

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012CF1788
)	EEOC NO.: 21BA20639
JAMES BARBER,)	ALS NO.: 12-0653
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Michael Bigger, Amy Kurson, and Cheryl Mainor presiding, upon James Barber’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2012CF1788 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 December 27, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Bobak’s Sausage Company (“Employer”) denied him a raise and a bonus because of his race in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On September 24, 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).

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).

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 denied a raise or a bonus check because of his race. The investigation revealed that the Petitioner was given a 50 cent raise in March 2010 after completion of his probationary period. When the Petitioner requested another raise in December 2011, this was denied, and the Employer told him business was too slow to give raises. The majority of Production Laborers, the same position as the Petitioner, are not members of his protected class. The investigation showed that of the 19 Production Laborers, 11 of them earned less than the Petitioner, and 8 of them earned the same amount. The Petitioner cannot point to a similarly situated employee not in his protected class who was given a raise during the relevant time period.

The Petitioner also alleges he was denied a bonus because he claims two employees were given \$500 bonus checks. The Employer denies that these checks were given, and the Employer's bonus policy makes no mention of monetary bonuses. Regardless of whether these checks were given, the investigation revealed four employees not in the Petitioner's protected class who were also not issued bonuses, so the Petitioner cannot prove his employment discrimination charge.

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 Bobak's Sausage 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 21st day of November 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Michael Bigger

Commissioner Amy Kurson

Commissioner Cheryl Mainor