

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)
FOR REVIEW BY:)

BRANDON SMITH,)

Petitioner.)

CHARGE NO.: **2013CF0043**
EEOC NO.: **21BA22117**
ALS NO.: **13-0390**

ORDER

This matter coming before the Commission by a panel of three, Commissioners Robert A. Cantone, Hamilton Chang, and Nabi R. Fakroddin presiding, upon the Request for Review (“Request”) of Brandon Smith (“Petitioner”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2013CF0043 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 July 10, 2012, the Petitioner filed a charge of discrimination with the Respondent alleging that City of Chicago, Board of Education (“Employer”), discharged him in retaliation for his prior charge of discrimination, and due to his disabilities: diabetic neuropathy, charcot foot, arthritis of the knees, and arthritis of the ankles, in violation of Sections 6-101(A) and 2-102(A) of the Illinois Human Rights Act (“Act”). On May 22, 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 in its entirety 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).

In order to establish a prima facie case of retaliation, the Petitioner must show 1) that he engaged in a protected activity; 2) that the employer took an adverse action against him; and 3) that there was a causal nexus between the protected activity and the employer’s adverse action. Carter Coal Co. v. Human Rights Comm’n, 261 Ill. App. 3d 1, 7 (5th Dist. 1994). In order to establish a prima facie case

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.”

of race discrimination, the Petitioner must show that 1) he is a member of a protected class; 2) he was performing satisfactorily; 3) adverse action was taken against him despite the adequacy of his work; and 4) a similarly situated employee who was not a member of the protected group was not subjected to the same adverse action. Anderson v. Illinois Human Rights Comm'n, 314 Ill. App. 3d 35, 49 (1st Dist. 2000). If the Petitioner establishes his prima facie case, the employer may rebut the presumption of discrimination by articulating a legitimate, nondiscriminatory reason for its decision, and then the Petitioner must prove that the articulated reason was a pretext for discrimination. Zaderaka v. Illinois Human Rights Comm'n, 131 Ill. 2d 172, 178-79 (1989).

In this case, the Petitioner cannot establish a case of retaliation because he cannot prove a causal nexus between the charges he filed and the discharge. He filed the first charge on October 24, 2011, almost eight months before the discharge, which is too far removed to create an inference of causality. The second charge, filed on June 18, 2012, was mailed on June 25, 2012 to the Employer, which was three days after the date of discharge. Because the Employer did not know about the June 18 charge, it could not have discharged the Petitioner in retaliation for the filing. Thus, the Petitioner's claim lacks sufficient evidence.

The Petitioner also fails to establish that the Employer discharged him because of his physical disabilities. First, the Petitioner was not performing his job satisfactorily, as shown by his June 2011, December 2011 and March 2012 teacher evaluation reports. Second, the Petitioner did not establish that a non-disabled teacher who had unsatisfactory evaluations was treated more favorably. Furthermore, the Employer rebutted the charge of discrimination by stating that its reason for the discharge was that the Petitioner's position was eliminated due to budget cuts.

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 City of Chicago, Board of Education, as respondents, with the Clerk of the Illinois Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
) **Entered this 18th day of December 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Nabi R. Fakhroddin, P.E., S.E.