STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	CHARGE NO.: **2012SF1626**
	)	EEOC NO.: **21BA20524**
ALESHIA DOWIELS,	)	ALS NO.: **12-0398**
Petitioner.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Nabi R. Fakroddin, Lauren Beth Gash,[1] and Hermene Hartman presiding, upon Aleshia Dowiels's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")[2] of Charge No. 2012SF1626 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 19, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Liberty Restaurant Group ("Employer") subjected her to sexual harassment, and reduced her work hours, issued her a written reprimand, subjected her to intimidation, and discharged her in retaliation for opposing sexual harassment in violation of Sections 2-102(D) and 6-101(A) of the Illinois Human Rights Act ("Act"). On May 30, 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).

Under the Act, sexual harassment is defined as any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or 3) such conduct has the purpose or effect of substantially interfering with an

[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."

individual's work performance or creating an intimidating, hostile, or offensive working environment. 775 ILCS 5/2-101(E).

The Petitioner lists two specific acts of harassment to support her charge of a hostile work environment: in the first, a co-worker told her to "suck my dick," and in the other, a co-worker "smacked her on the butt" once. These incidents cannot form the basis for a sexual harassment charge for two reasons. First, "occasional, isolated, casual or trivial remarks of a sexual nature do not constitute sexual harassment under the Act." In re Susan P. Farmer and Harper Oil Co., Charge No. 1996SF0604, 1997 WL 680633, *7 (October 2, 1997). More importantly, an employer will only be found liable for the sexual harassment of a nonmanagerial employee if the employer knows of the harassment and takes no action. 775 ILCS 5/2-102(D). The investigation revealed here that neither of the incidents of harassment were undertaken by a managerial employee, and the Employer discharged both soon after learning of the conduct. Therefore, the Petitioner cannot sustain her charge for sexual harassment.

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).

As to the Petitioner's charges of a reduction in hours and intimidation, she cannot establish that either of these conditions occurred, and therefore she cannot prove her *prima facie* case of retaliation. The investigation revealed that the Petitioner's hours were not substantially reduced after she complained about sexual harassment. A review of all of her hours worked from May 1, 2011 until her discharge on August 24, 2011 reveals a slight decrease in her hours in July and August. However, after reporting the sexual harassment, the Petitioner worked more hours those weeks than she did the first week in May, prior to reporting the harassment. Also, the average number of hours per shift worked by the Petitioner decreased by negligible amounts, which is not sufficient to demonstrate that her hours were reduced in retaliation for opposing sexual harassment.

The investigation results also do not support the Petitioner's charge of intimidation. The Petitioner must prove that the harassment or intimidation was so severe or pervasive that it altered the conditions of her employment and created an abusive environment. In re Luisa Tapia, et al. and Genlyte Thomas Group, IHRC, Charge No. 2000CF0871, 2002 WL 32828305 (December 16, 2002). The Petitioner alleged that her manager "was always yelling at her about something," including how she was talking to other co-workers and where she parked her car. However, nothing the Petitioner has alleged rises to the level of actionable harassment or intimidation. The yelling complained of is not so severe or pervasive as to alter the conditions of the Petitioner's employment.

Regarding the Petitioner's charges of the written reprimand and the discharge, the Employer has articulated a legitimate, non-discriminatory basis for both of its actions, and the Petitioner cannot show that these justifications are a mere pretext. The Employer stated during the investigation that it

gave the Petitioner a written reprimand after she got into a physical altercation with another employee and choked him. In response to the Petitioner's charge that she was discharged in retaliation for complaining about sexual harassment, the Employer stated that the Petitioner was discharged for insubordination. On the day of her discharge, the Petitioner had been asked to leave work early, and she not only refused to do so, but she proceeded to talk on her phone during her shift, which is against store policy. The Petitioner had previously been disciplined for a physical altercation, and had only been given a written warning, when the Employer could have discharged her at that time. Therefore, the Petitioner cannot demonstrate a causal nexus between her report of sexual harassment and her discharge.

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 Liberty Restaurant Group 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 1st day of November 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Nabi R. Fakroddin

Commissioner Lauren Beth Gash

Commissioner Hermene Hartman