

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012CN0864
)	EEOC NO.: 440-2011-04282
DAVID A. HEFFERNAN,)	ALS NO.: 12-0728
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commission Chair Rose Mary Bombela-Tobias and Commissioners Nabi R. Fakroddin and Hermene Hartman presiding, upon David A. Heffernan’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2012CN0864 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 7, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Con-way Freight, Inc. (“Employer”) harassed him in retaliation for opposing unlawful discrimination in violation of Section 6-101(A) of the Illinois Human Rights Act (“Act”). On December 5, 2012, after vacating a previous dismissal and remanding for further investigation, the Respondent again 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 prove a *prima facie* case of retaliation, the Petitioner must prove the following three elements: (1) Petitioner engaged in a protected activity, (2) the Employer took an adverse action against him, 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).

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 harassed in retaliation for engaging in any protected activity. The Petitioner stated during the investigation that he had to call off work on short notice due to a family emergency, and a manager told him that he may get written up because of it. The Petitioner then spoke to two supervisors, and reported that his manager was threatening to write him up and that he had heard rumors he was about to be fired. The Petitioner states that these conversations were protected activity, and his manager subjected him to a hostile work environment thereafter. Under the Act, it is a violation of civil rights to “retaliate against a person because he or she has opposed that which he or she reasonably and in good faith believes to be unlawful discrimination.” 775 ILCS 5/6-101(A). And “unlawful discrimination” is defined by the Act as “discrimination against a person because of his or her race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service...” 775 ILCS 5/1-103(Q). Therefore, the conversations the Petitioner reported having with his supervisors are not a protected activity as they did not report any unlawful discrimination. The Petitioner has not established his *prima facie* case of retaliatory harassment.

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 Con-way Freight, Inc. as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION) **Entered this 30th day of November 2018.**

Chair Rose Mary Bombela-Tobias

Commissioner Nabi R. Fakroddin

Commissioner Hermene Hartman