

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: <b>2011CF3247</b>
	)	EEOC NO.: <b>21BA11676</b>
<b>CARLOS ROMERO,</b>	)	ALS NO.: <b>12-0514</b>
	)	
Petitioner.	)	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Nabi R. Fakroddin, Hermene Hartman, and Lauren Beth Gash<sup>1</sup> presiding, upon Carlos Romero's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")<sup>2</sup> of Charge No. 2011CF3247 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 January 5, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that NEP Electronics, Inc. ("Employer") issued him written reprimands, denied him overtime pay, and denied him regular pay because of his disability and in retaliation for filing a previous charge of discrimination in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act"). On May 25, 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 prove a *prima facie* case of retaliation, the Petitioner must prove the following three elements: (1) Petitioner engaged in a protected activity, (2) the employer took an adverse action against him, and (3) there was a causal nexus between the protected activity and the adverse action. Carter Coal Co. v. Human Rights Commission, 261 Ill. App. 3d 1, 7 (5th Dist. 1994). There is an inference that the third prong of the retaliation analysis, the causal nexus, has been satisfied when

<sup>1</sup> This Order is in accordance with a vote cast by Commissioner Gash prior to the expiration of her term.

<sup>2</sup> 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 period of time between the protected activity and the alleged retaliation is sufficiently close. Previous decisions have found that a time span of six months was too remote to establish an inference of connectedness. Mitchell and Local Union 146, 20 Ill. HRC Rep. 101, 110-11 (1985).

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).

There is no substantial evidence that the Petitioner was discriminated against because of his disability, nor that he was retaliated against for engaging in a protected activity because the Petitioner cannot establish a necessary element of all of his causes of action: that the Employer subjected him to an adverse action. An actionable adverse employment action is something which "constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits." Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 761 (1998). The Petitioner admits that the written warnings did not result in any decrease of pay or responsibilities. The investigation further revealed that the denial of overtime pay was corrected in a later paycheck and was a result of the Petitioner's failure to clock back in after lunch. As for the denial of regular pay, the Petitioner had asked to be paid for five hours of time that he was at the doctor's office. While not entitled to be paid for this time, the Employer reimbursed him 2.5 hours as a gesture of good faith. Therefore, nothing in Plaintiff's charge constitutes an adverse employment action.

Further, the Petitioner cannot prove any of the actions taken against him were in retaliation for filing a previous claim of discrimination because the alleged actions are too remote in time to create a causal nexus. The Petitioner filed the previous charge with the Respondent in May 2009, and it was settled in January 2010. The current charge states that the Petitioner was issued warnings twice in September 2010, and he was denied overtime and regular pay in October and November of 2010. Because all of the alleged actions took place more than six months after the previous charge was filed and settled, the Petitioner cannot prove that there was a causal nexus between the protected activity and the alleged adverse actions.

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,

