

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )  
FOR REVIEW BY: )

**KA FU TANG,** )  
Petitioner. )

CHARGE NO.: **2012CF2444**  
EEOC NO.: **21BA21128**  
ALS NO.: **13-0186**

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Nabi R. Fakroddin, Hermene Hartman, and Duke Alden presiding, upon Ka Fu Tang’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)<sup>1</sup> of Charge No. 2012CF2444; 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 2, 2012, the Petitioner filed a charge of discrimination with the Respondent, alleging that Board of Trustees, Illinois Community College No. 508 a/k/a as City Colleges of Chicago (“Board”) discharged him because of his national origin, China (Count A), race, Asian (Count B) and in retaliation for filing a previous internal discrimination complaint (Count C), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”).
2. In Counts A and B, the Petitioner alleged that on October 5, 2011, the Board discharged him because of his national origin and his race in that under similar circumstances, the Board did not discharge non-China, non-Asian Instructors.
3. In Count C, the Petitioner alleged that on October 6, 2011, the Board discharged him in retaliation for opposing unlawful discrimination in that his discharge took place approximately eight months after January 28, 2011, when the Petitioner filed an internal discrimination complaint.

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<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the “Respondent.”

4. On February 14, 2013, the Respondent dismissed the Petitioner's Charge for Lack of Substantial Evidence.
5. On May 2, 2013, the Petitioner filed this timely Request. On May 30, 2013, the Respondent filed its Response to the Request.

**B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS**

1. The Petitioner was employed as an instructor by the City of Colleges of Chicago, Harold Washington College.
2. The Petitioner position was as an economics instructor and was hired on September 2, 2003 as a part time instructor and was promoted to full time instructor on January 19, 2010.
3. The Petitioner alleged that on January 28, 2011, he filed an internal complaint of discrimination with the Board's EEO officer because he had overheard a secretary in the Board's social sciences office, Virna Matos ("Matos") (non-China, non-Asian, no p/a); make the comment that there were too many Asians working at the Board. The Petitioner stated that the Board's EEO office conducted an investigation.
4. It is uncontested that Matos is a secretary. There is no evidence that Matos has any decision making authority regarding the hiring and retaining of instructors.
5. The Petitioner stated that in March 2011, he filed a complaint against Dominic Ferri ("Ferri") (non-China, non-Asian, no p/a), Social Science Department Chair, because he witnessed him at a restaurant with Marite Fregoso ("Fregoso") (non-China, non-Asian, no p/a) Social Science Instructor. The Petitioner stated that based on Ferri and Fregoso's behavior, he concluded that they were dating. The Petitioner stated that Fregoso is good friends with Matos and he was concerned that Ferri would retaliate against him when the Board's social science department voted on his contract renewal.
6. The Petitioner alleged that on April 11, 2011, he sent a letter to the Board's EEO investigator, outlining his complaint. The Petitioner stated that he indicated in his letter that he overheard Matos say that there were too many Asians coming to visit him and that Matos told him that make up exams needed to be held in classrooms. The Petitioner stated that he believes that this policy does not apply to non-Asian instructors.
7. The Petitioner stated that on April 28, 2011, the Board's social science department voted not to renew his contract. The Petitioner stated that he believes that Ferri had influenced the faculty members to vote against him.

8. The Petitioner stated that on October 6, 2011, he was informed during a meeting with Patricia Rios ("Rios") (non-China, non-Asian, no protected activity ("p/a")), Vice Chancellor of Human Resources, and Donald Lackman ("Lackman") (non-China, non-Asian, no p/a), President, that his contract for the next year would not be renewed and he would be discharged effective December 10, 2011. The Petitioner stated that he was told that the reason for the discharge was that there were concerns with his performance and that Respondent's full time faculty members voted against his contract being renewed.
9. The Board's discipline and termination policy states that employees whose performance falls below expectations, who violate the Board's policies, or who engage in misconduct, are subject to discipline and discharge.
10. The Board's violence in the workplace policy states that harassment; threats and intimidation are prohibited and result in discipline up to and including discharge.
11. The Board's employment and tenure policy states that tenured members shall vote on the granting of tenure contracts. However, if there are less than three tenured faculty members in the department then the recommendation concerning the granting of a tenure contract shall be made by a majority of the eligible members of the department. Recommendations not to renew an employment contract will be by majority vote by secret ballot.
12. On January 25, 2011, the Petitioner sent an email to all of the instructors in the social science department. Ferri stated that the email subject was "do not provoke me" and the email contained a link to a YouTube video. Ferri stated that the video contained footage of Chinese military units in action and concluded with a nuclear weapon being detonated. Ferri stated that several other instructors in the department complained to him about the email and indicated that they felt threatened by the Petitioner. Ferri stated that he spoke to the Petitioner about the email and was told that he had only meant to send it to one person, Zama Gulzad (non-China, non-Asian, no protected activity), Economics Instructor, however, the email was addressed to "dear colleagues", so Petitioner's explanation did not make sense to Ferri.
13. The Board stated that one faculty member in the Social Science Department sent the Board a complaint, characterizing the Petitioner's message and video as "somewhat disturbing."
14. The Board stated that on January 25, 2011, a second faculty member wrote a letter to the Board stating that the Petitioner's video message was threatening and showed "homicidal rage...." A third undated letter from a faculty member complained that the Petitioner had sent faculty a video which was part of a pattern of disturbing behavior that included other e-mail messages Petitioner had sent.

