

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CA3055
)	EEOC NO.: 21BA11545
MARSEYA RUIZ,)	ALS NO.: 12-0628
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Michael Bigger, Amy Kurson, and Cheryl Mainor presiding, upon Marseya Ruiz’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2011CA3055 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 15, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Bank of America (“Employer”) harassed her, failed to promote her, and discharged her due to her age in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On October 11, 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 harassment, the Petitioner must establish that she was harassed on the basis of her age 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 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.”

There is no substantial evidence that Petitioner was subjected to a hostile work environment because of her age. The Petitioner stated that she was assigned to work hours that others did not want to work, that she was ignored when she had a situation that needed to be addressed, that a manager suggested she should take disability when she hadn't requested it, and that her work performance was criticized. Nothing alleged by the Petitioner in the charge or in the investigation constitutes actionable harassment. Criticism of work performance is an ordinary part of most workplaces, and the Petitioner has not cited to any behavior that goes above and beyond to create an abusive environment. Nor has the Petitioner connected any of the alleged harassment to her age.

To establish her claim regarding failure to hire based on her age, the Petitioner must show that: (1) she is a member of a protected class; (2) she applied for an open position; (3) she was qualified for the position applied for; (4) she was not hired; and (5) thereafter, the position remained open and the Employer sought other applicants, or the Employer filled the available position with a person not in the Petitioner's protected class. In re Luis and Sonia Fragoso and Federal Chicago Corporation, Charge Nos. 1987CF1680; 1987CF1679, 1997 WL 407826, *7 (May 19, 1997).

The Petitioner alleged that she applied for a position as a Personal Banker and was passed over for someone younger. The investigation revealed that the Employer hired another more qualified candidate rather than promoting the Petitioner. Given the criticisms the Petitioner received in her current position, the Employer determined that she was not well-qualified for the promotion. An Employer is entitled to make hiring decisions based on its own criteria and evaluations of the candidates, and absent evidence of discrimination, the Commission will not second guess those decisions. Shah v. Illinois Human Rights Comm'n, 192 Ill. App. 3d 263, 273-74 (1st Dist. 1989).

The Petitioner also alleges she was discharged because of her age. To establish a *prima facie* case of discrimination, the Petitioner must show: 1) she is a member of a protected class; 2) she was performing her job satisfactorily; 3) she was subject to an adverse action; and 4) the Employer treated a similarly situated employee outside her protected class more favorably under similar circumstances. Marinelli v. Human Rights Comm'n, 262 Ill. App. 3d 247, 253 (2d Dist. 1994).

The Petitioner cannot establish the *prima facie* elements of her case, as she cannot show that a younger, similarly situated employee who violated the Code of Ethics in the same manner as the Petitioner was not discharged. The investigation revealed that the Petitioner admitted to manipulating her numbers in the referral tracking system at least twenty times. The investigation further revealed that a 19-year-old employee was also fired for violating the Code of Ethics, and of the 48 employees terminated over the relevant time period, 32 were under the age of 40.

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 Bank of America 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 21st day of November 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Michael Bigger

Commissioner Amy Kurson

Commissioner Cheryl Mainor