

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CF2129
)	EEOC NO.: 21BA10875
ANTHONY MORRIS,)	ALS NO.: 12-0217
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hamilton Chang, Lauren Beth Gash¹, and Robert A. Cantone presiding, upon the Request for Review (“Request”) of Anthony Morris (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)² of Charge No. 2011CF2129 and the Commission having reviewed all pleadings 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 dismissal of the charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On January 31, 2011, Petitioner filed a charge of discrimination with the Respondent alleging that the State of Illinois Student Assistance Commission (“Employer”) subjected him to harassment and placed him on a performance improvement plan due to his race (black), sex (male), and physical disability (dry eye syndrome), and failed to accommodate his physical disability, in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”).

On January 17, 2012, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

Petitioner has not presented an actionable case for harassment. Harassment must be so severe and pervasive that it alters the conditions of employment and creates an abusive working environment. Harris v. Forklift Systems, Inc., 510 U.S. 17, 20 (1993). The actions Petitioner describes (repeated emails, close monitoring, and yelling at him in front of others) do not rise to that level. It was the supervisor’s job to monitor Petitioner’s job performance and critique it when warranted. “Heavy-handed management” is unpleasant but not necessarily motivated by discriminatory animus, and so not actionable. Patel v. Allstate Insurance, 105 F.3d 365 (7th Cir. 1997).

¹ This Order is in accordance with a vote cast by Commissioner Gash prior to the expiration of her term.
² 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 Illinois Department of Human Rights’s action shall be referred to as the “Petitioner.”

Petitioner has also not presented a *prima facie* case that he was placed on a performance improvement plan due to his race and gender. He must show: 1) he is a member of a protected class; 2) he was performing his work satisfactorily; 3) he was subject to an adverse action; and 4) the Employer treated a similarly situated employee outside his protected class more favorably under similar circumstances. Marinelli v. Human Rights Comm'n, 262 Ill. App. 3d 247 (2d Dist. 1994). Petitioner's claims fail at the fourth prong. The Respondent's investigation showed that Petitioner's supervisor oversaw only two employees in Petitioner's position: Petitioner, and a black female. Both Petitioner and the other employee were placed on performance improvement plans around the same time, for similar reasons. Petitioner has not presented evidence of a similarly-situated employee, outside his protected classes, who was treated more favorably.

As to Petitioner's claim that he was discriminated against due to his dry eye syndrome, his *prima facie* case fails at the first prong. He is not a member of a protected class because his condition does not meet the statutory definition of a disability. The Act excludes "conditions that are transitory and insubstantial" and "conditions that are not significantly debilitating or disfiguring." See 56 Ill. Admin. Code, Ch. II, §2500.20(b)(1). The medical questionnaire completed by Petitioner's doctor states that dry eye syndrome is not significantly debilitating.

Similarly Petitioner has not presented a *prima facie* case that Employer failed to accommodate his dry eye syndrome. He must show 1) the petitioner is disabled within the meaning of the Act; 2) the employer had knowledge of the petitioner's disability; 3) the petitioner requested a reasonable accommodation; 4) the employer failed to accommodate the petitioner; and 5) with or without a reasonable accommodation, the petitioner could perform the essential functions of the job. Illinois Dep't of Corrections v. Illinois Human Rights Comm'n, 298 Ill. App. 3d 536, 540 (3d Dist. 1998). He is not disabled within the meaning of the Act.

Accordingly, the Petitioner has not presented any evidence to show that the Respondent's dismissal of the charge was not in accordance with the Act.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of the Petitioner's charge is hereby **SUSTAINED**.
2. 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 the State of Illinois Student Assistance Commission, 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 22nd day of October 2018.

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Lauren Beth Gash