

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2012SF1530
)	EEOC.:	21BA20441
ROBERT JAKUBOWSKI)	ALS NO.:	13-0174
)		
Petitioner.)		

ORDER

This matter coming before the Commission by a panel of three commissioners, Chair Rose Mary Bombela-Tobias and Commissioners Patricia Bakalis Yadgir and Duke Alden presiding upon Robert Jakubowski's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent") of Charge No. 2012SF1530 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 dismissal of Count A of the Petitioner's charges is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.

DISCUSSION

On November 29, 2011, the Petitioner, Robert Jakubowski, filed two charges of discrimination with the Respondent alleging his employer, State of Illinois Department of Corrections, discriminated against him by failing to promote him because he is white and retaliating against him in violation of Sections 2-102(A) and 6-101(A) of the Human Rights Act. On October 30, 2012 the Respondent closed Count B at the Petitioner's request. On January 23, 2013, the Respondent dismissed Count A for lack of substantial evidence. The Petitioner filed a timely Request for Review on April 26, 2013.

The Commission concludes that the Respondent properly dismissed the Petitioner's charges for lack of substantial evidence. If no substantial evidence exists after the Respondent's investigation of a charge, the charge must be dismissed. 775 ILCS 5/7A-102(D)(3). Section 7A-102(D)(2) states substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance.

In order to establish a *prima facie* case for employment discrimination based on failure to promote (Count A), Petitioner must show that: (1) he is a member of a protected class; (2) he was performing his work satisfactorily; (3) he was subject to an

adverse action; and (4) the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstance. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994). Once the Petitioner establishes a *prima facie* case of discrimination, then the burden shifts to the Employer to rebut the presumption of discrimination and articulate a non-discriminatory reason for its employment action. McDonald Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). An Employer is entitled to make employment decisions based on its reasonable belief of the facts surrounding the situation. It is improper for the Respondent to substitute its' judgment for the business judgment of the employer. Sapienza v. Cook County Office of the Public Defender, 128 F.Supp.2d 563 (2001).

On January 1, 2011, Petitioner was promoted to the position of Clinical Services Supervisor at Danville Correctional Center. After requesting a transfer to Vandalia Correctional Center for the Clinical Services Supervisor position, the Petitioner was required to participate in a Rutan interview on April 7, 2011. The employer selected a black employee for the position after he scored higher at the interview¹. Once Petitioner reviewed the scores, the Petitioner indicated his knowledge and experience score should have been higher because he has two Masters degrees and the selectee only obtained a Bachelor degree. The employer stated the selectee received a higher score because he has over 20 years of experience in addition to the Bachelor degree. It is improper for the Respondent to substitute its' judgment for the business judgment of the employer. Id. An Employer is entitled to make employment decisions based on its reasonable belief of the facts surrounding the situation. The evidence indicates the selectee deserved a higher score in knowledge and experience because in the Employer's judgment he possessed 20 years of work experience in addition to his degree. As a result, his Rutan score was higher than the Petitioner. The Petitioner was white when he was promoted to Supervisor at Danville Correctional Center four months prior to applying for the same position at Vandalia. The Petitioner did not provide other whites who were overlooked for promotions. The Petitioner failed to prove the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. The Petitioner failed to prove a *prima facie* case and the Respondent's dismissal for lack of substantial evidence was proper.

THEREFORE, IT IS HEREBY ORDERED THAT:

- 1.The dismissal of the Petitioner's charge is hereby SUSTAINED.
- 2.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 State of Illinois Department of Corrections as the

¹ The interview was conducted by two white interviewers. Petitioner's score was 2.667 and the selected candidate scored 2.917. Each candidate was asked the same questions. The selected candidate's score was 0.100 higher than Petitioner's score in knowledge and experience and 0.150 higher in leadership.

respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
) **Entered this 14 day of Dec. 2018.**
HUMAN RIGHTS COMMISSION)

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden