STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2012CF2230
	)	EEOC NO.: 21BA20964
JULIUS PERRYMAN	)	ALS NO.: 13-0278
	)	
	)	
	)	
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 Julius Perryman ("Petitioner"), of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent") of Charge No. 2012CF2230 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 February 14, 2012, the Petitioner filed a charge with the Respondent alleging that the State of Illinois Department of Transportation ("Employer") harassed him because of his race, black (Count A) and suspended him in retaliation for his participation as a witness in a 2008 Equal Employment Opportunity Commission investigation (Count B) in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act.

On March 14, 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 Counts A and B 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).

Count A

An employer may be liable for the discriminatory conduct of its employees only where it knew of such conduct and failed to take remedial action. Board of Directors, Green Hills Country Club v. IHRC, 162 Ill.App.3d 216, 514 N.E.2d 1227 (5th Dist. 1987). In this case, the Respondent's investigation revealed that the Employer investigated the Petitioner's allegation against his co-worker, Bobby Joe Gifford. During the Employer's investigation, the Petitioner and Gifford accused each other of being the aggressor and using racial slurs. Additionally, there were no witnesses who were able to determine who was the aggressor during the altercation. As a result, the Employer suspended both Petitioner and Gifford for their roles in the altercation. As the Act requires, the Employer investigated the allegations of improper behavior and took remedial action against the Petitioner and Gifford based on the information derived from the Employer's investigation. As a result, the Employer is not liable for the alleged harassment committed by its employee. Therefore, the Respondent's dismissal of Count A is proper.

Count B

The Commission concludes that the Respondent properly dismissed Count B for Lack of Substantial Evidence.

Generally, to establish a *prima facie* case of retaliation, the Petitioner must show: 1) that he engaged in protected activity; 2) that the Employer committed an adverse action against him; and 3) that a causal connection existed between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill.App.3d 1027, 1035, 733 N.ED.2d 410, 416 (3rd Dist. 2000). A causal connection will be inferred if the period of time between the protected activity and the adverse action is sufficiently short. See Mitchell and Local Union, 146, 20 Ill. HRC Rep. 101, 110-11 (1985) (six months was too remote to establish connectedness).

Here the Petitioner alleges that he was suspended on September 25, 2011 because he was a witness in a co-worker's 2008 EEOC charge. A period of three years between Petitioner's protected activity and his suspension is too remote to establish a connection between the two events. Additionally, Giovanni Fulgenzi, the manager who suspended the Petitioner stated that he was not aware of Petitioner's prior protected activity when he issued the discipline. Petitioner has not presented any other evidence to show that he suspended for a reason other than his involvement in an altercation with Gifford. Accordingly, the Respondent's dismissal of Count B is not a violation of 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 Human Rights Commission, the Illinois Department of Human Rights, and State of Illinois

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

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

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden