

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CE3919
)	EEOC NO.: N/A
JENNIFER DOBBINS,)	ALS NO.: 12-0500
)	
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 Jennifer Dobbins's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")² of Charge No. 2011CE3919 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 May 27, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Advocate Lutheran General Hospital ("Employer") issued her a Level III warning and discharged her due to her race and national origin in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On May 21, 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) she is a member of a protected class; 2) she was performing her job 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 (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 disciplined or discharged due to her race or national origin. The investigation revealed that the Petitioner was disciplined for being rude and discourteous to a patient. The Petitioner claimed that the other employee who was involved in the dispute, who was not a member of either of the Petitioner's protected classes, was not given any discipline. However, the investigation revealed that she was given the same level of discipline as the Petitioner. The investigation also showed that 14 individuals had been disciplined for rude and discourteous behavior over a two year period, and 9 of them were of a different race than Petitioner, and at least 12 of them were of a different national origin. Therefore, the Petitioner cannot establish that similarly situated employees outside of her protected class were treated more favorably under similar circumstances.

The Petitioner also cannot prove the fourth element of her discharge counts, as there are no similarly situated employees who have not been discharged for the same behavior. The Employer stated that it discharged Petitioner because she engaged in unprofessional behavior with a patient. The investigation revealed that the Petitioner encountered the same patient from the incident which led to her discipline and told that patient that he was the reason she had been disciplined and not to tell anyone she had spoken to him. The employee that the Petitioner points to as a similarly situated employee who received more favorable treatment cannot be used as a comparative because she had not been given a Level III warning, so she was not in the same place in the disciplinary process.

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 Advocate Lutheran General Hospital 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 9th day of November 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Diane M. Viverito

Commissioner Michael Bigger

Commissioner Amy Kurson