

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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

GEORGE W. WALLS, JR.,)

Petitioner.)

CHARGE NO.: **2012CF3688**

EEOC NO.: **21BA21948**

ALS NO.: **13-0483**

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 George W. Walls, Jr., (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2012CF3688 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 19, 2012, the Petitioner filed a charge of discrimination with the Respondent alleging that PRS LLC Dialysis (“Employer”) sexually harassed him, harassed him in retaliation for opposing sexual harassment, and discharged him in retaliation for opposing sexual harassment, in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”). On August 13, 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).

The Petitioner first argues that the Employer subjected him to sexual harassment. To establish a prima facie case of sexual harassment based on hostile work environment, the Petitioner must show that (1) the conduct was sexual in nature; (2) the conduct was unwelcome, as measured on a subjective standard; and (3) the conduct must create a hostile, intimidating or offensive working environment as

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.”

measured on an objective standard. Ford and Caterpillar, Inc., IHRC, Charge No. 1993SF0242 (October 28, 1996). “Unless the conduct is quite severe, isolated incidents of offensive sexual remarks generally do not create an abusive environment. Unwelcome conduct of a sexual nature which does not amount to more than several isolated instances will not create liability.” In re Karen Tribble and Russell DeBerry, IHRC, Charge No. 1990SN0544, 1996 WL 652645, *9 (September 9, 1996).

In this case, the Petitioner asserted that his coworker Jackie Stamps (“Stamps”) told him that she liked the way he dressed; repeatedly asked him to give her a hug, which he did; asked him if he thought she was pretty; and told him several times that she loved him. These isolated incidents did not transform the Petitioner’s workplace into the abusive environment that the Act seeks to prevent. Thus, the Petitioner’s argument fails.

The Petitioner next argues that the Employer subjected him to harassment in retaliation for opposing discrimination. In a claim of retaliation, the Petitioner must establish that 1) he engaged in a protected activity; 2) the actor took an adverse action against him; and 3) there was a causal nexus between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill. App. 3d 1027, 1035 (3rd Dist. 2000). 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. 17, 21 (1993). The Commission may take into consideration the following factors: 1) the frequency of the discriminatory conduct; 2) the severity of the conduct; 3) the physically threatening or humiliating nature of the conduct, as opposed to mere offensive utterances; and 4) the interference that the conduct has on the employee’s work performance. In the Matter of Ella J. Wade, IHRC, Charge No. 2009CF1686, 2010 WL 7634127, *2 (October 13, 2010) (citing Harris, 510 U.S. at 22). If the Petitioner establishes his prima facie case, the employer may rebut the presumption of discrimination by articulating a legitimate, nondiscriminatory reason for its decision, and then the Petitioner must prove that the articulated reason was a pretext for discrimination. Zaderaka v. Illinois Human Rights Comm’n, 131 Ill. 2d 172, 178-79 (1989).

Here, the Petitioner argues that Stamps harassed him by refusing to communicate with him and trying to give him the most difficult patients to work with when he had to assist her. On April 30, 2012, after the Petitioner refused to take one of her patients, she became confrontational, calling him names and threatening to have her husband beat him up. Stamps then charged at him and he had to grab her hands to protect himself. The incidents recounted by the Petitioner did not constitute actionable harassment because they were not sufficiently severe or pervasive to alter the conditions of the Petitioner’s employment or create an abusive working environment. In the case of the April 30 incident, the Employer investigated the exchange between Stamps and Petitioner the next day and days later discharged both the Petitioner and Stamps for violating its anti-harassment policy. The Petitioner’s argument that the Employer subjected him to harassment lacks substantial evidence.

The Petitioner also argues that he was discharged in retaliation for having opposed sexual harassment. The Petitioner maintains that he complained about Stamps’s sexual harassment, was

