**STATE OF ILLINOIS**
**HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF THE REQUEST FOR REVIEW BY: | ) | CHARGE NO.: 2013CF0001 |
| | ) | EEOC NO.: 21BA22036 |
| **MARTESE WASH** | ) | ALS NO.: 13-0256 |
| 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. 2013CF0001 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 July 2, 2012, the Petitioner filed a charge of discrimination with the Respondent alleging that Atkore International ("Employer"), harassed him based on his race and in retaliation for his filing of a previous charge of discrimination with the Illinois Department of Human Rights ("Department") and issued him a final written warning in retaliation for his filing of a previous charge of discrimination with the Department in violation of Sections 2-102(A) and 6-101(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

[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."

conclusion. In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

The Commission found insufficient evidence to establish that the Petitioner was harassed due to his race and in retaliation for his filing of a previous charge of discrimination with the Department. Actionable harassment occurs when the workplace is permeated with 'discriminatory intimidation, ridicule and insult' that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. Harris v. Forklift Systems, Inc. 510 U.S.210, 114 S.Ct. 367, 371, 126 L.Ed.2d 295 (1993). Here, the Petitioner alleges that Scott Nally, Human Resources Officer, telling him he would be discharged for violating the Employer's attendance policy, failing to follow the Employer's progressive disciplinary procedures, and escorting him off the Employer's premises amounted to harassment. The incidents alleged by the Petitioner do not show he was subjected to a pattern of racially motivated incidents and do not rise to the level of abuse or harassment. Additionally, the Employer's discipline actions were consistent with the Collective Bargaining Agreement and there is no nexus showing the Petitioner was harassed based on the charge he previously filed with the Department.

Furthermore, there was insufficient evidence to establish a *prima facie* case that the Petitioner was issued a final written warning in retaliation for his filing of a previous charge of discrimination with the Department. Generally, retaliation is established by showing that the (1) Petitioner engaged in a protected activity; (2) the employer committed an adverse act against the petitioner, and (3) a causal connection existed between the protected activity and the adverse act. Stone v. Department of Human Rights, 299 Ill.App.3d 306, 316, 700 N.E.2d 1105, 233 Ill. Dec. 397 (1998). Here, the Petitioner failed to establish that a causal connection existed between the protected activity and the adverse act as the Employer presented a legitimate, nondiscriminatory reason for issuing the Petitioner a final written warning. The evidence showed that the Petitioner was initially discharged pursuant to the Employer's Collective Bargaining Agreement after the Petitioner incurred his third no-call/no-show infraction violating the Employer's Absenteeism policy. The discharge was later rescinded and the Petitioner was issued a final written warning in which the Petitioner agreed he had accumulated three no-call/no-show absence occurrences within a 12-month period. 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.

**STATE OF ILLINOIS )**
**)** **Entered this 20th day of December 2018**
**HUMAN RIGHTS COMMISSION )**

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Nabi R. Fakroddin