli v. Human Rights Comm'n*, 262 Ill. App. 3d 247 (2d Dist. 1994). To establish a *prima facie* case of age discrimination based on unequal terms and conditions of employment, Petitioner must show that: (1) she was in the protected class of age 40 or older; (2) she was performing her job satisfactorily; (3)

she was subjected to an adverse action; and (4) there is a significant disparity between her age and the age of a younger employee treated more favorable. *Hartley v. Wisconsin Bell, Inc.*, 124 F.3d 887, 892 (7th Cir. 1997).

Here, Petitioner failed to meet the fourth prong of her *prima facie* case. Petitioner identified Gonzalez as a race, age, and sex comparative. However, Gonzalez is not a similarly situated employee. Petitioner was responsible for using the wrong block in violation of LOTO procedures. Gonzalez received a written warning and suspension for violation of a safety rule but was not found to have violated LOTO procedures like Petitioner. Because Gonzalez did not violate LOTO procedures, he was not treated more favorably than Petitioner when Employer did not discharge him. Further, Employer discharged Boyle for the same reason as Petitioner. Accordingly, Petitioner failed to establish her *prima facie* case.

Even if Petitioner were able to establish her *prima facie* case for any of her Counts, Employer may rebut the presumption of discrimination by articulating a legitimate, nondiscriminatory reason for its decision, and Petitioner must prove that the articulated reason was a pretext for discrimination. *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill. 2d 172, 178-79 (1989). Here, Employer articulated a legitimate, nondiscriminatory reason, that Petitioner violated LOTO procedures. Employer has a progressive discipline policy, but the Employee Handbook states that violation of LOTO procedures may result in immediate discharge. Employer suspended both Petitioner and Gonzalez pending further investigation. The investigation revealed that Petitioner, not Gonzalez, violated LOTO procedures. Petitioner alleged in her request that Gonzalez was more at fault and should have been discharged, but she has not presented any evidence that the investigation was undertaken in bad faith, or that Employer's stated reason was pretextual. The Commission does not sit as a super-personnel department that reexamines Employer's discipline policies or reliance on the results of the investigation. *Mechnig v. Sears, Roebuck & Co.*, 864 F.2d 1359, 1365 (7th Cir.1988).

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 for lack of substantial evidence 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 Grief Packaging, LLC as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
) **Entered this 26th of July 2022.**
HUMAN RIGHTS COMMISSION)

Commissioner Barbara R. Barreno-Paschall

Commissioner Robert A. Cantone

Commissioner Janice M. Glenn