

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)		
FOR REVIEW BY:	)	CHARGE NO.:	2013CF0066
	)	EEOC.:	21BA22138
LORENZO RODRIGUEZ,	)	ALS NO.:	13-0398
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 Lorenzo Rodriguez’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”) of Charge No. 2013CF0066 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 July 12, 2012, the Petitioner, Lorenzo Rodriguez, filed a perfected charge of discrimination with the Respondent, alleging that his employer, Colonial Cafe, harassed him because of his disabilities, subjected him to unequal terms and conditions, and constructively discharged him in violation of Section 2-102(A) of the Illinois Human Rights Act. On July 3, 2013, the Respondent dismissed the charges for lack of substantial evidence. The Petitioner filed a timely Request for Review on August 12, 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 harassment based on disabilities of depression and panic attacks (Counts A-B). Actionable harassment occurs when the workplace is permeated with discriminatory ridicule and insult that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment. See Harris v. Forklift Systems, Inc., 510 U.S. 17, 20, 114 S.Ct. 367, 371, 126 L.Ed.2d 295 (1993).

Petitioner, a short order cook, alleges his manager harassed him by yelling and screaming at him, and criticizing his work performance. Petitioner's doctor, Dr. Francisco Cruz diagnosed Petitioner with Generalized Anxiety Disorder<sup>1</sup> and Dysthymia on September 23, 2011.<sup>2</sup> Petitioner alleges on December 16, 2011, the Employer harassed him by requesting he arrive on time to work after he came late twice due to his doctor's appointment and by yelling at him for messing up an order in April 2012.<sup>3</sup> These incidences are not egregious or pervasive enough in nature to rise to the level of actionable harassment. In addition, the alleged incidences of harassment were activities within the scope of the Employer's authority and were related to job performance. Requiring the Petitioner to perform the duties of his job and to follow company policy do not constitute harassment. See Patel v. Allstate Insurance Co., 105 F.3d 365 (7th Cir. 1997). Further, the investigation did not reveal a nexus between the employer's action and the disability of the Petitioner. The Petitioner failed to establish a *prima facie* case and the Respondent's dismissal of the charges for lack of substantial evidence is proper.

The evidence was insufficient to establish a *prima facie* case of unequal terms and conditions of employment due to disabilities of anxiety and depression (Counts C-D). 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). 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 alleges he was subjected to unequal terms and conditions of employment from January 2012 and May 28, 2012 when his Employer asked the Petitioner to rip up the floor under the fry station and haul materials left by the construction crew to the trash. Petitioner stated these responsibilities were not related to his position of short order cook. The President of the company indicated that Petitioner did not complain, that the additional duties were voluntary, and that the Petitioner was compensated for the extra two hours of work. Petitioner did not satisfy adverse action because he was only asked to perform these additional tasks one time and was paid for the extra two hours of work. The Employer did not attach any threats to the Petitioner's failure to comply with these request. The Petitioner did not prove that the employer treated a

---

<sup>1</sup> Dr. Cruz indicated the condition is significantly debilitating, is not transitory and it is not insubstantial and that the generalized anxiety disorder causes frequent anxiety with panic attacks.

<sup>2</sup> The HR specialist indicated she did not receive a complaint from the Petitioner or notices from his doctor. The Manager stated Petitioner never told her of his depression and anxiety only the diabetes and that he never requested an accommodation.

<sup>3</sup> An employee stated Petitioner was told to go to his doctor's appointment on his off days and not on Fridays. Petitioner admitted making errors at work because of his medical conditions to his doctor.

similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. The Petitioner did not establish a nexus between the employer's action and his disability. Instead, the Petitioner suggested he and another worker were chosen because they were the lowest paid and the employer financially benefitted by choosing them. The Petitioner failed to establish a *prima facie* case and the Respondent's dismissal of the charges for lack of substantial evidence is proper.

The evidence was insufficient to establish a *prima facie* case of constructive discharge (Counts E and F). Constructive discharge occurs when an employer deliberately makes working conditions so intolerable as to force an involuntary resignation. Green Hills-Country Club v. Illinois Human Rights Commission, 162 Ill.App.3d 216, 514 N.E.2d 1227, 113 Ill.Dec. 216 (5<sup>th</sup> Dist. 1987). Where an employee is subjected to sexual harassment, or any other form of illegal discrimination, this standard is clearly met. Id. Petitioner resigned from his position on May 28, 2012 allegedly because the Employer continually harassed and discriminated against him. Petitioner stated the manager had tired him out to the point of having suicidal ideations. As previously discussed, the Petitioner failed to provide substantial evidence of harassment or unequal terms or conditions. The manager demanding the Petitioner come to work on time and correctly and timely process food orders are within her responsibilities as his manager. Further, allegedly, the manager stated "If I did not know what condition you are in, what I would do to you." This indicates that the manager was adjusting her behavior and treating him better because of his condition. The Petitioner did not prove a nexus between the employer's behavior and his disabilities. The Petitioner failed to establish a *prima facie* case and the Respondent's dismissal of the charge 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 Colonial Cafe as the respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

**STATE OF ILLINOIS** )  
 )  
**HUMAN RIGHTS COMMISSION** )

**Entered this 14 day of Dec. 2018.**

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden