

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: <b>2011CA2296</b>
)	EEOC NO.: <b>21BA10995</b>
<b>ARTHUR JAMES, III,</b> )	ALS NO.: <b>12-0184</b>
)	
)	
Petitioner. )	

**ORDER**

This This matter coming before the Commission by a panel of three, Commissioners David Chang<sup>1</sup> , Robert A. Cantone, and Lauren Beth Gash<sup>2</sup> presiding, upon Arthur James, III's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>3</sup> of Charge No. 2011CA2296; 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 filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's Notice of Dismissal 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 February 15, 2011, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged Rush University Medical Center ("Rush") discharged him because of his race, Black (Count A), his age, 46 (Count B), and sex, male (Count C), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act").
2. On December 30, 2011, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence.
3. On January 4, 2012, the Petitioner filed a timely Request. On May 8, 2012, the Respondent filed its Response.

<sup>1</sup> This Order is in accordance with a vote cast by Commissioner Chang prior to the expiration of his term

<sup>2</sup> This Order is in accordance with a vote cast by Commissioner Gash prior to the expiration of her term

<sup>3</sup> 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 was employed as a Probationary Clinic Coordinator by Rush. Rush hired the Petitioner on November 15, 2010.
2. Rush is an academic medical center.
3. Rush's probationary employee period policy, states that at the time of hire an employee would be placed on a 90 day probationary period. At the time of a transfer an employee would be placed on a 90 day probationary period.
4. Rush's Code of Conduct ("ICARE") states that Rush intends that all employees are treated with dignity and respect and expects employees to follow a "Code of Conduct" which promotes and protects the health and welfare of its patients, the wellbeing of other employees and visitors as well Rush's property and reputation.
5. Violations of Rush's Code may result in disciplinary action, up to, and including discharge. Rush's Code further states that "Standard policies, practices and procedures, practices include, but are not limited to, the policies listed in this section. Further Rush's Code regarding Personal Conduct at Work/Interpersonal Relationships states "Use of profane, obscene, discourteous or threatening language towards, or in the presence of, patients, fellow employees, supervisors or others. This includes derogatory name-calling or offensive references which violate the Medical Center's anti-harassment policy." Additionally, the Code of Conduct-Personal Conduct at Work/Interpersonal Relationships states that "Fighting with, threatening, intimidating, coercing or interfering with employees, patients, supervisors or other individuals at any time" is a violation of Rush's policy.
6. Two months into Petitioner being hired Petitioner had a confrontation with Mary Irizzary ("Irizzary"). Frances Perez ("Perez") (non-black, over 40, female), Rush's Operations Manager, stated that a patient arrived at the clinic without an appointment. Perez stated that Complainant and another co-worker, both were trying to see if the patient could be seen by a doctor. Perez stated that without the employee knowing that Petitioner was trying to schedule an appointment for the patient, the employee advised Petitioner that a patient should not be sent away without first checking with a doctor. Perez stated that Petitioner reacted in an inappropriate manner in that he pointed his finger in the employees face and yelled "You are not my supervisor. Who are you to tell me how to do my job?" Perez stated that several employees confirmed that they heard Petitioner yelling. In this incident with Irizzary, Petitioner allegedly told her "I am sick of your crap. I am going to stick it up your ass."
7. January 18, 2011, Petitioner and Nurse Assistant, Carmen Santos ("Santos") were involved in a work related dispute. On this date, a patient came in and was late for his appointment. Santos stated that the Petitioner went to ask one of the new nurses if he could still be seen and the nurse said no reschedule. Santos stated that she went to ask the doctor if the patient could still be seen and he said yes so she told Petitioner in a nice way that instead of asking a

nurse to ask the doctor directly. Santos stated that Petitioner started screaming at her and telling her that she is not his boss and that she could not tell him what to do. Santos stated that she went to human resources and talked to Linda Meeks. Santos stated that she was shaking. Santos stated that she was not the one that was loud. Santos stated that Petitioner was the one who was loud. Santos stated that she was the one who referred Petitioner to work for their department.

8. Santos complained to Rush's Manager, Tonya Pavolovich regarding the manner in which Petitioner acted towards her. Based on Santos' complaint, Rush conducted an investigation of the incident by interviewing the Petitioner, Santos, and several employees who saw or heard the commotion between Petitioner and Santos.
9. Rush determined that Petitioner's conduct as a probationary employee was in violation of its ICARE values and as such his conduct warranted discharge. On January 18, 2011, Rush discharged the Petitioner.
10. Rush stated that Stephanie Munoz (non-black), Secretarial Coordinator, was discharged for being late to work and leaving early, not completing self-evaluation and following up with meetings and not completing letters in a timely manner, and two patient complaints. Munoz was discharged on her 90th day of probation. Rush further stated that Elizabeth Barriga (non-black), Secretarial Coordinator, was discharged due to inappropriate behaviors, poor customer services, and lack of performance of required job duties, after receiving a verbal and written warning.
11. In his Request, the Petitioner argued that Rush wanted a Hispanic in his position and that the Hispanics at the Rush's facility conspired to have him discharged. The Petitioner further argued that the Illinois Department of Employment Security ("IDES") found in his favor against Rush.
12. In its Response, the Respondent requests the Commission to sustain the 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 argued, that Rush articulated a non-discriminatory business reason for discharging the Petitioner and there was no evidence of pretext.

### **C. DISCUSSION & DETERMINATION**

The Commission concludes that the Respondent properly dismissed 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).

The Commission finds that 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 he is a member of a protected class; (2) that he was performing his work satisfactorily; (3) that he 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. There was no evidence that the Rush treated a similarly situated non-Black, younger female employee, who violated the Rush's code of conduct, more favorably under similar circumstances. Moreover, the evidence revealed that Rush had discharged a non-Black, younger female under similar circumstances.

The Commission further finds that Rush articulated a non-discriminatory business reason for discharging the Petitioner and there was no evidence of pretext. The Rush stated that it discharged the Petitioner because he violated its code of conduct during his probationary period. The evidence revealed that a violation of the Rush's code of conduct may result in disciplinary action, up to, and including discharge. The evidence revealed that the Petitioner was involved in two disputes with two different co-workers. The Rush investigated the incidents, and determined that the Petitioner violated its code of conduct. Thereafter, the Rush made a business decision to discharge the. The Petitioner offered no proof of pretext in his Request. The Petitioner speculates that Hispanics at the Rush's facility conspired to have him discharged. However, Petitioner's argument is speculative and mere speculation or conjecture does not constitute evidence of discrimination. See Willis v. Illinois Dep't of Human Rights, 307 Ill.App.3d 317, 326, 718 N.E.2d 240 (4th Dist. 1999).

Lastly, the Petitioner argued that IDES found in his favor against Rush. IDES rulings have no bearing on Petitioner's allegations before the Department or the Commission.

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.

**WHEREFORE, 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, Rush University Medical Center, 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 10<sup>th</sup> day of December 2018.**

Commissioner David Chang

Commissioner Robert A. Cantone

Commissioner Lauren Beth Gash