

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

|                              |   |             |            |
|------------------------------|---|-------------|------------|
| IN THE MATTER OF THE REQUEST | ) |             |            |
| FOR REVIEW BY:               | ) | CHARGE NO.: | 2013CF0050 |
|                              | ) | EEOC.:      | 21BA22123  |
| DELPHINE CHERRY              | ) | ALS NO.:    | 13-0519    |
|                              | ) |             |            |
| 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 Delphine Cherry's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent") of Charge No. 2013CF0050 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 July 10, 2012, the Petitioner, Delphine Cherry, filed a charge of discrimination which she amended on August 7, 2013, with the Respondent alleging her employer, Cook County Social Service Department failed to offer her an alternative position due to her Race (black) in violation of Section 2-102(A) of the Human Rights Act. On June 21, 2013, the Respondent dismissed the charge for lack of substantial evidence. The Petitioner filed a timely Request for Review on August 1, 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 than a preponderance.

The evidence was insufficient to establish a *prima facie* case of failure to offer an alternative position based on race (black). (Count A). Discrimination occurs when a Petitioner demonstrates that (1) he is a member of a protected class; (2) he was performing his work satisfactorily; (3) he was subject to an adverse action; (4) and that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstance. See Marinelli v. Human Rights

Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2<sup>nd</sup> Dist. 1994). Once the Petitioner establishes a *prima facie* case of discrimination, then the burden shifts to the Employer to rebut the presumption of discrimination and articulate a non-discriminatory reason for its' employment action. McDonald Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).

Petitioner was laid off effective June 8, 2012 along with another black employee and one non-black employee due to a reduced fiscal year 2012 budget and a loss of grant funds. Petitioner alleges Employer offered a non-black an alternative position in lieu of layoff but failed to offer her an alternative position in lieu of layoff because she is black.<sup>1</sup> The employer has not hired a new employee since June 8, 2012, the effective date of the layoff. The investigation revealed the non-black employee applied for and obtained a position at a different government agency that was recommended to her by the Human Resource Administrator.<sup>2</sup> The Petitioner did not apply for that position nor inquire of the Human Resource Administrator of other open positions in other agencies. Petitioner cannot prove that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. As a result, the Petitioner did not establish a *prima facie* case of discrimination and the Respondent's dismissal of her claim for lack of substantial evidence was proper.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

1.The dismissal of the Petitioner's charges 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 Cook County Social Service Department 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** )  
)  
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**Entered this 14 day of Dec. 2018.**

Chair Rose Mary Bombela-Tobias

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<sup>1</sup> The Petitioner stated the employees laid off had the least seniority.

<sup>2</sup> Carolos Viramontes, Assistant Director, stated that the Social Service Department is an entity within the Circuit Court of Cook County. The non-black employee applied for Stenographer V position with the Office of the Chief Judge, a separate governmental entity.

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden