

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)
FOR REVIEW BY:)
MAURICE WILLIAMS,)
)
)
Petitioner.)

CHARGE NO.: **2011CF0601**
EEOC NO.: **21BA02857**
ALS NO.: **12-0187**

ORDER

This This matter coming before the Commission by a panel of three, Commissioners David Chang¹, Robert A. Cantone, and Lauren Beth Gash² presiding, upon Maurice Williams’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)³ of Charge No. 2011CF0601; 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 September 9, 2010, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged Groot Recycling & Waste Systems (“Groot”) discharged him due to his national origin, USA (Count A), and his disability, visual impairment, right eye (Count B), in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”).
2. On October 15, 2010, the Respondent administratively closed Count B of the Petitioner’s charge pursuant to the Petitioner’s request. Therefore, Count B was not before the Commission.
3. On December 29, 2011, the Respondent dismissed Count A of the Petitioner’s charge for Lack of Substantial Evidence.
4. On January 27, 2012, the Petitioner filed a timely Request. On May 8, 2012, the Respondent filed

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

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

³ 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.”

its Response.

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. Groot specializes in solid waste management and recycling programs for commercial and resident settings.
2. The Petitioner was hired as a Truck Driver by Groot on February 8, 2008.
3. The Federal Motor Carrier Safety Regulations that includes Physical Qualifications and Examination policy which states that an employee may not drive a commercial motor vehicle unless they are physically qualified and carry a medical examiner's certificate stating so. The policy states that an employee may not drive if they have poor vision that affects their ability to see objects that are far away (they may use glasses or contact lenses to correct their vision), objects to the side, or traffic signal colors (they may not drive if they see with only one eye).
4. A medical examination must be done by a licensed medical examiner. A licensed optometrist may perform the visual portion of the exam. The exam must be done and recorded according to the regulations. If the medical examiner finds that the employee is physically qualified to drive a commercial motor vehicle. The medical examiner will fill out a medical certificate. The employee must keep a copy with them and a copy will be sent to their employer and put into their driver qualification file.
5. Groot's Discharge or Suspension policy states that Groot shall give at least two (2) warning notices to the employee prior to discharge, in writing, with a copy of the same to the union. Respondent's Work Rules policy ("Work Rules") states that offenses which may result in immediate discharge are: failure to immediately report an accident; property damage or injury; failure to meet all requirements of local, state, and federal laws; failure to comply with applicable Department of Transportation regulations.
6. Groot's Work Rules policy states that Groot believes that certain rules and regulations regarding employee behavior are necessary for efficient business operations and for the bene fit and safety of all employees. Groot will not tolerate conduct that interferes with operations, discredits the company, or is offensive to customers or coworkers. Employees who are involved in an avoidable accident or who damage company equipment through carelessness are subject to the following discipline: \$1000-\$2000, warning letter; \$2001-\$3500 warning letter with one day suspension; \$3501-\$6000, warning letter with three day suspension; over \$6001, warning letter with five day suspension.
7. Groot's Work Rules policy further states offenses which may result in immediate discharge are: failure to immediately report an accident, property damage or injury; failure to meet all requirements of local, state, and federal laws; failure to comply with applicable Department or Transportation regulations. Offenses which will result in progressive discipline are failure to properly comply with any safety rule or standard of the company or customer.
8. On July 18, 2008, the Petitioner received a first written warning for failure to wear company issued uniform.

