

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)		
)	CHARGE NO.:	2021CA1215
)	EEOC/HUD NO.:	21BA10609
MATTHEW SCHILD,)	ALS NO.:	22-0090
)		
Petitioner.)		

ORDER

This matter coming before the Commission on August 3, 2022 by a panel of three, Panel Chair Barbara R. Barreno-Paschall, Chair Mona Noriega and Commissioner Stephen A. Kouri II presiding, upon the Request for Review (“Request”) of Matthew Schild (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2021CA1215, 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 December 11, 2020, Petitioner filed a charge of discrimination with the Respondent alleging that Securitas Security Services USA, Inc. (“Employer”) prohibited him from the work site (Count A) and discharged him (Count B) due to his age, and prohibited him from the work site (Count C) and discharged him (Count D) in retaliation for complaining of discrimination in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”). On December 14, 2021, the Respondent dismissed Petitioner’s charge for lack of substantial evidence. Petitioner filed a timely Request.

Factual Background

On January 3, 2019, the Petitioner was hired as a Security Officer by the Employer, which provides uniformed security and patrol services for its clients. The Employer assigned the Petitioner to work at the Sullivan Center, managed by Jones Lang LaSalle, Inc. (“JLL”).³ On July 10, 2019, the Employer promoted the Petitioner to the Account Manager position. The Petitioner’s job duties included

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.

³ The Petitioner also filed a charge of discrimination against JLL (Charge Number 2021SA1216).

performing daily building operations, processing any management or tenant requests, and supervising other security officers.

In January 2020, the Employer was notified by JLL that the Petitioner was speaking negatively to the tenants about JLL's management and harassing the security officers. On February 12, 2020, the Employer placed the Petitioner on a paid suspension and prohibited him from the Sullivan Center while the Employer investigated JLL's complaint. The Petitioner stated that, on the same day, he complained verbally to his supervisors that he believed the Employer wanted to discharge him because of his age.

On February 25, 2020, a supervisor informed the Petitioner that the investigation was unsubstantiated. Still, the Employer decided to remove him from the Sullivan Center due to the "frayed" relationship between him and JLL. Meanwhile, the Petitioner's supervisor asked the Petitioner to submit an updated resume so that the Employer could start a reassignment process. It is uncontested that no one ever told the Petitioner that the Employer was discharging him in February 2020.

The next day, the Petitioner emailed the supervisor to confirm that he had understood their conversation but "had not received any letter ending his employment, his personnel file, or any and all investigation documents." On March 2, 2020, the Petitioner contacted his supervisor again, stating he would like his personal items at the Sullivan Center to be collected and given to him. The Employer had a policy that if it had not heard from an employee for 30 days during the reassignment process, the employee would be considered voluntarily discharged. The Petitioner never provided the Employer with an updated resume nor kept contact with the Employer. The Employer discharged the Petitioner in October 2020 for lack of engagement seven months after his last contact with the Employer.

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).

Counts A and B: Age Discrimination

Generally, to establish a *prima facie* case for discrimination, the Petitioner must show that (1) he falls within a protected class; (2) he was performing his work satisfactorily; (3) he was subjected to an adverse action; and (4) the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. *Marinelli v. Illinois Human Rights Comm'n*, 262 Ill.App.3d 247, 253 (2nd Dist. 1994). Once the *prima facie* case has been established, the burden shifts to the Employer to articulate a legitimate, non-discriminatory reason for its actions. Then, to

prevail, the Petitioner must prove that the Employer's proffered reason is a pretext for unlawful discrimination. *McDonnell Douglas Corp v. Green*, 411 U.S. 792, 804 (1973).

Even assuming that the Petitioner could establish a *prima facie* case of discrimination, his claims still fail because the Employer articulated legitimate and non-discriminatory reasons for its actions. As to Count A, the Employer placed the Petitioner on a paid suspension on February 12, 2020, while it investigated the complaints from JLL, the management company of the Petitioner's work site. As to Count B, the Employer ended the Petitioner's assignment at the Sullivan Center due to the "frayed" relationship between the Petitioner and JLL. The Employer notified the Petitioner of this decision on February 25, 2020 and encouraged him to submit an updated resume so he could be reassigned to another location. However, the Petitioner never provided an updated resume or kept in contact with the Employer. Accordingly, the Employer discharged the Petitioner for lack of engagement eight months after his last contact with the Employer in October 2020.

As such, the Petitioner cannot prevail without showing that the Employer's proffered reasons were a pretext for discrimination. *Sola v. Illinois Human Rights Comm'n*, 316 Ill.App.3d 528, 537 (1st Dist. 2000). In the absence of evidence that such business consideration relied upon by the Employer is a pretext for discrimination, it is improper for the Commission to substitute judgment for the Employer's business judgment. *In re Robert Dean Berry and State of Illinois*, IHRC, ALS No. S-9146, 1997 ILHUM LEXIS 738, *20-21 (Dec. 10, 1997). We sustain the dismissal of Counts A and B.

Counts C and D: Retaliation

The Petitioner also alleged that the Employer subjected him to unequal terms and conditions of employment in retaliation for complaining of discrimination. To establish a *prima facie* case for retaliation, the Petitioner must show: (1) that he engaged in protected activity; (2) that the Employer "committed a material adverse act" against her; and (3) that there was a "causal nexus . . . between the protected activity and the adverse act." *Hoffelt v. Illinois Dep't of Human Rights*, 367 Ill.App.3d 628, 634 (5th Dist. 2006) (citations omitted). If the Petitioner can make out this *prima facie* case, the burden shifts to the employer to articulate a non-retaliatory reason for its action. *Stone v. Illinois Dep't of Human Rights*, 299 Ill.App.3d 306, 313 (4th Dist. 1998). After the employer provides such an explanation, the burden shifts back to the employee to prove the employer's proffered reason was pretextual. *Id.*

Even assuming that the Petitioner could establish a *prima facie* case, his retaliation claims still fail because the Employer articulated legitimate and nonretaliatory reasons for its actions, as detailed above, and the Petitioner failed to show that the Employer's proffered reasons were pretextual.

In his Request, the Petitioner did not present any additional evidence that the Employer's articulated legitimate and non-discriminatory reasons were pretexts for unlawful age and retaliation discrimination. 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 Securitas Security Services USA, Inc. 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 9th day of AUGUST 2022.**
HUMAN RIGHTS COMMISSION)

Chair Mona Noriega

Commissioner Stephen A. Kouri II

Commissioner Barbara R. Barreno-Paschall

