

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)
FOR REVIEW BY:)

LILIANA M. CRUZ,)

Petitioner.)

CHARGE NO.: **2012CA3701**
EEOC NO.: **21BA21958**
ALS NO.: **13-0475**

ORDER

This matter coming before the Commission by a panel of three, Commissioners Robert A. Cantone, Hamilton Chang, and Nabi R. Fakroddin presiding, upon the Request for Review (“Request”) of Liliana M. Cruz (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2012CA3701 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 12, 2012, the Petitioner filed a perfected charge of discrimination with the Respondent alleging that Chicago Transit Authority (“Employer”) failed to promote her based on her national origin, perceived sexual orientation, and age, in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On August 14, 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).

In this case, the Petitioner states that she worked as a bus schedule analyst for the Employer and applied for a promotional position as a transportation manager. A few weeks later, her application was terminated. The Petitioner contends that the Employer did not promote her because she was Puerto Rican, because she was perceived to be a homosexual, and because of her age, 48.

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 Employer stated that there were three positions for transportation manager that were open at the time that the Petitioner applied. One position was filled internally by India Birdsong (“Birdsong”) upon the recommendation of the vice president of bus operations, in accordance with Employer policy, and thus did not need to be posted. The Employer posted for the other two positions, but then decided to rehire transportation managers who had been laid off the previous year. At that point, the Employer cancelled the posting and terminated all of the applications, including the Petitioner’s, without review.

In the instant case, the evidence was insufficient to establish a prima facie case of discrimination. In order to prevail, the Petitioner must show 1) that she is a member of a protected class; 2) that she was performing her work satisfactorily; 3) that she was subject to an adverse action; and 4) that the employer treated a similarly situated employee outside the Petitioner’s protected class more favorably under similar circumstances. See Marinelli v. Human Rights Comm’n, 262 Ill. App. 3d 247, 253 (2nd Dist. 1994). In this case, the Petitioner could not establish that there was another applicant who was not in her protected classes who was offered the sought-after position. The Petitioner argued that the hiring of Birdsong establishes the Employer’s discrimination against her. But Birdsong is not similarly situated to the Petitioner, as she was promoted on the specific recommendation of a department hiring manager.

Moreover, the Employer articulated a legitimate, nondiscriminatory reason for its decision not to promote the Petitioner. The Employer followed its policy of rehiring laid off employees and promoting employees who were recommended by department hiring managers. The Petitioner has not proved that the Employer’s reason was a pretext to discriminate against her because of her national origin, perceived sexual orientation, or age. See In the Matter of F. Gene Beenenga, IHRC, Charge No. 1993SA0101, 1997 WL 313423, *6 (April 4, 1997) (noting that if the employer rebuts the presumption of unlawful discrimination by articulating a legitimate, nondiscriminatory reason, the Petitioner must prove that the reason was merely a pretext for unlawful discrimination).

The Petitioner has not presented any 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 Human Rights Commission, the Illinois Department of Human Rights, and Chicago Transit Authority as respondents, with the Clerk of the Illinois Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
)
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Entered this 18th day of December 2018.

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Nabi R. Fakhroddin, P.E., S.E.