

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: <b>2012CF3806</b>
)	EEOC NO.: <b>21BA22028</b>
)	ALS NO.: <b>13-0428</b>
<b>ARTHUR MAY,</b> )	
)	
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 Arthur May's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2013CF3806, 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 June 28, 2012, the Petitioner, a former factory production worker, filed a charge of discrimination with the Respondent, alleging that Silver Line Building Products, LLC ("Employer") discharged him on the basis of his race (black), and sex (male), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On May 31, 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). If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. Id.

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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."

The Petitioner worked for the Employer for approximately eight years when he was fired in April 2012. Prior to his termination, a female co-worker accused him of numerous instances of sexual harassment. While the Employer was investigating those allegations, the Petitioner reported that the same female co-worker had in fact sexually harassed him, by rubbing against him and inviting him to a hotel.

The Employer conducted an extensive investigation, interviewing 19 witnesses in total. The female co-worker reported that the Petitioner had inappropriately touched her, made obscene gestures, and made inappropriate sexual remarks, numerous times over the course of several years. Many witness statements corroborated the co-worker's accounts, with citations to a number of specific incidents, and the Employer concluded that the Petitioner engaged in unwelcome and inappropriate sexual conduct in violation of the Employer's sexual harassment policy. During the investigation, the Employer also determined that no credible evidence supported the Petitioner's assertion that the co-worker sexually harassed him.

The Petitioner states that a supervisory employee, Juan Garza, who is not black, was also accused of sexual harassment, but that he was only suspended and not fired. The Employer acknowledged that Mr. Garza was accused of one incident of making a vulgar and obscene verbal comment, which was not corroborated by other witnesses. Nevertheless, the Employer did instruct Mr. Garza to refrain from social contact with employees and required him to regularly meet with human resources to review proper communication skills.

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, 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.

No substantial evidence exists to support the fourth element of the Petitioner's *prima facie* case for either his sex or race discrimination claims. The investigation did not reveal any individual who was treated better than the Petitioner under similar circumstances. Rather, the investigation showed that the two individuals named by the Petitioner – Mr. Garza and the female co-worker – were not accused of conduct as severe or ongoing as the Petitioner, and the allegations against them were not corroborated by numerous witnesses. And Mr. Garza, for his lesser infraction, was still reprimanded and subject to counseling.

Moreover, the record does not contain even a “scintilla” of evidence that the Employer’s legitimate reason for terminating the Petitioner was a pretext to disguise discriminatory intent. The Employer conducted an extensive investigation into the allegations levied against the Petitioner and determined, based on numerous witness statements, that the allegations were credible. The Petitioner has not pointed to any evidence tending to show that the conclusions from the investigation did not actually motivate the Employer’s decision.

**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 Silver Line Building Products, 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