

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2012CR3941
	)	EEOC NO.: 440-2012-03255
<b>JAMES T. PINSON</b>	)	ALS NO.: 13-0257
	)	
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 James T. Pinson’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)<sup>1</sup> of Charge No. 2012CR3941 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 April 19, 2012, the Petitioner filed a charge of discrimination with the Respondent alleging that Pace Industries, (“Employer”) suspended and subsequently discharged him due to his race and in retaliation for opposing unlawful discrimination in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”). On March 19, 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 in its entirety. 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

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<sup>1</sup> 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).

Generally, to establish a *prima facie* case for discrimination the Petitioner must show that (1) he falls within 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 (2<sup>nd</sup> Dist. 1994).

In the instant case, the Petitioner failed to establish element four in showing that a similarly situated employee not in his protected class was treated more favorably than he under similar circumstance as the Employer identified other non-black employees suspended and/or discharged under similar circumstances. Additionally, the Petitioner failed to demonstrate a causal chain between the Employer's actions and his race. Moreover, the Employer articulated a legitimate, nondiscriminatory reason for discharging the Petitioner: the evidence established the Petitioner improperly accepted unemployment money resulting in a suspension and subsequent discharge. 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).

Furthermore, there was insufficient evidence to establish a *prima facie* case of retaliation. 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 discharging the Petitioner. Additionally, the Employer identified employees of other races previously discharged for violating the Employer's policy who had not opposed unlawful discrimination.

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 Pace Industries, 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**

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**Entered this 20<sup>th</sup> day of December 2018**

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Nabi R. Fakroddin