

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012CF1524
)	EEOC NO.: 21BA20435
RAFAELA GARCIA,)	ALS NO.: 13-0002
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Michael Bigger, Amy Kurson, and Cheryl Mainor presiding, upon Rafaela Garcia’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2012CF1524 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 1, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that McKesson Corporation (“Employer”) issued her a final warning and discharged her because of her physical and mental disabilities in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On October 5, 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 disability discrimination under the Act, a complainant must prove: (1) that she is disabled within the definition of the Act; (2) that her disability is unrelated to her ability to perform the functions of the job she was hired to perform; and (3) that an adverse job action was taken against her related to her disability. Habinka v. Human Rights Comm’n, 192 Ill. App. 3d 343, 372-73. (1st Dist. 1989).

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 warning or discharged because of her disabilities. The investigation revealed that the Employer issued the written warning and ultimately discharged the Petitioner because of excessive absences. All of the discipline issued was in accordance with the Employer's progressive discipline policy. The Employer's policy states that a final warning will be given if an employee has six unplanned absences in twelve months, and the seventh unplanned absence in the same period will result in termination. The Petitioner accumulated twelve unplanned absences in eight months before she was issued the final warning, and the discharge followed after another unplanned absence. The Petitioner could not identify, nor did the investigation reveal, any other employee who had violated the attendance policy in the same way and was not discharged.

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 McKesson Corporation 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 30th day of November 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Michael Bigger

Commissioner Amy Kurson

Commissioner Cheryl Mainor