

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)		
FOR REVIEW BY:	)	CHARGE NO.:	2012CR4055
	)	EEOC.:	N/A
FATEMEH MOROVATI	)	ALS NO.:	13-0400
	)		
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 Fatemeh Morovati's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent") of Charge No. 2012CR4055 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:

- A) The Respondent's dismissal of Counts A-D of the Petitioner's charges is **SUSTAINED** for **LACK OF JURISDICTION**.
- B) The Respondent's dismissal of Counts G-L of the Petitioner's charges is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.

**DISCUSSION**

On March 6, 2012, the Petitioner, Fatemeh Morovati, filed twelve charges of discrimination with the Respondent alleging his employer, College of DuPage, discriminated by using unequal terms and conditions and wrongfully discharging her on January 13, 2012 due to her sex (female), religion (Islam), National origin (Iran), age (50), Race (white) and retaliating against her in violation of Sections 2-102(A) and 6-101(A) of the Human Rights Act. The Petitioner perfected her charges on January 31, 2012. The Respondent administratively closed Counts E and F on April 24, 2013 and they are not before the Commission. On June 26, 2013, the Respondent dismissed Counts A-D for lack of jurisdiction and dismissed Counts G-L for lack of substantial evidence. The Petitioner filed a timely Request for Review on September 9, 2013.

The Commission concludes that the Respondent properly dismissed Petitioner's charges A-D for lack of jurisdiction. Section 7A-102(A)(1) provides that an aggrieved party must file a charge of discrimination under oath or affirmation within 180 days after the date that the alleged civil rights violation has been committed. The petitioner's compliance with the 180-day filing requirement of section 7A-102(A)(1) is a condition precedent to his right to seek a remedy and is required to vest the Commission with

subject matter jurisdiction of the charge. Board of Educ. Of City of Chicago v. Cady, 369 Ill.App.3d 486, 860 N.E.2d 526, 307 Ill.Dec. 872, 215 Ed. Law Rep. 991 (2006).

The Petitioner alleges that on November 1, 2006 her work hours were reduced from 28 to 12 hours per week, from June 2009 to August 2009, her hours were reduced to 10 hours per week, and in September 2009, her hours were increased to 12 hours per week based on her sex, (female), religion (Islam), national origin (Iran) and age (50 years). (Counts A-D). In order to satisfy the 180 day requirement, Petitioner must file her charge for the November 1, 2006 reduction in May 2007. Petitioner filed her charge on March 6, 2012 or almost 5 years after the 180 day deadline. In order to satisfy the 180 day requirement, Petitioner must file her charge for the June - August 2009 reduction in February 2010. Petitioner filed her charge on March 6, 2012 or almost 2 years after the 180 day deadline. The Petitioner also alleges her name has not been included on the schedule since she moved to the library in 1994. In order to satisfy the 180 day requirement, Petitioner must file her charge by June 1995. Petitioner filed her charge on March 6, 2012 or almost 17 years after the 180 day deadline. The Commission concludes the Respondent properly dismissed these charges for lack of jurisdiction.

The Commission concludes that the Respondent properly dismissed the Petitioner's charges G-L 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 unequal terms and conditions the Petitioner must show: (1) that she is a member of a protected class; (2) that she was performing her work satisfactorily; (3) that she 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 (2<sup>nd</sup> Dist. 1994). An Employer is entitled to make employment decisions based on its reasonable belief of the facts surrounding the situation. It is improper for the Respondent to substitute its' judgment for the business judgment of the employer. Sapienza v. Cook County Office of the Public Defender, 128 F.Supp.2d 563 (2001).

Petitioner alleges she was subject to unequal terms and conditions due to her race (white), sex (female), religion (Islam) national origin (Iran) and age (50 years) (Counts G-J and L). Petitioner, the only Delivery Assistant/Distribution Assistant, complained that her employer hired her friends who arrived late and did not work as hard as her, that it was unfair to cut her hours, and that a white male part time employee delivered equipment. Petitioner admitted, and the employer stated, it was unaware of the Petitioner's religion. Employer indicated Petitioner failed to maintain a positive attitude, had difficulty getting along with staff and reacted negatively when directed to perform

tasks or when there was a change in procedures.<sup>1</sup> From September to November 2011, the Employer continued to receive complaints regarding Petitioner's attitude and communication style. Petitioner cannot prove that she satisfactorily performed her responsibilities. Petitioner was told at the December 16, 2011 meeting that her position was eliminated effective January 13, 2012 because it was no longer needed due to technological advances.<sup>2</sup> Petitioner's position was the only position eliminated in the Circulation Department, but the employer eliminated other positions in 2010, 2011 and 2012.<sup>3</sup> Petitioner cannot prove that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. Additionally, it is improper for the Respondent to substitute its' judgment for the business judgment of the employer. Petitioner failed to establish a *prima facie* case and the Respondent's dismissal for lack of substantial evidence is proper.

To establish a *prima facie* case of retaliation the Petitioner must show 1) she engaged in a protected activity 2) the Employer committed an adverse action against her and 3) a causal connection existed between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3<sup>rd</sup> dist. 2000). Additionally, a causal connection will be inferred if the period between the protected activity and the adverse action is sufficiently short. See Mitchell and Local Union, 146, 20 Ill. HRC Rep. 101, 110-111 (1985) (six months was too remote to establish connectedness).

Petitioner alleges she was discharged in retaliation for opposing discrimination (Count K). Petitioner filed a discrimination complaint in 1994<sup>4</sup> and filed a sexual harassment complaint in 2007. Employer investigated her concerns. The Employer notified the Petitioner at the December 16, 2011 meeting that her position was eliminated effective January 13, 2012 due to technological advances. Almost seventeen years has elapsed since the discrimination complaint and almost four years has elapsed since the sexual harassment complaint which is too long to establish a connection between the protected activity and the adverse action. The Petitioner failed to prove 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

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<sup>1</sup> Petitioner's February 26, 2010 written warning

<sup>2</sup> E-mails dated October 28, 2011 and back up documentation about eliminating the DA position. The Vice President and Board of Trustees agreed to eliminate the position because there was a 27% decrease in bookings for QAV once most classrooms became equipped with IT and AV equipment. Documentation demonstrated that since 2006, there has been a 73% decrease in deliveries.

<sup>3</sup> Exhibit I documentation of other people whose jobs were eliminated in 2012.

<sup>4</sup> Memo to Complainant's file about discrimination complaint in 1994

Department of Human Rights, and College of DuPage 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