

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012CA3465
)	EEOC NO.: 21BA21804
)	ALS NO.: 13-0415
FELICIA SMYLES,)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Robert A. Cantone, Hamilton Chang, and Nabi R. Fakroddin presiding, upon Felicia Smyles’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2012CA3465, 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 May 30, 2012, the Petitioner, a former financial aid counselor, filed a charge of discrimination with the Respondent, alleging that DePaul University (“Employer”) discharged her because of her age (49), race (black), and physical disabilities (diabetes, glaucoma, and diabetic retinopathy), in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On July 3, 2013, the Respondent dismissed the Petitioner’s charge for lack of substantial evidence. The Petitioner filed a timely Request.

For the reasons that follow, the Commission concludes that the Respondent properly dismissed the Petitioner’s claims for lack of substantial evidence. Substantial evidence is that which “a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance.” 775 ILCS 5/7A-102(D); Owens v. Dep’t of Human Rights, 403 Ill. App. 3d 899, 917, 936 N.E.2d 623, 638 (1st Dist. 2010).

¹ 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.”

The Petitioner had worked in the Employer's financial aid department for over 15 years when she was fired in May 2012. Prior to her termination, the Petitioner was approved for a medical leave from mid-April to mid-May. In the beginning of April, the Petitioner's immediate supervisor, Tina Tindall, stated to her "I see you have a leave coming up. What's this one for?" The Petitioner told Ms. Tindall she could ask Human Resources if she wanted more information. The Petitioner had also taken medical leave several years earlier, in late 2008. In addition, in June 2008, the Employer approved the reasonable accommodation of turning off the Petitioner's overhead fluorescent lights, which aggravated her diabetic retinopathy. The Employer acknowledged it was aware of the Petitioner's diabetes and diabetic retinopathy.

It is uncontested that on April 18, 2012, the Petitioner's access to the National Direct Student Loan Data System (NSLDS) was revoked, but she did not report it to the Employer. The failure to report and get her access restored within two weeks was the Employer's stated cause for terminating her. The Employer stated access was required for all employees on the Petitioner's team to perform their jobs; the Petitioner acknowledged she used it about once per week.

The Petitioner met with several management employees on April 25, 2012, after it was discovered her access was revoked. The Petitioner told the Employer that her loan servicer's mistake caused the issue, as they marked her student loans in default (while they were actually in forbearance). The Employer suspended her for two weeks with pay to resolve the issue. The Petitioner thereafter obtained a letter from her loan servicer that her loans were not in default; however, her access to NSLDS was not restored. The Petitioner met with management again on May 11, at which time she told them her loans were not in default, but she could not say when her access would be restored. She was thereafter terminated. The Petitioner was replaced by a non-black, 28-year-old employee. In July, NSLDS notified the Petitioner that it had attempted to restore her access, but her account had been deactivated by the Employer.

The Petitioner stated that she believed a younger, non-black co-worker, Lauren Lentz, also did not have access to NSLDS, because the Petitioner had observed a third co-worker print documents from the system for her. However, the Employer stated that Ms. Lentz did have access to NSLDS, and that no other employee except for the Petitioner lacked access. Ms. Lentz stated in her interview with the Respondent that she did have access to NSLDS and had only been without it for a short time during her initial training period in 2011.

To establish a *prima facie* case of race or age discrimination, the Petitioner must show: (1) she is a member of a protected class; (2) she was performing her work satisfactorily; (3) she was subject to an adverse employment action; and (4) the Employer treated a similarly situated employee or employees outside her protected class more favorably under similar circumstances. Marinelli v. Human Rights Comm'n, 262 Ill. App. 3d 247, 634 N.E.2d 463 (2d Dist. 1994).

The record does not contain substantial evidence supporting the fourth element of the *prima facie* case. The employee the Petitioner named, Ms. Lentz, was not actually treated more favorably by the Employer because the Petitioner was mistaken about their circumstances being similar. The investigation established that Ms. Lentz did not lack access to the NSLDS system, and that the Petitioner was the only employee who presented that issue. Without evidence that a comparator was treated more favorably, there is no reasonable inference of discriminatory intent to be drawn with respect to the Petitioner's race or age.

To establish her claim that she was terminated because of her disabilities, the Petitioner must show: (1) that she is disabled within the meaning of the Act; (2) the disability is unrelated to her ability to perform the job; and (3) the Employer's termination was related to the disability. Kreczko v. Triangle Package Machinery Co, 2016 IL App (1st) 151762, 53 N.E.3d 1070 (1st Dist. 2016).

The record did not reveal more than a "scintilla" of evidence that the Petitioner's termination was related to her disabilities. The Employer had long been aware of the Petitioner's conditions, and provided her a requested accommodation in 2008. The only evidence cited by the Petitioner was the temporal proximity of her termination to her 2012 medical leave and Ms. Tindall's statement to her asking "What's this one for?" But the investigation did not show that Ms. Tindall was part of the decision to fire the Petitioner. Rather, the Petitioner met with the Employer's Associate Vice President of Financial Aid, Director of Employee Relations, and Director of Operations regarding the NSLDS issues, and they were the ones who made the decision to fire her.

In her Request for Review, the Petitioner attaches emails between herself and Ms. Tindall from 2008, which show that Ms. Tindall asked the Petitioner to send her worksheets to another employee to be double-checked. This was apparently not a previously required procedure, and the Petitioner cites it as evidence that Ms. Tindall was harassing her. However, nothing in the content of the emails hints at any discriminatory animus. Moreover, the email correspondence predated the Petitioner's termination by four years.

Accordingly, the Petitioner has not presented enough 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 Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and DePaul University as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
) **Entered this 21st day of December 2018**
HUMAN RIGHTS COMMISSION)

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Nabi R. Fakhroddin