

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)
FOR REVIEW BY:)

JAMES W. HASSETT,)

Petitioner.)

CHARGE NO.: **2013CR0748**
EEOC NO.: **440-2012-04324**
ALS NO.: **13-0066**

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hamilton Chang, Steve Kim, and Robert A. Cantone presiding, upon the Request for Review (“Request”) of James W. Hassett (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2013CR0748 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 dismissal of the Petitioner’s charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On July 6, 2012, the Petitioner filed a charge of discrimination with the Respondent alleging that Lumber Liquidators (“Employer”) harassed and discharged him because of his age (58), in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”).

On February 5, 2013, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

Harassment must be so severe and pervasive that it alters the conditions of employment and creates an abusive working environment. Harris v. Forklift Systems, Inc., 510 U.S. 17, 20 (1993). Petitioner alleges that a supervisor made isolated comments that Petitioner reminded him of another older employee, but these comments were not “severe and pervasive.”

Petitioner’s claim that he was discharged due to his age fails. To make a *prima facie* case, he must show: 1) he is a member of a protected class; 2) he was performing his work 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, 253-54 (2d Dist. 1994). Petitioner failed to provide evidence as to the fourth prong. Even if he had presented a *prima facie* case, Employer may then produce a legitimate, nondiscriminatory reason for its action, and Petitioner must prove that this reason is a pretext for

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.”

discrimination. Zaderaka v. Illinois Human Rights Comm'n, 131 Ill. 2d 172, 179 (1989). Employer asserts that Petitioner's performance was poor and he was issued progressive discipline over the course of several months. Petitioner has not proven that this was pretextual. The Commission does not sit as a "super-personnel department" to examine an employer's business decisions, even if those decisions seem "high-handed" or "mistaken." Mechnig v. Sears, Roebuck & Co., 864 F.2d 1359, 1365 (7th Cir.1988) (citations omitted).

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 Lumber Liquidators 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 21st day of November 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Steve Kim