

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

|                              |   |                                 |
|------------------------------|---|---------------------------------|
| IN THE MATTER OF THE REQUEST | ) |                                 |
| FOR REVIEW BY:               | ) | CHARGE NO.: <b>2011CN3342</b>   |
|                              | ) | EEOC NO.: <b>440-2011-02915</b> |
| <b>DONELL MCDOUGLE,</b>      | ) | ALS NO.: <b>12-0515</b>         |
|                              | ) |                                 |
| Petitioner.                  | ) |                                 |

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Diane M. Viverito,<sup>1</sup> Michael Bigger, and Amy Kurson presiding, upon Donell McDougle’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. 2011CN3342 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**:

- A. The Respondent’s dismissal of Count A of the Petitioner’s charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.
- B. The Respondent’s dismissal of Count B of the Petitioner’s charge for **LACK OF JURISDICTION** is **SUSTAINED**.

**DISCUSSION**

On March 22, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Securitas Security (“Employer”) discharged him because of his disability (Count A) and in retaliation for opposing unlawful discrimination (Count B) in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”). On May 21, 2012, after having previously vacated a dismissal and remanded for further investigation, the Respondent again dismissed Count A of the Petitioner’s charge for lack of substantial evidence and Count B for lack of jurisdiction. The Petitioner filed a timely Request.

The Commission concludes that the Respondent properly dismissed Count A of 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).

<sup>1</sup> This Order is in accordance with a vote cast by Commissioner Viverito 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.”

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 Petitioner was discharged due to his disability. The investigation revealed that the Petitioner was discharged for leaving his post while on duty. Security footage of the incident that led to Petitioner's discharge showed that he left his post, entered a room, turned the lights off, and stayed there for approximately 30 minutes. The Petitioner had previously been disciplined for sleeping on the job. Further, the investigation did not reveal any non-disabled employees who had been found sleeping on the job and had not been terminated.

The Commission also finds that the Respondent properly dismissed Count B of the Petitioner's charge for lack of jurisdiction. 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).

The Petitioner is unable to establish the first element of his retaliation charge: that he engaged in a protected activity. The Petitioner believes that he was discharged because he complained about the use of hazardous cleaning materials, but this complaint does not constitute protected activity under the Act. The Act provides that it is unlawful to retaliate against a person because "he or she has opposed that which he or she reasonably and in good faith believes to be unlawful discrimination" or because "he or she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this Act." The Petitioner's complaint was not directed at unlawful discrimination or any other activity covered under the Act; therefore, the Respondent's dismissal of Count B was appropriate.

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 Securitas Security as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

**STATE OF ILLINOIS** )  
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**HUMAN RIGHTS COMMISSION** )

**Entered this 9th day of November 2018.**

Commissioner Diane M. Viverito

Commissioner Michael Bigger

Commissioner Amy Kurson