STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	CHARGE NO.: **2012SR3739**
	)	EEOC NO.: **846-2012-45203**
SARAH MURPHY,	)	ALS NO.: **13-0180**
Petitioner.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Duke Alden, Rose Mary Bombela-Tobias, and Patricia Bakalis-Yadgir presiding, to correct a typographical error in the Commission's October 2, 2018 Order in this matter.

IT IS SO ORDERED:

1) The following language is stricken from the October 2, 2018 Order: "This Order is not yet final and appealable."

2) The stricken language is replaced with the following language: "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 the City of Springfield, Department of Public Works as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order."

3) All other provisions in the October 2, 2018 Order remain in full force and effect.

STATE OF ILLINOIS)
) **Entered this 3rd day of October 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Duke Alden

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis-Yadgir

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	CHARGE NO.: **2012SR3739**
	)	EEOC NO.: **846-2012-45203**
SARA MURPHY, Petitioner.	)	ALS NO.: **13-0180**

ORDER

This matter coming before the Commission by a panel of three, Commissioners Duke Alden, Rose Mary Bombela-Tobias, and Patricia Bakalis-Yadgir presiding, upon Sara Murphy's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Respondent of Human Rights ("Respondent")[1] of Charge No. 2012SR3739; 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 dismissal of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.*

In support of which determination, the Commission states the following:

A. PROCEDURAL HISTORY

1. On April 24, 2012, Petitioner filed a charge of discrimination with the Equal Opportunity Employment Commission ("EEOC"), alleging that City of Springfield, Department of Public Works ("Employer"), subjected her to harassment on December 29, 2012, due to her age, 61 (Count A); and on January 27, 2012, laid her off, due to her age, 61 (Count B), and in retaliation for complaining about the harassment (Count C), in violation of Sections 2- 102(A), 6-101(A) of the Illinois Human Rights Act ("Act").

2. In her Charge, Petitioner alleged that on December 29, 2012, she was harassed by Employer due to her age, 61, when a supervisor made an inappropriate comment and on January 27, 2012, she was laid off by Employer due to her age, and in retaliation for opposing unlawful discrimination for complaining about the harassing incident.

3. Pursuant to Section 7A-102(A-1)(1) of the Act, a charge filed with the EEOC is deemed filed with the Respondent.

[1] In a Request for Review Proceeding, the Illinois Respondent of Human Rights is the "Respondent."

4. On May 10, 2012, the EEOC informed the Respondent that it would investigate the charge. On May 17, 2012, the EEOC sent to Petitioner a Dismissal and Notice of Rights ("Dismissal") stating that the EEOC closed its file since it was unable to conclude that information obtained established violations of the statutes.

5. On May 30, 2012, the Respondent sent a letter to Petitioner stating that if Petitioner wished the Respondent to investigate the charge at the completion of the EEOC investigation and receipt of findings, Petitioner could request the Respondent to do so by mailing or personally serving a request, in writing, to the Respondent, along with a copy of the EEOC's determination, within thirty days of receipt of the EEOC's Dismissal.

6. On June 11, 2012, twenty-five days after the date of the EEOC's determination, Petitioner mailed to the Respondent a written request asking the Respondent to investigate her case, and a copy of the EEOC's Dismissal. Thereafter, the Respondent conducted an investigation, and on January 25, 2013, the Respondent dismissed Counts A, B, and C of Petitioner's charge for Lack of Substantial Evidence.

7. On April 30, 2012, Petitioner filed this timely Request

8. On June 11, 2013, the Respondent filed its Response to the Request.

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. On March 27, 1978, Employer hired Petitioner with her most recent position being Payroll Technician II.

2. On December 29, 2011, Petitioner had an argument with Michael Dirksen ("Dirksen"), Operations Coordinator, when she asked him about how drivers were to be paid for overtime. Petitioner told Dirksen that he was the boss, so it was his decision and he needed to tell her how many hours to give the drivers. Dirksen became angry with Petitioner not wanting to make the decision on her own as the timekeeper and said, "If I wanted a monkey in a chair, I could hire a monkey in a chair." Petitioner told him to not refer to her as a "monkey in a chair" because it was demeaning.

3. On January 11, 2012, Petitioner and Dirksen met with Dan Schweska ("Schweska"), Operations Coordinator, to discuss the incident. Schweska told Dirksen that he should not talk to employees in that manner, so Dirksen apologized to Petitioner. Petitioner does not know if there was any formal discipline of Dirksen.

