

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012SA2242
)	EEOC NO.: 21BA20973
CHRYSTAL PENNY,)	ALS NO.: 12-0697
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hamilton Chang, Rose Mary Bombela-Tobias, and Robert A. Cantone presiding, upon the Request for Review (“Request”) of Chrystal Penny (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2012SA2242 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 January 24, 2012, the Petitioner filed a charge of discrimination with the Respondent alleging that Family Guidance Center at Triangle (“Employer”) subjected her to unequal terms and conditions of employment, and discharged her, because of her race (black) and age (58), in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). Petitioner, a medical records clerk, asked for assistance with filing in August 2011. Employer assigned another employee, Barb Lucas, to help Petitioner for a few hours per day. Petitioner alleges that Lucas did not help her enough. On August 25, 2011, Petitioner’s position was eliminated.

On October 23, 2012, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

Petitioner has not presented a *prima facie* case that Employer discriminated against her by subjecting her to unequal terms and conditions, or discharging her because of her race or age. She must show: 1) she is a member of a protected class; 2) she was performing her work 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, 253-54 (2d Dist. 1994). As to both claims of unequal terms and conditions, Petitioner provided no evidence that any similarly-situated employees of a different race and age received assistance with their tasks, more than she received.

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.”

As for her discharge, Petitioner alleges that she was replaced by Lucas. Employer asserts that some of Petitioner’s duties were assigned to Lucas, whose position was not eliminated. But Lucas was only one year younger than Petitioner. The *prima facie* case requires sufficient disparity in ages to infer age discrimination. Hartley v. Wisconsin Bell, Inc., 124 F.3d 887, 892 (7th Cir. 1997).

Even assuming that Petitioner presented a *prima facie* case that she was discharged due to her race, the Employer has produced a legitimate, nondiscriminatory reason for eliminating her position: budget cuts necessitated eliminating the positions of six employees (two of whom were much younger, and of a different race, than Petitioner). Employer asserts that Petitioner’s position was eliminated because her duties could be assumed by the remaining employees. Petitioner has not proven that this reason is a pretext for discrimination. Zaderaka v. Illinois Human Rights Comm’n, 131 Ill. 2d 172, 179 (1989). 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).

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 Family Guidance Center at Triangle 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 Rose Mary Bombela-Tobias