STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	CHARGE NO.: **2011CA2539**
	)	EEOC NO.: **21BA11172**
VINCENZO R. FARAONE,	)	ALS NO.: **12-0637**
Petitioner.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hamilton Chang, Steve Kim, and Robert A. Cantone presiding, upon the Request for Review ("Request") of Vincenzo R. Faraone ("Petitioner"), of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")[1] of Charge No. 2011CA2539 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 March 3, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Abbott Molecular, Inc. ("Employer") harassed him, demoted him, and placed him on a performance improvement plan because of his national origin, mental disabilities (stress, depression, and anxiety), age, 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").

Petitioner, a warehouse material handler, was diagnosed with depression, stress, and anxiety in October 2010. His physician recommended that Employer accommodate Petitioner by transferring him to a different facility, away from a coworker who had harassed him. Petitioner was transferred on October 13, 2010, but alleges that at the new facility, his supervisor also harassed him. Petitioner complained about this harassment to Employer, and to OSHA about safety procedures. Petitioner was on medical leave between October 22 and December 6, 2010. Petitioner alleges that on December 6, 2010, he was demoted, and placed on a performance improvement plan on January 25, 2011.

On July 24, 2012, the Respondent dismissed the Petitioner's charge in its entirety. The Petitioner filed a timely Request.

[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."

Harassment must be so severe and pervasive that it alters the conditions of employment and creates an abusive working environment. Harris v. Forklift Systems, Inc., 510 U.S. 17, 20 (1993). Petitioner alleges that his supervisor failed to invite him to staff meetings, required him to work while coworkers relaxed, falsely accused him of yelling, questioned him about the harassment by the coworker, refused to train him, and did not give him a bonus that other coworkers received. When putting him on a performance improvement plan, the supervisor commented that Petitioner could transfer "back to Italy." This isolated comment was not "severe and pervasive," and it was within the supervisor's discretion to supervise Petitioner's work. Heavy-handed management is unpleasant but does not constitute harassment. Patel v. Allstate Insurance, 105 F.3d 365, 373 (7th Cir. 1997).

Petitioner has not presented a *prima facie* case that Employer discriminated against him by demoting him, or placing him on a performance improvement plan, because of his national origin, disabilities, or age. He must show: 1) he is a member of a protected class; 2) he was performing his work satisfactorily; 3) he was subject to an adverse action; and 4) the Employer treated a similarly situated employee outside his protected classes more favorably under similar circumstances. Marinelli v. Human Rights Comm'n, 262 Ill. App. 3d 247, 253-54 (2d Dist. 1994). Petitioner's claims fail at the third prong. An adverse action must be sufficiently severe or pervasive to constitute a term or condition of employment. See In the Matter of: Linda M. Hartman and City of Springfield Police Department, IHRC, Charge No. 1993SF0365 (October 4, 1999), 1999 WL 33252975 (Ill.Hum.Rts.Com.). Adverse action must be "more disruptive than a mere inconvenience or an alteration of job responsibilities." Traylor v. Brown, 295 F.3d 783, 788 (7th Cir. 2002). Termination, decrease in wages, or material loss of benefits would qualify. Id. Employer presented documentary evidence showing that Petitioner's wages were not decreased at any time. Written reprimands, or negative performance evaluations, standing alone, do not qualify as adverse actions. Owens v. Dep't of Human Rights, 403 Ill. App. 3d 899, 920 (2010); Smart v. Ball State Univ., 89 F.3d 437, 441–42 (7th Cir. 1996).

Even if Petitioner had presented a *prima facie* case, Employer has produced a legitimate, nondiscriminatory reason for its actions: Petitioner made many errors in his work. Zaderaka v. Illinois Human Rights Comm'n, 131 Ill. 2d 172, 179 (1989). Petitioner has not shown this to be pretextual. The Commission does not sit as a "super-personnel department" to examine an employer's business decisions, even if those decisions seem "high-handed" or "mistaken." Mechnig v. Sears, Roebuck & Co., 864 F.2d 1359, 1365 (7th Cir.1988) (citations omitted).

Finally, Petitioner has not made a *prima facie* case of retaliation. This requires evidence that the Petitioner engaged in a protected activity, that they suffered an adverse action, and that there is evidence of a causal connection between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill. App. 3d 1027, 1035 (3rd Dist. 2000). Again, Petitioner has not shown that he suffered an adverse action. Even if he did present a *prima facie* case, he has not shown that Employer's legitimate, nondiscriminatory reason was pretextual.

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 Abbott Molecular, 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 Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Steve Kim