

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: <b>2012CF0176</b>
	)	EEOC NO.: <b>21BA12316</b>
<b>ERNEST B. ROBERTS, JR.,</b>	)	ALS NO.: <b>12-0599</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 Ernest B. Roberts, Jr.'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. 2012CF0176 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 July 21, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Illinois Bell Telephone Company ("Employer") harassed him due to his race and sex in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act").<sup>3</sup> On June 14, 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 he was harassed on the basis of his race 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."

<sup>3</sup> The charge related to sex discrimination was administratively closed by the Respondent, and therefore not before the Commission.

There is no substantial evidence that Petitioner was subjected to a hostile work environment due to his race. The Petitioner's charge alleges that his supervisor targeted him for criticisms about his work performance due to his race and as an excuse for imposing discipline. However, the Respondent's investigation revealed that the Petitioner had a history of disciplinary actions for failing to perform his job adequately, dating back to November 2008. For the time period complained of, the Petitioner was disciplined for sitting in his vehicle without safety cones around it, for leaving his vehicle unlocked, for arguing with a coworker, and for causing flooding. The decision whether to discipline an employee is a legitimate business decision, and will not be second-guessed by the Commission. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, Charge No. 1994SA0240 (December 10, 1997). Further, the Petitioner has not pointed to any other employees who took the same actions as the Petitioner and were not disciplined. Thus, the Petitioner cannot establish a discriminatory motive behind any of his discipline.

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 Illinois Bell Telephone Company 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