

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011SN3095
)	EEOC NO.: N/A
PENNY BURKETT,)	ALS NO.: 12-0244
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Lauren Beth Gash¹, Hermene Hartman, and Nabi R. Fakroddin presiding, upon the Request for Review (“Request”) of Penny Burkett (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)² of Charge No. 2011SN3095 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 Petitioner’s charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On April 12, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Bernardi’s II (“Employer”) discharged her because of her arrest for a drug crime, in violation of Section 2-103(A) of the Illinois Human Rights Act (“Act”).

On March 21, 2012, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

Under Section 2-103(A), an employer is prohibited from using the fact of an arrest as a basis for discharging an employee. However, under Section 2-103(B), an employer is permitted to obtain information other than the fact of the arrest which indicates that the employee actually engaged in the conduct for which she was arrested, and use that information as a basis for discharge. Murillo v. City of Chicago, 2016 IL App (1st) 143002, ¶ 22. The caveat of Section 2-103(B) applies here: Petitioner apparently confessed to law enforcement that she possessed the marijuana that she was arrested for possessing, and explained to Employer why she had been arrested. So, it was not improper for Employer to discharge her based on this conduct. Sroga v. Pers. Bd. of City of Chicago, 359 Ill. App. 3d 107, 114, 833 N.E.2d 1001, 1007–08 (2005) (permissible for employer to disqualify employee based on employee’s confession to law enforcement about employee’s conduct).

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.”

