

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: <b>2012CA0158</b>
	)	EEOC NO.: <b>21BA12294</b>
<b>MARCIE F. ABERMAN,</b>	)	ALS NO.: <b>12-0706</b>
	)	
	)	
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 Marcie F. Aberman (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)<sup>1</sup> of Charge No. 2012CA0158 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 July 20, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that City of Chicago Board of Education (“Employer”) placed her on forced medical leave, gave her a bad performance evaluation, and subjected her to unequal terms and conditions of employment, due to her age (58) and her physical disability (auditory impairment), in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). Petitioner, a high school teacher, had been diagnosed with an auditory impairment since childhood. However, she did not wear the prescribed hearing aids because of an allergy, and never formally informed Employer of her disability or requested any accommodation. In the 2010-11 school year, her principal observed her classroom several times. On March 21, 2011, the principal rated Petitioner’s performance as “unsatisfactory” and referred her to a physician for a “fitness for duty” evaluation. The physician rated her as unfit, and Petitioner was placed on involuntary medical leave. Because of her unsatisfactory rating, Petitioner was removed from her position and placed in the teacher reassignment pool.

On August 28, 2012, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

Petitioner’s claims that Employer discriminated against her based on her physical disability fail. She must show: (1) that she is disabled within the meaning of the Act; (2) the employer had knowledge of the disability; (3) the Petitioner suffered an adverse employment action; and (4) the

<sup>1</sup> 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.”

disability is unrelated to Petitioner's ability to perform the job with or without an accommodation. Habinka v. Human Rights Commission, 192 Ill.App.3d 343, 373 (1st Dist. 1989). The Employer may then state a legitimate nondiscriminatory reason for the adverse action, and Petitioner must prove that this reason is a pretext for discrimination. Id. at 372. Petitioner's claims fail at this point: Employer asserts that Petitioner was placed on leave, given a bad evaluation, and put in the teacher reassignment pool due to her ineffectiveness in the classroom. Specifically, the principal observed that Petitioner did not seem to hear or attend to students; the classroom was noisy and disruptive; and students complained that Petitioner did not help them. A previous principal, while rating Petitioner as "excellent," still noted that she needed to improve her classroom management. Petitioner has not proven that these reasons were pretextual.

As to the claims based on her age, Petitioner has not presented a *prima facie* case that Employer discriminated against her. 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). Petitioner presented no evidence of younger employees with similarly poor performance who were not placed on leave, given poor evaluations, or put in the teacher reassignment pool. Even if Petitioner presented a *prima facie* case, the Employer has produced a legitimate, nondiscriminatory reason for its actions: her documented poor performance. 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 City of Chicago Board of Education 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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**HUMAN RIGHTS COMMISSION**        )

**Entered this 16th day of November 2018.**

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Rose Mary Bombela-Tobias