STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	
	)	CHARGE NO.: 2021SF2209
	)	EEOC NO.: 21BA11108
Stephaney Marshall,	)	ALS NO.: 22-0120
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 Stephaney Marshall ("Petitioner"), of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")[1] of Charge No. 2021SF2209, 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 May 26, 2021, Petitioner filed a charge of discrimination with the Respondent (perfected on August 26, 2021) alleging that Mueller Co., LLC ("Employer") discriminated against her when it discharged her (Count A) and denied her backpay (Count B) based on her perceived disability, COVID-19, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On January 12, 2022, the Respondent dismissed Petitioner's charge for lack of substantial evidence. Petitioner filed a timely Request.

Factual Background

Employer, a manufacturer of water and gas products, hired Petitioner in November 2017 as a Brass Casting Handler, and promoted her to Brass Sorter in October 2018. On September 27, 2020, Petitioner learned that her sister-in-law, Shaina Foxx, who also worked for Employer and with whom Petitioner had recently been in close contact, had tested positive for COVID-19. Petitioner emailed Senior HR Generalist Abby Damery that day to let her know about the exposure.

Petitioner went into work the following day, September 28, 2020, but was sent home and instructed to get tested for COVID-19. She was unable to get tested that day because the lines were

[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.

too long. She did get tested the next day, September 29, and was told the results would be available in three to four days.

Under Employer's COVID-19 procedures, employees who were exposed to COVID-19 were required to present a letter from the Macon County Health Department ("the Health Department") indicating that they needed to quarantine. Petitioner stated that she initially could not reach the Health Department to obtain her quarantine letter, and it is uncontested that Petitioner notified Damery of her difficulty on or around September 28, 2020. Damery stated that after being notified of Petitioner's difficulty obtaining a quarantine letter, Damery herself contacted the Health Department and was informed that Petitioner was not documented as needing to quarantine due to possible COVID-19 exposure.

On October 1, 2020, Employer sent Petitioner a letter notifying her that she was being discharged for job abandonment and falsifying the need for medical leave. Human Resources Manager Josh Smith stated that Petitioner was discharged because Employer believed that she did not have COVID-19, nor been exposed to it, and that she was misleading Employer in order to miss work unnecessarily. He denied that Employer discharged Petitioner because they perceived her as having COVID-19. Smith also stated that Employer does not have a specific policy related to job abandonment or falsifying medical leave, but that lying about the need for medical leave presented an ethical issue in violation of Employer's Code of Conduct. Respondent's Investigative Report ("the Report") revealed that other employees who were exposed to or diagnosed with COVID-19 were not discharged by Employer, including Foxx, who was Petitioner's original source of exposure.

Petitioner received her negative COVID-19 test result on October 2, 2020, which she emailed to Damery that same day. Petitioner eventually obtained a letter from the Health Department, dated October 14, 2020, which stated that she should remain off work until "released from isolation/quarantine" on October 10, 2020.

Following her discharge, Petitioner filed a grievance with her Union. As a result of negotiations between the Union and Employer, Smith offered Petitioner her job back, with seniority, in mid-August 2021. Petitioner was not offered backpay for the period of time she was discharged. The terms of Petitioner's rehiring were determined between the Union and Employer without Petitioner's input.

Petitioner stated that she did not specifically request backpay from Employer but assumed the Union would attempt to obtain it during negotiations. Union Representative Chris Frydinger stated that the Union was only able to get Petitioner rehired by taking backpay "off the table." Smith stated that the Union Collective Bargaining Agreement ("the CBA") does not address backpay specifically, but it is sometimes part of the grievance process. Smith stated that backpay was not an element of the agreement to rehire Petitioner and denied that Employer did not offer backpay because they perceived her as having COVID-19.

Petitioner stated that another employee, maintenance worker Latrelle Cliff (no disability, perceived disability status unknown), was discharged because Employer believed he had left the work site without approval but was later rehired with backpay. Smith confirmed that Cliff had been discharged for a different reason than Petitioner. Employer provided evidence that two other discharged employees, neither of whom had or were perceived to have disabilities, were rehired without backpay.

Petitioner's Request identified another employee who had been fired, Mike Withers, who Respondent did not interview during its investigation. Petitioner stated in her Request that Withers is a better comparator than the other employees referenced in the Report because he had the same job title as Petitioner. Petitioner did not specify whether Withers had a perceived disability, or why he was discharged.

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).

Under the Act, it is unlawful for an employer to discriminate "against a person because of his or her actual or perceived . . . disability." 775 ILCS 5/1-103(Q). In order to establish a *prima facie* case of perceived disability discrimination, Petitioner must show that (1) she was perceived to be disabled under the Act, (2) she performed her work duties satisfactorily, (3) Employer subjected her to an adverse employment action, and (4) other similarly situated employees without Petitioner's perceived disability were treated more favorably under similar circumstances. *See Marinelli v. Ill. Human Rights Comm'n*, 262 Ill. App. 3d 247, 253 (2d Dist. 1994). Once a *prima facie* case has been established, Employer may articulate a nondiscriminatory reason for its adverse action, which Petitioner has the burden of rebutting as a pretext for discrimination. *Zaderaka v. Ill. Human Rights Comm'n*, 131 Ill. 2d 172, 178-79 (1989).

Count A: Discharge

In Count A, Petitioner alleged that Employer discriminated against her because of her perceived disability by discharging her. Petitioner has not provided sufficient evidence to satisfy her *prima facie* case, and even if she did, Employer can articulate a nondiscriminatory reason for Petitioner's discharge which she has not rebutted.

