

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012CF0638
CORDINIA M. GREEN,)	EEOC NO.: 21BA12718
)	ALS NO.: 13-0042
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Nabi R. Fakroddin, Hermene Hartman, and Duke Alden presiding, upon Cordina M. Green’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)¹ of Charge No. 2012CF0638; 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 Notice of Dismissal is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

A. PROCEDURAL HISTORY

1. On September 8, 2011, the Petitioner filed a perfected charge of discrimination with the Respondent. The Petitioner alleged John Stroger Jr. Hospital of Cook County (“Stroger Hospital”) subjected her to harassment (Count A) and suspended her in retaliation for her filing of previous charges of discrimination (Count B), in violation of Section 6-101(A) of the Illinois Human Rights Act (“Act”).
2. In Count A, the Petitioner alleged that from April 7, 2011, through September 7, 2011, Stroger Hospital harassed her in retaliation for filing previous charges with the Respondent, in that: 1) Stroger Hospital’s Night Shift Nurse Coordinator and her supervisor, Christina Thiligam (“Thiligam”), assigned her to watch the psychiatric (“psych”) patients three times a week; 2) Stroger Hospital changed her schedule; 3) Stroger Hospital gave her an “unwarranted” disciplinary hearing on September 7, 2011; and 4) that Stroger Hospital had three performance evaluations in her personnel file but two evaluations were not signed by Petitioner.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the “Respondent.”

3. In Count B, the Petitioner alleged that on April 27, 2011, Stroger Hospital suspended her in retaliation for filing previous charges of discrimination. As to Counts A and B, Petitioner further alleged that on December 9, 2010, and on April 7, 2011, she filed previous charges of discrimination with the Respondent, respectively Charge Nos. 2011CF1646 and 2011CF2986.
4. On January 10, 2013, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence.
5. On February 15, 2013, the Petitioner filed her Request. On April 15, 2013, Complainant filed a "Second Request for Review"². On June 4, 2013, the Respondent filed its Response.

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. The Petitioner was employed as an Emergency Room Technician ("ER Tech") by Stroger Hospital.
2. The Petitioner filed Charge No. 2011CF1646 with the Respondent on December 9, 2010, and on April 7, 2011, she filed Charge No. 2011CF2986.
3. Stroger Hospital is a public hospital with an Emergency Room.
4. The Petitioner's supervisor was Thilagam, Nurse Coordinator.
5. An Emergency Room Technician's duties included: providing patient care related to personal hygiene, comfort, ambulation, nutrition and elimination; performing procedures utilizing the principles of infection control and asepsis, wound care, venipuncture, specimen collection, post mortem care, posterior mold application and peripheral IV line insertion; computer order entries, labels, specimens, prepare requisitions, and transports to designated areas; takes and records vital signs, SaO2 and peak flow parameter; demonstrates use of safe equipment; removes, labels and removes malfunctioning equipment immediately; maintains cleanliness of equipment, e.g. pulse oximeters, IV pumps, etc.; assists physicians or nurse with procedures as necessary; performs cardiopulmonary resuscitation as required; demonstrates knowledge of emergency procedures e.g. fire/evacuation, internal/external disaster plans and is aware of daily assignments; provides direct observation nursing care for psychiatric patients; transports patients as needed; answers call lights promptly; demonstrates flexibility in changing workloads/assignments; inventory patients clothing and valuables and completes necessary paperwork; participates in emergency response team and responds

² The Petitioner's second Request consisted of additional pages that were not filed on February 15, 2013.

to calls from all work areas; prepares patients for examination procedures; participates in patient/family teaching; maintains cleanliness of patient care area to include cart, equipment, counter tops, etc.; completes stock checklists and restocking in assigned areas; and performs other duties as assigned.

6. Stroger Hospital's Personnel Rules, Conduct and Discipline of Personnel Policy state that Stroger Hospital employs a progressive disciplinary policy wherein employees are first issued a verbal warning, followed by a written reprimand, suspension, and ultimately discharged. Pursuant to its Personnel Policy, Stroger Hospital conducts a pre-disciplinary hearing before suspending or discharging an employee.
7. It is uncontested that Part of Petitioner's duties is to work with psychiatric patients and observe them. Her work schedule can fluctuate for days worked and days off.
8. ER Techs work assignments at different shifts and departments on an "as-needed basis" depending on the number of patients and staff at the hospital. Denise Little ("Little"), Staff Coordinator, and Stroger Hospital's Charge Nurses were in charge of scheduling staff including ER Techs.
9. The Petitioner alleged that Thiligam assigned her to watch the "psych" patients three times a week and that Stroger Hospital changed her schedule. The Petitioner alleged that she wanted Saturday and Sundays off.
10. The Petitioner was served with several disciplinary hearings from April 14, 2011, through September 7, 2011.
11. Stroger Hospital did not follow through with the disciplinary hearings and did not hold any disciplinary hearings from April 14, 2011, through September 7, 2011.
12. The Petitioner alleged that sometime from April 14, 2011, through September 5, 2011, she looked at her personnel file and saw three performance evaluations. The Petitioner further alleged that she signed one performance evaluation but not the other two. The Petitioner alleged that someone "forged her signature".
13. On October 28, 2010, and November 10, 2010, the Petitioner engaged in two incidents which Stroger Hospital determined to be violation of its policies and work rules. The first incident occurred on October 28, 2010, wherein a Charge Nurse directed Petitioner to take vital signs on four patients at midnight and Petitioner did not do so. On November 10, 2010, Stroger Hospital's management directed Petitioner to take vital signs and draw blood of thirteen patients at midnight and failed to do so. Complainant drew blood on six patients instead of all thirteen.

