

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CN4631
)	EEOC NO.: N/A
MELANIE BARNETT-STUBBERFIELD,)	ALS NO.: 12-0155
)	
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 Melanie Barnett-Stubberfield's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")⁴ of Charge No. 2009CN4631; 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 March 5, 2009, the Petitioner filed an unperfected charge of discrimination with the Respondent, which was perfected on November 16, 2009. The Petitioner alleged that Fox Television Stations, Inc. ("FOX") discharged her because of her race, Black (Count A), her color, brown (Count B), her sex, female (Count C) and in retaliation for filing two previous charges of discrimination (Count D), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act").
2. On December 18, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On January 6, 2010, the Petitioner filed her first Request for Review. On March 1, 2010, pursuant to the Respondent's Response to the Request, the Commission vacated the dismissal of the charge and remanded the matter to the Respondent for further investigation.
3. On February 21, 2012, the Respondent again dismissed the Petitioner's charge for Lack of Substantial Evidence.
4. On March 20, 2012, the Petitioner filed her second Request. On April 20, 2012, the Respondent filed its Response to the Petitioner's Request.

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."

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. The Petitioner is employed as a Television Stagehand by Fox.
2. On July 25, 2006 and April 25, 2007, the petitioner filed a previous charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") against Fox.
3. The Petitioner's employment with Fox was governed by a collective bargaining agreement with the International Alliance of Theatrical Employees (IATSE) which describes the scope of duties for employees.
4. The Petitioner alleged that Fox did not discharge similarly situated non-black, non-brown, male employee, William Barth ("Barth"), under similar circumstances.
5. On or about December 23, 2008, due to Fox's economic downturn, Fox made the decision to eliminate a total of seven positions from its Sales, News, and Creative Services/Programming and Promotions Departments.
6. Fox employed two employees in the position of Stagehand, Petitioner and Barth.
7. In determining which of the two Stagehand employees to retain, Fox considered which of the two had the necessary and varied skill set in order to perform the Stagehand duties. In so doing, Fox determined that it was critical that the Stagehand who was retained was skilled at performing Stagehand duties as well as carpentry duties.
8. Fox selected Barth for retention because he was adept at performing Stagehand duties as well as carpentry duties. Moreover, Fox determined that Petitioner was less qualified because she had a very limited mechanical aptitude and also had limited skills in using hand tools. Moreover, Fox had to hire additional Stagehands to assist Petitioner when she was assigned to assemble various props for Fox.
9. Fox determined that Barth was the more qualified Stagehand and should be retained because he had the necessary experience, i.e., he was a scenic carpentry high school instructor and also managed a downtown stage using his carpentry skills.
10. On January 7, 2009, Petitioner was informed due to a reduction in staff her position was being eliminated and her services were no longer needed.
11. Fox discharged seven employees, including the Petitioner. Five of the discharged employees were non-black and non-brown. Additionally, four of discharged employees were male employees.
12. In her Request, the Petitioner argued that sections of her charge were inaccurate and incomplete. The Petitioner also raises a new allegation for the first time in her Request. The Petitioner alleged she was also harassed by Fox.
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 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).

Counts A, B, and C

In Counts A, B, and C, of the Petitioner's, 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 he is a member of a protected class; (2) that he was performing his work satisfactorily; (3) that she 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 were not established, there was no evidence that an employee outside of the Petitioner's protected class was treated more favorably under similar circumstances. Rather the evidence revealed that at the time of the alleged harm, the Fox discharged five employees that outside of the Petitioner's protective class.

Count D

In Count D, 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 Fox 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. 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 July 25, 2006 and April 25, 2007 when she filed a charge of discrimination with the EEOC against the Fox. The time period between the protected activity and the adverse action was over 21 months, which was too lengthy of a time to give rise to an inference of retaliation.

Lastly, a to Counts A, B, C, and D, the Commission further finds that Fox articulated a non-discriminatory business reason for its actions and there was no evidence of pretext. The evidence revealed that due to an economic downturn, Fox made a business decision to eliminate seven positions in three different departments. Fox eliminated positions in Sale, News and Creative Services. The Petitioner's position was in the News department, which had two stagehands. Fox further stated that it chose to keep the named comparable because of his skills in carpentry, which the Petitioner did not have. The Petitioner offered no evidence of Pretext in her Request. 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

In the Matter of the Request for Review by: Melanie Barnett-Stubberfield

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 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 Fox Television Stations, 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