

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF THE REQUEST |) | |
| FOR REVIEW BY: |) | CHARGE NO.: 2012CF2717 |
| |) | EEOC NO.: 21BA21297 |
| MARTESE WASH |) | ALS NO.: 13-0255 |
| |) | |
| Petitioner. |) | |

ORDER

This matter coming before the Commission by a panel of three, Commissioners Robert A. Cantone, Hamilton Chang, and Nabi R. Fakroddin presiding, upon Martese Wash's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2012CF2717 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 dismissal of the Petitioner's charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On March 26, 2012, the Petitioner filed a charge of discrimination with the Respondent alleging that Atkore International ("Employer"), denied him retroactive pay, issued him a written warning, and suspended him due to his race in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On March 7, 2013, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. The Petitioner filed a 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. 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. In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

¹ In a request for review proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Illinois Department of Human Rights's action shall be referred to as the "Petitioner."

Generally, to establish a *prima facie* case for discrimination the Petitioner must show that (1) he is a member of a protected class; (2) he was performing his work satisfactorily; (3) that he was subjected to an adverse action; and (4) a similar situated employee outside the Petitioner's protected class was not treated more favorably under similar circumstances. Marinelli v. Human Rights Commission, 262 Ill. App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994).

In the instant case, the third and fourth elements were not satisfied as the Petitioner failed to provide any evidence the Employer denied him retroactive pay because of his race or that the Employer treated a similarly situated non-black employee more favorably under similar circumstances. The evidence established that the Employer erred in paying both the Petitioner and his co-worker, Bill Spoor, the hourly rate at which they were supposed to be paid and both retroactively received pay based on the error. The Petitioner failed to establish that he was subjected to an adverse employment action based on his race or that the Employer treated a similarly situated non-black employee more favorably under similar circumstances.

Additionally, there was no substantial evidence that the written reprimand or the three-day suspension the Petitioner received was based on his race or that a similarly situated non-black employee was treated more favorably under similar circumstances. Rather, the evidence showed that the Petitioner was disciplined in accordance with the Employer's Rules and Regulations regarding the incident with the health and safety specialist, Lisa Contreras, in which the Employer claimed the Petitioner was insubordinate and harassed Contreras. The Commission finds no evidence of pretext, and in the absence of pretext, the Commission cannot substitute its judgment for the Employer's business judgment. Berry and State of Illinois, Dep't of Mental Health and Developmental Disabilities, Charge No. 1994SA0240 (Dec. 10, 1997).

Accordingly, the Petitioner has not presented any substantial evidence to show that the Respondent's dismissal of the charge was not in accordance with the Act.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of the Petitioner's charge is hereby **SUSTAINED**.
2. This is a final Order. A Final Order may be appealed to the Illinois Appellate Court by filing a Petition for Review, naming the Illinois Department of Human Rights, the Illinois Human Rights Commission, and Atkore International, as named party respondents, with the Clerk of the Illinois Appellate Court within 35 days after the date of service of this Final Order.

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Entered this 20th day of December 2018

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Nabi R. Fakhroddin