

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: <b>2011CA1245</b>
	)	EEOC NO.: <b>21BA10243</b>
<b>MARY M. SEAY,</b>	)	ALS NO.: <b>11-0839</b>
	)	
Petitioners.	)	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Nabi R. Fakroddin, Merri Dee<sup>1</sup>, and Lauren Beth Gash<sup>2</sup> presiding, upon Mary M. Seay's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>3</sup> of Charge No. 2011CA1245; 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 October 28, 2010, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged Tiger Healthcare, LLC, d/b/a Bright Star ("Bright Star") the laid her off on April 14, 2010 (Count A) and on September 25, 2010 (Count B) because of her age, 75, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act").
2. In Count A, Petitioner alleged Bright Star aid her off due to her age on April 14, 2010. The Petitioner further alleged in Count A that Bright Star hired a younger employee to replace her.
3. In Count B, the Petitioner alleged Bright Star her off on September 25, 2010, because of her age. The Petitioner further alleged that after she was laid Bright Star hired younger employee to replace her.

<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 requesting review of the Department's action shall be referred to as the "Petitioner."

3. On September 8, 2011, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence.
4. On October 13, 2011, the Petitioner filed a timely Request. On February 1, 2012, the Respondent filed its Response to the Petitioner's Request.

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

1. The Petitioner was employed as a Certified Nurse Aid Assistant by Bright Star.
2. Bright Star is a temporary home care staffing agency located in Orland Park, Illinois that provides medical and non-medical assistance in client's homes.
3. Between April 14, 2010 and September 25, 2010, the Petitioner accepted work assignments from Bright Star.
4. After September 25, 2010, the Petitioner did not accept work assignments from Bright Star.
5. The Petitioner alleged she was laid off on April 14, 2010. The Petitioner filed this instant charge on October 28, 2010, approximately 197 days after the alleged harm.
6. On or about May 3, 2010, Bright Star assigned Petitioner to a client. The client made complaints about the Petitioner to Bright Star. On or about September 10, 2010, the client informed Bright Star that they wanted the Petitioner removed from the assignment. Bright Star removed the Petitioner from the client and called the Petitioner to offer the Petitioner a different assignment.
7. During the Respondent's investigation, the Petitioner acknowledged that she did not accept any additional assignments from Bright Star because she no longer wanted to work for Bright Star.
8. In her request the Petitioner argued that the case has been unfair and that no one is trying to help her.
9. In its response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for Lack of Substantial Evidence. The Respondent argued that the Petitioner failed to establish a prima facie case of discrimination.

**C. DISCUSSION & DETERMINATION**

*Count A*

The Commission concludes that the Respondent lacked jurisdiction to investigate Count A of the Petitioner's charge; if a charge is not timely filed, then the Respondent lacks jurisdiction to investigate the merits of the charge. See *Pickering v. Illinois Human Rights Commission*, 146 Ill. App.3d 340, 496 N.E 2d 746 (1986). Section 7A-102(A) (1) of the Act requires that a charge of unlawful employment discrimination be filed within 180 days from the date of the discriminatory act. The Petitioner alleged she was laid off on April 14, 2010. The Petitioner filed her charge on October 28, 2010, approximately 197 days after the alleged civil rights violation. Therefore, the Respondent lacked jurisdiction over this count.

*Count B*

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).

In the Petitioner's matter the Commission finds that the evidence was insufficient to establish a *prima facie* case of discrimination. Generally, to establish a *prima facie* case of discrimination, the evidence must show: (1) that the Petitioner is a member of a protected class; (2) that the Petitioner was performing her work satisfactorily; (3) that the Petitioner 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 of an adverse action by Bright Star. The Petitioner admitted that she voluntarily chose not to work for Bright Star, and thus she was not laid off.

**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, Tiger Healthcare, LLC, d/b/a Bright Star 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 3<sup>rd</sup> day of December 2018.**

Commissioner Nabi R. Fakroddin

Commissioner Merri Dee

Commissioner Lauren Beth Gash