

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012CF0800
)	EEOC NO.: 21BA12825
ERIC CABALLERO,)	ALS NO.: 12-0626
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Michael Bigger, Amy Kurson, and Cheryl Mainor presiding, upon Eric Caballero’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2012CF0800 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 April 7, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that ATMI Precast (“Employer”) harassed him, issued him a written reprimand, and discharged him due to his marital status, his national origin, 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 July 3, 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 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).

¹ 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).

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's charge alleges that he was subjected to a hostile work environment because of his marital status, his national origin, and in retaliation for opposing unlawful discrimination. The Petitioner alleged the harassment consisted of his manager yelling at him, criticisms about his work performance, including a written reprimand, a comment about his wedding ring, and his manager grabbing his crotch and telling him to "be a man." These actions, when taken together, are not so severe and pervasive as to create an abusive environment. The Petitioner cited isolated incidents of yelling, but even if these were enough to create a hostile environment, the Petitioner cannot connect these actions to his membership in a protected class. The Petitioner's coworker was of the same national origin, and there is no evidence that this coworker was harassed. Further, the majority of the Petitioner's coworkers are of the same marital status as he is.

The Petitioner's charge alleges that he was issued a written reprimand because of his national origin and in retaliation for opposing unlawful discrimination. The investigation revealed that the Petitioner had been issued the warning for poor work performance and failure to follow instructions. Specifically, the Petitioner was not using the proper equipment and was giving his workers overtime that had not been approved. There is no evidence that this warning was anything other than a legitimate business decision made by the Employer, and the Petitioner cannot point to another similarly situated employee who was not a member of the Petitioner's protected classes who was treated more favorably. Rather, the investigation revealed other employees who had been given written reprimands who were not of the Petitioner's national origin. Further, there is no evidence that the Petitioner engaged in any protected activity. He stated during the investigation that he told a manger he was overwhelmed and needed help, but the Petitioner acknowledges he never reported that he was being discriminated against.

The Petitioner's charge alleges that he was discharged due to his marital status, national origin, and in retaliation for opposing unlawful discrimination. The Petitioner cannot prove the necessary elements of his *prima facie* case, as he cannot demonstrate that his performance met his Employer's legitimate expectations. The Employer stated during the investigation that even after the written reprimand, the Petitioner continued to allow overtime that had not been approved and failed to implement new policies. The Petitioner also cannot point to a similarly situated employee whose work performance was deficient who was not terminated. It is clear from the investigation that the Employer

