

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CF0655
)	EEOC NO.: 21BA02893
BETTY GARDNER-MANN,)	ALS NO.: 12-0168
)	
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 Betty Gardner-Mann's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")⁴ of Charge No. 2011CF0655; 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 November 8, 2010, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged United Healthcare Group ("Employer") placed her on a final 90-day corrective action plan, due to her race, Black (Count A), and sex, female (Count B); and subjected her to harassment due to her race (Count C) and sex (Count D) in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act").
2. On November 21, 2011, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence.
3. On February 23, 2012, the Petitioner filed a timely Request. On April 20, 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 Network Contractor by the Employer.
2. On February 2, 2009, the Employer hired the Petitioner as a Network Account Manager at its Chicago, Illinois office. From February 2, 2009 through September 7, 2010, Petitioner was responsible for recruiting new healthcare providers and maintaining relationships with existing providers
3. The Employer's Corrective Action Process Policy, contained in its 2010 Employee Handbook indicates that respective managers can open and close corrective action plans at one of three (3) levels: initial, elevated, and final. The document further indicates that the employee on the corrective plan must meet the expectations of Respondent indicated on the plan, and failure to do so can result in further corrective action. The document further indicates that a "Final Warning" is used for serious performance issues where employment termination consideration may result if improvement or correction is not immediately demonstrated.
4. On or about February 2, 2009, immediately after the Employer hired the Petitioner Pamela Harkin ("Harkin"), Physician Manager, began to notice performance deficiencies with the Petitioner. Harkin stated that Petitioner would often make grammatical and spelling errors when drafting reports and correspondence.
5. On or about November 18, 2009, the Employer placed the Petitioner on an initial corrective action plan which indicated Petitioner lacked attention to detail in the performance of her duties.
6. On February 28, 2010, on Petitioner's Performance Review, Harkin, rated Petitioner a two (2); which indicated Petitioner needed improvement.
7. On May 12, 2010, the Employer determined Petitioner's performance deficiencies and inattention to detail persisted; and therefore placed her on a final 90-day corrective action plan.
8. On or about June 28, 2010, the Petitioner filed an Internal Dispute Resolution Appeal Form to Human Resources regarding her May 12, 2010 final corrective action plan. On September 7, 2010, the Employer denied Petitioner's request for appeal of her final 90-day corrective action plan.
10. 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 Counts A and B, of 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 Petitioner must show: (1) that she is a member of a protected class; (2) that she 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 second and fourth elements were not established. First, the Petitioner was not performing her duties to the expectations of the Employer. Second, there was no evidence that an employee outside of the Petitioner's protected class was treated more favorably under similar circumstances.

In Counts C and D, of the Petitioner's matter, the evidence was insufficient to establish a *prima facie* case of harassment. Generally, actionable harassment occurs when the workplace is permeated with discriminatory, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. See Harris v. Forklift Systems, Inc., 510 U.S. 20, 114 S.Ct. 367, 371, 126 L.Ed.2d 295. In the Petitioner's case, the alleged harassment was not sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. Rather, the alleged harassment was merely supervisory conduct which any employee endures during the course of employment.

Lastly, the Commission further finds that the Employer articulated a non-discriminatory business reason for its actions and there was no evidence of pretext. The evidence showed that the Employer has a progressive discipline policy, which the Employer used to discipline the Petitioner. The Employer disciplined the Petitioner because of her inattention to detail and inability to complete tasks without assistance. In her Request the Petition did not provide 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 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 United Healthcare Group 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