

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2013CA0223
)	EEOC NO.: 21BA22301
)	ALS NO.: 13-0421
DEBORAH RICKS,)	
)	
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 Deborah Ricks's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2013CA0223, 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 30, 2012, the Petitioner, a legal assistant, filed an unperfected charge of discrimination with the Respondent, perfected on July 31, 2012 and amended on April 24, 2013, alleging that McDonald Hopkins, LLC ("Employer") discharged her on the basis of her race (black), and age (56), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On June 21, 2013, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. The Petitioner filed a timely Request.

The Petitioner worked as a legal assistant in the Employer's litigation department from September 2007 until she was terminated on February 1, 2012. The events precipitating her termination involved her emailing case materials to an attorney, Michael Femal, who had recently left the Employer, and who she had been primarily supporting before his departure. The Petitioner believed that it was acceptable to send

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."

materials to Mr. Femal because she was aware of another attorney in the office who was doing so. In her charge, the Petitioner also named three other legal assistants who she stated engaged in similar conduct without repercussion, none of whom were black, and all of whom were younger than the Petitioner (34, 45, and 46 years, respectively).

The Employer had a written policy about transferring client materials when an attorney leaves the firm, which stated, in relevant part:

If a Lawyer terminates from the Firm, no client materials may go with the attorney without written authorization from the Client.... If a former attorney requests materials, please contact the Department manager, or someone in administration before releasing any materials. All files must be reviewed by an attorney before leaving the Firm premises. Any person failing to abide by these instructions is subject to disciplinary measures up to and including termination.

The Petitioner stated that when Mr. Femal left the firm in December 2011, the Employer's Director of Administration instructed her not to disclose to him information on one particular case. The Petitioner did not disclose any materials on that case. For some (but not all) of the other materials she sent Mr. Femal, the Petitioner obtained permission from another of the Employer's attorneys in its Cleveland office, who ultimately brought to the managing partner's attention that the Petitioner was providing Mr. Femal with information from client files.

Mr. Femal testified that none of the materials the Petitioner sent him were confidential, but were for clients who were moving with him to his new firm. Mr. Femal stated that he had client authorization to obtain all the materials the Petitioner sent him. Mr. Femal stated the information contained only due dates. However, the Employer conducted a search of the Petitioner's emails from January 2012, and found numerous files attached to emails she sent Mr. Femal, including items identified as charts, videos, and patent applications.

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). If no substantial evidence of

discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. Id.

In order to prove her claims of discrimination, the Petitioner must first establish a *prima facie* case, showing that: (1) she is a member of a protected class; (2) she was meeting the Employer's legitimate business expectations; (3) she suffered an adverse employment action; and (4) the Employer treated similarly situated employees outside the class more favorably. Owens, 403 Ill. App. 3d at 919, 936 N.E.2d at 640. The burden then shifts to the Employer to articulate a legitimate reason for its decision. Id. Once the Employer articulates such a reason, the Petitioner will bear the ultimate burden to show that the Employer's reason was untrue and was a pretext for discrimination. Id.

The investigation did not uncover substantial evidence supporting the fourth element of the *prima facie* case sufficient to raise an inference of race and/or age discrimination. Although the Petitioner named three other legal assistants in her charge who purportedly also sent unauthorized files, she only provided specific information about one of those assistants during the investigation and in her Request. However, that assistant, Mary Brady, actually told the Petitioner that she was reviewing Mr. Femal's files on behalf of an attorney to decide what information should be sent to him (which was supposed to be an attorney's job). The record did not show that Ms. Brady was sending out information to Mr. Femal without approval. And the fact that that same attorney was also sending files to Mr. Femal, according to the Petitioner, does not help her case. The attorney served a different role at the firm and was not similarly situated to the Petitioner, who as a legal assistant was clearly not authorized to send clients' files without attorney approval.

Moreover, the evidence of record does not suggest that the Employer's legitimate reason for terminating the Petitioner was pretextual. The record shows that the Petitioner signed the policy regarding disseminating client information around the time she was hired. The Petitioner acknowledges that she violated that policy by not seeking authorization to provide the information to Mr. Femal. Simply because the Employer may have cautioned the Petitioner not to provide materials on one specific case, does not justify the assumption that the policy did not have to be followed for other cases. And although Mr. Femal may have had client authorization for the information sent, that does not negate the Petitioner's obligation to follow the Employer's policy that an attorney review the file before it leave the premises.

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 McDonald Hopkins, LLC 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