

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012CF0939
)	EEOC NO.: 21BA20028
ANNA M. GARCIA,)	ALS NO.: 12-0424
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Duke Alden, Lauren Beth Gash¹, and Patricia Bakalis Yadgir presiding, upon the Request for Review (“Request”) of Anna M. Garcia (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)² of Charge No. 2012CF0939 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 October 5, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that JST Corporation (“Employer”) discharged her due to her national origin (El Salvador) and her sex, in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). Petitioner worked on an assembly line at the same facility where her former boyfriend, Reynaldo Tovar, also worked. Between 2009 and 2011, Petitioner and Tovar had a series of arguments in the workplace, and at one point Petitioner had an order of protection against Tovar. In September 2011, Petitioner filed a police report accusing Tovar of threatening her with a firearm. The police called Employer looking for Tovar, and Employer temporarily locked down the facility while searching for Tovar, who was not present. On September 21, 2011, the police informed Employer that they had determined Petitioner’s report was false. Employer then discharged Petitioner for causing a disturbance in the workplace, but did not discharge Tovar.

On June 7, 2012, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

There is no substantial evidence that the Employer discriminated against the Petitioner based on her sex or national origin. Generally, to establish a *prima facie* case of discrimination, the Petitioner must show: 1) she is a member of a protected class; 2) she was performing her work

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.”

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, 253 (1994). Petitioner's claim fails at the fourth prong: she was unable to identify an individual outside her protected classes who was not discharged for causing a disturbance in the workplace. She alleges that Tovar was not discharged, but he was not similarly situated because he was not the person who filed the police report leading to the lockdown and search of the facility. Further, even if the Petitioner presents a *prima facie* case, the Employer has produced a legitimate, nondiscriminatory reason for its action: the disturbance at the facility. Zaderaka v. Illinois Human Rights Comm'n, 131 Ill. 2d 172, 179 (1989). Petitioner has not shown that this reason was pretext for discrimination based on her sex or national origin.

In her Request, Petitioner argues that she did not falsely report Tovar, but was merely mistaken as to the date he threatened her. She also points out that an Administrative Law Judge determined that she should receive unemployment benefits. Neither of these reasons affects the conclusion that Petitioner was not discriminated against because of her sex or national origin.

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 JST Corporation, 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 2nd day of November 2018.

Commissioner Duke Alden

Commissioner Lauren Beth Gash

Commissioner Patricia Bakalis Yadgir