

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE No.: 2012 CA3269
Tracy James,)	EEOC No.: 21BA 21674
)	ALS No.: 13-0358
)	
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 Matter of Petitioner Tracy James' Request for Review (Request) of the Notice of Dismissal issued by the Illinois Department of Human Rights (Respondent¹), of Charge 2012 CA 3269, 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 in 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 May 9, 2012, the Petitioner filed a charge of discrimination with the Respondent alleging that her employer, Cook County Housing Authority (Authority) discharged her because of her race, age, sex, disability in violation of Section 2-102(A) of the Illinois Human Rights Act and in retaliation for opposing racial discrimination in violation of Section 6-101(A) of the Act. The Respondent dismissed the Petitioner's charge based on age for lack of jurisdiction and dismissed the remaining Counts 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 and, in the case of the age-based discrimination count, for lack of jurisdiction. 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. 1993CA 2747, 1995 WL 793258, (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 who is requesting review of the Department's action shall be referred to as the "Petitioner."

The Petitioner was hired by the Authority as an office assistant in 2000. She was transferred to another position, customer service coordinator in 2009 and promoted in 2010² to "Mobility Counselor." Hers was a non-union position in an agency that had both union and non-union positions. The Petitioner was discharged on February 6, 2012 when the Authority, under the leadership of a new executive director, restructured the department in which she worked with a plan to outsource department functions. The investigations department was also reorganized, and its functions outsourced. The Petitioner alleges that she was discharged because of her race, age, sex, disability and in retaliation for opposing discrimination.

To prevail on a claim of discrimination the Petitioner must show that (1) she falls within a protected class; (2) she was performing his/her work satisfactorily; (3) she was subjected to an adverse action; and (4) that the Employer treated a similarly situated employee outside Petitioner's protected class more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill. App. 3d, 634 N.E. 2nd 463 (2nd Dist. 1994). Once the Petitioner has established a *prima facie* case, the burden shifts to the Employer to articulate a legitimate, non-discriminatory reason for its employment action. See Zaderaka v. Human Rights Comm., 131 Ill.2d 172, 179, 545 N.E.2d 684, 687 (1989). The Petitioner must then show that the Employer's legitimate, articulated reason for its employment action was a pretext.

The Petitioner failed to establish a *prima facie* case that she was discharged based on her race, sex, or disability. There is no dispute that the Petitioner falls within classes protected by the Act, that she was performing her work satisfactorily, and that nevertheless, she was subject to an adverse action. She was not able to establish however, that similarly situated employees, not in her protected class were treated more favorably. Even assuming that she established a *prima facie* case however, the Authority provided a non-discriminatory basis for discharging her, namely, the outsourcing of the department and the elimination of her position. The Authority awarded a twelve-month contract to a consulting corporation, not an individual outside the Petitioner's protected classes. Existing staff, including a black female, filled in after the Petitioner's discharge and prior to the consulting company's taking on the department's responsibilities.

Although the outsourcing contract was ultimately unsuccessful, the Petitioner did not provide any evidence that it was conceived of or implemented as a pretextual basis for her discharge. Put another way, there is no indication that a prohibited factor played a role in her discharge. Accordingly, the Respondent correctly found that she failed to provide substantial evidence of discrimination and dismissed the counts based on her race or sex.

The Petitioner's claim of disability discrimination fails for the same reason. To establish a *prima facie* case based on a disability, the Petitioner must show (1) she was

² There are some inconsistencies in the record as to the years that certain events occurred. A careful review of the record indicates that the Petitioner was promoted to Mobility Specialist on October 12, 2010; her injury occurred in September 2011, and she was discharged February 6, 2012.

disabled within the definition of the Act; (2) her disability is unrelated to her ability to perform the functions of the job she was hired to perform; and (3) an adverse job action was taken against her. Kreczko v. Triangle Package Machinery Co., 2016 IL App (1st) 151762, 53 N.E. 2nd 1070, 1078. In this case, the Petitioner incurred an injury at work when a piece of ceiling fell on her. She was on leave for three months and went to physical therapy for a period thereafter. Within a short time after her return to work, she learned that her department, including her job, would be outsourced. Even assuming the Petitioner established a *prima facie* case, there is no indication that the employer harbored any disability related animus toward her or that its articulated basis for eliminating her position was pretext.

As to her age discrimination claim, under Section 1-103 (A) of the Act, except in circumstances not relevant here, the Respondent lacks jurisdiction to investigate the Petitioner's age-based discrimination claim because the Petitioner was not at least 40 years old at the time of the adverse action. Accordingly, the Respondent properly dismissed the Petitioner's age discrimination claim for lack of jurisdiction. See 775 ILCS 5/1-103 (A).

Finally, to establish a *prima facie* retaliation claim, the Petitioner must show that she was engaged in protected activity, she was subjected to an adverse action, and a causal connection between the two. Welch v. Hoeh, 314 Ill. App. 3d 306, 316 (3d Dist. 2000). A protected activity is an activity opposing unlawful discrimination under the Act. 775 ILCS 6-101(A). Here, the Petitioner claims that she opposed discrimination when she suggested that a brochure include a picture with a more diverse group of children. Because the Act does not proscribe brochures that fail to portray diverse groups of people, her suggestion was not a protected activity and the Respondent correctly dismissed her retaliation count.

Accordingly, the Petitioner has not presented any 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 Human Rights Commission, the Illinois Department of Human Rights, and the Housing Authority of Cook County as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

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Entered this 21st day of December 2018

HUMAN RIGHTS COMMISSION

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden