**STATE OF ILLINOIS**
**HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF THE REQUEST FOR REVIEW BY: | ) | CHARGE NO.: **2012CF2900** |
| | ) | EEOC NO.: **21BA21427** |
| **SOCORRO GARCIA,** | ) | ALS NO.: **13-0155** |
| Petitioner. | ) | |

## ORDER

This matter coming before the Commission by a panel of three, Commissioners Patricia Bakalis Yadgir, Duke Alden, and Rose Mary Bombela-Tobias presiding, upon Socorro Garcia's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")[1] of Charge No. 2012CF2900 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 Notice of Dismissal is **SUSTAINED** on the following ground:

## LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

### A. PROCEDURAL HISTORY

1. On April 10, 2012, the Petitioner filed a perfected charge of discrimination with the Respondent. The Petitioner alleged that Respondent, Winston Brands, Inc. ("Employer"), discharged her because of her national origin, Mexico (Count A), her ancestry, Hispanic (Count B), and her immigration related status (Count C), in violation of Sections 2- 102(A) and 2-102(G)(2) of the Illinois Human Rights Act ("Act").

2. In Counts A, B, and C, the Petitioner alleged that on January 13, 2012, the Employer discharged her because of her national origin, her ancestry, and her immigration related status. The Petitioner further alleged that the Employer did not discharge similarly situated non-Mexico, non-Hispanic employees, who were not legally authorized to work in the United States.

3. On December 31, 2012, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence.

[1] In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

4. On March 18, 2013, the Petitioner filed her Request. On May 21, 2013, the Respondent filed its Response.

## B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. The Petitioner was employed as a Picker/Packer. As a Picker/Packer, Petitioner's duties were to scan, move and pack merchandise. Moreover, the Petitioner was responsible for fulfilling customer orders through quick and accurate selection of product and/or accurate packaging of customer orders prior to shipping.

2. The Employer is a multilevel marketing and distribution center for giftware.

3. The Employer's Immigration Control and Reform Act policy ("IRCA policy") states that the Employer employs only those persons who are legally eligible to work in the United States. The Employer's IRCA policy requires it to verify the identity of all persons it hires. All new associates are required to sign a verification form and furnish proof of their identity. The IRCA policy further provides that the required documentation must be consistent with current immigration laws, and such documentation must be submitted within the time period required by law as a condition of continued employment.

4. The Employer encountered several incidents relating to employees not providing proper documentation to work in the United States which caused the Employer to do a companywide audit. The first incident occurred on or about February 7, 2011, when Reyna Roman ("'Roman") (Mexico, Hispanic), indicated to the Employer's human resources that she was not legally authorized to work in the United States, but would be after her son helped her to apply for citizenship. On February 8, 2011, the Employer discharged Roman for indicating that she was not legally authorized to work in the United States. The second incident occurred on or about August 8, 2011, when Maximo Galvan (national origin unknown, Hispanic), filed for bankruptcy using an ITIN number, instead of a social security number. The third incident occurred on or about May 20, 2011, when a former employee Monica Lopez called Ben Varela (national origin unknown, Hispanic), Human Resource Representative, and advised him that she was aware of numerous employees who were working at the Employer that were not legally authorized to work in the United States. Lastly, on or about July 8, 2011, the Employer's Human Resources Representative, Yardin Escamilla ("Escamilla") (national origin unknown, Hispanic), was entering Salomon Delgado's ("Delgado") (Mexico, Hispanic), Shipping, information into the Employer's healthcare system because he requested to enroll in medical benefits and Escamilla was unable to enter the information because Delgado had given the Employer two different social security numbers. When Escamilla asked Delgado about the social security numbers, Delgado indicated that they were not assigned to him and that he was not legally authorized to work in the United States. As a result, the Employer discharged Delgado on July 8, 2011, for willful violation of government laws, rules and regulations, dishonesty, and falsification of work-related records.

5. The Employer hired an outside attorney to train its Human Resources staff from all three of its facilities on how to conduct I-9 audits. The I-9 Audit process involved looking for material errors that may indicate that an employee is not authorized to work in the United States and less serious technical violations, such as missing dates of birth or the failure to record the name of the government agency that issued an identity or work authorization document.

6. In or about August 2011, the Employer conducted I-9 audits for every employee at all three of its facilities. The audit revealed a significant number of material and technical discrepancies at its Melrose Park, Illinois facility where the Petitioner worked.

7. On January 4, 2012, the Employer held a meeting at that facility for all those employees with discrepancies in their I-9 documentation. The Employer's Director of Human Resources, Nancy A. Agajeenian ("Agajeenian") (non-Mexico, non-Hispanic), and the Employer's Associate Director of Human Resources, Selene Diaz ("Diaz") (Mexico, Hispanic), conducted the meeting and Diaz translated from English to Spanish what was said at the meeting. At the meeting, Agajeenian informed each employee that they had some deficiency with their 1-9 documentation and informed them that each employee would receive a letter that would indicate instructions on what that employee should do next.

