

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CA2889
)	EEOC NO.: 21BA11419
BARBARA DAVIS,)	ALS NO.: 12-0315
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hamilton Chang, Steve Kim, and Robert A. Cantone presiding, upon the Request for Review (“Request”) of Barbara Davis (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2011CA2889 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 31, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Colfax Corporation (“Employer”) discriminated against her because of her race, age, and sex, by laying her off and later discharging her, in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”).

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

There is no substantial evidence that the Employer discriminated against the Petitioner. 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 work 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). If the Petitioner presents a prima facie case, the Employer must then produce a legitimate, nondiscriminatory reason for its action, and Petitioner must prove that this reason is a pretext for discrimination. Zaderaka v. Human Rights Comm’n, 131 Ill. 2d 172, 179 (1989). The Employer articulated a legitimate reason for laying off, and later discharging, Petitioner: it had accumulated substantial evidence that Petitioner had been secretly working for a competing company, including phone records showing that Petitioner used her Employer-issued cellular phone

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.”

for 1329 minutes during a month when she had not been assigned any work by Employer. Petitioner has not proved that this was 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 Colfax Corporation 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 10th day of October 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Robert Cantone -

Commissioner Hamilton Chang -

Commissioner Steve Kim -