

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CN4769
	)	EEOC NO.: N/A
CHAD KNIGHT	)	ALS NO.: 13-0267
	)	
	)	
	)	
Petitioner.	)	

**ORDER**

This matter coming before the Commission by a panel of three, Chair Rose Mary Bombela-Tobias and Commissioners Patricia Bakalis Yadgir and Duke Alden presiding, upon the Request for Review (“Request”) of Chad Knight (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”) of Charge No. 2008CN4769 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 16, 2008, the Petitioner filed a charge with the Respondent alleging that Caterpillar, Inc. (the “Employer”), suspended him for 10 days on December 27, 2007 (Count A) and discharged him on February 22, 2008 (Count B), because of his race, black in violation of Section 2-102(A) of the Illinois Human Rights Act.

On January 11, 2012, the Respondent dismissed the charge for Lack of Substantial Evidence. The Petitioner filed a timely Request.

The Commission concludes that the Respondent properly dismissed the Petitioner’s claims 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). A finding of Lack of Substantial Evidence is proper in this case because the Petitioner has failed to prove that the Employer’s legitimate, non-discriminatory reason for suspending and discharging the Petitioner is a pretext for unlawful 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) 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. Marinelli v. Human Rights Commission, 262 Ill.App.3d. 247, 634 N.E.2d 463 (2d Dist. 1994). Once the *prima facie* case has been established, the burden shifts to the respondent to articulate a legitimate, non-discriminatory reason for its actions. Then, to prevail, the complainant must prove that the respondent's proffered reason is a pretext for unlawful discrimination. McDonnell-Douglas Corp v. Green, 411 U.S. 792, 93 S.Ct. 1817 (1971).

In this case, the Employer established that it suspended and later discharged the Petitioner because of his excessive absences, not because of his race. Before the Employer suspended the Petitioner for 10 days, the Employer issued a written warning, issued a three-day suspension, and placed Petitioner on valid proof status because of his frequent absences. Even after these disciplinary measures, the Petitioner continued to be regularly absent from work. Petitioner does not dispute his frequent absenteeism but claims that two white employees, Dan Gallagher and Pat Scholtes, both on valid proof status, were treated more favorably when they were absent. The Respondent's investigation revealed that Gallagher and Scholtes were able to provide proof to excuse their absences. Also, it is unclear whether Gallagher was scheduled to work on the day that Petitioner alleges he was absent. The proof that Petitioner submitted to his supervisor, however, did not establish his need to be absent from work.

The investigation also showed that the Employer has disciplined several employees for excessive absence, without regard to race. First, Dan Gallagher (white) and Pat Scholtes (white) were on valid proof status for attendance issues at the same time as the Petitioner. Second, in the two years prior to Petitioner's suspension, the Employer suspended 17 white employees and 6 black employees for attendance issues. Finally, in the two years prior to Petitioner's discharge, the Employer discharged four white employees, one Hispanic employee, and one black employee for attendance issues. The Employer does not treat similarly situated, non-black employees more favorably when it issues discipline for attendance issues.

The Petitioner has failed to prove that his race, not his excessive absences, was the reason for his suspension and discharge. As a result, the Commission sustains the Respondent's dismissal of the Petitioner's charge.

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 Human Rights Commission, the Illinois Department of Human Rights, and Caterpillar, Inc. as

respondents, with the Clerk of the Illinois Appellate Court within 35 Days after the date of service of this order.

STATE OF ILLINOIS )  
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HUMAN RIGHTS COMMISSION )      Entered this 14th day of December 2018.

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden