

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)		
FOR REVIEW BY:	)	CHARGE NO.:	2012SA4001
	)	EEOC.:	21BA22412
WESBY MARION,	)	ALS NO.:	13-0397
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 Wesby Marion’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”) of Charge No. 2012SA4001 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 August 22, 2012, the Petitioner, Wesby Marion, filed a charge of discrimination with the Respondent, alleging that on February 29, 2012 his employer, State of Illinois-Department of Children and Family Services, failed to provide him with proper training due to his race and age (Counts A and B) and failed to extend the training period due to his race and age (Counts C and D) in violation of Sections 1-103(A) and 2-102(A) of the Illinois Human Rights Act. On June 21, 2013, the Respondent dismissed the charge for lack of substantial evidence. The Petitioner filed a timely Request for Review on September 13, 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 discrimination based on unequal terms and conditions of employment because the employer failed to provide him with proper training due to his race and age. 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 (2<sup>nd</sup> 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). Additionally, to satisfy adverse action, Petitioner must establish alterations in duties or working conditions that caused a materially significant disadvantage. See In the Matter of Diane Allen, IHRC, Charge No. 1995CF0836 (October 20, 1999), 1999 WL 33252953 (Ill.Hum.Rts.Com).

Petitioner, a probationary Child Welfare Specialists, alleges he was subjected to unequal terms and conditions of employment because the employer failed to provide him with proper training due to his race (black) and age (52) from September 2011 through February 29, 2012 (Counts A-B). Employer states the Petitioner received the same training and on one occasion received additional one-on-one training.

Employer's training format was classroom training in the morning followed by on the job training with an advanced Child Welfare Specialists in the afternoon. Petitioner admitted having trouble grasping the concept of the job and making several errors. The investigation revealed the Petitioner received additional computer training with another trainer on November 21, 2011. On November 23, 2011, a trainer conducted a two month evaluation of Petitioner and noted Petitioner had trouble with the intake process and had a higher error rate than other probationary employees. Petitioner received additional one-on-one training on December 15, 2011, December 29, 2011 and January 19, 2012.<sup>1</sup> Petitioner was also allowed to repeat portions of his initial training to assist him in better understanding his job. On February 6, 2012, Petitioner received several "does not meet" on his evaluation.<sup>2</sup> Petitioner continued to make mistakes and was discharged on February 29, 2012 for failure to comprehend the job functions. Petitioner could not grasp the functions of the job after receiving the same training as the other probationary employees and having the **advantage** of receiving additional one-on-one training, repeating certain portions of the initial training and receiving additional computer training. Petitioner cannot establish adverse action because he received the same training as all the other employees. Petitioner cannot establish that he satisfactorily performed the job. The white comparative was not certified during the same time frame as Petitioner. Petitioner did not identify, and the investigation did not reveal, a comparative who received additional training but could not grasp the functions of the job. Petitioner failed to establish a *prima facie* case and the Respondents dismissal for lack of sufficient evidence was proper.

Petitioner alleges he was subjected to unequal terms and conditions of employment because the employer failed to extend his probationary period due to his race (black) and age (52). (Counts C-D). Petitioner stated two white coworkers made the same number of mistakes as Petitioner and their probationary period was extended to allow

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<sup>1</sup> Employer's exhibit B Notice of Discussion.

<sup>2</sup> Employer's exhibit G Intake Monitoring Note.

them to learn the job. Employer stated one white person who was not given an extension, was certified in the position and did not make mistakes like the Petitioner.<sup>3</sup> The second white person was not a comparative because she is a full time certified employee as opposed to a probationary employee like the Petitioner. Two white people were discharged and not certified in the position. Petitioner cannot prove that the employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. The Petitioner failed to establish a *prima facie* case and the 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 State of Illinois-Department of Children and Family Services 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

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<sup>3</sup> Employer's policy is to allow a probation extension equal to the time the individual was absent during the training sessions. Employer's exhibit I white employees Certification Notice.