

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2013SF2099
)	EEOC NO.:	21BA30949
ED ROZIER,)	ALS NO.:	14-0197
)		
)		
Petitioner.)		

ORDER

This matter coming before the Commission by a panel of three, Commissioners Michael Bigger, Amy Kurson, and Cheryl Mainor presiding, upon Ed Rozier's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2013SF2099 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, WHEREFORE, it is hereby **ORDERED** that the Respondent's Notice of Dismissal is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.

DISCUSSION

On February 4, 2013¹ the Petitioner filed a perfected charge of discrimination with the Respondent alleging that W.M. Putman Co., ("Putman"), discharged him on June 26, 2012 due to his race, black and religion, Jehovah Witness, in violation of Sections 1-103(A) and 2-102(A) of the Illinois Human Rights Act ("Act"). On January 24, 2014, the Respondent dismissed the charge for Failure to Proceed, following which the Petitioner filed a Request for Review. On April 7, 2014, the Commission Reinstated and Remanded the charge to the Respondent's Charge Proceeding Division for further investigation, and other proceedings. The Respondent conducted further investigation and on April 16, 2014, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On April 24, 2014, Petitioner filed a timely Request for Review

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. See 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. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

The Commission concludes that the evidence was insufficient to establish a *prima facie* case of discrimination. Generally, 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; (4) and 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). In the Petitioner's matter the second and fourth elements were not established. The evidence showed that the Petitioner was not was performing his work satisfactorily. The Petitioner was placed on a third and final written warning before termination for asking customers to help him unload, cornering customers and complaining about their business, arguing or discussing things with customers. Additionally, the Petitioner admitted the day before he was terminated that he had asked a customer to help him unload supplies in

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

violation of Putman policy. Second, there was no evidence that Putman treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances.

The Commission further concludes that Putman articulated a non-discriminatory reason for its actions and there was no evidence of pretext. Putman stated that the Petitioner violated its code of conduct policy in that Putman received several complaints from its customers regarding the Petitioner. In his Request, the Petitioner did not offer any evidence of pretext. In the absence of any evidence that the business consideration relied upon by the Employer is a pretext for discrimination, it is improper to substitute judgment for the business judgment of the employer. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997).

In his Request, the Petitioner does not provide any additional evidence that would warrant a reversal of the Respondent's original determination. The Petitioner argued that the Respondent conducted an improper investigation by failing to contact witnesses. The Petitioner further reiterates the facts that led to his charge. Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of the Charge was not in accordance with the Act. The Petitioners' Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights and, W.M. Putman Co. as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

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Entered this 29th day of November 2018

HUMAN RIGHTS COMMISSION

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Commissioner Michael Bigger

Commissioner Amy Kurson

Commissioner Cheryl Mainor