STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	CHARGE NO.: **2011CE1441**
	)	EEOC NO.: **N/A**
HAKEEM ABAYOMI,	)	ALS NO.: **12-0403**
Petitioner.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Duke Alden, Patricia Bakalis Yadgir, and Terry Cosgrove[1] presiding, upon the Request for Review ("Request") of Hakeem Abayomi ("Petitioner"), of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")[2] of Charge No. 2011CE1441 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 and LACK OF JURISDICTION** is **SUSTAINED**.

DISCUSSION

On August 27, 2010, the Petitioner filed a charge of discrimination with the Respondent alleging that Walgreens Co. ("Employer") subjected him to a hostile work environment due to his sex and national origin, Nigeria (Counts A and B); issued him a verbal warning due to his sex, national origin, and in retaliation for opposing unlawful discrimination (Counts C, D, and E); and failed to promote him, denied him a discretionary bonus, and gave him a negative performance review due to his sex, national origin, and in retaliation for opposing unlawful discrimination (Counts F through N), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act").

On April 12, 2012, the Respondent dismissed the Petitioner's charge in its entirety. The Petitioner filed a timely Request.

As to Counts A and B, Petitioner has not presented a *prima facie* case of harassment creating a hostile work environment. 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). Petitioner alleges that certain subordinates made isolated racist comments and were disrespectful, and the store manager overrode his authority. The comments were not "severe and pervasive," and it was within the store manager's discretion to supervise Petitioner's work.

[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."

Heavy-handed management is unpleasant but does not constitute harassment. Patel v. Allstate Insurance, 105 F.3d 365, 373 (7th Cir. 1997).

As to Counts C, D, and E, the Commission concludes that the Respondent properly dismissed the Petitioner's claims for lack of jurisdiction. Section 7A-102(A)(1) of the Act provides that in all cases (except housing discrimination cases), a petitioner must file a charge of discrimination with the Respondent within 180 days after the date of the alleged civil rights violation. This 180-day filing requirement is jurisdictional. Failure to file a charge within the prescribed time deprives the Respondent and the Commission of jurisdiction to proceed further. Trembczynski v. Human Rights Comm'n, 252 Ill. App. 3d 966, 625 N.E.2d, 215 (1st Dist. 1993). These Counts all relate to a verbal warning given to Petitioner in July 2008, but he did not file his charge until August 2010. This is well outside the 180-day window.

Petitioner also has not presented a *prima facie* case that Employer discriminated against him by failing to promote him, denying him discretionary bonuses, or giving him negative performance evaluations because of his sex or national origin. 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 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). 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).

As to the negative performance reviews (Counts L and M), 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).

As to the promotion (Counts F and G), Petitioner admits that he never applied for it, but contends he was never told about the promotion opportunity. The Employer's documentation showed that employees are only notified of such opportunities if they have an active application in the computerized system, which Petitioner did not. The documents also showed that Petitioner did receive bonuses (Counts I and J) based on the store's performance, but no discretionary bonuses were given to anyone. These are legitimate, nondiscriminatory reasons. Employer produced further reasons why Petitioner would not have received a promotion or a bonus: he had a history of negative performance reviews (even before he complained of a hostile work environment). Petitioner has not shown that these reasons were pretextual.

Finally, Petitioner has not shown that he was not promoted, not given a discretionary bonus, or given negative performance reviews in retaliation because he had complained of a hostile work

environment (Counts H, K, and N). 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, 733 N.E.2d 410, 416 (3rd Dist. 2000). Again, the negative performance review (Count N) does not count as an adverse action. See Smart, 89 F.3d at 441-42. Petitioner never applied for a promotion or used the computerized system that would have notified him of the promotion opportunity (Count H), and Employer did not give discretionary bonuses (Count K). Petitioner has not shown that these legitimate, nondiscriminatory reasons were pretext for retaliation. Zaderaka v. Illinois Human Rights Comm'n, 131 Ill. 2d 172, 179 (1989).

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 Walgreens Co., 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