

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF THE REQUEST |) | |
| FOR REVIEW BY: |) | CHARGE NO.: 2012CF1621 |
| |) | EEOC NO.: 21BA20519 |
| SYLVESTER MBA, |) | ALS NO.: 13-0074 |
| |) | |
| |) | |
| Petitioner. |) | |

ORDER

This matter coming before the Commission by a panel of three, Commissioners Duke Alden, Charlene Foss-Eggemann,¹ and Patricia Bakalis Yadgir presiding, upon the Request for Review (“Request”) of Sylvester Mba (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)² of Charge No. 2012CF1621 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 Petitioner’s charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On December 8, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Carmax Auto Super Store (“Employer”) discharged him because of his race, national origin, and in retaliation for complaining of unlawful discrimination, in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”). Petitioner, a car salesman, was discharged for falsifying customer credit applications on November 5, 2011. He had filed a complaint with Employer’s internal ethics department on April 8, 2011. Petitioner alleges that the other salespeople also falsified customer credit applications, and he was being unfairly singled out.

On December 5, 2012, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

To make a *prima facie* case that Employer discriminated against him, Petitioner 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). If the Petitioner presents a *prima facie* case, the Employer must then produce a legitimate, nondiscriminatory reason for its action, and Petitioner must prove that this reason is a pretext for discrimination. Zaderaka v. Illinois Human Rights Comm’n, 131 Ill. 2d 172, 179

¹ This Order is in accordance with a vote cast by Commissioner Foss-Eggemann prior to the expiration of her term.
² 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.”

(1989). Employer asserts that Petitioner had entered false information on customer credit applications for all of his sales over several months, and that while other salespeople had done the same thing occasionally, Petitioner had done it much more often. Further, Petitioner had a history of disciplinary notices. Petitioner has not proven that this reason was pretextual.

A *prima facie* case of retaliation requires evidence that the Petitioner engaged in a protected activity, that they suffered an adverse action, and that there is evidence of a causal connection between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill. App. 3d 1027, 1035 (3rd Dist. 2000). A causal connection will be inferred if the period of time between the protected activity and the adverse action is sufficiently short. See Mitchell and Local Union, 146, 20 Ill. HRC Rep. 101, 110-11 (1985) (six months was too remote to establish connectedness). Petitioner has not shown a causal nexus between his April 2011 complaint, and his discharge seven months later.

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 Carmax Auto Super Store as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION) **Entered this 21st day of November 2018.**

Commissioner Duke Alden

Commissioner Charlene Foss-Eggemann

Commissioner Patricia Bakalis Yadgir