

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2012SF3844
	)	EEOC NO.: 21BA22065
MARIE MOSBY	)	ALS NO.: 13-0473
	)	
	)	
	)	
Petitioner.	)	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioner Robert A. Cantone, Hamilton Chang, and Nabi R. Fakroddin presiding, upon the Request for Review (“Request”) of Marie Mosby (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”) of Charge No. 2012SF3844 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 June 28, 2012, the Petitioner filed a charge with Respondent alleging that St. John’s Hospital (“Employer”) refused to place her on light duty (Count A) and discharged her (Count B) because of her race, Black, in violation of Section 2-102(A) of the Illinois Human Rights Act.

On July 31, 2013, the Respondent dismissed the charge for Lack of Substantial Evidence. The Petitioner filed a timely Request.

The Commission concludes that the Respondent properly dismissed the Petitioner’s claims 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).

The Commission finds that the Respondent properly dismissed the Petitioner’s charge. Generally, to establish a *prima facie* case of discrimination, the Petitioner must show: 1) that she is a member of a protected class; 2) that she was performing her work

satisfactorily; 3) that he was subjected to an adverse action; 4) and that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. Marinelli v. Human Rights Commission, 262 Ill.App.3d. 247, 634 N.E.2d 463 (2d Dist. 1994). Once the *prima facie* case has been established, the burden shifts to the respondent to articulate a legitimate, non-discriminatory reason for its actions. Then, to prevail, the complainant must prove that the respondent's proffered reason is a pretext for unlawful discrimination. McDonnell-Douglas Corp v. Green, 411 U.S. 792, 93 S.Ct. 1817 (1913).

#### *Count A*

Regarding Count A, the Petitioner has failed to prove that third and fourth requirements of the *prima facie* case. The investigation shows that the Employer was aware that the Petitioner had fallen at work on two occasions. Petitioner asserts that she had previously asked to be placed on light duty; however, the investigation reveals that Petitioner did not submit medical documentation to support her request for light duty until June 12, 2012. The Employer granted Petitioner's request, but the Employer discharged Petitioner that same day for unrelated reasons, so Petitioner's request became moot. In addition, the Petitioner alleges that Eugenia Koonce, a non-black employee, was placed on light duty. The investigation showed that Koonce followed the employer's procedures for requesting light duty, unlike Petitioner, so her request was granted right away. The Petitioner has failed to establish the *prima facie* case because her request was granted once she followed the Employer's procedures and because there is no evidence that the Employer placed non-black Employees on light duty who did not following the Employer's procedures.

#### *Count B*

The Petitioner has failed to prove that the Employer's legitimate, non-discriminatory reason for discharging Petitioner was a pretext for discrimination. The investigation revealed that the Petitioner had an extensive disciplinary record prior to her discharge. Petitioner was ultimately discharged for making a profane statement in front of other employees and customers and telling her co-workers that if anyone reported her to her supervisor, they would "answer to her." The Employer found that the statement and subsequent threat to her co-workers constituted gross misconduct. Petitioner offers no evidence to show that Employer's reason is a pretext for discrimination. Petitioner simply states that some employees were "out to get her." This is insufficient to prove pretext; therefore, the Respondent's dismissal must be sustained.

#### **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 Human Rights

Commission, the Illinois Department of Human Rights, and St. John's Hospital as respondents, with the Clerk of the Illinois Appellate Court within 35 Days after the date of service of this order.

**STATE OF ILLINOIS** )  
 ) **Entered this 14th day of December 2018.**  
**HUMAN RIGHTS COMMISSION** )

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Nabi R. Fakroddin