

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF THE REQUEST |) | |
| FOR REVIEW BY: |) | CHARGE NO.: 2011CF3752 |
| |) | EEOC NO.: 21BA12054 |
| JOSHUA WILSON, |) | ALS NO.: 12-0425 |
| |) | |
| Petitioner. |) | |

ORDER

This matter coming before the Commission by a panel of three, Commissioners Diane M. Viverito,¹ Michael Bigger, and Amy Kurson presiding, upon Joshua Wilson’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)² of Charge No. 2011CF3752 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 June 22, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that the University of Chicago Police Department (“Employer”) discharged him because of his race in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On April 4, 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).

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 favorably under similar circumstances. Marinelli v. Human Rights Comm’n, 262 Ill. App. 3d 247, 253 (2d Dist. 1994).

¹ This Order is in accordance with a vote cast by Commissioner Viverito 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.”

There is no substantial evidence that Petitioner was discharged because of his race. The investigation revealed that the Petitioner had been working with the Employer as a Public Safety Officer before he was given an offer letter for a position as a Police Officer II. This offer was contingent upon the Petitioner's completion of a background check, a drug test, a motor vehicle records check, and any other contingency required by the Employer. One of these required contingencies was a psychological evaluation. The Petitioner was admitted to the police academy and began training prior to the Employer receiving the results of his psychological exam. Once the Employer received notice that the Petitioner had not passed his exam, the Employer removed him from the police academy and reassigned him to work as a Public Safety Officer.

The Petitioner's Request and Reply both point out inconsistencies in his version of events and the Employer's version of events as to when he took the test and how the results were received late. However, at no point does the Petitioner dispute the results of the test. Regardless of when he took the test, and when and how the Employer received notice of his results, the Petitioner was given a job offer contingent upon him passing a psychological exam, and he cannot provide proof that he did that.

The investigation also did not reveal any other similarly situated employees who were not members of the Petitioner's protected class who failed the psychological exam but were allowed to continue on in the police academy. The investigation did reveal that the only other applicant in the past year to fail the psychological exam was not a member of the Petitioner's protected class and was also denied entry into the police academy. The Petitioner points to another candidate outside his protected class who was allowed to take his POWER test over after failing it the first time. However, the POWER test is a physical agility test separate from the psychological exam and is administered by a different agency, and is therefore subject to different rules.

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 the University of Chicago Police Department as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

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Entered this 1st day of November 2018.

Commissioner Diane M. Viverito

Commissioner Michael Bigger

Commissioner Amy Kurson