

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CF2858
)	EEOC NO.: 21BA11395
DONNIE JONES,)	ALS NO.: 12-0456
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Nabi R. Fakroddin, Hermene Hartman, and Lauren Beth Gash¹ presiding, upon Donnie Jones's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")² of Charge No. 2011CF2858 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 March 29, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Draper and Kramer ("Employer") discharged him because of his sex in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On June 8, 2012, after a previous dismissal had been vacated and the case had been remanded for further investigation, the Respondent again 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 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."

The Petitioner is unable to establish the elements of his charge of discrimination. First, he cannot demonstrate that he was performing his job satisfactorily. The Respondent's investigation revealed that the Employer had reprimanded or suspended the Petitioner multiple times throughout his employment. The Petitioner's disciplinary file included three written reprimands for, among other things, leaving his post, rudeness, and unreported absences. The Employer issued at least five warnings to the Petitioner, including warnings for rudeness, unreported absences, tardiness or leaving early, and a final warning for improper conduct, sexual harassment, and violation of work rules. The Petitioner had also been suspended from work four times, again for rudeness, but also for not assisting residents at the door, dishonesty, disruption of operations, smoking on premises, and assisting in an unauthorized move. Two of these suspensions and one of the written reprimands indicated that if there were any further disciplinary issues, the Petitioner could be facing termination. The Petitioner's supervisor also stated during the investigation that she had received approximately seventeen complaints from tenants about the Petitioner.

The Petitioner is also unable to demonstrate that a similarly situated employee who was not a member of his protected class was treated more favorably. The two women that Petitioner pointed to as comparatives were not similarly situated, as their disciplinary records did not include any final warnings, suspensions, or indications that they had used cell phones or laptops while on duty.

The Petitioner's Request does not dispute any of the findings from the investigation, but rather focuses on issues he had with his union representation. The Petitioner's charge was one of discrimination based on sex, and any issues the Petitioner takes with the grievance process are not properly before the Commission.

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 Draper and Kramer 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 5th day of November 2018.

Commissioner Nabi R. Fakroddin

Commissioner Hermene Hartman

Commissioner Lauren Beth Gash