

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2010CF1927
)	EEOC NO.: 21BA00778
THADDEUS A. LIS,)	ALS NO.: 12-0027
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Diane M. Viverito¹, David J. Walsh², and Rozanne Ronen³ presiding, upon Thaddeus A. Lis's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")⁴ of Charge No. 2010CF1927; 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 January 4, 2010, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged the Village of University Park ("Employer") failed to promote him because of his race, White, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act").
2. The Petitioner alleged that on November 11, 2009, the Employer failed to promote him to the position of full-time permanent Maintenance Technician due to his race, White. The Petitioner alleged that on or about May 11, 2009, the Employer hired him as a full-time temporary employee and that he continued in that capacity until January 12, 2010. The Petitioner alleged that his work performance met the Employer's legitimate expectation. The Petitioner alleged that on or about October 2009, he expressed an interest in one (1) of the three (3) Maintenance Technician positions the Employer had available. The Petitioner alleged that he was qualified for the position. The Petitioner lastly alleged that on or about November 11,

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

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

³ This Order is in accordance with a vote cast by Commissioner Ronan prior to the expiration of her term.

⁴ 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."

2009, the Employer chose two (2) less qualified non-white employees, Sam Jennings (“Jennings”) and Don Brown (“Brown”) for the vacant positions.

3. On January 19, 2012, the Respondent dismissed the Petitioner’s charge for Lack of Substantial Evidence.
4. On November 16, 2011, the Petitioner filed a timely Request. On February 27, 2012, the Respondent filed its Response to the Petitioner’s Request.

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. The Petitioner was employed as Temporary Seasonal Worker by the Employer.
2. On or about April 1, 2009, the Petitioner applied for the position of Seasonal Worker/Public Works with the Employer.
3. On or about May 7, 2009, the Employer’s Director of Public Works, Jerry Townsend (“Townsend”), hired the Petitioner as a Seasonal Worker.
4. On August 21, 2009, the Employer posted a Job Notice seeking three (3) applicants for the position of Public Works Maintenance Technician and one (1) applicant for the position of Mechanic.
5. On or about August 30, 2009, the Petitioner applied for the Maintenance Technician position.
6. The Petitioner’s resume showed that for more than 10 years the Petitioner owned and operated a landscape design company and worked as an Assistant Manager at a school district.
7. The Employer’s hiring practice is that the Employer will first post a job vacancy and allot a period of time for applicants to submit their applications. After the application deadline passes, Townsend, sorts the applications to distinguish the qualified applicants from the unqualified applicants. The factors used by Townsend to determine an applicant’s qualifications include, skill sets, experience, and education. Finally, Employer conducts an interview of the qualified applicants and makes a determination of who should be hired.
8. On or about November 1, 2009, the Employer determined that the Petitioner was not the most qualified applicant for the position and did not promote the Petitioner to the Maintenance Technician position. Moreover, the Employer promoted non-White employees, Brown, Jennings, and Darrell Byther (“Byther”) to the vacant positions.
9. On August 5, 2008, Brown applied for a golf course maintenance position seasonal position with the Employer. On August 22, 2008, the Employer hired Brown into said position wherein he performed maintenance duties such as painting, light carpentry, and used various hand held tools to perform those duties. On July 30, 2009, Brown applied for a Seasonal Worker position and was transferred into that position by the Employer on August 3, 2009. Further, on

August 24, 2009, Brown applied for the Maintenance Technician position and was promoted on October 29, 2009.

10. On May 5, 2008, Jennings applied for a temporary Golf Course Grounds Crew position with the Employer and was hired into the position in or about May 2008. In that position, Jennings performed landscaping, plumbing, and carpentry duties. On February 27, 2009, Jennings again applied for and was hired to the Golf Course Grounds Crew position. On August 25, 2009, Jennings applied for Maintenance Technician and on October 29, 2009, the Employer promoted him to that position.
11. The Employer demoted Blyther from the position of Foreman and placed him in the third Maintenance Technician position.
12. In his request the Petitioner argues that his qualifications were consistent with the Employer's job requirements. The Petitioner contends that the selected candidates who were promoted did not meet the job description requirements and were less qualified for the job. The Petitioner further argued that the facts were more than adequate to sustain a finding of substantial evidence and that the DHR investigator went against the Illinois substantial evidence standard.
13. 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 Employer articulated a non-discriminatory reason for not promoting the Petitioner and there was no evidence that the articulated non-discriminatory reason was pretext for unlawful discrimination.

C. DISCUSSION & DETERMINATION

The Commission concludes that the Respondent properly dismissed all counts 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).

In the Petitioner's case, the Employer articulated a non-discriminatory business reason for not promoting the Petitioner and there was no evidence of pretext. The Employer stated that the Petitioner was not promoted because he was not qualified for the position.

The Commission standard for considering a case such as the instant one is that it must appear from the evidence that the credentials of the successful candidate were so inferior to those of the complainant that the statement by the Employer that it selected the person with the better credentials could be considered unworthy of credence. See Bolte and State of Illinois, Dep't of Transportation, 55 Ill. HRC Rep. 3 (1990) citing Kindred v. Illinois Human Rights Comm'n, 180 Ill. App. 3d 766, 536 N.E.2d 447, 129 Ill. Dec. 607 (3d Dist. 1989). In other words, the Petitioner has to demonstrate that

his skills were clearly superior to those of the candidate who was selected and that no reasonable employer could have thought otherwise. See Townsell and Illinois Dep't of Labor, 43 Ill. HRC Rep. 185, 191-2 (1988). The Petitioner in the instant case failed to meet this standard.

Furthermore, the Employer is in a better position to assess the relative qualifications of an employee and that it is inappropriate to "sit as a super-personnel department that reexamines an entity's business decision in cases where discrimination is alleged." See Fitzgerald and State of Illinois Dep't. of Public Aid, IHRC, Charge No. 1993SA0460, 1997 WL 812479, *8 (November 7, 1997), .Absent proof of unlawful discrimination, the Commission will not substitute its business judgment for the Employer's decisions. See Bd. of Education v. Human Rights Comm'n, 135 Ill. App.3d 206 (5th Dist. 1985)

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 Village of University Park 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 4th day of December 2018.

Commissioner Diane M. Viverito

Commissioner David J. Walsh

Commissioner Rozanne Ronen