

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2012CF0876
)	EEOC NO.:	21BA12887
HAROLD L. JOHNSON,)	ALS NO.:	13-0134
)		
)		
Petitioner.)		

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hermene Hartman, Steve Kim and Cheryl Mainor presiding, upon Harold L. Johnson's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent") of Charge No. 2012CF0876; 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 September 28, 2011, the Petitioner filed a perfected charge of discrimination with the Respondent alleging that the City of Chicago, Department of Fleet Management, discharged him because of his physical disabilities, vision impairment, shoulder disorder, heart disorder, and lower back disorder; and in retaliation for filing a previous charges of discrimination, in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act"). On January 23, 2013, the Respondent dismissed Petitioner's charge for Lack of Substantial Evidence. On April 15, 2013, Petitioner filed this 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 or retaliation. Generally, to establish a *prima facie* case of discrimination, the Petitioner must show: (1) that he is a member of a protected class; (2) that he was performing her work satisfactorily; (3) that he 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). Generally To prove a *prima facie* case of retaliation, Petitioner must establish that (1) he engaged in a protected activity, (2) Respondent took an adverse action against him, and (3) there was a causal nexus between the protected activity and Respondent's adverse action. See Carter Coal Co. v. Human Rights Commission, 261 Ill. App. 3d 1, 633 N.E.2d 202 (5th Dist. 1994).

In the Petitioner's matter, there was no evidence of an adverse action. An adverse action is an essential element of a *prima facie* case of unlawful discrimination or retaliation. The adverse action must be sufficiently severe or pervasive as to alter the terms, conditions or privileges of the Petitioner's terms and conditions of employment, if it is not, it does not give rise to a cause of action under the Act. See In the Matter of: Linda M. Hartman and City of Springfield Police Department, IHRC, Charge No. 1993SF0365, WL 33252975 *11 (October 4, 1999). The Petitioner alleged that he was fired, however, however the evidenced shows the City of Chicago Respondent never discharged Petitioner. Rather, the Petitioner has been and remains on a medical leave of absence since late 2011 as of the date the charge was filed.

The Commission further concludes that City of Chicago articulated a non-discriminatory reason for its actions and there was no evidence of pretext. The City of Chicago stated it was that it did not discharge the Petitioner. The City of Chicago further stated is that the Petitioner was sent for a fitness for duty evaluation on September 22, 2011. The Petitioner was found unfit for duty and thereafter told that he must take a medical leave of absence, and could return to work after a doctor released him to perform the functions of his job. The Petitioner offered no evidence of pretext in his Request, and in the absence of any evidence that the business consideration relied upon by the City of Chicago 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 his Request, the Petitioner offered no additional evidence that would warrant the reversal of the Respondent's original determination. 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 City of Chicago 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 28th day of November 2018

Commissioner Hermene Hartman

Commissioner Cheryl Mainor

Commissioner Steve Kim