

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2013CR0360
)	EEOC NO.: N/A
GLORIA E. SWANSON,)	ALS NO.: 13-0191
)	
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 Baker & McKenzie LLP 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**

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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 Gloria E. Swanson’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Respondent of Human Rights (“Respondent”)¹ of Charge No. 2013CR0360; 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 Counts A and B of the Petitioner’s charge is **SUSTAINED for LACK OF JURISDICTION.***

*The Respondent’s dismissal of Counts C and D 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 August 1, 2012, Petitioner filed a perfected charge of discrimination with the Respondent, alleging that Baker & McKenzie LLP (“Employer”), discriminated against her when it discharged her based on her race, black (Count A), and in retaliation for opposing unlawful discrimination in the workplace (Count B), as well as when it provided unfavorable references about her based on her race, black (Count C) and in retaliation for opposing unlawful discrimination in the workplace (Count D) in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”).
2. In her charge, the Petitioner alleged that on May 22, 1995, Employer discharged her based on her race, black, and in retaliation because she had complained of racial discrimination during

¹ In a Request for Review Proceeding, the Illinois Respondent of Human Rights is the “Respondent.”

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her employment with Employer. Petitioner further alleged that in July 2012, Employer provided unfavorable references to a reference checker based on her race, black, and in retaliation for complaining of racial discrimination in the workplace.

3. On April 16, 2013, the Respondent dismissed Counts A and B of Petitioner's charge for Lack of Jurisdiction and dismissed Counts C and D for Lack of Substantial Evidence.
4. On April 26, 2013, Petitioner filed this timely Request.
5. On June 14, 2013, the Respondent filed its Response to the Request.

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. Employer is a limited liability partnership law firm serving the Chicago, Illinois, area.
2. Petitioner started working for Employer in February 1990 and her last title was Executive Legal Secretary.
3. Petitioner's job ended with Employer on May 22, 1995.
4. Petitioner had complained of discrimination while employed by Employer
5. Petitioner and Employer signed a termination agreement on June 19, 1995, which released Employer of any race, sex or age discrimination that might be alleged by Petitioner.
6. Petitioner filed her charge on July 23, 2012. The alleged date of harm is May 22, 1995. There are more than 17 years from the alleged date of harm and Petitioner's filing of the instant charge.
7. Section 7A-102(A)(1) of the Human Rights Act states that a charge must be filed within 180 days after the date an alleged civil rights violations has been committed.
8. Petitioner states she hired Allison & Taylor, a reference checking company, in July 2012 and that company's reference checkers told her that Employer told them "they could not find you in their database system" and "I can't confirm she worked here or deny she worked here."
9. Petitioner alleges that Employer lied and told prospective employers that Petitioner couldn't be found in Employer's records and Petitioner had never worked for Employer.
10. Petitioner alleges that Employer could find other former employees including her former boss, Thomas Haderlein, who had been deceased for years. Petitioner alleged that because

Employer could not find her records in their system, it looked like Petitioner had been untruthful on her job applications when she listed Employer as a former employer.

11. Employer provided Petitioner a favorable reference letter, dated July 31, 1995.
12. Employer's employees told the reference checker hired by Petitioner that Petitioner's information could no longer be located because their systems had changed since Petitioner's job ended in 1995 and they could not confirm or deny Petitioner's employment with Employer.
13. There is no evidence that Employer's employees provided an unfavorable reference about Petitioner and it is reasonable that Petitioner's records would be inaccessible after seventeen years.
14. In her Request, the Petitioner argues that the Employer's investigator made credibility determinations and accepted the Employer's version of events. The Petitioner further argues that the Employer's investigator tried to mislead her into believing that her case was over when in fact, the Employer's duty to investigate was underway. The Petitioner also noted that she provided the Employer with proof of her past employment, but that the Employer refused to update its response related to their record of the Petitioner's employment.
15. In its Response, the Respondent asks the Commission to sustain the dismissal of Counts A and B for Lack of Jurisdiction and Counts B and C for Lack of Substantial Evidence. The Respondent's investigation revealed that it does not have jurisdiction to investigate Counts A and B of Complainant's charge, which was filed more than 17 years after Complainant alleges she was discharged. The Respondent argues that its investigation revealed that Employer merely stated that it could not confirm or deny that Complainant worked at Employer due to their inability to locate Complainant in their database due to the intervening period of time between the end of her employment, May 22, 1995, and the requests which occurred in July 2012.

C. DISCUSSION & DETERMINATION

The Commission sustains the dismissal of Counts A and B of the Charge for Lack of Jurisdiction, and Counts C and D 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 Counts A and B, the Commission finds that there is no jurisdiction to consider these counts. Section 7A- 102(A) of the Act states that a charge must be filed within 180 days after the date that a civil rights violation allegedly has been committed. The 180 day period begins when the

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employer gives notice of the adverse action; this is when the injury is deemed to have occurred. *Faulkner King v. Dept. of Human Rights*, 225 Ill.App.3d 784, 587 N.E.2d 599 (4th Dist. 1992); *Witt and MuM Electric Co-Operative Inc. and its Board of Directors*, 42 Ill.HRC Rep. 220, 224 (1988). In this case, Petitioner alleged in her charge that she was discharged on May 22, 1995, more than 17 years before she filed the instant charge of discrimination. As such, there is no jurisdiction over these counts.

As to Counts C and D, the Commission finds that the evidence was insufficient to establish a case of race discrimination or retaliation. In order to establish a prima facie case of discrimination, Petitioner must show: (1) that she falls within a protected class; (2) that she was performing her work satisfactorily; (3) that she was subjected to an adverse action; and (4) that Employer treated a similarly situated employee outside Petitioner's protected class more favorably under similar circumstances. See *Marinetti v. Human Rights Commission*, 262 Ill. App.3d 247, 634 N.E.2d (2nd Dist. 1994). In this case, the Petitioner failed to establish the third and fourth elements. The Employer's investigation revealed that the Employer merely stated that it could not confirm or deny the Petitioner's past employment due to the age of the records. There is no evidence that this alone is an adverse action against the Petitioner. Additionally, the Respondent's investigation did not reveal a similarly situated employee treated more favorably than the Petitioner.

To establish a prima facie case of retaliation, Petitioner must show that: (1) the Petitioner engaged in a protected activity; (2) the Employer committed an adverse action against Petitioner; and (3) a causal connection existed between the protected activity and the adverse act. *Stone v. Dept. of Human Rights*, 299 Ill.App.3d 306, 316, 700 N.E.2d 1105, 233 Ill.Dec. 397 (1998). An inference of connectedness or a "rebuttable presumption" of causation can arise if the time period between the protected activity and the adverse action is sufficiently short. *Mims and State of Illinois, Dept. of Lottery*, Ill. HRC Rep., 1998WL937898 at 11, Charge No. 19\$8\$F017I (July 26, 1991); *Washington and Groen Division/Dover Corp.*, 19 Ill. HRC Rep. 106, 119 (1985). In this case, the protected activity occurred on or before May 22, 1995, and the alleged adverse action occurred in July 2012. As such, the time period between the protected activity and the adverse action is too remote to infer a causal connection.

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 Counts A and B of the Petitioner's charge is **SUSTAINED** for **LACK OF JURISDICTION**.*

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

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 2nd day of October 2018

Commissioner Bakalis-Yadgir

Commissioner Alden

Chair Bombela-Tobias