

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2010CN3785
)	EEOC NO.: N/A
TRACY L. JOHNSON,)	ALS NO.: 12-0383
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Diane M. Viverito,¹ Lauren Beth Gash,² and Michael Bigger presiding, upon Tracy L. Johnson's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")³ of Charge No. 2010CN3785 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 September 24, 2009, the Petitioner filed a charge of discrimination with the Respondent alleging that Sunnybrook School District #171 ("Employer") decided not to recall him as a substitute teacher because of his race, sex, age, and in retaliation for filing a previous claim with the EEOC in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act"). After the Commission vacated the Respondent's dismissals twice and remanded for further investigation, the Respondent dismissed the Petitioner's charge for the last time on June 4, 2012 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 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

¹ This Order is in accordance with a vote cast by Commissioner Viverito prior to the expiration of her term.

² This Order is in accordance with a vote cast by Commissioner Gash prior to the expiration of her term.

³ 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."

favorably under similar circumstances. Marinelli v. Human Rights Comm'n, 262 Ill. App. 3d 247, 634 N.E.2d 463 (2d Dist. 1994).

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 him, 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 discriminated against due to his race, sex, age, or opposition to unlawful discrimination. The Employer articulated two valid, non-discriminatory bases for its decision not to include the Petitioner in its roster of available substitute teachers. First, the Employer stated that it considered its need, the duration of the teaching assignment, familiarity, more qualified applications and prior experience when making its decision regarding which teachers to recall. As these are all business judgments, it is not appropriate for the Commission to substitute its judgment for that of the Employer. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, Charge No. 1994SA0240 (December 10, 1997). Second, the Employer had concerns about the Petitioner's poor work performance. The Employer stated that one of its Principals had observed the Petitioner while teaching and found him to be ineffective at controlling the classroom.

The Petitioner has not presented any evidence that would suggest the Employer's reasons for not recalling him are a mere pretext. Significantly, the Petitioner cannot point to any similarly situated substitute teachers who were treated differently than he was. In fact, six other substitute teachers were not recalled in the same year as the Petitioner, and they were all female and at least ten years younger than the Petitioner. Three of them were white, and three were black.

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 Sunnybrook School District #171 as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION) **Entered this 26th day of October 2018.**

Commissioner Diane M. Viverito

Commissioner Lauren Beth Gash

Commissioner Michael Bigger