

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CA1066
)	EEOC NO.: 21BA10109
TOMET EVANS,)	ALS NO.: 12-0153
)	
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 Tomet Evans's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")⁴ of Charge No. 2011CA1066; 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 July 8, 2010, the Petitioner filed an unperfected charge of discrimination with the Respondent, which was perfected on October 13, 2010. The Petitioner alleged the Chicago State University ("CSU") laid her off due to her age, 46 (Count A), sexual orientation, homosexual (Count B), and in retaliation for opposing unlawful discrimination (Count C); and demoted her due to her age (Count D), sexual orientation (Count E) and in retaliation for opposing unlawful discrimination (Count F), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act").
2. On December 20, 2011, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence.
3. On March 1, 2012, the Petitioner filed a timely Request. On April 18, 2012, the Respondent filed its Response to the Petitioner's Request.

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. The Petitioner was employed by CSU as a Micro-Computer Specialist III.
2. The Petitioner filed a charge of discrimination against CSU on April 22, 2008, 23 months before she received her March 31, 2010 Notice of Layoff.
3. Petitioner was notified that she was to be laid off from CSU, on March 31, 2010, due to budget cuts, causing her position to be eliminated.

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."

4. CSU personnel actions are governed by the State Universities Civil Service System ("Civil Service System"). CSU's Civil Service System's Layoff Policy ("Layoff policy") provides for layoffs based on the least amount of service in the class to be laid off. An employee designated to be laid off shall receive a written notice, at least 30 calendar days in advance of the effective date of layoff.
5. When it becomes to reemploy employees of a laid off class, reemployment shall be made of laid off employees by seniority. The employee last laid off by seniority shall be reemployed first. Further, a fulltime status employee may bump another employee who holds less seniority to the individual. An employee can bump into a position in another classification if the individual previously held the position and has seniority over a current employee. A demotion is a reduction in salary but is not considered such if the action has been initiated or willingly accepted by the employee.
6. Due to the State of Illinois budget crisis in late 2009, Respondent determined that it had to initiate cost savings actions. Respondent determined which positions, with respect to both substance and quantity, were needed to meet its needs and to increase overall efficiency. Respondent's president and senior level administrators conducted a series of workforce planning meetings in early 2009, to assess Respondent's employment needs. Renee Mitchell ("Mitchell"), Director of Human Resources, stated that the Union and the Executive Director of the Civil Service System were also consulted and both provided input.
7. CSU determined that some positions would need to be eliminated. Cece Dillon ("Dillon"), Chief Information Officer, identified redundant positions, which were designated to be redefined, assigned to a different department for centralization or be eliminated. Dillon decided that Petitioner's position, Micro-Computer Specialist III was redundant, and therefore could be eliminated. The reason for the position elimination was that Petitioner's position under CSU's Civil Service System classification was no longer needed to accomplish the current goals and objective of the Information Technology ("IT") Department.
8. The final workforce organizational plan that resulted was the collective decision of the President's Executive Council. CSU laid off a total of 38 employees. All layoffs were done in compliance with the regulations of the Civil Service system. Petitioner's Lay-Off Notice, dated March 31, 2010, states that Petitioner is laid off from her position as Micro Support Specialist II, in the Information Technology Department, effective April 30, 2010. Petitioner's Lay-Off Notice further states, the reason for the lay-off is "budget cut causing an elimination of position."
9. CSU's Notice of Bumping Rights for Petitioner dated April 8, 2010, informed the Petitioner that her position of Microcomputer Support Specialist III was eliminated. The Petitioner was also informed that she had bumping rights under the Civil Service Statue allowing her to assume another position of an individual with less seniority. The position may be Petitioner's current classification or a classification that she previously held and still maintains seniority.
10. The Petitioner was given two choices: accept the layoff and be placed on the layoff registry effective May 1, 2010, or she could bump a less senior employee. CSU offered and the Petitioner elected to take the BSW position. CSU's Personnel Action Form for Petitioner, dated May 1, 2010, states that Petitioner was moved from job title of Microcomputer Support Specialist III in the IT Department to the job title of BSW in the Custodial Services Department. Under CSU's bumping policy, the Petitioner voluntarily elected to take the BSW position.
11. CSU laid off a total of 38 employees. Of those 38 employees, 6(16%) were younger than 40 years old and 37(97%) were non-homosexual.

12. In her Request, the Petitioner argued that the CSU did not follow the guidelines of the collective bargaining agreement. The Petitioner further argued that other employees outside of her protected class were treated more favorably under similar circumstances. The Petitioner provided the names of several comparables in her Request.
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 argued that the evidence was insufficient to establish a *prima facie* case of discrimination and retaliation. The Respondent further argues that the CSU articulated a non-discriminatory business reason for its actions and that there was no evidence of pretext

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).

Counts A, B, D, and E

In the Petitioner's matter, 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, the fourth element was not established. The evidence revealed that the CSU laid off or demoted 38 employees. Of those 38 employees 6 were younger than 40 years of age and 37 were non-homosexual. As such, the evidence did not show that CSU treated a younger non-homosexual employee more favorably under similar circumstances.

Counts C and F

In Counts C and F, 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) the Petitioner engaged in a protected activity; (2) the CSU 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). A causal connection will be inferred if the period of time between the protected activity and the adverse action is sufficiently short. In the Petitioner's case, there was no causal connection. See Mitchell and Local Union, 146, 20 Ill. HRC Rep. 101, 110-11 (1985) (six months was too remote to establish connectedness); Lynell Mims and State of Illinois, Illinois Department of Lottery, Charge No. 1989CF1141, 1998 WL 937898 (December 17, 1998). (nineteen-month time period between protected activity and adverse action to long to create an inference of retaliation). The Petitioner engaged in a protected activity on March 31, 2010 when she filed a charge of discrimination with the Respondent against the CSU. The time period between the protected activity and the adverse action was 23 months, which was too lengthy of a time to give rise to an inference of retaliation.

Lastly, the Commission further finds that CSU articulated a non-discriminatory business reason for its actions and there was no evidence of pretext. CSU stated that it laid the Petitioner off due to budget cuts and the Petitioner's position being eliminated. The evidence further revealed that the CSU followed the guidelines outlined in the Civil Service System Layoff Policy.

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 Chicago State University as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS

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HUMAN RIGHTS COMMISSION

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Entered this 10th day of December 2018.

Commissioner Diane M. Viverito

Commissioner David J. Walsh

Commissioner Rozanne Ronen