

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2013SR0998
)	EEOC NO.: N/A
ROBERT E. MALONE,)	ALS NO.: 13-0038
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Nabi R. Fakroddin, Hermene Hartman, and Eleni Bousis presiding, upon Robert E. Malone’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2013SR0998 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 August 21, 2012, the Petitioner filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) alleging that Jefferson County Comprehensive Services (“Employer”) harassed him and suspended him because of his race in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On January 15, 2013, after investigations by both the EEOC and the Respondent, 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).

In order to prove harassment, the Petitioner must establish that he was harassed on the basis of his race and that the harassment was so severe or pervasive that it altered the conditions of his employment and created an abusive environment. In re Luisa Tapia, et al. and Genlyte Thomas Group, IHRC, Charge No. 2000CF0871, 2002 WL 32828305 (December 16, 2002).

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.”

The Petitioner's charge alleges only one incident of harassment: a racial comment made by a supervisor about "keeping a man down." The Petitioner also mentioned an incident during the investigation where a coworker shredded his mail, but there was no evidence this conduct was racially motivated. Regardless of the motivation behind them, the two cited incidents are isolated incidents of harassment and not sufficiently severe or pervasive as to be actionable.

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).

The Petitioner cannot prove his *prima facie* case of employment discrimination. His charge alleges that he was suspended due to his race; however, the investigation revealed that his suspension was the result of a report that was made to his Employer that the Petitioner had been observed hitting a client on the forehead with a cup. The Petitioner was subsequently suspended pending the OIG investigation. The Employer is entitled to make business decisions based on the evidence in front of it, and it is not the job of the Commission to substitute its judgment for that of the Employer's. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, Charge No. 1994SA0240 (December 10, 1997).

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 Jefferson County Comprehensive Services 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 7th day of December 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Nabi R. Fakroddin

Commissioner Hermene Hartman

Commissioner Eleni Bousis