

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF THE REQUEST |) | |
| FOR REVIEW BY: |) | CHARGE NO.: 2011SF3253 |
| |) | EEOC NO.: 21BA11679 |
| MARION MAKEDA-PHILLIPS, |) | ALS NO.: 12-0127 |
| |) | |
| |) | |
| Petitioner. |) | |

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hamilton Chang, Lauren Beth Gash¹, and Robert A. Cantone presiding, upon the Request for Review (“Request”) of Marion Makeda-Phillips (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)² of Charge No. 2011SF3253 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 dismissal of Petitioner’s charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On May 3, 2011, Petitioner filed a charge of discrimination with the Respondent alleging that the State of Illinois Secretary of State (“Employer”) subjected her to harassment and gave her a verbal warning, because of her race and in retaliation for opposing unlawful discrimination, in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”).

On November 28, 2010, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

Petitioner had worked for Employer for several years when she was transferred to work under a new supervisor, in December 2009. One of Petitioner’s duties was processing and delivering the mail. According to Petitioner, the supervisor almost immediately began to closely monitor her work and criticize Petitioner for making mistakes and working slowly. In March 2011, Petitioner filed a charge with Respondent, complaining of the supervisor’s behavior, but later withdrew it. Petitioner filed another charge in April 2011, the subject of ALS No. 12-0269, alleging that the supervisor harassed her due to her race and in retaliation for filing the previous charge. The charge in this case follows the previous two and complains that the supervisor’s behavior continued into May 2011, when supervisor gave her a verbal warning.

¹ This Order is in accordance with a vote cast by Commissioner Gash prior to the expiration of her term.
² 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 Illinois Department of Human Rights’s action shall be referred to as the “Petitioner.”

Petitioner has not presented an actionable case for harassment. Harassment must be so severe and pervasive that it alters the conditions of employment and creates an abusive working environment. Harris v. Forklift Systems, Inc., 510 U.S. 17, 20 (1993). The actions Petitioner describes (repeated emails from the supervisor and close monitoring) do not rise to that level. It was the supervisor's job to monitor Petitioner's job performance and critique it when warranted. "Heavy-handed management" is unpleasant but not necessarily motivated by discriminatory animus, and so not actionable. Patel v. Allstate Insurance, 105 F.3d 365 (7th Cir. 1997).

A *prima facie* case of retaliation requires evidence that the Petitioner engaged in a protected activity, that they suffered an adverse action, and that there is evidence of a causal connection 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). Petitioner cannot establish such a nexus: the harassment she categorizes as retaliatory began long before Petitioner filed her first complaint in March 2011. "[T]he adverse act must come after the complainant has engaged in a protected activity." Bregenhorn and C.C.Services, Inc., ALS No. S10596, 2004 WL 3312882 at 6 (Ill. HRC.Apr 2, 2004).

As for the verbal warning of May 2, 2011, Petitioner's claim still fails. If the Petitioner presents a *prima facie* case, the Employer must then produce a legitimate, nondiscriminatory reason for its action, and Petitioner must prove that this reason is a pretext for discrimination. Zaderaka v. Illinois Human Rights Comm'n, 131 Ill. 2d 172, 179 (1989). Petitioner has not shown that Employer's articulated nondiscriminatory reason (her poor work performance) was pretextual.

Accordingly, the Petitioner has not presented any evidence to show that the Respondent's dismissal of the charge was not in accordance with the Act.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of the Petitioner's charge is hereby **SUSTAINED**.
2. 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 State of Illinois Secretary of State, as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

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Entered this 22nd day of October 2018.

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Lauren Beth Gash