

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

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

**INEZ ALEXANDER,** )  
Petitioner. )

CHARGE NO.: **2012CR2624**  
EEOC NO.: **846-2012-05452**  
ALS NO.: **13-0202**

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Nabi R. Fakroddin, Hermene Hartman, and Duke Alden presiding, upon Inez Alexander'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. 2012CR2624; 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. The Petitioner filed an unperfected charge of discrimination with the Respondent on January 10, 2012, which was perfected on January 30, 2012. The Petitioner alleged that AT & T ("Employer") suspended (Count A) and discharged (Count B) her because of her age, 54, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act").
2. In Count A, the Petitioner alleged that on September 23, 2011, the Employer suspended her because of her age.
3. In Count B, the Petitioner alleged that on October 19, 2011, the Employer discharged her because of her age.
4. On July 17, 2012, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On October 22, 2012, the Petitioner Complainant filed her first Request for Review. On December 10, 2012, pursuant to the Respondent's Response, the Commission entered an Order vacating the dismissal of the Petitioner's charge and remanded the charge to the Respondent's Charge Processing Division for further investigation.
5. On February 5, 2013, the Respondent again dismissed the Petitioner's Charge for Lack of Substantial Evidence.

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

6. On May 13, 2013, the Petitioner filed this timely Request. On June 25, 2013, the Respondent filed its Response to the Request.

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

1. The Petitioner was employed as a Service Representative by the Employer.
2. The Service Representative duties include but not limited to: 1) handling telephone calls with customers; 2) recommending or selling telecommunication products to customers; 3) correcting and troubleshooting billing problems or issues; 4) working to meet sales goals; 5) negotiating and preparing service order requests from existing and new customers for installation, removal, or changes of telephone services, etc. the Employer tracked production and sales standards on a monthly basis for all its Service Representatives.
3. The Employer weighs performance in three categories: rate of penetration, rate of intensity (revenue), and reputation. The Employer standards are: a score of 99.9% or below is considered "unacceptable" or not meeting expectations; a score of 100% to 114% meets expectations; and a score of 115% or above exceeds expectations.
4. On April 8, 2010, the Employer issued the Petitioner a written warning for poor performance. The written warning indicated that the Employer placed the Petitioner on a performance improvement plan.
5. On May 11, 2010, the Employer issued the Petitioner a final written warning indicating that her performance was poor and that the Petitioner was suspended for one day effective May 13, 2010.
6. On July 15, 2010, the Employer issued the Petitioner a final written warning and placed her again on a 30 day performance improvement plan.
7. On October 27, 2010, The Employer issued the Petitioner another written warning for poor performance and placed her on a 30 day performance improvement plan.
8. On January 6, 2011, The Employer issued the Petitioner a final written warning for poor performance and placed her on a performance improvement plan again.
9. On February 9, 2011, The Employer issued the Petitioner a final written warning indicating that her performance was poor and that the Petitioner was suspended for one day effective February 15, 2011.
10. On April 28, 2011, The Employer issued the Petitioner a final written warning indicating that her performance was poor and that the Petitioner was suspended for one day effective May 3, 2011.
11. On July 1, 2011, The Employer issued the Petitioner a final written warning indicating that her performance was poor and that the Petitioner was suspended for one day effective July 7, 2011.
12. On August 9, 2011, The Employer issued the Petitioner a final written warning indicating that her performance was poor and that the Petitioner was suspended for one day effective August 10, 2011.

13. On September 23, 2011, The Employer issued the Petitioner a "suspension pending dismissal letter" indicating that her performance was poor and that the Petitioner was discharged.
14. On October 19, 2011, The Employer discharged the Petitioner.
15. The Petitioner's year to date production for 2011 percentage was 84.490% below Respondent's performance standards.
16. The Employer discharged two employees for poor performance and misconduct.
17. In his Request, the Petitioner stated that there are many questions that are still unanswered and that the Respondent should have dug deeper in its investigation of her charge.
18. 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. The Respondent further argued that the Employer 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).

As to Counts A and B, the Commission finds there is no substantial evidence 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 second and fourth elements were not established. The evidence showed the Petitioner had a history of discipline, as such she was not was performing her work satisfactorily. Second, there was no evidence that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. Rather the evidence showed that the Employer discharged younger similarly situated employee for poor work performance.

The Commission further concludes that the Employer articulated a non-discriminatory reason for its actions and there was no evidence of pretext in the articulated non-discriminatory reason. The Employer stated that reason is that it discharged the Petitioner was the Petitioner had a history of poor performance. The Petitioner offered no evidence in her Request to rebut the Employer's business reason. 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, AT&T 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