

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CF0754
)	EEOC NO.: 21BA83119
VALERIE RENE WILLIAMS,)	ALS NO.: 11-0797
)	
Petitioners.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic¹, Terry Cosgrove², and Patricia Bakalis Yadgir presiding, upon Valerie Rene Williams’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)³ of Charge No. 2009CF0754; 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 September 9, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged Rush Oak Park Hospital (“Employer”) discharged her because of her race, Black, in violation Section 2-102(A) of the Illinois Human Rights Act (“Act”).
2. The Petitioner alleged discharged her because of her race, black. The Petitioner alleged that at all times, she performed her duties in a satisfactory manner. The Petitioner alleged that just prior to her termination, she was told that her performance had improved and she was doing a good job. Regardless, the Employer discharged her on August 7, 2008, stating that it was due to poor performance. The Petitioner alleged that the Petitioner used poor performance as pretext to get rid of her because of her race. The Petitioner further alleged that there were 2 non-black individuals Amanda Good and Amanda Necklace, in her office with similar performance, but they were not terminated.

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

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

³ 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 May 17, 2010, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On June 18, 2010, the Petitioner filed a Request for Review. On May 11, 2011, Panel D of the Commission vacated the dismissal and remanded the charge for further investigation. On November 8, 2011, the Respondent again dismissed the Petitioner's charge for Lack of Substantial Evidence.
4. On December 10, 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 an Office Assistant by the Employer. The Employer hired the Petitioner for its Center for Diabetes and Endocrine Care ("CDEC") on December 26, 2006.
2. The job description for the position of Office Assistant showed that the duties related to that position, included, but were not limited to, answering telephones, directing calls, greeting patients, scheduling appointments, preparing, filing and maintaining medical records, preparing billing information, and performing a wide variety of clerical assignments, including scheduling, and secretarial assignments. The Office Assistant job description further showed that the Office Assistant reported to the Office Coordinator.
3. The Employer's Corrective Action Policy provides that corrective action consists of counsel and advise; verbal warning; written warning; suspension; and discharge. The Employer's Corrective Action Policy further provides that "certain infractions may be of such a serious nature that it becomes necessary to move to the most severe degrees of corrective action, including termination, without prior warning."
4. The Petitioner's performance evaluation dated June 11, 2007, her three month evaluation, indicated that Complainant was "doing well in all areas but need[ed] to be faster." On that evaluation, the Petitioner scored 320 points out of 400 possible points.
5. The Petitioner's performance evaluation dated January 20, 2008, her annual performance, indicated that the Petitioner "need[ed] to work on speed" and was expected "to be able to do [her]present duties faster and add other tasks [such] as daily dictations for MD and Educators." On that evaluation, the Petitioner scored 275 points out of 400 possible points.
6. The Employer assigned the Petitioner dictation duties in February 2008, in addition to her other duties. Dictation duties had previously been performed by Ann Marie ("Marie") (nonblack), until Marie's departure in July 2007, at which time the dictation duties were scattered among office staff.
7. Lucy Mullen ("Mullen") (non-black), Program Coordinator/Manager assigned dictation duties to the Petitioner because she was more experienced than the other Office Assistant, who the Employer hired five months after the Petitioner was hired.

8. Sylvia Mijajlovic ("Mijajlovic") trained the Petitioner on dictations and that dictations consisted of physician notes that the Office Assistant downloaded to her computer and saved. The Office Assistant would thereafter open the dictation, print it and save it again. The printed dictation was then attached to the patient's chart, which the Office Assistant normally was expected to locate. If a physician made changes to the dictation, the Office Assistant was expected to make the corrections and reprint the dictation in final copy. The Petitioner was expected to perform these tasks in a timely fashion.
9. In the beginning of March 2008, and again a few weeks later, Mijajlovic advised Mullen that the Petitioner was not completing the dictation task, as instructed. On March 26, 2008, Mullen sent the Petitioner an electronic message, informing her that she needed "to download the dictation on a daily basis, clip it to the charts and give [it] to the physician or Educator" without the telephones being turned off. The investigation revealed that Mijajlovic subsequently received several complaints from physicians that the Petitioner was not completing her dictation duties. Mijajlovic reported these complaints to Mullen.
10. On April 15, 2008, Mullen prepared a written discipline for the Petitioner addressing her performance issues. Mullen did not immediately issue the discipline to the Petitioner because the Petitioner had a death in her family.
11. On April 28, 2008, Mullen issued the written warning dated April 15, 2008, to the Petitioner. The Petitioner refused to sign the written warning which had been signed by Mullen and Mijajlovic on the date issued.
12. The written warning indicated that Petitioner was not completing her job duties, specifically preparing dictation, in a satisfactory manner and that if the Petitioner continued to have performance issues, it might result in further disciplinary action, up to and including, termination. The written warning also noted that the Petitioner would have a follow-up evaluation in two weeks.
13. In May 2008, the Petitioner was keeping up with all of her assigned tasks, including dictation duties, and Mullen documented Petitioner's progress in a note dated May 14, 2008, which Mullen wrote at the bottom of the written warning dated April 15, 2008.
14. In July 2008, the Petitioner was struggling to multi-task all of the essential duties of an Office Assistant. Between July and the beginning of August 2008, the Petitioner was unable to return all telephone calls and messages or complete dictation duties in a timely manner even when they were downloaded for her to expedite the process. The Employer discharged Petitioner on August 7, 2008.

15. The Petitioner's named two comparatives, Amanda Good ("Good") and Amanda Necklace ("Necklace"). Good and Necklace, had different job titles and assigned duties.
16. The Employer discharged eight employees between August 2007, and August 2008. Those eight employees were comprised of both black and non-black individuals.
17. In her request the Petitioner argues that the Respondent's findings and conclusions contain untrue statements. The Petitioner argued that the Employer's office managers treat Black support staff differently than non-Black staff.
18. 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-Black employee more favorably under similar circumstances. Furthermore, the evidence showed that non-Black employees were also discharged 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 discharged the Petitioner because the Petitioner continued to have performance issues even after the Petitioner received a warning about her performance. Based on the Petitioner's poor performance, the Employer made a good faith business decision 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 Rush Oak Park Hospital 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