

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CF3430
)	EEOC NO.: 21BA11813
R.J. COLE,)	ALS NO.: 12-0401
)	
)	
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 R.J. Cole (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)² of Charge No. 2011CF3430 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 May 23, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Honeywell International, Inc. (“Employer”) subjected him to harassment and gave him negative performance evaluations because of his physical disabilities (rotator cuff disorder and missing digits), in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”).

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

Petitioner has not presented a *prima facie* case of harassment based on either of his physical disabilities. Harassment must be so severe and pervasive that it alters the conditions of employment and creates an abusive working environment. Harris v. Forklift Systems, Inc., 510 U.S. 17, 20 (1993). The actions Petitioner describes (being told not to talk to coworkers or sing in the lunch room, and criticism of his work performance) do not rise to that level. Heavy-handed management is unpleasant but does not constitute harassment. Patel v. Allstate Insurance, 105 F.3d 365, 373 (7th Cir. 1997).

Petitioner also has not presented a *prima facie* case that Employer discriminated against him by giving him negative performance evaluations. He must show: 1) he is a member of a protected class; 2) he was performing his work satisfactorily; 3) he was subject to an adverse action; and 4) the

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.”

Employer treated a similarly situated employee outside his protected class more favorably under similar circumstances. Marinelli v. Human Rights Comm'n, 262 Ill. App. 3d 247, 253-54 (2d Dist. 1994). Petitioner's case fails at the third prong. An adverse action must be sufficiently severe or pervasive to constitute a term or condition of employment. See In the Matter of: Linda M. Hartman and City of Springfield Police Department, IHRC, Charge No. 1993SF0365 (October 4, 1999), 1999 WL 33252975 (Ill.Hum.Rts.Com.). Negative performance evaluations, standing alone, do not qualify. See Smart v. Ball State Univ., 89 F.3d 437, 441-42 (7th Cir. 1996).

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 Honeywell International, 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 25th day of October 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Duke Alden

Commissioner Terry Cosgrove

Commissioner Patricia Bakalis Yadgir