15. The Board stated that the Petitioner's co-worker complained about safety concerns because of the Petitioner.
16. The Board stated that on April 25, 2011, a fourth instructor in the Social Science Department wrote a letter complaining that he/she felt very threatened by the video and that several faculty members left the building because of their fear for their safety.
17. Ferri stated that the Petitioner had also been the subject of complaints from students during the previous school year as well. Ferri stated that on May 10, 2010, he received an email complaint which indicated that during the spring of 2010, the Petitioner had made fun of people with HIV, and called women frivolous shoppers, as well as commenting on his and other student's sexual orientations.
18. Ferri stated that on April 28, 2011, the Board held a meeting to vote on the Petitioner's contract renewal. Ferri stated that there were nine tenured instructors voting, of whom seven voted not to renew the Petitioner's contract. Ferri stated that on May 2, 2011, he notified the Board's president, vice president, dean of instruction, and the Petitioner about the vote result. Ferri stated that on October 6, 2011, The Board of Trustees adopted the vote and the Petitioner was notified by mail that his employment with the Board would end on December 10, 2011.
19. There was no evidence that any of the nine tenured instructors made any derogatory remarks regarding the Petitioner's protected classes.
20. In his Request, the Petitioner reiterates that his email the "humorous" email was intended to one instructor. The Petitioner further contends that since the Board did not take action against Matos, it therefore shows pretext on part of the Board. The Petitioner further describes how Matos actions made him feel extremely uncomfortable. Additionally, the Petitioner argued how the Respondent's investigator overlooked the Petitioner's strong performance record while placing undue emphasis on evidence that the Board did not even appear to find important. Further, the investigator failed to properly consider the bad faith character of Ferri's actions with regard to the performance evaluations leading up to the contract non-renewal.
21. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for Lack of Substantial Evidence. The Respondent argued the evidence was insufficient to establish a prima facie case of discrimination and retaliation. The Respondent further argued that the Board's 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).

In Counts A and B, the Commission finds there is no substantial evidence to establish a *prima facie* case of discrimination or retaliation. 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 and fourth elements were not established. First, even though the Petitioner had a strong performance record, he violated the Board's conduct policy when he sent out his humorous email. Second, there was no evidence that the board treated instructors outside the Petitioner's protected class more favorably under similar circumstances.

As to Counts C, the Commission finds there is no substantial evidence to establish a *prima facie* case of retaliation. Generally to establish a *prima facie* case of retaliation the Petitioner must show: (1) he engaged in a protected activity; (2) the Employer committed an adverse action against him; and (3) a causal connection existed between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3rd dist. 2000). A casual connection may be established by showing evidence of unequal treatment of similarly situated persons who did not engage in the protected activity See In the Matter of: Giuseppe Scalera and Village of Oak Park, IHRC, Charge No. 1997CF1270, 2002 WL 32828292, \*5 (September 23, 2002). In the Petitioner's matter, there was no evidence that the Board treated a similarly situated persons who did not engage in the protected activity more favorably under similar circumstances.

The Commission further concludes that the Board articulated a non-discriminatory reason for its actions and there was no evidence of pretext in the articulated non-discriminatory reason. The Board stated that the Petitioner did not meet its work expectations in that the Petitioner sent out a threatening video to co-workers, who complained about the video. Out of concern for the safety of its faculty and staff the Board did not renew the Petitioner's contract. An Employer is entitled to make employment decisions based on its reasonable belief of the facts surrounding the situation. The correctness is not important as long as there was a good faith belief by the Employer in its decision. See Carlin v. Edsal Manufacturing Company, IHRC, Charge No. 1992CN3428, 1996 WL 652580 \*7 (May 6 1996) citing Homes and Board of County Commissioner, Morgan County, 26 Ill HRC Rep. 63 (1986). Lastly the Commission concludes there was no evidence of pretext. In the absence of any evidence that the business consideration relied upon by the Employer is a pretext for discrimination, it

is improper to substitute 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).

**D. CONCLUSION**

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of the Charge was not in accordance with the Act. The Petitioners' 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, Board of Trustees, Illinois Community College No. 508 a/k/a as City Colleges 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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**HUMAN RIGHTS COMMISSION**

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**Entered this 29<sup>th</sup> day of October 2018.**

Commissioner Nabi R. Fakroddin

Commissioner Hermene Hartman

Commissioner Duke Alden