

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CA2198
)	EEOC NO.: 21BA10925
MARCELLINA CHARBONNIER,)	ALS NO.: 12-0276
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Robert Cantone, Hamilton Chang, and Steve Kim presiding, upon Marcellina Charbonnier's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2011CA2198 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 Petitioner's charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On February 7, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Sunrise Senior Living, Inc. ("Employer") issued her a written warning, denied her training, and discharged her due to her national origin, ancestry, and age in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On February 12, 2012, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. The Petitioner filed a timely Request.

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. 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. In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

Generally, to establish a *prima facie* case of discrimination, the Petitioner must show: 1) she is a member of a protected class; 2) she was performing her job satisfactorily; 3) she was subject to an adverse action; and 4) the Employer treated a similarly situated employee outside her protected class more favorably under similar circumstances. Marinelli v. Human Rights Comm'n, 262 Ill. App. 3d 247, 634 N.E.2d 463 (2d Dist. 1994). Once the Employer articulates a legitimate and nondiscriminatory reason for its actions, the Petitioner must establish that the articulated reason is a pretext for unlawful discrimination. Id.

¹ 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."

In this case, the Employer asserts that it issued the Petitioner a written warning because three of the Employer's residents' families complained about the Petitioner's care for the residents, and asked the Employer not to assign the Petitioner to care for their loved ones. The Employer asserts that it, in fact, did not deny the Petitioner any training. Rather, the Employer asserts that the Petitioner simply never completed and passed the training. Finally, the Employer asserts that it discharged the Petitioner because of numerous disciplinary actions. The evidence suggests that the Employer had a good-faith belief as to all of these matters, and then acted accordingly. The Commission finds no evidence of pretext, and in the absence of pretext, the Commission cannot substitute its judgment for the Employer's business judgment. Berry and State of Illinois, Dep't of Mental Health and Developmental Disabilities, Charge No. 1994SA0240 (Dec. 10, 1997).

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 Sunrise Senior Living, Inc. 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 1st day of October 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Robert Cantone

Commissioner Hamilton Chang

Commissioner Steve Kim