

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2013CF3860
)	EEOC NO.: 21BA31481
JULIUS PERRYMAN,)	ALS NO.: 14-0318
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hermene Hartman, Steve Kim and Cheryl Mainor presiding, upon Julius Perryman's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent") of Charge No. 2013CF3860; 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 JURISDICTION**.

DISCUSSION

On April 11, 2013, the Petitioner filed a perfected on March 19, 2014, alleging that State of Illinois, Department of Central Management Services ("CMS"), discharged him due to his religion, Christian, mental disability, Stress Disorder, mental disability, Depression, and in retaliation for opposing unlawful discrimination, in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act"). On April 24, 2014, the Respondent dismissed the Petitioner's charge for Lack of Jurisdiction finding that CMS was not the Petitioner's employer. On July 27, 2014, the Petitioner filed his timely Request for Review ("Request").

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for Lack of Jurisdiction. The Commission has adopted instructions set out by the Illinois Appellate Court regarding the determination of whether an entity can be considered a joint employer. See In the Matter of Kelly Barnwell and Select Management Resources and Midwest Title Loans, Inc., 2006 WL 6186330 (Ill. Hum. Rts. Com.), citing Jerome W. Mitchell v. Ill. Department of Corrections, No. 1-04-1928, 1-04-2112, 1st Dist., September 27, 2006. The test is to determine whether two employers exert significant control over the same employee such that they share those matters governing essential terms and conditions of employment. Factors to consider include the employer's role in (1) hiring and firing, (2) promotion and demotion, (3) setting wages and hours, (4) disciplining the workers, and (5) providing actual day-to-day supervision and direction.

In the Petitioner's matter, was employed as a Highway Maintainer by the Illinois Department of Transportation ("IDOT"). CMS is a state agency that provides services to state agencies such as the Respondent, IDOT, and others. CMS's services to state agencies include human resources and employee benefits; information technology and telecommunications; property and facilities management; and fleet vehicle management, among other services. IDOT authority over the Petitioner included promotion and demotion, setting Petitioner's wages and hours, disciplining the Petitioner, and providing actual day-to-day supervision and direction of the Petitioner.

In his Request the Petitioner argued that when an employee is discharged, that discharge is approved by CMS. When an employee files a grievance, that grievance is heard by CMS. When a person is reinstated after being discharged, that reinstatement is through an agreement between the IDOT and CMS. The Petitioner stated that Section 302.720 (Merit and Fitness of Public Employees) of CMS's administrative rules, as well as section 415/9 of the Illinois Personnel Code, indicate that the Director of Illinois Central Management Services must provide written approval for the discharge of a certified employee. Although CMS does grant administrative approval for certain severe disciplinary sanctions and does administer certain agreements concerning state agencies, CMS did not hire Petitioner, did not exercise any control over his work, and could not have initiated his discharge on its own accord. The Petitioner's Request is not persuasive. 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.

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 Central Management Services 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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HUMAN RIGHTS COMMISSION

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Entered this 28th day of November 2018

Commissioner Hermene Hartman

Commissioner Cheryl Mainor

Commissioner Steve Kim