STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST	)		
FOR REVIEW BY:	)	CHARGE NO.:	2013CF0537
	)	EEOC NO.:	21BA22581
EATISHA R. WILLIAMS,	)	ALS NO.:	13-0516
Petitioner.	)		

ORDER

This matter coming before the Commission by a panel of three commissioners, Chair Rose Mary Bombela-Tobias and Commissioners Patricia Bakalis Yadgir and Duke Alden, presiding upon Eatisha R. William's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent") of Charge No. 2013CF0537 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 charges for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On August 30, 2012, the Petitioner, Eatisha Williams, filed a perfected charge of discrimination with the Respondent, alleging that her employer, John H. Stroger Hospital, discriminated against her in violation of Sections 1-103(A) and 2-102(A) of the Illinois Human Rights Act. On August 28, 2013, the Respondent dismissed the charge for lack of substantial evidence. The Petitioner filed a timely Request for Review on November 27, 2013.

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence exists after the Respondent's investigation of a charge, the charge must be dismissed. 775 ILCS 5/7A-102(D)(3). Section 7A-102(D)(2) states substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion and which consists of more than a mere scintilla but may be somewhat less that a preponderance.

The evidence was insufficient to establish a *prima facie* case of discrimination based on unequal terms and conditions of employment. To establish a *prima facie* case of discrimination, the Petitioner must show: (1) that he is a member of a protected class; (2) that he was performing his work satisfactorily (3) that he 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 Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994).

Additionally, the "definition of an adverse employment action is generous," an employee "must show some quantitative or qualitative change in the terms or conditions of his employment" or some sort of "real harm." Johnson v. Cambridge Indus., Inc. 325 F.3d 892, 901(7th Cir.2003); an adverse employment action has been defined by court as "more disruptive than a mere inconvenience or an alteration of job responsibilities". Traylor v. Brown 295 F.3d 783, 788 ()7th Cir. 2002). To be materially adverse enough to constitute discrimination, an employment action must constitute a "severe or pervasive change in the daily conditions of employment. Rhodes v. Illinois Department of Transportation, 359 F.3d 498, 504 (7th Cir. 2004).

Petitioner, a Clinical Nurse I, alleges she was subjected to unequal terms and conditions of employment from May 14, 2012 through August 29, 2012 due to her race when her employer changed her shift, did not allow her to take breaks and failed to schedule a replacement for her causing her to perform overtime. The investigation revealed, in January 2012, four Clinical Nurse I's retired from the Perioperative Surgical Services Department of the Employer causing a need for schedule changes to meet the operational needs of the department. The investigation revealed Petitioner's work shift of 10:00 a.m. – 6:30 p.m. was eliminated because the employer's operational needs required an 11:00 a.m. -7:30 p.m. shift.[1] The investigation also revealed that the Employer did not offer the 10:30 a.m. - 7:00 p.m. shift which allegedly was bid on by the Petitioner. Additionally, the Employer's initial May 3, 2012 memo stated only staff impacted could select new shifts. However, after meeting with the union, the Employer allowed all CNIs and CNIIs to select from available shifts and allowed seniority to dictate who would receive a shift change. Effective June 18, 2012, Petitioner was forced to work the 11:00 a.m. – 7:30 p.m. shift. The Petitioner's shift was moved back by one hour which is not materially adverse enough to qualify for an adverse action.

Employer indicated that Coleman whom Petitioner identified as non-black is black and was not offered Petitioner's shift. Rather, Coleman left on worker's compensation and returned to work on May 1, 2013. The investigation revealed that the two non-black employees identified by the Petitioner received shift changes at the same time as the Petitioner. Employer's data indicates that it employs a substantial number of blacks, both as overall full-time employees and in Petitioner's Job Category. Employer stated that out of 30 nurses, nine or thirty (30%) are black. The Petitioner cannot prove, and the investigation did not reveal, the employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. Further, the Petitioner did not establish a nexus between the employer's actions and her race. Rather the investigation revealed that the new shifts were established to fit the operational needs of the employer and that the nurses were assigned the shifts according to seniority. Petitioner has not established a *prima facie* case and the Respondent's dismissal for lack of substantial evidence is proper.

[1] Employer provided Exhibit F the May 3, 2012 Postings for Positions needed which revealed Petitioner's time slot of 10:00 a.m. – 6:30 p.m. was not offered as of May 3, 2012. All employees were required to review Exhibit E and rank the time slots in order of preference.

According to Petitioner, breaks and replacements are not scheduled but rather are taken according to the Employer's instructions and she was not scheduled for 20 days. Petitioner alleges non-black employees received their breaks. Two charge nurses stated Petitioner refused to take her breaks when assigned and took it at her leisure. Employer indicated Petitioner took an hour lunch and 15-minute break even though she frequently arrived late for work. Employer admitted that due to patient care, all employees must work late because sometimes an employee is late for work and the employer is short staffed at this time. Petitioner did not identify, and the investigation did not reveal the employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. The investigation did not reveal a racial animus on part of the employer rather it established that the operational needs of the employer dictated its' actions. Petitioner has not established a *prima facie* case and the Respondent's dismissal for lack of substantial evidence is proper.

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 John H. Stroger Hospital, 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)
) **Entered this 14 day of Dec. 2018.**
HUMAN RIGHTS COMMISSION)

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden