

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2013SF1903
)	EEOC NO.:	21BA30805
JASON RASMUSSEN)	ALS NO.:	13-0431
)		
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 Jason Rasmussen’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2013SF1903 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 December 12, 2012, the Petitioner filed a charge of discrimination with the Respondent, perfected on January 11, 2013, alleging that Shivam Hotel, LLC (“Employer”) harassed him based on his physical disability, obesity, in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On August 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).

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 Commission found insufficient evidence to establish that the Petitioner was harassed due to his physical disability. Actionable harassment occurs when the workplace is permeated with ‘discriminatory intimidation, ridicule and insult’ that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment. Harris v. Forklift Systems, Inc. 510 U.S.210, 114 S.Ct. 367, 371, 126 L.Ed.2d 295 (1993). Additionally, “[t]he alleged conduct cannot be ‘sporadic’; instead, there must be some substantial evidence of a ‘steady barrage’ of objectionable conduct to rise to the level of actionable harassment.” See Larry Poulos and Olson RC, Inc., IHRC, ALS No. S05-152, March 17, 2009 (2009 WL 2382481).” In re Alberto Hernandez., IHRC Req. for Rev, ALS No. 09-375, April 13, 2010.

In the instant case, the harassment alleged by the Petitioner consists of: the Petitioner’s manager saying in front of everybody at a potluck, “You all better get in there before big boy does.”; the head housekeeper telling the Petitioner’s manager to tell “fat boy” not to lie on her anymore; and the Petitioner’s manager asking the Petitioner “Hey easy money, what are you up to?” Here, the conduct alleged by the Petitioner is not sufficiently severe or pervasive to constitute actionable harassment and does not alter the conditions of the Petitioner’s employment. Additionally, the evidence showed that the Petitioner’s manager took remedial action regarding the statement made to the Petitioner by the housekeeper by issuing her a written warning preventing any further incidents involving the housekeeper. Insufficient evidence exists to establish that the Petitioner was subjected to a pattern of discriminatory action based on his disability.

Accordingly, the Petitioner has not presented any substantial 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 Department of Human Rights, the Illinois Human Rights Commission, and Shivam Hotel, LLC, as named party respondents, with the Clerk of the Illinois Appellate Court within 35 days after the date of service of this Final Order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 20th day of December 2018

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Nabi R. Fakhroddin