8. The Employer issued three types of letters based on the three different discrepancies found with the employees' I-9 forms. The first type of letter indicated that the employee had only minor technical errors that could be corrected on their existing I-9 form in the employee's file. The second type of letter indicated that the employee had to fill out a new I-9 form because due to a technical error. The third type of letter indicated that the employee had to fill out a new I-9 form and provide documentation indicating that the employee had legal authorization to work in the United States.

9. On January 4, 2012, The Employer issued the Petitioner a letter indicating that Petitioner's documentation appeared to be fraudulent on its face and The Employer was requiring the Petitioner to provide documentation to show that she was legally authorized to work in the United States. More specifically, the Petitioner's I-9 audit report stated that the Petitioner's permanent resident card did not appear to be authentic because the fingerprint appeared to be cut off. In addition, the audit report stated that the Petitioner's permanent resident card was issued in 2005, however the Petitioner was hired in 2000, and re-hired in 2003 although the preparer/translator singed the I-9 form in 2006. As such, the Petitioner was issued the third type of letter because the Petitioner's documentation appeared to be fraudulent on its face, and The Employer was requiring that the Petitioner to provide valid documentation which verified her identity and authorizes her to lawfully work in the United States. In addition, the letter indicated that the Petitioner should contact The Employer's human resource department as soon as possible, but no later than 3:30 p.m. on January 11, 2012, to schedule a time to provide appropriate documentation.

10. The letter further indicated that once the Petitioner submitted the documentation and it was approved by The Employer, her social security number would be verified consistent with the

compliance program. The letter further indicated that upon proper verification, the Petitioner would return to work and be provided with full back pay for all hours lost between January 4, 2012, and the date that her employment authorization is verified. The letter indicated that if by January 11, 2012, the Petitioner was not able to produce such documentation and has not reached out to The Employer, it would have no choice but to assume that she lacked proper authorization to work in the United States, and her employment would be terminated. The portion of the January 4, 2012, letter that indicated that Petitioner's social security number would be verified consistent with the compliance program meant that Respondent would run Complainant's social security number through the Social Security Administration website, to ensure that it was a valid social security number. This was done for all employees whose documentation appeared to be fraudulent on its face.

11. After January 4, 2012, the Petitioner did not contact anyone at human resources or submit her proper authorization to work in the United States as she was unauthorized to work in the United States.

12. On January 13, 2012, the Employer sent the Petitioner a letter indicating that the Petitioner's employment was being terminated because the Petitioner had not provided the Employer with the requested documentation to establish her identity and her employment authorization to work in the United States by January 11, 2012, nor had the Petitioner contacted anyone at the Employer.

13. The January 13, 2012 letter further stated that the Employer had no choice but to assume that Petitioner lacked proper authorization to work in the United States and that federal law prohibits the Employer from continuing to employ her. Accordingly, the Petitioner's employment was terminated, effective immediately.

14. As a result of the I-9 audit, Respondent discharged thirty-seven employees for lack of proper authorization to work in the United States.

15. That even after the Employer discharged the Petitioner, the Employer informed the Petitioner that if she had documentation showing that she was authorized to work in the United States she should reapply and the Employer would consider rehiring her.

16. The Employer EEO-1 report from 2011 indicates that it employed 187 individuals, of whom 167 (89%). were Hispanic. The Employer does not keep records of the national origins of its employees. The Employer was aware of the immigration related status of its employees as per the information provided by their I-9 forms, but did not keep separate records of immigration related status.

17. The Petitioner stated that she could not name anyone else who had invalid documents, and was not discharged, but she knew that there were many. The Petitioner further stated that she was not aware of any non-Mexico, non-Hispanic employees who were not legally authorized to work in the U.S. and were not discharged.

18. In her Request, the Petitioner argued that the Respondent's investigator acted inappropriately by inquiring into the Petitioner's legal status in the United States. The Petitioner further argued that that the Respondent's investigator was biased by giving the Employer more time during the fact finding conference to explain its actions.

19. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for Lack of Substantial Evidence. The Respondent argues the evidence was insufficient to establish a *prima facie* case of discrimination and retaliation. The Respondent further argued that the Employer articulated a non-discriminatory reason for its actions and its investigation uncovered no evidence of pretext.

**C. DISCUSSION & DETERMINATION**

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).

As to Counts A, B, and C, 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 Stroger Hospital 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 as to Counts A, B, and C, the Employer articulated a non-discriminatory reason for its actions and there was no evidence of pretext. The Employer 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. Respondent is entitled to make employment decisions based on its reasonable belief surrounding the situation. Generally, the 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. The Employer was simply following Federal Law. As such, the Employer 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.

**WHEREFORE, 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, Winston Brands, Inc. Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

**STATE OF ILLINOIS )**
**)** **Entered this 2nd day of October 2018**
**HUMAN RIGHTS COMMISSION )**

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden

Chair Rose Mary Bombela-Tobias