

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CF1627
)	EEOC NO.: 21BA10517
KELLY CLARKE,)	ALS NO.: 12-0585
)	
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 Kelly Clarke's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")² of Charge No. 2011CF1627 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 November 29, 2010, the Petitioner filed a charge of discrimination with the Respondent alleging that Arena Food Service, Inc. ("Employer") harassed her and constructively discharged her due to her race and in retaliation for opposing unlawful discrimination in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act"). On April 26, 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).

In order to prove discriminatory harassment, the Petitioner must establish that she was harassed on the basis of her race and that the harassment was so severe or pervasive that it altered the conditions of her employment and created an abusive environment. In re Luisa Tapia, et al. and Genlyte Thomas Group, IHRC, Charge No. 2000CF0871, 2002 WL 32828305 (December 16, 2002).

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."

For the Petitioner to establish that she was constructively discharged from her employment, she must be able to show that her Employer deliberately made her working conditions so intolerable that she was forced to resign involuntarily. Steele v. Illinois Human Rights Comm'n, 160 Ill. App. 3d 577, 581 (3d Dist. 1987).

There is no substantial evidence that Petitioner was subject to a hostile work environment or constructively discharged due to either her race or in retaliation for opposing unlawful discrimination. The Petitioner complained of the following harassing behavior during the investigation: her supervisor prevented a coworker from helping her, a different coworker was belligerent with her when she would not allow him a donut off of her line, a manager screamed and cursed at her, and when she attempted to report this behavior she was told by the general manager that "Blacks have more rights than anyone." These isolated incidents are not so severe and pervasive as to rise to the level of actionable harassment.

The Petitioner relies on these same incidents to argue that she was constructively discharged from her employment. However, the analyses for harassment and constructive discharge are similar, and the Petitioner cannot prove that these isolated incidents made her working conditions so intolerable as to force her to resign.

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 Arena Food Service, Inc. 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 16th day of November 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Diane M. Viverito

Commissioner Michael Bigger

Commissioner Amy Kurson