

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011SF3607
)	EEOC NO.: 21BA11948
GREGORY GAY,)	ALS NO.: 13-0200
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Michael Bigger, Amy Kurson, and Cheryl Mainor presiding, upon Gregory Gay's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2011SF3607 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 Notice of Dismissal is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.

DISCUSSION

On June 2, 2011, the Petitioner filed a perfected charge of discrimination with the Respondent, alleging that Manchester Tank and Equipment Company, Inc. ("Manchester"), discharged him on April 18, 2011 due to his race, black, in violation of Sections 1-103(Q), and 2-102(A), of the Illinois Human Rights Act ("Act"). On June 5, 2012, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On August 29, 2012, the Petitioner filed his first Request for Review ("Request"). On December 4, 2012, the Respondent filed a Response to Request recommending that the Respondent's finding of Lack of Substantial Evidence be vacated and the charge remanded to the Respondent's Charge Processing Division for further investigation. On December 12, 2012, the Commission entered an order vacating the Respondent's finding of Lack of Substantial Evidence and remanding the charge to the Respondent. On February 14, 2013, the Respondent again entered an order of Lack of Substantial Evidence. On May 17, 2013, the Petitioner filed a second timely Request.

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).

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."

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 concludes that the evidence was insufficient 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 fourth element was not established. There was no evidence that Manchester treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. Rather, the evidence showed the employer discharged two employees outside the Petitioner's protected class under similar circumstances.

The Commission further concludes that Employer articulated a non-discriminatory reason for suspending and discharging the Petitioner and there was no evidence of pretext. Manchester stated that the Petitioner was discharged due to the Petitioner engaging in serious improper conduct; specifically, over the Company radio, the Petitioner used profane negative language about a supervisor with the intent to stir up dissension and to undermine supervisory authority at the plant. In his Request, the Petitioner did not offer any 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).

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, Manchester Tank and Equipment Company, Inc. 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 29th day of November 2018

Commissioner Michael Bigger

Commissioner Amy Kurson

Commissioner Cheryl Mainor
