STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	CHARGE NO.: **2013CA0803**
	)	EEOC NO.: **21BA30017**
	)	ALS NO.: **13-0417**
RONALD D. WOODS,	)	
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 Ronald D. Woods's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")[1] of Charge No. 2013CA0803, 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 October 1, 2012, the Petitioner, a former full service driver, filed a charge of discrimination with the Respondent, alleging that American Bottling Company ("Employer") discharged him due to his race (black), his age (41), 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 25, 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 claim 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

[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."

Ill. App. 3d 899, 917, 936 N.E.2d 623, 638 (1st Dist. 2010). If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. Id.

The Petitioner worked as a Full Service Driver for the Employer, which involved driving to customers' vending machines to collect money and stock beverages. The Petitioner was employed for 10 years under the same supervisor, apparently without any significant disciplinary incidents, which changed after 2010 when a new supervisor, Tomas Gallegos, took the helm. Mr. Gallegos changed the areas to which the drivers delivered, and the areas to which the Petitioner delivered increased. However, the number of accounts he serviced actually decreased, and the Employer's daily production numbers did not change.

In July 2011, the Petitioner received a written disciplinary warning for neglect of duty, because he misplaced a cash bag on his route. On December 22, 2011, Mr. Gallegos gave the Petitioner a written reprimand for failing to service three different accounts for an important corporate customer. In a letter dated December 28, 2011, the Petitioner wrote to the Employer's Human Resources Manager that he felt Mr. Gallegos was discriminating against him and harassing him by giving him an increased workload. It is not clear how fully that report was investigated. On May 14, 2012, the Petitioner reported to a different Human Resources Manager that he felt he was being discriminated against based on race. The Employer conducted an investigation and concluded in early June that it could not substantiate the Petitioner's claim.

On June 18, 2012, the Petitioner filed a prior charge of discrimination with the Respondent, alleging that he had been subject to discipline because of his race. Thereafter, the Petitioner was again given a written reprimand on July 23, 2012, for low productivity and working unauthorized overtime. This was dubbed a "final" warning.

Approximately two months later, on September 14, 2012, the Petitioner was suspended pending further investigation of an earlier incident at the end of August, when a set of the Petitioner's keys went missing. The Petitioner admitted during the investigation that he left the keys in his truck while making a delivery. Mr. Gallegos stated the Employer's policy was that drivers should keep all keys on their person when not in the truck. Moreover, the Petitioner was accused of giving conflicting contemporaneous accounts of the missing keys; he told Mr. Gallegos that the keys had been stolen when he left them under the seat of his truck, but when Mr. Gallegos spoke to a loss prevention employee of the store where the Petitioner was parked, she said the Petitioner told her he left the keys in the ignition. The Petitioner also reported the

incident to the local police, who recorded the Petitioner as reporting the keys to be missing after he left the store.

On September 17, 2012, the Petitioner filed another charge with the Respondent, alleging retaliation. On September 27, 2012, the Petitioner was terminated. The reasons cited involved violations of the Employer's standards of conduct, including dishonesty, falsification of records, poor work performance, carelessness, inattention to or neglect of duties, and violation of safety rules and practices. The investigation revealed that Mr. Gallegos terminated five employees total between February 2011 and November 2012, all of whom were black, and several of whom were younger than the Petitioner.

In order to establish his claims of discrimination, the Petitioner must first establish a *prima facie* case, showing that: (1) he is a member of a protected class; (2) he was meeting the Employer's legitimate business expectations; (3) he suffered an adverse employment action; and (4) the Employer treated similarly situated employees outside the class more favorably. Owens v. Dep't of Human Rights, 403 Ill. App. 3d 899, 919, 936 N.E.2d 623, 640 (1st Dist. 2010).

Although the Respondent argues the Petitioner has not met the fourth element of his *prima facie* case, there is some evidence in the record showing that Mr. Gallegos fired several black drivers, while other non-black drivers presumably stayed on. The Commission notes that the Respondent's investigation report does not contain a great deal of information about the other Full Service Drivers the Petitioner identified by the first names Rich, Randy, Pete, (white, late 40s), and Caesar (Hispanic, late 20s or early 30s).

To establish a *prima facie* case of retaliation, the Petitioner must show: (1) he engaged in a protected activity; (2) the Employer took an adverse action against him; and (3) a causal nexus exists between the protected activity and the adverse action. Hoffelt v. Illinois Dep't of Human Rights, 367 Ill. App. 3d 628, 634, 867 N.E.2d 14, 19 (1st Dist. 2006). An adverse employment action arising a relatively short time after protected activity raises a reasonable inference of retaliatory conduct. See Maye v. Human Rights Comm'n, 224 Ill. App. 3d 353, 362, 586 N.E.2d 550, 556 (1st Dist. 1991).

The Petitioner has established that he was terminated soon after filing several charges against the Employer. This temporal proximity is sufficient under the guiding precedent to establish the Petitioner's *prima facie* case.

However, this does not end the Commission's inquiry. Once a *prima facie* case of discrimination and retaliation is established, the burden will then shift to the Employer to articulate a non-discriminatory reason for its employment action. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) (adopted by Illinois Supreme Court in Zaderaka v. Human Rights Comm., 131 Ill.2d 172, 179, 545 N.E.2d 684, 687 (1989)). The Petitioner must then show that the Employer's articulated reason for its employment action was a pretext. Id. Pretext may be shown if the Employer's stated reasons are untrue, did not actually motivate the Employer's decision, or were insufficient to motivate the Employer's decision. Sola v. Illinois Human Rights Comm'n, 316 Ill. App. 3d 528, 537, 736 N.E.2d 1150, 1158 (1st Dist. 2000).

The investigation did not uncover substantial evidence that the Employer's disciplinary actions were a pretext. The record showed a progression of discipline by Mr. Gallegos that had a documented basis in the Petitioner's performance issues. In July 2011 and December 2011, the Employer disciplined the Petitioner for neglect and failure to meet well-documented performance expectations. In July 2012, the Petitioner was again cited for failure to service customer accounts, as well as failure to abide by guidelines regarding overtime and clocking out.

Thereafter in August 2012, the Petitioner admittedly left his keys unattended in his truck, after which they went missing. The investigation did not make clear what the Petitioner's motives may have been for telling the police that he simply lost the keys, rather than report that they had been stolen; and then admitting to the Employer that he did believe they were stolen. But in any event, the Employer was thereafter left with inconsistencies in the Petitioner's story. And ultimately, the Employer stated the Petitioner violated safety policies by leaving the keys unattended, which the Petitioner does not dispute. The Petitioner does suggest that the missing keys may have been a "set up" to get him fired, but he points to no specifics of who may have had the means to perpetrate this action and how he believes they might have accomplished it.

The Petitioner has identified one other driver, Anthony Jones, who was known at one time to have left his keys in his truck, and who the Petitioner does not believe was disciplined. Mr. Gallegos was aware of this occurrence because he was on site at the time. However, the comparison to Mr. Jones does not help the Petitioner's case. Mr. Gallegos was not Mr. Jones's direct supervisor, and, furthermore, Mr. Jones stated during the investigation that he was in fact given a disciplinary warning for a first-time infraction. In addition, Mr. Jones is also black and nearly the same age as the Petitioner, so even if he had been treated more leniently than the Petitioner, the comparison does not raise an inference of discrimination.

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 The American Bottling Company 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. Fakroddin