

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

|                              |   |                               |
|------------------------------|---|-------------------------------|
| IN THE MATTER OF THE REQUEST | ) |                               |
| FOR REVIEW BY:               | ) | CHARGE NO.: <b>2011CA2102</b> |
|                              | ) | EEOC NO.: <b>21BA10863</b>    |
| <b>KEVIN DESPIAU,</b>        | ) | ALS NO.: <b>12-0588</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 Kevin Despiau'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. 2011CA2102 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 26, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that City of Chicago, Fire Department ("Employer") harassed him and forced him to retire due to his race, ancestry, age, sex, physical disability and mental disability in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On May 16, 2012, after vacating a previous dismissal and remanding for further investigation, the Respondent again 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 he was harassed on the basis of his membership in a protected class and that the harassment was so severe or pervasive that it altered the conditions of his 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).

<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."

To establish a *prima facie* case of employment 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 harassed or forced into early retirement due to his membership in any of the listed protected classes. The Petitioner claims that the harassment occurred between August 2010 and October 2010, and that he was forced to retire on October 20, 2010. However, the investigation revealed that the Petitioner signed voluntary retirement paperwork on January 14, 2010, so he was not even employed by the Employer on the dates of the alleged harassment. Furthermore, even if the Petitioner had still been employed, the harassment complained of included directing him to report to the medical section when it was not necessary and refusing to approve his medical documentation. These actions when taken together are not severe or pervasive enough to create a hostile work environment or alter the terms and conditions of his employment.

The Petitioner's forced retirement charges also cannot proceed because his date of retirement was January 14, 2010. The Petitioner did not file his charge until January 26, 2011, well beyond the 180 day jurisdictional requirement to bring a charge before the Respondent. 775 ILCS 5/7A-102(A).

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 City of Chicago, Fire Department 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 Nabi R. Fakroddin, P.E., S.E.

Commissioner Hermene Hartman

Commissioner Lauren Beth Gash