Petitioner cannot satisfy the first element of her *prima facie* case because she has not offered substantial evidence that Employer perceived her as disabled with COVID-19. The Report revealed that when Employer discharged Petitioner on October 1, 2020, Petitioner was quarantining at home

due to a recent COVID-19 exposure. Petitioner did not provide evidence that Employer actually perceived her to have COVID-19 and was not simply taking precautions to avoid spread among its employees by sending her home. In fact, Employer's policy of requiring exposed employees to obtain a COVID-19 test and a quarantine letter from the Health Department suggests that Employer does not consider its employees to have COVID-19 without proof. Although Petitioner eventually obtained a quarantine letter from the Health Department, it was on October 14, 2020, 13 days after Employer discharged her.

Additionally, Petitioner cannot satisfy the fourth *prima facie* element because she has not identified any comparatives. Petitioner did not identify any employees who were not perceived as disabled and took medical leave without the appropriate paperwork, but were not discharged. Further, the Report revealed that multiple employees were known by Employer to have COVID-19 and were not discharged, including Petitioner's sister-in-law.

Moreover, even if Petitioner could satisfy her *prima facie* case, Employer articulated a nondiscriminatory reason for discharging her. Damery and Smith stated that Petitioner was discharged because Employer believed that she did *not* have COVID-19 and had *not* been exposed to it, and was misleading the company in order to take medical leave.

To establish that Employer's articulated reason for discharging her was pretextual, Petitioner must show that (1) the reason has no basis in fact, (2) the reason did not actually motivate the decision, or (3) the reason was insufficient to motivate the decision. *See Sola v. Illinois Human Rights Comm'n*, 316 Ill. App. 3d 528, 536-37 (1st Dist. 2000). Petitioner did not provide sufficient evidence to establish any of these grounds. Employer proffered that they believed Petitioner did not need to quarantine for COVID-19 because the Health Department told them so, and Petitioner did not provide evidence that this is untrue. Employer further stated that improperly taking medical leave violates its Code of Conduct, which is a logical and sufficient cause to discharge an employee. Petitioner did not provide evidence that there was another reason for her discharge.

Therefore, Petitioner has not provided substantial evidence for her discrimination claim in Count A.

Count B: Denial of Backpay

In Count B, Petitioner alleged that Employer discriminated against her because of her perceived disability by denying her backpay upon rehiring her. Petitioner has not provided sufficient evidence to satisfy her *prima facie* case, and even if she did, Employer articulated a nondiscriminatory reason for the denial of backpay which Petitioner has not rebutted.

Petitioner cannot satisfy the first element of her *prima facie* case because she has not provided evidence that Employer perceived her as disabled with COVID-19 when they denied her backpay. Petitioner sent Damery her negative COVID-19 test results on October 2, 2020. Employer and the

Union reached the agreement to rehire Petitioner several months later. Therefore, at the time that Employer denied backpay to Petitioner, they knew that she did not have COVID-19 in September 2020, and Petitioner did not provide evidence that Employer believed that she subsequently became disabled with COVID-19.

Additionally, Petitioner cannot satisfy the fourth element of her *prima facie* case because she did not provide substantial evidence that Employer treated similarly situated employees not perceived as disabled more favorably under similar circumstances. Petitioner pointed to one employee, Cliff (not disabled, perceived disability status unknown), who had been discharged and then rehired with backpay. But Cliff had a different job title than Petitioner, so they were not similarly situated, and he was discharged for a different reason than her, so their rehiring terms were decided under different circumstances. *See In re Request for Review by: Victor Porter*, IHRC, ALS No. 18-0392, 2019 ILHUM LEXIS 1245, *6 (August 30, 2019) (holding that an employee was not subject to similar circumstances as the petitioner because there was no evidence he had "violated a comparable work policy"); *In re Request for Review by: Alanda Banner*, IHRC, ALS No. 11-0622, 2014 ILHUM LEXIS 10, *5 (August 10, 2014) (holding that an employee with a different job title than the petitioner was not "similarly situated").

Moreover, even if Petitioner could satisfy her *prima facie* case, Employer articulated a nondiscriminatory reason for denying her backpay. The Report revealed that the terms of Petitioner's rehiring were decided during negotiations between the Union and Employer, and Petitioner conceded that she did not specifically ask for backpay. The CBA between the Union and Employer does not address backpay. Union Representative Frydinger stated that taking backpay "off the table" was the only way to get Petitioner rehired.

Further, Petitioner has not rebutted Employer's articulated reason because she did not provide sufficient evidence the reason was untrue, that it did not actually motivate its decision, or that it was insufficient to motivate its decision. *See Sola*, 316 Ill. 3d at 536-37. Petitioner did not provide evidence that Employer's and the Union's statement about their negotiations were untrue or did not actually motivate Employer. The Commission does not "sit as a super-personnel department that reexamines an entity's business decisions," such as the one Employer made in conjunction with the Union to deny backpay to Petitioner. *See Dale v. Chicago Tribune Co.*, 797 F.2d 458 (7th Cir. 1987). Therefore, Petitioner has not provided substantial evidence that Employer discriminated against her in Count B.

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 Mueller Co., 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 9th day of August, 2022.**
HUMAN RIGHTS COMMISSION)

Commissioner Barbara R. Barreno-Paschall

Commissioner Stephen A. Kouri II

Chair Mona Noriega