

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: <b>2012CA0499</b>
	)	EEOC NO.: <b>21BA12604</b>
<b>DAVID L. ROBERTSON,</b>	)	ALS NO.: <b>12-0557</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 David L. Robertson'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. 2012CA0499 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 JURISDICTION** is **SUSTAINED**.
- B. The Respondent's dismissal of Count B of the Petitioner's charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

**DISCUSSION**

On August 2, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that The Big Picture, Inc. d/b/a Woodstock Harley Davidson a/k/a Bob's Harley Davidson ("Employer") suspended him (Count A) and terminated him (Count B) due to his age in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On May 25, 2012, the Respondent dismissed Count A of the Petitioner's charge for lack of jurisdiction and Count B for lack of substantial evidence. The Petitioner filed a timely Request.

The Commission finds that the Respondent properly dismissed Count A of the Petitioner's charge for lack of jurisdiction. The Act provides that a charge must be filed within 180 days after the date that a civil rights violation allegedly has been committed. 775 ILCS 5/7A-102(A). This requirement is jurisdictional, meaning that because the Petitioner did not file his charge until more than 180 days after his suspension, neither the Respondent nor the Commission have the jurisdiction to proceed on the charge. Trembczynski v. Human Rights Comm'n, 252 Ill. App. 3d 966, 969 (1st Dist. 1993).

<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."

Further, the Commission concludes that the Respondent properly dismissed Count B 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).

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).

The Petitioner is unable to prove all of the elements of his *prima facie* case of age discrimination, as he is unable to point to any similarly situated employees outside of his protected class who were treated more favorably under similar circumstances. The investigation revealed that five other employees had been terminated for disciplinary issues, four of whom were younger than the Petitioner, and two of whom were under the age of 40. The Petitioner's Request and Reply argue that the Employer's articulated non-discriminatory reason for discharging Petitioner, his insubordination, is a mere pretext. However, because the Petitioner was unable to prove all of the necessary elements of his *prima facie* case, the Commission need not evaluate whether the Employer's reason for the discharge is a pretext. See McDonald Douglas Corp. v. Green, 411 U.S. 792, 802 (1973); adopted by Illinois Supreme Court in Zaderaka v. Human Rights Comm., 131 Ill. 2d 172, 179 (1989).

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 The Big Picture, Inc. d/b/a Woodstock Harley Davidson a/k/a Bob's Harley Davidson 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 13th day of November 2018.**

Commissioner Nabi R. Fakhroddin, P.E., S.E.

Commissioner Hermene Hartman

Commissioner Lauren Beth Gash