

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011SE0658
)	EEOC NO.: 440-2010-05761
DAVID HOLDER, III,)	ALS NO.: 12-0159
)	
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 David Holder, III's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")⁴ of Charge No. 2011SE0658; 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 August 16, 2010, the Petitioner filed an unperfected charge of discrimination with the Respondent, which was perfected on September 14, 2010. The Petitioner alleged Illinois Department of Juvenile Justice ("IDJJ") placed him on administrative lockout (leave) because of his race, Black (Count A), and in retaliation for opposing unlawful discrimination (Count B); harassed him because of his race (Count C) and in retaliation for opposing unlawful discrimination (Count D); subjected him to unequal terms and conditions of employment because of his race (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 June 8, 2011, pursuant to the Petitioner's request, the Respondent administratively closed Counts B, C, D, E and F of the charge.

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."

3. On December 29, 2011, the Respondent dismissed Count A of the Petitioner's charge for Lack of Substantial Evidence.
4. On January 12, 2012, the Petitioner filed a timely Request. On April 4, 2012, the Respondent filed its Response to the Petitioner's Request.

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. The Petitioner is employed as a Juvenile Justice Specialist by IDJJ.
2. IDJJ is a correctional facility that houses juveniles.
3. The Petitioner alleged that on June 2, 2010, he was placed on administrative leave/lockout because of his race/black. The Petitioner alleged that White employees are not placed on administrative leave/lockout to investigate allegations of excessive use of force to a youth by an employee.
4. Pursuant to Section 20, Subsection 501 "Use of Force" of the IDJJ's Institutional Directive ("Directives"), Juvenile Justice Specialists are prohibited from using "corporal punishment ... use of violent force, threatening, profane, or abusive verbal assaults ... [on juveniles]." Pursuant to IDJJ's "Mandated Reporting of Abuse and Neglect" Policy, IDJJ must report any injury or abuse of any juvenile to the Illinois Department of Children and Family Services ("DCFS") and refer the alleged abuse to DCFS for further investigation.
5. Pursuant to Section 302.795 of IDJJ's Code ("Code") on "Administrative Leave" provides that "an agency head may relieve an employee from duty in extraordinary circumstances and the best interest of the agency and the State of Illinois will be served in doing so." 80 Ill. Admin. Code, Section 302.795. In circumstances where a juvenile inmate has been physically abused or injured, IDJJ may place an employee who committed a battery on a juvenile on administrative lockout pending an investigation into the matter.
6. On May 30, 2010, Petitioner was on duty at IDJJ's facility in Harrisburg, Illinois. The Petitioner observed a juvenile inmate watching a movie without approval or authorization. The Petitioner removed the juvenile inmate from that area and then escorted the juvenile to his cell. The Petitioner and the juvenile inmate were engaged in a physical confrontation. The Petitioner struck the juvenile inmate in the face which caused a laceration and other physical injuries on the juvenile. The Petitioner does not deny that he hit the juvenile inmate but alleges that he acted in "self defense". The Petitioner also admitted that he told a different juvenile inmate that "he needed to cut his hair if [that juvenile inmate] was not a fag."
7. IDJJ conducted an investigation into the matter. Rocky James ("James") (white), Supervisor, interviewed the juvenile inmate that Petitioner struck, Tasha Johnson ("Johnson"), Juvenile Justice Specialist Intern, Petitioner, and another juvenile inmate who was a witness of the confrontation. The Petitioner admitted to striking the juvenile inmate numerous times.
8. On June 2, 2010, IDJJ placed the Petitioner on a paid administrative lockout pending an investigation into the matter in that Petitioner struck and caused injury to a juvenile inmate.

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IDJJ referred the matter to the Illinois State Police and DCFS pursuant to its Directives, Code, and Mandated Reporting of Abuse and Neglect Policy.

9. In 1999, IDJJ placed a similarly situated, non-black employee, Scotty Dearing ("Dearing") on administrative lockout after he hit an inmate. Similarly, Respondent placed Mark Strucker ("Strucker") (white) on an administrative lockout when he hit a juvenile inmate.
10. In his Request, the Petitioner argued that IDJJ has not been fair or consistent in regards to discipline handed down or administrative lockouts or charges in relation to African American and Caucasian staff members. In his Request the Petitioner provides a list of comparables, with their infractions and their discipline identified. The Petitioner further argues that the IDJJ has made false and misleading statements throughout the Respondent's investigation.
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 discrimination. 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 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 third and fourth elements were not established. First there was no adverse action. An adverse action is an essential element of a *prima facie* case of unlawful discrimination. The adverse action must be sufficiently severe or pervasive as to alter the terms, conditions or privileges of the Petitioner's employment, if it is not, it does not give rise to a cause of action under the Human Rights Act. See In the Matter of: Linda M. Hartman and City of Springfield Police Department, IHRC, Charge No. 1993SF0365, WL 33252975 *11 (October 4, 1999). In the Petitioner's matter, the Petitioner was merely placed on paid administrative leave. Second, there was no evidence that an employee outside of the Petitioner's protected class was treated more favorably under similar circumstances.

Lastly, the Commission further finds that IDJJ articulated a non-discriminatory business reason for its actions and there was no evidence of pretext. IDJJ stated that it placed the Petitioner on lockout because he was involved in a physical confrontation with a juvenile inmate. It is uncontested that the Petitioner hit the juvenile, which the Petitioner contends was in self-defense. It is also uncontested that the IDJJ has a policy against excessive force and that the IDJJ is mandated by to report the incident to DCFS. It is further uncontested that the IDJJ's policy is to place the Juvenile Justice Specialist on administrative paid leave during the investigation of an incident of physical altercation. Based on the IDJJ's policies and DCFS mandate, the IDJJ placed the Petitioner on lockout. The Petitioner offered no evidence of pretext in his 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 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 Illinois Department of Juvenile Justice 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

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Entered this 17th day of December 2018.

Commissioner Diane M. Viverito

Commissioner David J. Walsh

Commissioner Rozanne Ronen