

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CA2435
)	EEOC NO.: 21BA11098
BEVERLY ROBINSON,)	ALS NO.: 12-0328
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Diane M. Viverito,¹ Robert A. Cantone, and Michael Bigger presiding, upon Beverly Robinson's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")² of Charge No. 2011CA2435 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 24, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that the University of Chicago ("Employer") suspended and later discharged her because of her age, her mental disability, and in retaliation for filing previous charges of discrimination in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act"). On February 28, 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).

To establish a *prima facie* case of employment discrimination, the Petitioner must show that: 1) she is a member of a protected group; 2) she performed her job satisfactorily; 3) the employer took adverse action against her despite the adequacy of her work; and 4) a similarly situated employee, who is not a member of the protected group, was not subjected to the same adverse action. Anderson v. Chief Legal Counsel, 334 Ill. App. 3d 630, 634 (3d Dist. 2002). Once the Petitioner

¹ This Order is in accordance with a vote cast by Commissioner Viverito 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."

establishes a *prima facie* case of discrimination, then the burden shifts to the Employer to rebut the presumption of discrimination and articulate a non-discriminatory reason for its employment action. McDonald Douglas Corp. v. Green, 411 U.S. 792 (1973); adopted by Illinois Supreme Court in Zaderaka v. Human Rights Comm., 131 Ill. 2d 172, 179 (1989). The Petitioner must then show that the Employer's articulated reason for its employment action was a mere pretext. Id.

To prove a *prima facie* case of retaliation, the Petitioner must prove the following three elements: (1) Petitioner engaged in a protected activity, (2) the employer took an adverse action against her, and (3) there was a causal nexus between the protected activity and the adverse action. Carter Coal Co. v. Human Rights Commission, 261 Ill. App. 3d 1, 7 (5th Dist. 1994).

There is no substantial evidence that Petitioner was suspended or terminated due to her age or mental disability. As revealed in the investigation, and detailed in Respondent's Response to the Request, the Petitioner's supervisor, Dr. Spencer, provided numerous examples of the Petitioner's work not meeting legitimate expectations. Indeed, prior to her suspension and termination, the Petitioner had been placed on a performance improvement plan in an attempt to remedy these deficiencies.³ Further, the Petitioner is unable to point to any similarly situated employees who were given more favorable treatment. The Petitioner's Request attempts to draw comparisons between her and another coworker, Latasha Sawyer. However, Sawyer does not report directly to Dr. Spencer, and Dr. Spencer has no control over Sawyer's employment conditions. Nor was any evidence provided that Sawyer was derelict in her duties in any way. The only employee the Petitioner could point to as being similarly situated would be Dr. Spencer's previous secretary, who was also discharged due to performance issues. The Employer has articulated a legitimate, non-discriminatory reason for the Petitioner's suspension and discharge, and the Petitioner has not presented any evidence that that reason is a mere pretext.

Regarding the Petitioner's charge that her suspension and discharge were in retaliation for filing a previous charge of harassment with the Respondent, the Petitioner cannot satisfy the third prong of the test here. The investigation revealed substantial evidence of the Petitioner's deficiencies in the performance of her job duties, and there is no evidence that the termination was for any reason other than her poor performance.

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**.

³ The Petitioner filed a separate charge against the Employer for discriminating against her by placing her on this performance improvement plan. The Commissioner affirmed the Respondent's decision to dismiss that charge for lack of substantial evidence.

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 the University of Chicago 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 26th day of October 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Diane M. Viverito

Commissioner Robert A. Cantone

Commissioner Michael Bigger