

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: <b>2012CA0733</b>
	)	EEOC NO.: <b>21BA12782</b>
<b>ROBERT RICKMON,</b>	)	ALS NO.: <b>13-0070</b>
	)	
	)	
Petitioner.	)	

**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 Robert Rickmon (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)<sup>1</sup> of Charge No. 2012CA0733 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 September 15, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that State of Illinois, Department of Commerce & Economic Opportunity (“Employer”) gave him a poor performance evaluation because of his age (56), rescinded the accommodation for his physical disability (degenerative arthritis in his knee), and failed to accommodate him because of his disability and in retaliation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”). Petitioner’s role required him to travel several times per month. Due to his knee arthritis, he was given an accommodation in 2009 to allow him to rent cars for his travels because the cars in Employer’s motor pool were not big enough for him to sit comfortably. In 2011, Employer told him that some new vehicles in the motor pool should be big enough for him to use, and that he should use them if they were available; otherwise, he could rent a vehicle.

On October 23, 2012, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

Petitioner has not presented a *prima facie* case that Employer discriminated against him by giving him a poor performance evaluation. 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

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<sup>1</sup> 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.”

similar circumstances. Marinelli v. Human Rights Comm'n, 262 Ill. App. 3d 247, 253-54 (2d Dist. 1994). His claim fails at the third prong. An adverse action must be sufficiently severe or pervasive to constitute a term or condition of employment. See In the Matter of: Linda M. Hartman and City of Springfield Police Department, IHRC, Charge No. 1993SF0365 (October 4, 1999), 1999 WL 33252975 (Ill.Hum.Rts.Com.). Negative performance evaluations, standing alone, do not qualify. See Smart v. Ball State Univ., 89 F.3d 437, 441-42 (7th Cir. 1996).

Petitioner has not shown that rescinding his accommodation was discrimination. He must show: (1) that he is disabled within the meaning of the Act; (2) the employer had knowledge of the disability; (3) the Petitioner suffered an adverse employment action; and (4) the disability is unrelated to Petitioner's ability to perform the job with or without an accommodation. Habinka v. Human Rights Commission, 192 Ill.App.3d 343, 373 (1st Dist. 1989). The Employer may then state a legitimate nondiscriminatory reason for the discharge, and Petitioner must prove that this reason is a pretext for discrimination. Id. at 372. Employer asserts that, in an attempt to reduce expenses, it required Petitioner to use Employer-owned vehicles that met his needs if available, before renting vehicles. Petitioner has not shown that this was pretextual.

Petitioner has failed to present a *prima facie* case that Employer failed to accommodate his disability, either because of his disability or in retaliation. He must show 1) the petitioner is disabled within the meaning of the Act; 2) the employer had knowledge of the petitioner's disability; 3) the petitioner requested a reasonable accommodation; 4) the employer failed to accommodate the petitioner; and 5) with or without a reasonable accommodation, the petitioner could perform the essential functions of the job. Illinois Dep't of Corrections v. Illinois Human Rights Comm'n, 298 Ill. App. 3d 536, 540 (3d Dist. 1998). Further, it is Petitioner's burden to demonstrate that accommodation was necessary for adequate performance. Owens v. Dep't of Human Rights, 356 Ill. App. 3d 46, 53-54 (2005). Petitioner has not shown that Employer failed to accommodate him; he was allowed to continue renting vehicles if necessary. The only change in policy was to require him to use Employer-owned vehicles if they met his needs. He has not shown that his desired accommodation (being able to rent vehicles regardless of whether an Employer-owned vehicle met his needs) was necessary for adequate performance.

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 State of Illinois Department of Commerce & Economic Opportunity 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**        )

**Entered this 21st day of November 2018.**

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Steve Kim