

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2011SA0778
)	EEOC NO.:	21BA02971
RICHARD ALTGILBERS,)	ALS NO.:	11-0505
)		
)		
Petitioner.)		

ORDER

This matter coming before the Commission by a panel of three, Commissioners Diane M. Viverito¹, David J. Walsh² and Chairman Martin R. Castro³, presiding, upon Richard Altgilber's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")⁴ of Charge No. 2011SA0778; 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 the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On September 16, 2010, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged Marlboro Wire, LTD. ("Employer") failed to recall him because of his disability, diabetes (Count A), and his age, 50, (Count B), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On April 20, 2011, the Respondent dismissed Petitioner's charge for Lack of Substantial Evidence. On July 25, 2011, the Petitioner filed a Request for Review.
2. The Petitioner was employed as a Straight Cut Operator by the Employer.
3. In Counts A and B, the Petitioner alleged that the Employer failed to call him back to work, on April 12, 2010, due to his disability and age. The Petitioner stated that he was

¹ This Order is in accordance with a vote cast by Commissioner Viverito prior to the expiration of her term.

² This Order is in accordance with a vote cast by Commissioner Walsh prior to the expiration of his term.

³ This Order is in accordance with a vote cast by Chairman Castro prior to the expiration of his term.

⁴ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

laid-off from the Employer on September 25, 2009 being told by the Employer's President that he would be called back around March or April 2009.

4. As to Counts A and B, the Employer articulated a non-discriminatory reason for its actions. The Employer stated that it did not fail to recall the Petitioner because of his disability or his age. Rather, the Employer stated that on September 25, 2009 the Employer did not recall any other employee who had been laid off.
5. The Respondent's investigation revealed that Layoff Policy states that "If economic conditions dictate the need for a layoff at the Employer's, the employee will retain employees with skills that can help the firm remain profitable and competitive. This may, but does not necessarily mean that those persons working in profitable units will be selected for lay off. The Employer reserves the right to administer layoffs in a way that will most benefit the profitability of the company, without being discriminatory to any of its employees. If an employee is laid-off, he or she will be required to exhaust any accrued vacation and/or personal time."
6. The Respondent's investigation revealed that on September 25, 2009, the Employer laid off the Petitioner and Glenda O'Briant, the only other person in the Petitioner's department, due to the Employer's financial concerns.
7. The Respondent's investigation did not reveal any evidence that on April 12, 2010, the Employer recalled any employee, much less a similarly situated non-disabled, younger employee and failed to recall the Petitioner. Moreover, the investigation did not reveal that the Employer recalled any employees who were laid off.
8. In his Request for Review, the Petitioner argues the Respondent mishandled his matter. The Petitioner contends the Respondent's investigator refused to resolve the matter through a settlement with the parties. The Petitioner further contends the Respondent's investigator refused to take any further evidence after the Respondent's fact finding conference.
9. In its response, the Respondent asks the Commission to sustain the dismissal of the Petitioner's charge for Lack of Substantial Evidence. The Respondent contends that the evidence was insufficient to establish a prima facie case of discrimination. The Respondent further argues that the Employer articulated a non-discriminatory business reason for not recalling the Petitioner and the Respondent found no evidence of pretext.

Conclusion

The Commission concludes that the Respondent properly dismissed all counts of the 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. See 775

ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

The Commission finds that the evidence was insufficient to establish a *prima facie* case of discrimination. Generally, to establish a *prima facie* case of discrimination, the evidence must show that: (1) the Petitioner is a member of a protected class; (2) the Petitioner was performing his work satisfactorily; (3) the Petitioner was subject to an adverse action; and (4) the employer treated a similarly situated employee outside the Complainant's protected class more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994). In the Petitioner's case, there was no evidence that the Employer treated a similarly situated employee outside the Complainant's protected class more favorably under similar circumstances because the Employer did not recall any laid off employee.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Marlboro Wire, LTD., as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS

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Entered this 4th day of December 2018.

HUMAN RIGHTS COMMISSION

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Commissioner Diane M. Viverito

Commissioner David J. Walsh

Chairman Martin R. Castro