

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2013SF0350
JEREMY JOERGENSEN,)	EEOC NO.: 21BA22407
)	ALS NO.: 13-0167
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Robert A Cantone, Hamilton Chang, and Steve Kim presiding, upon Jeremy Joergensen’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)¹ of Charge No. 2013SF0350 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 March 9, 2012, the Petitioner filed a perfected charge of discrimination with the Respondent. The Petitioner alleged that Lone Star Steakhouse & Saloon (“Employer”) discharged him based on his disabilities of bi-polar disorder (Count A) and depression (Count B) in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”).
2. In Counts A and B, the Petitioner alleged that on February 20, 2012, the Employer discharged him based on his disabilities of bi-polar disorder and depression.
3. On January 7, 2013, the Respondent dismissed the Petitioner’s charge for Lack of Substantial Evidence.
4. On April 12, 2013, the Petitioner filed her Request. On May 31, 2013, the Respondent filed its Response.

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.”

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. The Petitioner was employed as Server by the Employer.
2. The Employer is a restaurant. At all relevant times, Mary Ann Hibbert (non-disabled), General Manager, and Ada Wiggins (non-disabled), Service Manager supervised the Petitioner.
3. The Petitioner stated that he had an allergic reaction to his medication for bi-polar and told "them." The Petitioner could not recall who he had told. The Petitioner could not recall the date of the allergic reaction.
4. The Petitioner stated that in February 2012 he went to work and looked horrible from not sleeping the night before. The Petitioner stated that he started having depression and bi-polar symptoms. The Petitioner stated that he reported that he had been up all night because his neighbor had been arrested the night before. The Petitioner stated he told "them" he had been up all night. The Petitioner further stated that Hibbert told him that he needed to provide a doctor's note when he reported the bi-polar episode.
5. Wiggins stated that the Petitioner never mentioned any medication or bi-polar issues.
6. Wiggins stated the Petitioner did tell him that he was hit in the head with a hammer so they gave him a couple of extra days off shortly after he was hired.
7. Wiggins stated that the Petitioner came in on Friday, February 17, 2012 and he was "out of it." Wiggins stated that the Petitioner didn't make any sense when he talked and had a glazed over look. Wiggins stated the Petitioner looked as if he was on drugs. Wiggins stated that the Petitioner reported that his neighbors had had a party the night before and he was really tired. Wiggins stated he sent the Petitioner home and he was scheduled to work the next day.
8. Wiggins stated that the Petitioner came in on Saturday, February 18, 2012 and looked the same way, glazed over and incoherent. Wiggins stated that Hibbert pulled the Petitioner into her office.
9. Hibbert stated the Petitioner had been out sick Friday night and then came in on Saturday and was in no condition to work. Hibbert stated the Petitioner was sent home on Saturday by her. Hibbert further stated the Petitioner came into work and was not fit to be on the floor. Hibbert stated the Petitioner looked like he was moving in slow motion; his speech was slurred and appeared to be under the influence of something.

10. Hibbert stated the Petitioner never returned to work and does not recall him attempting to get his job back.
11. In his Request, the Petitioner argued that he was never given a rebuttal. The Petitioner further argued that everything the employer said was a lie. Lastly the Petitioner attached a Police report showing that he was assaulted with a hammer in December 2011.
12. 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).

The Commission finds there is no substantial evidence to establish a *prima facie* case of discrimination. 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 his 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). In the Petitioner's matter, the second, third, and fourth elements were not established. First, the evidence showed that the Petitioner was not performing his work satisfactorily. On two consecutive days he was dazed and confused and was in no condition to work. Therefore, he was not performing his work satisfactorily. Second, there is no evidence of an adverse action. Neither party testified that the Petitioner was discharged. Rather, the evidence showed that the Petitioner never returned to work after the February 18, 2012 incident. Lastly there was no evidence that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of his 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, Lone Star Steakhouse &Saloon 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 2nd day of October 2018

HUMAN RIGHTS COMMISSION

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Commissioner Robert A Cantone

Commissioner Hamilton Chang

Commissioner Steve Kim