

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: <b>2011CF0021</b>
TYRONE JACKSON, )	EEOC NO.: <b>21BA02370</b>
)	ALS NO.: <b>11-0802</b>
)	
Petitioners. )	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Nabi Fakroddin, Merri Dee<sup>1</sup>, and Lauren Beth Gash<sup>2</sup> presiding, upon Tyrone Jackson’s (“Petitioners”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)<sup>3</sup> of Charge No. 2011CF0021 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 Notice of Dismissal 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 13, 2010, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged Filtran, LLC (“Employer”) issued him a written reprimand (Count A), and a 2-day suspension (Count B), in retaliation for opposing unlawful discrimination, in violation of Section 6-101(A) of the Illinois Human Rights Act (“Act”).
2. Pursuant to the Petitioner’s written request, on January 25, 2011, the Respondent administratively closed Count A of the Petitioner’s charge.
3. In Count B, the Petitioner alleged that on June 25, 2010, the Employer issued him a 2-day suspension in retaliation for opposing unlawful discrimination. The Petitioner further alleged that he opposed unlawful discrimination when he filed two previous charges of discrimination with the Respondent.

<sup>1</sup> This Order is in accordance with a vote cast by Commissioner Dee prior to the expiration of her term.

<sup>2</sup> This Order is in accordance with a vote cast by Commissioner Gash prior to the expiration of her term.

<sup>3</sup> 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.”

4. On September 22, 2011, the Respondent dismissed Count B of the Petitioner's charge for Lack of Substantial Evidence.
5. On November 16, 2011, the Petitioner filed her second Request. On April 9, 2012, the Respondent filed its Response.

## **B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS**

1. The Petitioner is employed as Floor Material Handler.
2. On October 5, 2009 and January 25, 2010, the Petitioner filed Charge Nos. 2010CF1028 and 2010CF2177 with the Respondent against the Employer, alleging race and retaliation discrimination.
3. The Employer's Parking Lot and Plant Entrance Policy states that employees may not walk in front of the shipping dock area because it creates an unsafe situation.
4. The Employer's Progressive Discipline Policy has five steps which include: 1. verbal warning, 2. written warning, 3. suspension, 4. last chance agreement, and 5. discharge.
5. It is uncontested that the Employer issued the Petitioner, a Wage Employee Handbook which instructs employees to follow the sidewalk from the employee parking lot, to a designated crosswalk in order to safely access the side employee entrance.
6. Between November 6, 1995, and June 25, 2010, the Petitioner had received 24 prior disciplinary actions for violation of the Employer's rules.
7. On June 25, 2010, Annette DiFonzo ("DiFonzo"), Human Resources Representative, informed the Petitioner that he was being issued a 2-day suspension for violating the Employer's safety rules.
8. DiFonzo informed the Petitioner that on June 16, 2010, Rick Pastiak ("Pastiak"), Shipping & Receiving Supervisor, observed the Petitioner walking in walking in the truck dock area. DiFonzo also informed the Petitioner that Venky Gopalan ("Gopalan"), Manufacturing Supervisor, observed the Petitioner walking in an unauthorized area earlier that day.
9. In May 5, 2009 through August 3, 2010, the Employer disciplined twelve employees; of which none (0) (0%) were Floor Material Handlers, for violations ranging from violations of shop and safety rules, creating unsafe or unsanitary conditions, walking in unauthorized areas and using cellular telephones on the shop floor. Three (3) (25%) employees were disciplined for safety issues concerning, walking in an unauthorized area in violation of the Employer's Shop Rules and Parking Lot and Plant Entrance Policies. None (0) (0%) of the three (3) individuals disciplined had engaged in a protected activity.

10. In his Request, the Petitioner provided the names of several comparables that the Petitioner argues broke the same rules and were treated more favorably by the Employer. The Petitioner also attached copies of numerous grievances against the Respondent.
11. In its Response, the Respondent requests the Commission to sustain the dismissal of the Petitioner's charge for Lack of Substantial evidence. The Respondent argues that the Employer articulated a non-discriminatory reason for its actions and its investigation found no evidence of pretext.

### **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 concludes that the evidence was insufficient to establish a *prima facie* case of retaliation. Generally to establish a prima facie case of retaliation, the evidence must show: (1) he engaged in a protected activity; (2) the Employer committed an adverse action against her; and (3) a causal connection existed between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3rd dist. 2000). There are three ways in which the Petitioner may establish the necessary "causal nexus" required to prove a prima face case of retaliation under the Act. Those methods are: 1) showing direct evidence of retaliation; or 2) showing evidence of unequal treatment of similarly situated persons who did not engage in the protected activity; or 3) establishing that the time period between the protected activity and the adverse action is short enough to create an inference of "connectedness." See In the Matter of: Giuseppe Scalera and Village of Oak Park, IHRC, Charge No. 1997CF1270, 2002 WL 32828292, \*5 (September 23, 2002).

In the Petitioner's matter there was no evidence of unequal treatment of similarly situated persons who did not engage in the protected activity or that the time frame between the protected activity and the adverse action was short enough to create an inference of retaliation. First the evidence showed that the Employer disciplined similarly situated employees that did not engage in a protected activity for similar violations. Second, there was a six month time period between the protected activity and the adverse action, this period of time was not sufficiently short as to create an inference of retaliation.

The Commission further concludes that the Employer articulated a non-discriminatory reason for its actions and there was no evidence of pretext in the articulated non-discriminatory reason. The Employer stated that between November 6, 1995 and June 25, 2010, the Petitioner had received 24 prior disciplinary actions for violation of its rules. On June 12, 2010, the Petitioner violated the Employer's rules when he was observed walking in an unauthorized area. As a result of the infraction, the Employer issued the Petitioner a two-day suspension.

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.

**WHEREFORE, 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, Filtran, LLC, 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 17<sup>th</sup> day of December 2018.**

Commissioner Nabi Fakroddin

Commissioner Merri Dee

Commissioner Lauren Beth Gash