

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012CF1616
)	EEOC NO.: 21BA20514
YAROSLAV SKLYARSKY,)	ALS NO.: 12-0745
)	
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 Yaroslav Sklyarsky's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2012CF1616 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 8, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Harvard Maintenance, Inc. ("Employer") issued him a written warning because of his national origin 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 October 15, 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 issued a written warning because of his national origin. The investigation revealed that the Employer issued the written warning for insubordination, the stated reason being that the Petitioner had ignored a direction from a site supervisor not to take a picture of something onsite. The Petitioner did not point to, nor did the investigation reveal, any employees not of Petitioner's national origin who were insubordinate who were not disciplined. Therefore, the Petitioner cannot prove his *prima facie* case of employment discrimination.

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). There is an inference that the third prong of the retaliation analysis, the causal nexus, has been satisfied when the period of time between the protected activity and the alleged retaliation is sufficiently close. Previous decisions have found that a time span of six months was too remote to establish an inference of connectedness. Mitchell and Local Union 146, 20 Ill. HRC Rep. 101, 110-11 (1985).

The Petitioner filed a charge with the EEOC in April 2010, and he was not issued this written warning until October 2011, more than 18 months after the charge. Absent any other evidence of a retaliatory motive, the time period is too remote for the Petitioner to prove that the written warning was issued in retaliation for engaging in a protected activity.

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 Harvard Maintenance, 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. Fakhroddin

Commissioner Hermene Hartman