

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CA3452
)	EEOC NO.: 21BA11829
ROBERTO ZAVALA,)	ALS NO.: 12-0442
)	
)	
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 Roberto Zavala (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)² of Charge No. 2011CA3452 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 24, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that TC Industries, Inc. (“Employer”) issued him written reprimands and suspended him because of his age and in retaliation for opposing unlawful discrimination, in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”). Petitioner, a Furnace Operator, had filed a charge with Respondent on July 28, 2009, alleging that Employer discriminated against him. That charge was resolved. On April 12, 2011 (Counts A and B), and May 17, 2011 (Counts C and D), Employer issued Petitioner written reprimands, and on May 17, 2011, suspended him for five days (Counts E and F).

On April 24, 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 his age. Generally, 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 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 (1994). Petitioner’s Counts A and C (the written reprimands) fail at the third prong. 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.”

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.). Written reprimands do not qualify. Owens v. Dep't of Human Rights, 403 Ill. App. 3d 899, 920 (2010).

Count E (the 5-day suspension) also fails. 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). Here, Employer alleges that the suspension was justified by Petitioner's failure to find materials and holding up the production line. Petitioner has not shown that this was pretextual.

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 (2000). Again, Counts B and D (the written reprimands) fail because such reprimands are not "adverse actions." Owens, 403 Ill. App. 3d at 920. As for the suspension (Count F), Petitioner has not shown a causal nexus between his 2009 charge and the suspension almost two years later. See Lynell Mims and State of Illinois, Illinois Department of Lottery, Charge No. 1989CF1141, 1998 WL 937898 (December 17, 1998). (nineteen-month time period between protected activity and adverse action to long to create an inference of retaliation).

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 TC Industries, Incorporated, 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