

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CF0996
)	EEOC NO.: 21BA10059
ANDRE STRONG,)	ALS NO.: 12-0258
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Lauren Beth Gash, David J. Walsh, and Diane M. Viverito¹ presiding, upon the Request for Review (“Request”) of Andre Strong (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)² of Charge No. 2011CF0996 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 October 7, 2010, Petitioner filed a charge with the Respondent alleging that Whelan Security of Illinois (“Whelan”) failed to hire him because of his physical disability (a speech impediment), in violation of Section 2-102(A) of the Act.

On February 2, 2012, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

A *prima facie* of discrimination based upon a failure to hire is established by proving the following elements: 1) that the complainant is a member of a protected class; 2) that he applied for and was qualified for a position for which the potential employer was seeking applicants; 3) that he was rejected for the position despite his qualifications; and 4) the respondent hired a person, not a member of the complainant’s protected class, whose qualifications were similar to, or less than the complainant’s qualifications. See In the Matter of: Brenda Roger and Commonwealth Edison Company, IHRC, Charge No. 1991CF1450 (April 26, 1996), 1996 WL 311411 (Ill.Hum.Rts.Com.).

However, if the complainant has no proof of discriminatory animus beyond the fact that the employer hired a person outside the complainant’s protected category, and the employer articulates the successful candidate’s superior qualifications as its legitimate, non-discriminatory reason for its hiring decision, the only means of establishing discrimination is to show that the complainant’s

¹ This Order is in accordance with votes cast by Commissioners Gash, Walsh, and Viverito prior to the expiration of their terms.
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.”

qualifications were so superior to the successful candidate's that the employer's articulated reason must be pretextual. See Kindred v. Human Rights Comm'n, 180 Ill. App. 3d 766, 768 (1989).

Petitioner's case fails at this point. Petitioner was one of four applicants for a job as a security guard, and two others (who were not disabled) were hired over Petitioner. Petitioner had five years of experience, but the two successful applicants had, respectively, four years of experience as a security guard and two years of experience as a correctional officer. This disparity in qualifications is not so stark that Petitioner can prove that Whelan's stated reasons for hiring others were pretextual.

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 Whelan Security of Illinois, as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
) **Entered this 15th day of October 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Lauren Beth Gash

Commissioner Diane M. Viverito

Commissioner David J. Walsh