

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CN1641
)	EEOC NO.: N/A
BOBBY SALTER,)	ALS NO.: 13-0053
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Nabi R. Fakroddin, Hermene Hartman, and Eleni Bousis presiding, upon Bobby Salter’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2011CN1641 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 September 23, 2010, the Petitioner filed a charge of discrimination with the Respondent alleging that Burlington Northern Santa Fe (“Employer”) failed to hire him because of his race, age, 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 November 20, 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).

In general the *prima facie* elements in a failure to hire case are as follows: (1) the Petitioner is a member of a protected class; (2) he applied for an open position; (3) he was qualified for the position applied for; (4) he was not hired; and (5) thereafter, the position remained open and the Employer sought other applicants, or the Employer filled the available position with a person not in Complainant's protected class. In re Luis and Sonia Fragoso and Federal Chicago Corporation,

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.”

Charge Nos. 1987CF1680; 1987CF1679, 1997 WL 407826, *7 (May 19, 1997). 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 no substantial evidence that Employer did not hire the Petitioner because of his race or his age. The Petitioner did not provide, and the investigation did not reveal, any evidence that younger applicants who were of a different race were hired for the available positions. Of the 221 applicants hired, ten were either the Petitioner's age or older, and 75 were of the same race. Even if the Petitioner were able to establish the elements of his *prima facie* case, the Employer articulated a legitimate, non-discriminatory reason for its decision not to hire the Petitioner: he had not performed well on the safety questions in the interview, and was therefore disqualified.

The Petitioner also cannot establish the elements of his retaliation claim, as he cannot demonstrate the necessary causal nexus between the protected activity and the decision not to hire him. As explained above, the Employer had a legitimate reason for not hiring him, and it is not the Commission's place to second guess an Employer's good-faith reasons for its hiring decisions. See Shah v. Illinois Human Rights Comm'n, 192 Ill. App. 3d 263, 273-74 (1st Dist. 1989).

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 Burlington Northern Santa Fe 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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Entered this 7th day of December 2018.

Commissioner Nabi R. Fakroddin

Commissioner Hermene Hartman

Commissioner Eleni Bousis