

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2012CF2903
)	EEOC NO.:	21BA21430
ROSARIO JUAREZ,)	ALS NO.:	13-0151
)		
Petitioner.)		

ORDER

This matter coming before the Commission by a panel of three, Commissioners, Hermene Hartman, Steve Kim and Cheryl Mainor presiding upon Rosario Juarez’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”) of Charge No. 2012CF2903; 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 April 10, 2012, Petitioner filed a perfected charge of discrimination with the Respondent, alleging that Winston Brands, Inc. (“Winston”), discharged her due to her national origin, Mexico, ancestry, Hispanic , and immigration related status, in violation of Sections 2-102(A) and 2-102(G)(2) of the Illinois Human Rights Act (“Act”). On December 18, 2012, the Respondent dismissed the Petitioner’s charge for Lack of Substantial Evidence. On March 18, 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 Commission finds there is no substantial evidence to establish a *prima facie* case of discrimination based on national origin, ancestry or immigration status. 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 subjected to an adverse action; (4) and that Winston treated a similarly situated employee outside the Petitioner’s protected class more favorably under similar circumstances. In the Petitioner’s case, the fourth elements were not established. The Petitioner did not provide evidence that an employee outside her protected class was treated more favorably under similar circumstances.

Additionally, Winston articulated a non-discriminatory reason for its actions and there was no evidence of pretext. Winston stated that the Petitioner did not provide documentation to show that she was authorized to work in the United States as required by Federal Law. Winston is entitled to make employment decisions based on its reasonable belief surrounding the situation. Generally, an employer may take its action for good reason, bad reason, reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason. The correctness of the reason is not important as long as there was a good faith belief by the Employer in its decision. See Carlin v. Edsal Manufacturing Company, 1996 WL 652580, Charge No. 1992CN3428 (Ill. HRC, May 6, 1996). The Petitioner admitted that she did not provide proper documentation that she was authorized to work in the United States. Winston was simply following Federal Law. As such, Winston had a good faith belief in discharging the Petitioner.

Additionally, the Petitioner offered no evidence of pretext in her Request. In the absence of any evidence that the business consideration relied upon by the Employer is a pretext for discrimination, it is improper for the Commission to substitute its judgment for the business judgment of the employer. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997). 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.

In her 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

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Entered this 28th day of November 2018

HUMAN RIGHTS COMMISSION

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Commissioner Hermene Hartman

Commissioner Cheryl Mainor

Commissioner Steve Kim
