

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012CF1816
)	EEOC NO.: 21BA20657
SUSAN FARMER,)	ALS NO.: 12-0693
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Nabi R. Fakroddin, Hermene Hartman, and Eleni Bousis presiding, upon Susan Farmer’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2012CF1816 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 29, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Resurrection Health Care (“Employer”) harassed her because of her race, suspended her and discharged her because of her race 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 November 8, 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).

The first count of the Petitioner’s charge alleges that she was subjected to a hostile work environment because of her race. In order to prove discriminatory harassment, the Petitioner must establish that she was harassed on the basis of her race 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

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.”

(December 16, 2002). The alleged harassment consisted of comments made about and criticisms of the Petitioner's work. Nothing in the investigation suggests that the harassment was so severe or pervasive as to create an abusive working environment. Criticism of one's work performance is a normal facet of employment and not evidence of harassment on its own. Motley v. Illinois Human Rights Comm'n, 263 Ill. App. 3d 367, 375 (4th Dist. 1994).

The Petitioner next alleges that her suspension and discharge were due to her race and in retaliation for opposing unlawful discrimination. 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). To prove a *prima facie* case of retaliation, the Petitioner must prove: (1) Petitioner engaged in a protected activity, (2) the Employer took an adverse action against her, 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 investigation revealed that the Petitioner was suspended pending investigation because one of the residents fell while the Petitioner was responsible for her. The Employer stated it was its practice to suspend an employee pending investigation any time a similar incident occurred. The Respondent's investigation also revealed that the Petitioner was in a 90-day probationary period at the time of the suspension, during which the Petitioner has fewer employment protections. The Employer made the decision to discharge the Petitioner during this period because numerous coworkers had stated that the Petitioner's job performance did not meet expectations, and that the patients were in danger because of it. Therefore, the Petitioner cannot establish that she was performing her job satisfactorily, nor can she establish the necessary causal nexus to prove that the suspension and discharge were retaliatory. Further, the Petitioner has not identified a similarly situated employee outside of the Petitioner's protected class who was not terminated for the same infractions.

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 Resurrection Health Care as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
)
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Entered this 30th day of November 2018.

Commissioner Nabi R. Fakroddin

Commissioner Hermene Hartman

Commissioner Eleni Bousis