

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2012CR3338
	EEOC NO.:	N/A
RICHARD T. WESTBROOK)	ALS NO.:	13-0394
)	
Petitioner.)		

ORDER

This matter coming before the Commission by a panel of three commissioners, Chair Rose Mary Bombela-Tobias and Commissioners Patricia Bakalis Yadgir and Duke Alden presiding upon Richard T. Westbrook’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”) of Charge No. 2012CR3338 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 Counts A-F of the Petitioner’s charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.

DISCUSSION

On January 31, 2012, the Petitioner, Richard T. Westbrook, filed a perfected charge of discrimination with the Respondent alleging his employer, UHS of Hartgrove, Inc., d/b/a Hartgrove Hospital, a subsidiary of Universal Health Services, Inc., discriminated by wrongfully suspending him and then discharging him due to his Race (black), sex (male) and age (54) in violation of Section 2-102(A) of the Human Rights Act. On January 25, 2013, the Respondent dismissed the charges for lack of substantial evidence. The Petitioner filed a timely Request for Review on April 24, 2013 and on May 31, 2013, the Respondent requested the Commission vacate and remand the charge for further investigation. On June 10, 2013, the Commission vacated the Respondent’s dismissal and remanded the charges for further investigation and other proceedings. On June 17, 2013, Respondent dismissed the charges for lack of substantial evidence. On August 27, 2013, the Petitioner filed a timely Request for Review.

The Commission concludes that the Respondent properly dismissed the Petitioner’s charges for lack of substantial evidence. If no substantial evidence exists after the Respondent’s investigation of a charge, the charge must be dismissed. 775 ILCS 5/7A-102(D)(3). Section 7A-102(D)(2) states substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a

conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance.

In order to establish a *prima facie* case for suspension and discharge based on Race (black), sex (male) and age (54), Petitioner must show that: (1) he is a member of a protected class; (2) he was performing his work satisfactorily; (3) 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 circumstance. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994). Once the Petitioner establishes a *prima facie* case of discrimination, then the burden shifts to the Employer to rebut the presumption of discrimination and articulate a non-discriminatory reason for its employment action. McDonald Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).

Petitioner, a Mental Health Specialist, alleges he was suspended on August 17, 2011 then discharged on August 19, 2011 due to his race (black), sex (male) and age (54) (Counts A-F).¹ The Employer stated the Petitioner was suspended then subsequently discharged from his responsibilities for violating the Patient Observation Rounds policy and Work Rules and Conduct policies. The Petitioner alleged he was **not** responsible for the patient who swallowed an ink pen cap. However, the Employer's video surveillance from August 17, 2011 revealed Lagunas monitoring a patient while the Petitioner who was conducting patient rounds, sat the rounds book and pen on the floor and walked toward the nurses' station.² The patient walked by, picked something up off the floor, proceeded down the hall and attempted suicide by placing the object in her mouth. Employer maintained that Lagunas was not disciplined because she did not violate a company policy. The Petitioner had previously been disciplined by the employer and the video demonstrated the Petitioner violated the Rounds policy by leaving the patient records and an ink pen unattended on the floor. Petitioner did not prove he was performing his work satisfactorily.

Respondent's investigation revealed that in the 'Molly' incidence mentioned as a comparative by the Petitioner, Molly's mouth was immediately swept for glass and none was found in her mouth or vomit. The comparator was issued a written warning³ because he was not previously disciplined like the Petitioner.⁴ The comparator however, was disciplined for purchasing a mirror compact for a patient in violation of the workplace polices. Employer's records revealed it suspended at least two other employees who were either female and/or had less than 40 years of age for violating the workplace policies. Petitioner did not prove that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar

¹ The employer's polices state "in serious cases or cases where an employee has previously violated the same or other rules or is not performing at an acceptable level, the employee may be subject to immediate employment termination."

² Employer's Exhibit L Tanner's investigation and Video Surveillance Review Notes.

³ Employer's Exhibit K Barajaz Written Warning letter.

⁴ Employer's Exhibit H Petitioner's Discipline History.

circumstance. Petitioner failed to establish a *prima facie* case of discrimination and the Respondent's dismissal for lack of substantial evidence was proper.

The Respondent lacked substantial evidence to sustain a charge of discharge based on Race (black), sex (male) and age (54).(Counts D-F). Petitioner received six corrective action reports between June 2008 and July 2011. The disciplined ranged from corrective counseling to final written/suspension for various workplace rule violations. The Petitioner was suspended pending an investigation in this case. The investigation video revealed the Petitioner left a pen and patient file unattended on the floor. Petitioner failed to prove he was performing his work satisfactorily. The employer discharged Petitioner on August 19, 2011 for violating HR 125-Employee Conduct and Work Rules. Employer's July 6, 2011 letter to another employee indicates she was also discharged for violating the same rule. Petitioner failed to prove the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. The Petitioner cannot establish a *prima facie* case. The Respondent's dismissal for lack of substantial evidence is proper.

THEREFORE, IT IS HEREBY ORDERED THAT:

- 1.The dismissal of the Petitioner's charges 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 UHS of Hartgrove, Inc., d/b/a Hartgrove Hospital, a subsidiary of Universal Health Services, Inc., as the respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
) **Entered this 14 day of Dec. 2018.**
HUMAN RIGHTS COMMISSION)

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden