

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012CF0111
)	EEOC NO.: 21BA10881
ROSALINA BAUTISTA,)	ALS NO.: 12-0357
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Duke Alden, Patricia Bakalis Yadgir, and Terry Cosgrove¹ presiding, upon the Request for Review (“Request”) of Rosalina Bautista (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)² of Charge No. 2012CF0111 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 July 14, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Fresh Express, Inc. (“Employer”) discharged her because of her physical disability, ancestry, and in retaliation for filing a charge of discrimination, in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”).

On May 9, 2012, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

Petitioner had been working for Employer for many years when she suffered a workplace injury in September 2009. She requested unpaid medical leave in November 2009 and began that leave before it had been approved. In January 2010, the unpaid leave was denied because Petitioner had failed to provide the necessary documentation. Employer did not discharge her, and Petitioner’s doctor released her to work, with restrictions, in February 2010. Employer agreed to accommodate those restrictions, but Petitioner did not return to work. Petitioner presented a new doctor’s note in April 2010, but Employer was not satisfied with the new note and scheduled her to return to work in May 2010. She did not, but Employer did not discharge her. In September 2010, Petitioner presented a doctor’s note with new restrictions, which Employer was unable to accommodate. Still, Employer did not discharge Petitioner. Petitioner’s doctor released her to work without restrictions in

¹ This Order is in accordance with a vote cast by Commissioner Cosgrove prior to the expiration of his 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.”

December 2010, but Petitioner did not return to work. In January 2011, Employer offered Petitioner a new job, because her old position had been filled during her absence. Petitioner accepted the new position, but also filed a separate charge with Respondent alleging that Employer discriminated against her because of her disability and national origin. Petitioner was scheduled to return to work in February 2011, but she brought Employer a new doctor's note with new restrictions. Employer discharged Petitioner on February 15, 2011.

Generally, to establish a *prima facie* case of discrimination based on disability, Petitioner must show (1) that she is disabled within the meaning of the Act; (2) the employer had knowledge of the disability; (3) the Petitioner suffered an adverse employment action; and (4) the disability is unrelated to Petitioner's ability to perform the job with or without an accommodation. Habinka v. Human Rights Commission, 192 Ill.App.3d 343, 373 (1st Dist. 1989). To rebut the *prima facie* case, the Employer can then present a legitimate, nondiscriminatory reason for its action. Id. at 372. Here, Employer states that it discharged Petitioner because she had used up all of her medical leave and had been absent from work for over a year. Petitioner has not shown that this reason was pretextual.

To establish a *prima facie* case of discrimination based on her ancestry, 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). Petitioner was unable to fulfill the fourth prong: she did not present evidence that other employees outside her ancestry group, who had also been absent from work for over a year, were not eventually discharged.

A *prima facie* case of retaliation requires evidence that the Petitioner engaged in a protected activity, that they suffered an adverse action, and that there is evidence of a causal connection between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill. App. 3d 1027, 1035 (3rd Dist. 2000). 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. Illinois Human Rights Comm'n, 131 Ill. 2d 172, 179 (1989). Again, Petitioner has not shown that Employer's reason (her lengthy absence from work on unexcused medical leave) 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 Fresh Express, 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 24th day of October 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Duke Alden

Commissioner Terry Cosgrove

Commissioner Patricia Bakalis Yadgir