

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )  
FOR REVIEW BY: )

**ANNETTE KELLY,** )

Petitioner. )

CHARGE NO.: **2013CF0054**  
EEOC NO.: **21BA22128**  
ALS NO.: **13-0401**

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Robert A. Cantone, Hamilton Chang, and Nabi R. Fakroddin presiding, upon the Request for Review (“Request”) of Annette Kelly (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)<sup>1</sup> of Charge No. 2013CF0054 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 charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

**DISCUSSION**

On July 11, 2012, the Petitioner filed a charge of discrimination with the Respondent alleging that Federal Signal Corporation (“Employer”) suspended her because of her disability, migraine headaches, and in retaliation for filing a prior charge of discrimination, in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”). On June 19, 2013, the Respondent dismissed the Petitioner’s charge for lack of substantial evidence. The Petitioner filed a timely Request.

The Commission concludes that the Respondent properly dismissed the Petitioner’s charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent’s investigation of a charge, the charge must be dismissed. 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, \*2 (March 7, 1995).

The Petitioner argues that the Employer suspended her because of her disability. In order to establish a prima facie case, 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; and 4) that the employer treated a similarly situated employee outside the Petitioner’s protected class more

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<sup>1</sup> In a request for review proceeding, the Illinois Department of Human Rights is the “Respondent.” The party to the underlying charge requesting review of the Illinois Department of Human Rights’s action shall be referred to as the “Petitioner.”

favorably under similar circumstances. See *Marinelli v. Human Rights Comm'n*, 262 Ill. App. 3d 247, 253 (2<sup>nd</sup> Dist. 1994).

In this case, the Petitioner worked as an assembler in the Employer's factory. She established that she was disabled, that she was performing her work satisfactorily, and that the Employer suspended her. Her prima facie case fails, however, because the Petitioner did not establish that the Employer treated a similarly situated employee who was non-disabled more favorably than her in similar circumstances. Thus, the Respondent properly dismissed this Count of the charge.

The Petitioner next argues that the Employer suspended her in retaliation for opposing discrimination. In a claim of retaliation, the Petitioner must establish that 1) she engaged in a protected activity; 2) the actor took an adverse action against her; and 3) there was a causal nexus between the protected activity and the adverse action. See *Welch v. Hoeh*, 314 Ill. App. 3d 1027, 1035 (3<sup>rd</sup> Dist. 2000). If the Petitioner establishes her prima facie case, the employer may rebut the presumption of discrimination by articulating a legitimate, nondiscriminatory reason for its decision, and then the Petitioner must prove that the articulated reason was a pretext for discrimination. Zaderaka v. Illinois Human Rights Comm'n, 131 Ill. 2d 172, 178-79 (1989).

Here, the Petitioner established that she filed a claim of discrimination against the Employer in June 2012, that she was suspended in July 2012, and that the proximity in time created an inference of causality. The Employer articulated that its legitimate reason for suspending the Petitioner was that she attempted to take Employer property without authorization. The Petitioner contended that she did not know that the Employer's voltmeter was in her tool box and that she took two storage containers because they were in the Employer's waste receptacle. While this may be true, it does not establish that the Employer's reason for suspending her was a pretext for discrimination. See *Carlin v. Edsal Mfg. Co.*, IHRC, Charge No. 1992CN3428, 1996 WL 652580, \*7 (May 6, 1996) (noting that the correctness of an employer's decision is not important as long as there was a good faith belief).

The Petitioner has not presented any evidence to show that the Respondent's dismissal of the charge was not in accordance with the Act.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The dismissal of the Petitioner's charge is hereby **SUSTAINED**.
2. This is a final Order. A final Order may be appealed to the Illinois Appellate Court by filing a Petition for Review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Federal Signal Corporation as respondents, with the Clerk of the Illinois Appellate Court within 35 days after the date of service of this Order.

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

**Entered this 18th day of December 2018.**

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Nabi R. Fakhroddin, P.E., S.E.