

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CF1105
)	EEOC NO.: 21BA10143
JACQUELINE D. LINDSEY,)	ALS NO.: 11-0796
)	
Petitioners.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Terry Cosgrove, and Patricia Bakalis Yadgir presiding, upon Jacqueline D. Lindsey’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)¹ of Charge No. 2011CF1105; and the Commission having reviewed *de novo* the Respondent’s investigation file, including the Investigation Report and the Petitioner’s Request, and the Respondent’s response to the Petitioner’s Request; 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:

A. PROCEDURAL HISTORY

1. On October 7, 2010, the Petitioner filed an unperfected charge of discrimination with the Respondent, which was perfected on October 18, 2010. The Petitioner alleged the Clerk of the Circuit Court of Cook County (“Employer”) discharged her because of her physical disability, Diabetes (Count A), and her mental disabilities, ADHD disorder (Count B), and Depression Disorder (Count C), in violation Section 2-102(A) of the Illinois Human Rights Act (“Act”).
2. In Counts A, B, and C, the Petitioner alleged that on May 11, 2010, she was discharged because of her physical disability, her mental disorder, and her mental disorder. Complainant alleges that Respondent had knowledge of her disabilities. The Petitioner alleged that on or about May 11, 2010, she was discharged by Hollis Healy (“Healy”), the Employer’s Chief Deputy Clerk for Labor Relations. The Petitioner alleged that Healy’s documentation indicated that she was terminated, effective May 11, 2010, because she was absent for three consecutive work days without notification; for excessive tardiness, absenteeism, and falsification of related documentation; and, for violating the Employer’s standard of conduct. The Petitioner further alleged that her disabilities did not affect her ability to perform the essential duties of her job with reasonable accommodations.

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 Department’s action shall be referred to as the “Petitioner.”

3. On September 7, 2011, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence.
4. On October 24, 2011, the Petitioner filed a timely Request. On January 18, 2012, the Respondent filed its Response to the Petitioner's Request.

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. The Petitioner was as a Clerk/Cashier by the Employer.
2. On October 21, 2001, the Employer hired the Petitioner as a Cashier. In 2002, the Petitioner informed the Employer of her physical disability, diabetes.
3. The Petitioner requested and was granted intermittent Family Medical Leave Act ("FMLA") leave for the following dates: April 29, 2002, to April 29, 2003; October 8, 2003 to October 8, 2004; October 15, 2004 to October 15, 2005; January 23, 2006 to January 23, 2007; January 24, 2007 to January 24, 2008; and January 25, 2008 to January 25, 2009.
4. Pursuant to the Employer's FMLA policy, an employee must work a requisite 1,250 hours during the previous 12 months to qualify for a FMLA leave. In January 2009, the Petitioner did not work the requisite 1,250 hours during the previous 12 months to qualify for FMLA.
5. The Employer accommodated and granted the Petitioner an additional 420 hours of "Compassionate Leave" for her disabilities, the Petitioner exhausted the 420 hours of Compassionate Leave.
6. On April 14, 2009, the Employer held a meeting with the Petitioner and its Labor Relations department to discuss the Petitioner's request for an accommodation of her physical and mental disabilities. The Employer's Labor Relations department advised the Petitioner to submit medical certification by April 30, 2009. The Petitioner failed to submit medical documentation.
7. On May 29, 2009, the Petitioner submitted a letter to the Employer stating that her primary care physician refused to complete the medical certification forms. On June 14, 2009, the Employer sent the Petitioner a letter requesting medical certification to grant her an accommodation. The Petitioner did not comply.
8. On October 9, 2009, the Employer sent a letter to the Petitioner denying her accommodation request in that she failed to submit medical certification and otherwise, failed to engage in an interactive process with the Employer.
9. In May 2009, the Petitioner began to accrue attendance disciplinary points due to tardiness and absences. Between May 14, 2009, through January 28, 2010, the Petitioner accrued 213 attendance disciplinary points in that she was absent, tardy, or was a no call/no show.

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10. On February 1, 2010, the Petitioner went on an emergency medical leave of absence and returned to work on April 16, 2010. The Employer did not count any attendance disciplinary points when the Petitioner went on an emergency leave of absence.
11. From March 3, 2010, through March 5, 2010, the Petitioner was absent from work and did not notify her immediate supervisor.
12. The Employer employs an Attendance policy which defines excessive absenteeism as accumulating 25 or more disciplinary points in a one year rolling time period. Any employee who accumulated 25 or more disciplinary points in a one year rolling time period would be terminated.
13. The Petitioner accumulated 230 attendance disciplinary points during one rolling year. On May 11, 2010, the Employer discharged the Petitioner for excessive absenteeism in violation of its Attendance Policy and Rules and Regulations.
14. The Employer discharged nine non-disabled employees for excessive absenteeism and tardiness in a two year time frame as the Petitioner.
15. In her request the Petitioner argues that the reason she missed work was because the Employer failed to accommodate her disabilities which in turn made her ill.
16. In its response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for Lack of Substantial Evidence. The Respondent argues that the evidence was insufficient to establish a *prima facie* case of discrimination.

C. DISCUSSION & DETERMINATION

The Commission concludes that the Respondent properly dismissed 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 the evidence insufficient to establish even a *prima facie* case of discrimination. 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 he was performing his 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. 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 the Employer treated a non-disabled employee more favorably under similar circumstances.

The Commission further finds that the Employer articulated a non-discriminatory business reason for discharging the Petitioner and there was no evidence of pretext. The Employer stated that it

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discharged the Petitioner pursuant to its Progressive Disciplinary Policy (“Policy”) per and collective contract with its employees’ union. The Policy states that any employee who accumulates 25 or more disciplinary points in a one year rolling period would be terminated. In the Petitioner’s case, the Petitioner accumulated over 200 disciplinary points for tardiness and or absences during one rolling year. Based on her disciplinary history, the Employer decided to discharge the Petitioner. In the absence of any evidence that the business consideration relied upon by the Employer is a pretext for discrimination, it is improper to substitute judgment for the business judgment of the employer. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997).

D. CONCLUSION

Accordingly, it is the Commission’s decision that the Petitioner has not presented any evidence to show that the Respondent’s dismissal of the Charge was not in accordance with the Act. The Petitioners’ 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 the Clerk of the Circuit Court 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 7th day of December 2018.

Commissioner Marti Baricevic

Commissioner Terry Cosgrove

Commissioner Patricia Bakalis Yadgir