14. On November 26, 2010, Stroger Hospital sent the Petitioner a pre-disciplinary hearing notice for gross insubordination and poor performance because of the previous incidents that occurred on October 28, 2010, and November 10, 2010. The pre-disciplinary notice indicated that the hearing was scheduled for December 14, 2010. The hearing never took place on that date but was rescheduled for February 17, 2011.
15. The pre-disciplinary hearing took place on February 17, 2011, and the Petitioner had union representation.
16. On April 27, 2011, Stroger Hospital sent the Petitioner a letter detailing its findings and found that the Petitioner was insubordinate and was negligent in performance of her duties. Stroger Hospital's letter also indicated that the Petitioner was suspended for 10 days for gross insubordination and poor performance.
17. On June 1, 2011, Stroger Hospital reduced the Petitioner's ten day suspension to five days.
18. In her first Request, the Petitioner did not provide an argument. Rather, she states that falsehoods were made by Stroger Hospital. In her second Request the Petitioner supplemented her first Request with further information regarding the dismissal of her charge. In her second Request the Petitioner argued that specific paragraphs of the Respondent's determination report had errors. The Petitioner lists the paragraphs that have errors and reiterates that Stroger Hospital has an agenda to discipline her with false hoods.
19. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for Lack of Substantial Evidence. The Respondent argues the evidence was insufficient to establish a *prima facie* case of harassment and retaliation. The Respondent further argues that Stroger Hospital articulated a non-discriminatory reason for its actions and its investigation uncovered no evidence of pretext.

C. DISCUSSION & DETERMINATION

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. See 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. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

As to Count A, the Commission finds there is no substantial evidence that Stroger Hospital subjected the Petitioner to harassment based on retaliation. Generally, actionable harassment occurs

when the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. Harris v. Forklift Systems, Inc., 510 U.S. 20, 114 S.Ct. 367, 371, 126 L.Ed.2d 295.

In the Petitioner's case, the actions of Stroger Hospital did not rise to the level of actionable harassment. Rather, the alleged incidents of harassment were activities within the scope of the Stroger Hospital authority and were job related. The Respondent was correct in that requiring the Petitioner to perform the duties of her job does not constitute harassment. See Patel v. Allstate Insurance Co., 105 F.3d 365 (7th Cir. 1997). As such, there is no substantial evidence Stroger Hospital subjected the Petitioner to harassment in retaliation.

As to Count B, the Commission finds there is no substantial evidence to establish a *prima facie* case of retaliation. Generally to establish a prima facie case of retaliation the Petitioner must show: (1) she engaged in a protected activity; (2) the Employer committed an adverse action against her; and (3) a causal connection existed between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3rd dist. 2000). Additionally, the Petitioner must show that the adverse action took place after the protected activity in order to allege retaliation under the Act. See Pace and State of Illinois, Department of Transportation, ___ Ill.HRC Rep. ___ (1989SF0588, February 27, 2995)(Slip op. at 13); see also Bregenhorn and C.C. Services, Inc., ALS No. S10596, 2004 WL 3312882 at 6 (Ill. HRC. Apr. 2, 2004). In the Petitioner's case, the protected activity took place after the adverse action. The Petitioner filed Charge No. 2011CF1646 with the Respondent on December 9, 2010, and on April 7, 2011, she filed Charge No. 2011CF2986. The Petitioner failed to take vital signs for patients on October 28, 2010, and November 10, 2010. On November 26, 2010, Stroger Hospital sent the Petitioner a pre-disciplinary hearing notice for gross insubordination and poor performance. Stroger Hospital began the discipline process before the Petitioner filed her previous charges, as such the Petitioner failed to establish a causal connection existed between the protected activity and the adverse action.

Additionally, the Commission concludes that Stroger Hospital articulated a non-discriminatory reason for its actions and there was no evidence of pretext. In the absence of any evidence that the business consideration relied upon by the Stroger Hospital is a pretext for discrimination, it is improper for the Commission to substitute its judgment for the business judgment of the employer. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997).

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

WHEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

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, John Stroger Jr. Hospital of Cook County, 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

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Entered this 29th day of October 2018.

Commissioner Nabi R. Fakroddin

Commissioner Hermene Hartman

Commissioner Duke Alden