

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2013SF0393
)	EEOC NO.: 21BA22467
DONNA J. HOWELL,)	ALS NO.: 13-0102
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hermene Hartman, Steve Kim and Cheryl Mainor presiding, upon Donna J. Howell's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent") of Charge No. 2013SF0393; 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, WHEREFORE, it is hereby **ORDERED** that the Respondent's Notice of Dismissal is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.

DISCUSSION

On October 21, 2012, the Petitioner filed a perfected charge of discrimination with the Respondent, alleging that the State of Illinois Department of Human Services ("IDHS"), as of late July 2012 subjected her to unequal pay, and denied her a pay increase, due to her sex, female, in violation of Sections 1-103(Q), and 2-102(A), of the Illinois Human Rights Act ("Act"). On February 28, 2013, the Respondent dismissed Petitioner's charge for Lack of Substantial Evidence. On March 21, 2013, the Petitioner filed a timely Request for Review.

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).

In the Petitioner's matter the evidence was insufficient to establish a *prima facie* case of discrimination. Generally, to establish a *prima facie* case of discrimination, the Petitioner must show: (1) that she is a member of a protected class; (2) that she was performing her work satisfactorily; (3) that she was subject to an adverse action; (4) and that the Employer treated a similarly situated

employee outside the Petitioner's protected class more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994).

As to the allegation for unequal wages, the Petitioner is employed as a Senior Public Service Administrator ("SPSA"). The Petitioner alleged that she received unequal pay and no pay increase, as compared to her co-worker male SPSAs. It is uncontested that all SPASs in the Petitioner's section, including female co-worker, were receiving more pay than the Petitioner. However, the Petitioner's named comparatives were not similarly situated. To meet burden of demonstrating that another employee is similarly situated, for purposes of employment discrimination claim, a Petitioner must show that there is someone who is directly comparable to her in all material respects. See Patterson v. Avery Dennison Corporation, 281 F3d 676, 680 (7th Cir. 2002). The named comparatives are not similarly situated because they are union employees and the Petitioner is a non-union employee. Their salaries were set by a Collective Bargaining Agreement.

As to allegation of being denied a pay increase in July 2012. The Commission concludes that IDHS articulated a non-discriminatory reason for its actions and there was no evidence of pretext. IDHS stated it was following a 2009 directive from the Governor of Illinois and Central Management Service. The Petitioner was a merit comp employee and the directive prohibited pay increases and bonuses for all merit comp employees. The Petitioner has not provided evidence of pretext in her matter. In the absence of any evidence that the business consideration relied upon by the Columbia is a pretext for discrimination, it is improper for the Commission to substitute its judgment for the business judgment of Columbia. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997).

In her Request, the Petitioner argued that the Respondent should have found in her favor based on Ledbetter Act. The Respondent is governed by the Act and may only address the narrow issues before it. The Act provides for remedies for violations of the Act. Discrimination on other issues or bases not listed in the Act is outside the Respondent's jurisdiction and cannot be resolved by the Respondent. Where an administrative agency acts outside its specific statutory authority, it acts without jurisdiction and its actions are void. Ferrari v. IDHR, 351 Ill. App.3d 1099, 1102, 815 N.E.2d 417, 284 Ill.Dec. 14 (4th Dist. 2004). The Ledbetter Act to which Petitioner refers is beyond the purview of the Respondent and the Commission. 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.

THEREFORE, 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 the Illinois Department of Human Services 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 28th day of November 2018

Commissioner Hermene Hartman

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Commissioner Cheryl Mainor

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Commissioner Steve Kim