

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011SF2977
)	EEOC NO.: 21BA11482
STEPHEN HOLMES,)	ALS NO.: 12-0154
)	
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 Stephen Holmes's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")⁴ of Charge No. 2011SF2977; 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 April 5, 2011, the Petitioner filed a charge of discrimination with the Respondent, and amended on August 15, 2011. The Petitioner alleged East Lake Management Group, Inc. ("East Lake") discharged him in retaliation for opposing sexual harassment, in violation of Section 6-101(A) of the Illinois Human Rights Act ("Act").
2. On December 22, 2011, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence.
3. On March 20, 2012, the Petitioner filed a timely Request. On April 9, 2012, the Respondent filed its Response to the Petitioner's Request.

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

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."

1. The Petitioner was employed as Grounds Keeper for East Lake.
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. April 23, 2010, the Petitioner when sent a letter to Brenda Whitman ("Whitman"), Director of Property Management, complaining about being sexually harassed by co-workers.
4. On or about April 2010, East lake investigated Petitioner's allegations of sexual harassment by co-workers and discharged one of the alleged harassers.
5. On August 28, 2010, after being unable to contact the Petitioner by telephone during work hours, East lake did a search on its GPS tracker for Petitioner's work telephone and determined that Petitioner was at an address where East Lake did not conduct business.
6. On September 1 2010, after being unable to contact Petitioner by telephone during work hours, East Lake did a search on its GPS tracker for Petitioner's work telephone and determined that Petitioner was at an address where East Lake did not conduct business.
7. In or about the first week of February 2011, Twila Funk ("Funk"), Compliance Manager telephoned Petitioner during work hours repeatedly on his work issued cellular phone for at least two hours to follow up on incomplete work orders and incomplete supply orders. Again, Petitioner failed to answer his telephone. When confronted by Funk regarding these issues, Petitioner responded with laughter and a careless and lackadaisical attitude. Funk informed Petitioner that his work performance was unacceptable and needed improvement.
8. In late 2010 and early 2011, Twila Funk, Compliance Manager and Property Manager, determined that Petitioner failed to sign completed work orders, and informed Diana Foster ("Foster"), former Property Manager, of Petitioner's failure to comply with East Lake's practice of timely completing work orders.
9. On February 14, 2011, Foster terminated Petitioner in accordance with East Lake's Rules of Conduct for Work Performance.
10. In his Request, the Petitioner argued that he was discharged because of a vendetta by the East lake. The Petitioner further denied that his work performance was poor.
11. 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 retaliation. The Respondent further argues that the east lake 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).

In the Petitioner's, 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 Complainant'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 too long to create an inference of retaliation). The Petitioner engaged in a protected activity on April 23, 2010 when he complained of sexual harassment. The time period between the protected activity and the adverse action was 10 months, which was too lengthy of a time to give rise to an inference of retaliation.

Lastly, the Commission further finds that East Lake articulated a non-discriminatory business reason for its actions and there was no evidence of pretext. East Lake stated that it discharged the Petitioner for work performance. The evidence revealed that he had several work infractions while employed with East Lake. In his Request the Petitioner offered no evidence of pretext. In the absence of any evidence that the business consideration relied upon by East Lake is a pretext for retaliation, it is improper to substitute judgment for the business judgment of the employer. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997).

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 Petitioner's 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 East Lake Management Group, Inc. 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 10th day of December 2018.

Commissioner Diane M. Viverito

Commissioner David J. Walsh

Commissioner Rozanne Ronen