

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012CF2832
)	EEOC NO.: 21BA21372
DAVID GRIFFIN)	ALS NO.: 13-0259
)	
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 David Griffin's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2012CF2832 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 3, 2012, the Petitioner filed a charge of discrimination with the Respondent alleging that PSCC, Inc., ("Employer") subjected him to sexual harassment and discharged him due to his sex and in retaliation for opposing sexual harassment in violation of Sections 2-102(A), 2-102(D), and 6-101(A) of the Illinois Human Rights Act ("Act"). On March 6, 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 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."

The Act defines sexual harassment as any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or 3) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. 775 ILCS 5/2 – 101 (E). To create a hostile environment, the misconduct must be sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive work environment. Motley v. The Illinois Human Rights Commission, et al., 263 Ill.App.3d 367, 636 N.E.2d 100, 200 Ill.Dec. 909 (4th Dist. 1994). Additionally, the Act provides that the "employer shall be responsible for sexual harassment of the employer's employees by nonemployees or nonmanagerial and nonsupervisory employees only if the employer becomes aware of the conduct and fails to take reasonable corrective measures." 775 ILCS 5/2 – 102(D).

In the instant case, assuming the Petitioner's allegations are true, the actions the employee (Shannon Wood) allegedly committed do not rise to the level of actionable sexual harassment. Wood's attempting to show the Petitioner pictures of her girlfriend and attempting to massage him on the shoulders once are not sufficiently severe or pervasive enough to alter the conditions of the Petitioner's employment and create an abusive environment. Furthermore, assuming the Petitioner reported Wood's conduct to his supervisor, no further incidents of a harassing nature occurred after the fact and there is no evidence that the Employer refused to take reasonable corrective measures after the Petitioner allegedly reported the alleged sexual conduct to management.

Additionally, there is insufficient evidence to establish that the Petitioner was discharged due to his sex. 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 (2nd Dist. 1994). Here, the evidence showed that, in addition to having performance problems, multiple employees complained about the Petitioner's behavior and the Employer had a good faith belief that the Petitioner violated its Personal Conduct Policy. 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. The evidence showed that the Petitioner was disciplined prior to ever engaging in a protected activity and that he was discharged based on his violation of the Employer's Personal Conduct Policy.

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 PSCC, Inc., 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