9. On November 4, 2008, the Petitioner received a second written warning for violation of safety rules. The Petitioner was observed making a left turn from the right side of the truck.
10. On April 28, 2009, the Petitioner received a third written warning for violation of safety rules. The Petitioner was observed making a left turn from the right side of the truck. This was Petitioner's third written warning in a rolling twelve month period, and this resulted in a one day suspension without pay. The suspension period was April 30, 2009 through May1, 2009.
11. On May 13, 2009 the Petitioner received a fourth written warning for failure to wear personal safety equipment. The Petitioner was observed wearing a black garbage bag as his outermost layer of clothing while working. This was Petitioner's fourth written warning in a rolling twelve month period, and this resulted in three day suspension period from May 4, 2009 through May 18, 2009. This was an infraction of the company work rules and high visibility clothing must be the outermost layer of clothing at all times.
12. On July 8, 2009 the Petitioner received a verbal warning for dumping yard waste to close to another vehicle. This is unsafe and a careless operation of equipment.
13. On December 17, 2009 the Petitioner received a third written warning for destruction of company property. The Petitioner was observed operating a vehicle on his regular route on December 10, 2009. On December 17, 2009, there was damage discovered on the vehicle. Petitioner was the only person to operate the vehicle since its delivery inspection. Unreported damage to property is unacceptable and can result in termination. This was the third discipline in a rolling twelve month period and this resulted in a one day suspension. The suspension period was December 21, 2009 through December 22, 2009.
14. On May 2010, Groot's human resources department ran an internal audit of its records in relation to its commercial drivers. The audit included a review for current commercial driver's licenses and Department of Transportation ("D.O.T.") cards. Jose Castillon ("Castillon") (USA), Human Resources Corporate Manager, stated that the audit found that many drivers, including Petitioner, did not have complete and current information on file. The internal audit found that Petitioner had been driving on an expired medical card since February 8, 2010, and failed to notify Groot of its expiration.
15. Castillon notified all affected operations managers to review and submit updates on missing or outdated drivers' certification records.
16. On May 17, 2010, Jonathan Groot, Director of Operations, asked Petitioner if he had an updated medical card and Petitioner replied that he didn't. Groot sent Petitioner to get a medical evaluation.
17. On May 18, 2010, Petitioner informed Castillon that he failed the vision portion of the medical evaluation. Castillon informed Petitioner that Groot could not continue to allow him to work without a valid D.O.T. card and that his failure to maintain his federal regulated driving credentials could result in his immediate termination.
18. Castillon allowed Petitioner to be examined by his own doctor. On May 22, 2010, Petitioner was seen by his physician and received a complete physical. The Petitioner's physician informed him that he needed a cornea transplant surgery. The Petitioner stated that his physician scheduled the surgery for June 6, 2010.

19. On May 24, 2010, Petitioner advised Groot that he had not passed his recent medical exams and that he could not get a medical card.
20. On May 24, 2010, Groot discharged the Petitioner for failure to maintain his driving credentials.
21. In his Request, the Petitioner argued that the Respondent's investigation was poorly handled. The Petitioner also argued that the Groot did not follow its policy in discharging him and that he had a good work record with Groot. Lastly the Petitioner raised a new allegation for the first time. The Petitioner alleged that Groot discriminated against him due to his race in that the Groot treated non-African-American drivers more favorably than the Petitioner.
22. 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 Groot 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 Groot treated a similarly situated non-USA employee, more favorably under similar circumstances.

The Commission further finds that Groot articulated a non-discriminatory business reason for discharging the Petitioner and there was no evidence of pretext. The Groot stated that it discharged the Petitioner because the Petitioner failed to maintain his driving credentials in violation of mandatory federal guidelines. The evidence revealed that the Groot abides by the Federal Motor Carrier Safety Regulations. The Federal Motor Carrier Safety Regulations states that no employee shall drive a commercial motor vehicle unless they are physically qualified and carry a medical examiner's certificate verifying that. Due to his physical disability, the Petitioner was unable to obtain his certificate. The Petitioner also had a history of discipline with Groot. As a result of his history of discipline and failure to obtain medical certificate, Groot discharged the Petitioner. The Petitioner offered no proof of pretext in his Request. In the absence

of any evidence that the business consideration relied upon by the Employer is a pretext for discrimination, 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).

Lastly, the Petitioner raised for the first time a new allegation of race discrimination. The Commission does not have jurisdiction to review new allegations or charges of discrimination. See 775 ILCS 5/8-103.

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, Groot Recycling & Waste Systems, 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 10th day of December 2018.

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Commissioner David Chang

Commissioner Robert A. Cantone

Commissioner Lauren Beth Gash