

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF THE REQUEST |) | | |
| FOR REVIEW BY: |) | CHARGE NO.: | 2012CA3664 |
| |) | EEOC.: | 21BA21933 |
| RONALD WOODS, |) | ALS NO.: | 13-0395 |
| 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 Ronald Woods' ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent") of Charge No. 2012CA3664 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 charges for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On June 18, 2012, the Petitioner, Ronald Woods, filed a charge of discrimination with the Respondent, alleging that his employer, The American Bottling Company, discriminated by issuing him a written reprimand and suspending him because of his age (40) and race (black) in violation of Section 2-102(A) of the Illinois Human Rights Act. On June 12, 2013, the Respondent dismissed the charge for lack of substantial evidence. The Petitioner filed a timely Request for Review on September 11, 2013.

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.

The evidence was insufficient to establish a *prima facie* case of issuing a written reprimand and suspending Petitioner based on age (40 years) and race (black). To establish a *prima facie* case of discrimination, the Petitioner must show: (1) that he is a member of a protected class; (2) that he was performing his work satisfactorily (3) that he was subject to an adverse action and (4) that the employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634

N.E.2d 463 (2nd Dist. 1994). Once Petitioner has established 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 must then show that the employers articulated reason for its employment action was pretextual. Id. An undeserved poor performance evaluation is not an adverse employment action. Smart v. Ball State Univ., 89 F.3d 437, 441 (7th Cir. 1996). An unfair reprimand or undeserved negative performance evaluation without a tangible job consequence does not amount to an adverse employment action. See Watson v. Potter, 351 Fed. Appx 103, 105(7th Cir. 2009).

Petitioner alleges on December 22, 2011, he was issued a written reprimand because of his age (40 years) and race (black). (Counts A-B). Employer denied, and Petitioner later admitted that a written reprimand was not issued but rather a notice of a one-day suspension for neglect of duty was issued and served on Petitioner on December 28, 2011.¹ The Petitioner failed to prove he was subjected to an adverse action. The Petitioner failed to establish a *prima facie* case and the Respondent's dismissal of the charges for lack of evidence is proper.

Petitioner alleges on December 28, 2011 he was suspended because of his age (40 years) and race (black). (Counts C-D). Employer admitted it issued a letter on December 22, 2011 and Petitioner was to serve a one-day suspension for neglect of duty on December 28, 2011. Petitioner stated a grievance meeting was held which included his Union Representative², and that he was informed of his one day suspension for neglect of duty due to his failure to service three Jewel's accounts for four weeks.³ Petitioner stated Jewel was not serviced because his supervisor required him to perform a survey audit⁴ that doubled his work load, included an increase from 100 to 160 miles per day and that the audit took priority over the Jewel accounts.⁵ Petitioner was the only Full Service Driver who failed to complete his route while conducting the audit.⁶ Two grievance meetings were held and the Petitioner rejected the agreement to reduce the one day suspension to a written warning without backpay to

¹ Exhibit C a memorandum dated December 19, 2011, to Complainant from Tomas Gallegos

² Exhibit F a December 26, 2011 Union Grievance indicates Petitioner was unable to service three Jewel accounts in a timely manner because of additional job assignments and re-routing from the supervisor.

³ Exhibit D a December 22, 2011 memorandum which indicates that on December 15, 2011, two Jewel accounts reported that they were out of product and had not received service in over four-weeks and on December 19, 2011, a third Jewel account called and reported that it had not been serviced for over one month.

⁴ Employer indicated the audit consisted of noting vending product lineup and rates, and serial numbers to identify and correct any mislabeled or inaccurate information in Employer's data program.

⁵ Exhibit K The letter from the supervisor indicated that each stack by the Driver's assigned route must be completed (surveyed) by Friday. It also states "Call-in's on other accounts are inevitable." The document does not state that they should not worry about any other assignments, because the survey audits were a priority.

⁶ Petitioner wrote a letter to the Human Resources Manager indicating that he considered these issues a hostile work environment and felt he was discriminated and harassed by the supervisor. The investigation revealed Human Resources Director left the Employer before investigating Petitioner's allegations. However, Human Resources Director Dixon mailed a letter to Petitioner indicating her investigation

the Petitioner.⁷ The investigation revealed Petitioner previously received a written reprimand in July 29, 2011 for inadvertently leaving a money bag in a vending machine and this was the second instance wherein the Employer disciplined the Petitioner.⁸ Petitioner cannot prove he satisfactorily performed his work. The current supervisor has suspended approximately 10 drivers who were diverse in age and race since becoming supervisor.⁹ Petitioner could not prove that the employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. Petitioner cannot establish a *prima facie* case and 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 The American Bottling Company 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

⁷ Exhibit M reveals Employer maintains three levels of discipline and Category C involuntary failure to follow instructions or neglect of duty could result in written reprimand, a disciplinary suspension of one to three days, and then subject to termination. Petitioner was not present but was represented at the first grievance meeting by a Union Representative and was present and represented by two Union Representatives at the second meeting.

⁸ Exhibit E July 29, 2011 Memorandum to Petitioner "written warning for failure to follow instructions or neglect of duty because Petitioner was short one money bag for his account" and it was signed on August 1, 2011. The memo also states the supervisor followed Petitioner to the account, opened the vendor and recovered the bag. Petitioner's stated his previous supervisor did not write up or suspend him for 10 years.

⁹ Exhibit L List of Full Service Drivers supervised by Tomas Gallegos. The investigation revealed that of the 14 Drivers supervised half are black; four are white and three are Hispanic. Supervisor issued six written warnings: all six employees were younger than Petitioner and two were not black. Supervisor issued four one day suspensions: half were white and three were younger than Petitioner.

Commissioner Duke Alden