

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2010CF0667
)	EEOC NO.: 21BA93250
DENISE R. LUSTER-MALONE,)	ALS NO.: 11-0516
)	
)	
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 Denise R. Luster-Malone’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)⁴ of Charge No. 2010CF0667; 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 August 19, 2009, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged John H. Stroger, Jr. Hospital of Cook County (“Hospital”) subjected her to harassment in retaliation for opposing unlawful disability discrimination in violation of Section 6-101(A) of the Illinois Human Rights Act (“Act”). On October 6, 2010, the Respondent had dismissed the Petitioner’s charge for lack of jurisdiction and the Petitioner file a Request for

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.”

Review on November 9, 2010. Pursuant to the Respondent's request, the dismissal was vacated and the charge was remanded on December 20, 2010 for further investigation. On July 8, 2011, the Respondent again dismissed the charge for Lack of Substantial Evidence. On April 12, 2011, the Petitioner filed a Request for Review.

2. The Petitioner was employed as a Steno V by the Hospital.
3. The Petitioner alleged in her charge that on August 19, 2009, she engaged in a protected activity when she filed charge number 2010CF0513, against the Hospital opposing that which she reasonably and in good faith believed to be unlawful discrimination based on her physical disability, obesity. The Petitioner further alleged that after receiving the charge on August 31, 2009, the Associate Director of Nursing ("Director"), addressed a letter to several officials in which she stated that an investigation had taken place and that it showed proof that Petitioner was guilty of the charges.
4. The Hospital denied that it harassed the Petitioner when the Director, wrote a letter dated August 31, 2009, to several of the Hospital's officials regarding the Petitioner's disciplinary problems with timekeeping issues and the Petitioner's subsequent accusatory stand against the Director. The Hospital stated that the action that the Director took was not retaliatory because the Hospital had not received the charge or knew of the charge until later on the following month.
5. On August 19, 2009, the Petitioner engaged in a protected activity when she filed charge number 2010CF0513, against the Hospital.
6. On August 19, 2009, the Hospital also notified Petitioner that she was being scheduled for a pre-disciplinary hearing to discuss the charges of: 1) misuse of timekeeping facilities or records, 2) theft of county funds, 3) falsification of timekeeping records, 4) un-authorization of overtime, 5) failure to follow instructions in accordance of county procedure and/or practice and 6) gross insubordination.
7. On or about August 31, 2009, the Director addressed a letter to the Cook County Corporate Compliance Office, the Cook County Department of Ethics, the United States Equal Employment Opportunity Commission and the Office of the Independent Inspector General of Cook County, stating that the Petitioner was filing false claims against the Director. The Director' letter further itemized the charges being brought against the Petitioner as a result of the overtime claims.

- The Director closed the letter requesting that the Petitioner be ordered to cease and desist in retaliating and filing false claims against the Director.
8. The Respondent's investigation did not reveal and the Petitioner did not allege any additional incidents of harassment.
 9. In her Request for Review, the Petitioner argues that her overtime hours were deleted illegally by the Hospital. The Petitioner further argues that she has never been disciplined by the Hospital.
 10. 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 harassment. The Respondent contends that the alleged harassment was a onetime isolated incident and thus was not sufficient to rise to the level of actionable harassment under the Act.

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 harassment. Actionable harassment occurs when the workplace is permeated with discriminatory, ridicule, and insult that is sufficiently severe or pervasive as to create an abusive working environment. Harris v. Forklift Systems, Inc., 510 U.S. 20, 114 S.Ct. 367, 371, 126 L.Ed.2d 295. Additionally, "in order to qualify as actionable harassment, the harassing behavior must occur frequently enough to constitute a term or condition of employment. Thus, infrequent or isolated comments of a harassing nature will not constitute a violation of the Human Rights Act." Lever and Wal-Mart Stores, Inc., Ill.HRC Rep., page 3, Charge No. 1998SF0551 (January 2, 2001) citing Hill and Peabody Coal Co., Ill. HRC Rep., Charge No. 1991SF0123 (June 26, 1996).

In the Petitioner's case the letter was a onetime isolated incident and thus was not sufficient to rise to the level of actionable harassment under the Act

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her 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 John H. Stroger, Jr. Hospital of Cook County, 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 4th day of December 2018.

Commissioner Diane M. Viverito

Commissioner David J. Walsh

Chairman Martin R. Castro