

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012CA2941
)	EEOC NO.: 21BA21454
Ivin Smith)	ALS NO.: 13-0293
)	
Petitioner)	

ORDER

This matter coming before the Commission by a panel of three, Chair Rose Mary BombelaTobias and Commissioners Patricia Bakalis Yadgir and Duke Alden, presiding upon Ivin Smith's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2012CA2941 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, **WHEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

DISCUSSION

On April 12, 2012, the Petitioner filed a discrimination charge with the Respondent alleging that he was suspended by his employer, Standard Parking Corporation ("SPC") due to his race, black (Count A) and age, 54 (Count B); involuntarily transferred him due to his race (Count C) and age (Count D); and reduced his hours due to his race (Count E) and age (Count F), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act").

On March 19, 2013, the Respondent dismissed the Petitioner's charge in its entirety for lack of substantial evidence. The Petitioner filed a timely Request for Review on June 24, 2013.

The Commission concludes that the Respondent properly dismissed all counts of 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 5/7A102(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 record shows that on September 24, 1993, Petitioner was hired by SPC as a hiker. Petitioner's job duties are equivalent to a valet. The difference is a hiker works in a residential setting whereas a valet works in a commercial setting. Due to some prior issues, Petitioner was re-assigned to a condominium on Lake Shore Drive in Chicago, Illinois. His Supervisor was Ali Saeed ("Saeed") (non-black; age, 32). Due to various complaints by customers and the Property Manager, Susan Hess ("Hess") regarding Petitioner driving too fast/driving recklessly in and around the garage, Saeed had informally warned him in the past to use caution and drive carefully at all times. Nonetheless, on March 8, 2012, Petitioner drove a resident's vehicle into a post, scratching the car door. The following day, Saeed issued Petitioner a two-day suspension, in violation of SPC's "safety rules and unsatisfactory work." On March 14, 2012, Petitioner filed a union grievance regarding the two-day suspension. Petitioner never stated in his grievance that discrimination was a factor in Petitioner's suspension.

On March 23, 2012, the Facility Manager, Roberto Alva ("Alva") (non-black; age 45) met with Petitioner and the union representative relevant to Petitioner's grievance. During the meeting, Alva advised Petitioner that pursuant to Hess's demand, he was being transferred to a similar full-time position with a different shift at 4800 South Beach in Chicago, Illinois, effective March 30, 2012. Since the new schedule conflicted with Petitioner's other job, SPC's Vice President, Rogers Walters ("Walters") (non-black; age, 58) worked with him to find a solution. The new agreed upon arrangement was a three, eight hour shifts per week.

To establish a *prima facie* case for race and age discrimination, Petitioner must show: 1) he falls within a protected class; 2) he was performing his work satisfactorily; 3) he was subject to an adverse action; and 4) SPC treated a similarly situated employee outside of Petitioner's protected class more favorably under similar circumstances. See *Anderson v. Chief Legal Counsel*, 334 Ill.App. 3d 630, 634, 778 N.E.2d 258, 268 Ill.Dec. 272 (3^d Dist., 2002); *Marinelli v. HRC*, 262 ILL.App.3d 247, 634 N.E.2d 463 (2d Dist. 1994).

In further analyzing discrimination cases under the Human Rights Act, assuming arguendo that Petitioner proved by a preponderance of the evidence a *prima facie* case of discrimination treatment, SPC then has the burden of stating a legitimate nondiscriminatory reason for its employment decision, which has the effect of successfully rebutting the presumption of unlawful discrimination. The burden then shifts to Petitioner to prove by a preponderance of the evidence that the legitimate reason offered by the employer was not the true reason underlying its decision, but, instead, merely a pretext for discrimination. The ultimate burden of proving that the employer engaged in intentional discrimination remains at all times with the employee. *Burdine*, 450 U.S. at 252-53, 101 S.Ct. at 1093, 67 L.Ed2d at 215; *Acorn Corrugated Box Co.*, 181 Ill.App.3d at 136-37, 129 Ill.Dec. at 891, 536 N.E.2d at 941; *Kenall Manufacturing Co.*, 152 Ill.App.3d at 701, 105 Ill.Dec. at 524, 504 N.E.2d at 809.

In the instant case, Petitioner fails to satisfy the second and fourth prongs of his *prima facie* case. As to prong two, Petitioner's suspension was due to violating of SPC's safety rules and poor performance. There is no nexus between the Petitioner's suspension, transfer, as well as reduced hours and his race or age. Regarding the fourth prong, there is no proof that Petitioner was treated

less favorably than others because of his race or age and Petitioner confirms as much. The Seventh Circuit has made it clear that an employee's failure to identify a comparator is detrimental to their ability to maintain an action for discrimination. *Erverroad v. Scott Truck Systems, Inc.*, 604 F3d 471, 480-482.

Next, SPC articulated a legitimate and non-discriminatory reason for Petitioner's suspension, namely violation of its safety rules and unsatisfactory work. Further, there is no evidence that SPC's articulated reason for discharging Petitioner was pretextual for unlawful discrimination. SPC is entitled to make employment decisions based upon its reasonable belief of facts surrounding the situation. The correctness of the reason is not important as long as there was a good faith belief by the [employer] in its decisions." *Carlin v. Edsai Mfg. Co.*, Charge No. 1992CN3428, ALS No. 7321 (May 6, 1996), citing *Homes and Bd. of County Comm'rs, Morgan County*, 26 Ill. HRC Rep. 63 (1986). See also *Shah v. IHRC*, 192 Ill. App. 3d 263, 273-74, 548 N.E.2d 695, 701 (1st Dist. 1989) ("A good faith belief for an employment decision is sufficient to rebut an intentional discrimination charge."). All in all, there is no substantial evidence that Petitioner was suspended, transferred or hours reduced because of his race or age.

In his Request for Review, there is no additional evidence provided by Petitioner that would warrant a reversal of Respondent's original determination.

Accordingly, the Petitioner has not presented 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 Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the Standard Parking Corporation as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 17th day of December 2018.

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden