

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CN4783
)	EEOC NO.: N/A
DONNIE REED,)	ALS NO.: 12-0289
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Nabi Fakroddin, Lauren Beth Gash¹, and Hermene Hartman presiding, upon Donnie Reed’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)² of Charge No. 2009CN4783 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 March 23, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Jewel Food Stores (“Employer”) subjected him to unequal terms and conditions of employment due to his race in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On April 18, 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) he is a member of a protected class; 2) he was performing his job 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, 634 N.E.2d 463 (2d Dist. 1994). Once the Employer articulates a legitimate and nondiscriminatory

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.”

reason for its actions, the Petitioner must establish that the articulated reason is a pretext for unlawful discrimination. Id.

The Petitioner, a union member, asserts that he was discriminated against because the Employer did not hear his untimely grievance. However, the Petitioner cannot establish by substantial evidence that he can meet element four, as there is no evidence that the Employer heard untimely grievances of employees outside the Petitioner's race.

The evidence also suggests that the Employer acted in good faith, pursuant to the applicable collective bargaining agreement, and not due to a discriminatory motive. 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 Jewel Food Stores 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 2nd day of October 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Nabi Fakroddin

Commissioner Lauren Beth Gash

Commissioner Hermene Hartman