

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2010CA4114
)	EEOC NO.: 21BA02377
KATHRYN GREVAS,)	ALS NO.: 11-0801
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang¹, Robert A. Cantone, and Brad Cole² presiding, upon Kathryn Grevas's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")³ of Charge No. 2010CA4114; 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:

A) LACK OF JURISDICTION

B) LACK OF SUBSTANTIAL EVIDENCE

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

A. PROCEDURAL HISTORY

1. On June 29, 2010, the Petitioner filed an unperfected charge of discrimination with the Respondent which was perfected on July 7, 2010. The Petitioner alleged JKNS, Inc., d/b/a Seven Eleven ("Employer") discharged her because of her disabilities, diabetes (Count A), hypothyroidism (Count B), osteoarthritis (Count C), plantar fasciitis (Count D), anxiety (Count E), depression (Count F), back injury (Count G), spinal stenosis (Count H); and her age, 53 (Count I); and her disability, hypertension (Count J), in violation Section 2-102(A) of the Illinois Human Rights Act ("Act").
2. The Petitioner alleged that on January 4, 2010, the Employer discharged her because of her disabilities and age. The Petitioner further alleged that the Employer did not treat similarly situated non-disabled employees the same under similar circumstances. The Petitioner further alleged that the Employer did not discharge similarly situated younger employees, Estella

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

² This Order is in accordance with a vote cast by Commissioner Cole 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."

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Valtierra ("Valtiera"), Pamela Esterson ("Esterson"), and Virginia Perry ("Perry"), under similar circumstances.

3. On September 8, 2011, the Respondent dismissed Counts A, B, C, D, E, F, G, H, and J of the Petitioner's charge for Lack of Jurisdiction and Count I for Lack of Substantial Evidence.
4. On December 12, 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 employed as a Sales Associate by the Employer.
2. On March 11, 2011, May 27, 2011, June 8, 2011, July 6, 2011, July 12, 2011, and July 26, 2011, the Respondent requested that Petitioner establish that she is a disabled person under the Act by providing the Respondent evidence of her disability.
3. On July 26, 2011, Petitioner provided the Respondent a printout from Lake Street Family Health Center which indicates that the Petitioner sought treatment for depressive disorder, numbness, back pain, depression, diabetes mellitus, and hypothyroidism which began on July 6, 2011.
4. The Petitioner failed to provide evidence that, at the time of her discharge on January 4, 2010, she was disabled under the Act.
5. On or about February 28, 2008, the Employer's Owner, Kryiakos John Stemanos ("Stemanos"), hired the Petitioner to the position of Sales Associate. At the time the Employer hired the Petitioner she was 51 years of age. Additionally, the investigation revealed that at the time of the alleged harm, the Employer had in its employ five Sales Associates, excluding the Petitioner, four of whom were over the age of forty.
6. The Petitioner had a history of having car problems and would often report to work late or needed to begin her shift earlier than scheduled in order to use public transportation.
7. On January 3, 2010, the Petitioner called the Employer and informed the Employer that she was unable to report to work on time due to having problems with her car.
8. On January 4, 2010, Petitioner again called Stemanos and told him that she needed to begin her shift early because she was still having car problems. The Stemanos informed the Petitioner that she could not come in early because the Employer did not need two employees to work the early shift and the Petitioner's shift did not begin until 10:30 p.m. During the course of the conversation between the Petitioner and Stemanos, the Petitioner yelled at Stemanos.

Stemanos determined that the Petitioner's conduct was insubordinate and he discharged the Petitioner.

9. There was no that a similarly situated younger employee engaged in the same or similar conduct as the Petitioner and was not discharged by Employer.
10. The Petitioner alleged in her charge that the Employer did not treat Valtierra, Esterson, and Perry the same under similar circumstances. Complainant's arguments fail because Complainant does not show that Valtierra, Esterson, or Perry engaged in similar.
11. The evidence showed that Valtierra, Esterson, and Perry did not engage in the same conduct as the Petitioner. Moreover, the evidence showed that at the time of Petitioner's discharge, Valtierra was 53 years old, Esterson was 46 years old, and Perry was 52 years old.
13. In her request the Petitioner denies that she committed any wrong doing at work and request that the Commission add a charge of retaliation and harassment to her original charge. Additionally, the Petitioner failed to offer any evidence in her Request that she was disabled on the date of the alleged civil rights violation.
14. In its response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for Lack of Jurisdiction and Lack of Substantial Evidence. As to Counts A, B, C, D, E, F, G, H, and J, the Respondent argues that the Petitioner failed to provide evidence that she was disabled on the date of the alleged harm. As to Count I, the Respondent argues that the evidence is insufficient to establish even a *prima facie* case of discrimination.

C. DISCUSSION & DETERMINATION

Counts A, B, C, D, E, F, G, H, and J

The Commission's review of the Respondent's response leads it to conclude that the Respondent properly dismissed Counts A, B, C, D, E, F, G, H, and J of the Petitioner's charge for lack of jurisdiction. If the Petitioner's condition does not meet the definition of disability under the Act, there must be a finding of lack of jurisdiction. See 775 ILCS 5/1-103(I).

Generally, the Petitioner has to establish: (1) that she is disabled within the meaning of the Act; (2) the employer had knowledge of the disability; (3) the Petitioner suffered an adverse employment action; and (4) the disability is unrelated to Petitioner's ability to perform the job with or without an accommodation. See *Habinka v. Human Rights Commission*, 192 Ill.App.3d 343, 373, 548 N.E.2d 702, 139 Ill.Dec 317 (1st Dist. 1989). In the Petitioner's case, the first element was not established. The Respondent on several occasions requested that the Petitioner provide the Respondent with medical information and submit a completed medical questionnaire. The Petitioner failed to provide the medical information and the Respondent was unable to establish that the Petitioner was disabled within the meaning of the Act. Additionally, the Petitioner had an opportunity in her Request to provide

the required medical information and again the Petitioner failed to do so. As such, the Petitioner has failed to show that she was disabled within the meaning of the Act at the time of the alleged harm.

Count I

The Commission concludes that the Respondent properly dismissed Count I 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 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 she was performing her 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 that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances.

The Commission further finds in Count I, that the Employer articulated a non-discriminatory business reason for discharging the Petitioner and there was no evidence of pretext in the articulated non-discriminatory business reason. The Employer stated that it discharged the Petitioner for fighting with another employee, calling off work excessively, swearing inappropriately, and for insubordination. The Petitioner offered no evidence of pretext. 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 JKNS, Inc., d/b/a Seven Eleven 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 3rd day of December 2018.

Commissioner David Chang

Commissioner Robert A Cantone

Commissioner Brad Cole