

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012CF0370
)	EEOC NO.: 21BA12484
RICHARD J. GOLDSCHMIDT, JR.,)	ALS NO.: 12-0451
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hamilton Chang, Steve Kim, and Robert A. Cantone presiding, upon the Request for Review (“Request”) of Richard J. Goldschmidt, Jr. (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2012CF0370 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 August 9, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Illinois Bell d/b/a AT&T (“Employer”) removed him from payroll because of his mental disabilities, in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). After being diagnosed with a sleep disorder, severe anxiety, and stress, Petitioner applied for disability benefits and did not report to work. Employer extended his “return to work” date several times while his disability claim was pending. The claim was ultimately denied, and on May 2, 2011, after Petitioner had failed to report to work for almost six months, Employer removed him from payroll.

On May 15, 2012, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

To show a *prima facie* case that Employer discriminated against him by removing him from payroll, 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, 253-54 (2d Dist. 1994). Petitioner’s claim fails at the second prong, since he was not working during the months-long period after he filed for disability benefits. Even if the Petitioner presented a *prima facie* case, the Employer may then produce a legitimate, nondiscriminatory reason for its action, and Petitioner must prove that this reason is a

¹ 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.”

pretext for discrimination. Zaderaka v. Illinois Human Rights Comm'n, 131 Ill. 2d 172, 179 (1989). Petitioner has not shown that his removal from payroll because of his lengthy absence from work was a pretext for discrimination.

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 Illinois Bell d/b/a AT&T 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 2nd day of November 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Steve Kim