4 The single incident of Dirksen's comment was not referring to Petitioner's age and was not described by Petitioner in her account as being in reference to her age.

5. In January 2012, Employer received the results of a fiscal sustainability study performed by MAXIMUS Consulting Services, Inc.

6. The results of the fiscal Sustainability Study suggested the elimination of 82 positions. Petitioner's position was referenced in the report as Public Works Various Support Positions. Employer was able to reduce the number of active employees laid off to eighteen. The average age of those employees laid off was 45, with 61% of those employees being ten or more years younger than Petitioner.

7. January 27, 2012, Employer informed Petitioner that her position was eliminated due to operational needs as suggested by the third party study.

8. Petitioner stated that her position was eliminated because Employer wanted to get rid of older employees. Petitioner did not hear anyone make direct comments about her age.

9. In her Request, Petitioner argues that prior to the sustainability study, Schweska asked her if she intended to retire. The Petitioner further argues that she is not located on the Employer's organizational chart because she believes the decision to discharge her was made prior to the study. The Petitioner also attaches documentation showing that she inquired with the Mayor about her position being eliminated and that she received a letter of recommendation from the Employer.

10. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for Lack of Substantial Evidence. The Respondent argues that its investigation did not reveal that the Employer harassed the Petitioner because of her age or laid her off because of her age or in retaliation. The Respondent argues that its investigation revealed that the comment the Petitioner complained about occurred on one occasion and did not rise to the level of harassment. The Respondent further argues that its investigation did not reveal any evidence that the comment was related to the Petitioner's age or that she was laid off for complaining about the comment. The Employer laid the Petitioner off due to operational needs as suggested by the sustainability study.

C. DISCUSSION & DETERMINATION

The Commission sustains the dismissal of the 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* 775ILCS 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 Count A, the Commission finds that the evidence was insufficient to establish a case of harassment. Actionable harassment occurs "[w]hen the workplace is permeated with 'discriminatory intimidation, ridicule, and insult' [citation omitted] that is 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment [citation omitted] . . . ." Harris v. Forkflft Systems, Inc., 510 U.S. 20, 114 S.Ct. 367, 371, 126 L.Ed.2d 295 (1993). "[O]ccasional, isolated, casual or trivial remarks. . . do not constitute harassment . . . ." Franklin W. Lay and St. Mary 's Hospital, 34 Ill. HRC Rep. 197 (September 25, 1927). The harassing behavior must occur frequently enough to constitute a term or condition of employment. Motley v. IHRC, 263 Ill.App.3d 367, 374, 636 N.E.2d 100, 104, 200 Ill. Dec. 909, 913 (4th Dist. 1994). In the instant case, the comment complained of occurred on one occasion and did not implicate the Petitioner's age. Therefore, the comment does not rise to the level of harassment.

As to Count B, the Commission finds that the evidence was insufficient to establish a prima facie case of age discrimination. 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 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). Here, the Petitioner failed to establish fourth element. The Respondent's investigation did not reveal a similarly situated employee treated more favorably than the Petitioner. Additionally, the Petitioner acknowledged that no comments were made about her age. The evidence showed that the Employer conducted a sustainability study and that the Petitioner was laid off due to operational needs suggested by the study.

As to Count C, the Commission finds that the evidence was insufficient to establish a prima facie case of retaliation. In order to establish a prima facie case for retaliation, Complainant must show that: (1) she engaged in a protected activity; (2) Respondent committed an adverse action against her; and (3) a causal connection existed between the protected activity and the adverse action by Respondent. Welch v. Hoeh, 314 Ill.App.3d 1027, 1035, 733 N.E.2d 410, 416 (31C Dist. 2000). Here, the Petitioner failed to establish the first element. The Respondent's investigation did not reveal that the Petitioner opposed unlawful discrimination under the Act. The evidence showed that the Petitioner reported the comment as being demeaning, not as being related to her age or any other protected class.

Therefore, the Commission finds no substantial evidence of discrimination or retaliation, and the dismissal of the Petitioner's charge is **SUSTAINED**.

THEREFORE, IT IS HEREBY ORDERED THAT:

*The Respondent's dismissal of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.*

This Order is not yet final and appealable.

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

Commissioner Bakalis-Yadgir

Commissioner Alden

Chair Bombela-Tobias