

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2014CF0475
)	EEOC NO.: 21BA32440
Mary D. Madison)	ALS NO.: 14-0369
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hermene Hartman, Steve Kim, and Cheryl Mainor, presiding upon Mary D. Madison's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2014CF0475 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 is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

DISCUSSION

On August 29, 2013, the Petitioner filed a charge of discrimination with the Respondent alleging that Kenco Logistic Service, LLC ("KLS"), placed her on a performance improvement plan ("PIP") due to her race, black (Count A); sex, female (Count B); and in retaliation for opposing discrimination (Count C); as well as discharged because of race (Count D); sex, female (Count E); and in retaliation for opposing discrimination (Count F), in violation of Sections 2-102 (A) and 6-101(A) of the Illinois Human Rights Act ("Act").

On May 7, 2014, the Respondent dismissed the Petitioner's charge in its entirety. After being granted an Extension of Time to file a Request for Review, the Petitioner filed a timely Request for Review on November 13, 2014.

The Commission concludes that the Respondent properly dismissed all counts of 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).

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."

On May 13, 2013, Petitioner began employment as a Quality Engineer with KLS (a third-party logistics (“3PL”) company that operates and manages warehouse and order fulfillment operations for third parties) at their Mars facility. Five weeks later, Petitioner complained to the Human Resources Administrator, Edith McCurry (non-white) that she felt being treated differently because she was a female and black. On July 8, 2013, Petitioner was placed on a PIP by her immediate supervisor, General Manager, Kevin Walsh (non-black) for alleged poor performance. Petitioner did not seem to understand what was expected in her role of how to adhere to the requirements of the Kenco Quality Management System (“KQMS”) that addresses various aspects of the business from a quality standpoint and provides standard operating procedures (SOP). While she was very adept at finding and citing various regulations, she was not very good at communicating to others what was needed to comply with those regulations. In her various emails, Petitioner’s tone and communication style with management, co-workers and outside vendors were very confrontational. She also did not work in a collaborative manner.

The most urgent project Petitioner was asked to work on after she was hired was assistance in preparing for an internal audit scheduled in July of 2013. She was to create a project plan by reviewing the audit findings from the prior year; reviewing any gaps identified in the prior audit; and launching a proposal to address any gaps; as well as meet any of the remainder of the audit requirements. Petitioner was to identify specific items that needed to be addressed and the individuals responsible for each item, as well provide a timeline for completion. Ultimately, an outside consultant was retained to assist with the audit and provide guidance to Petitioner as it became apparent that Petitioner would not be able to provide the necessary assistance to successfully prepare and timely complete the Mars audit.

At the end of the thirty-day period set forth in the July 8, 2013 PIP, Walsh reviewed Petitioner’s performance and what if any efforts had been made to improve. On August 9, 2013, Petitioner was terminated as she failed to improve her tone and communication style; collaborative working as opposed to being confrontational; and her knowledge of KQMS system.

As to Counts A-F, Petitioner is unable to prove that she was placed on a performance improvement plan (“PIP”) and discharged due to her race, gender and in retaliation for opposing discrimination.

To prove a *prima facie* case of race or gender discrimination, Petitioner must show that: 1) she is a member of the protected class; 2) she was performing her job duties according to Respondent’s legitimate expectations; 3) she suffered an adverse employment action; and 4) other individuals not within her protected class were treated more favorably. *Interstate Material Corp. v. Human Rights Comm’n*, 274 Ill. App. 3d 1014, 1022, 654 N.E.2d 713, 718 (1st Dist. 1995); *Marinelli v. HRC*, 262 Ill.App.3d 247, 634 N.E.2d 463 (2d Dist. 1994). The applicable test for *prima facie* gender discrimination is identical to the racial discrimination test above. See *McQueary and Wal-Mart Stores, Inc.*, IHRC, ALS No. 9416, November 20, 1998.

Note that in an action alleging race discrimination and/or unlawful retaliation, the Commission and the courts have applied a three-step analysis to determine whether there has been a violation of the Human Rights Act. See *Thompson and Hoke Construction Co.*, IHRC, ALS No. S9135, June 2, 1998), and *Loyola University of Chicago v. Illinois Human Rights Commission*, 149 Ill.App.3d 8, 500 N.E.2d 639, 102 Ill.Dec. 746 (1st Dist., 3rd Div. 1986).

Assuming arguendo that Petitioner established a *prima facie* case of discrimination, KLS must articulate a legitimate, nondiscriminatory reason for its actions. If this is done, the Petitioner must prove by a preponderance of the evidence that the articulated reason advanced by KLS is a pretext. See *Clyde and Caterpillar, Inc.*, IHRC, ALS No. 2794, Nov. 13, 1989, *aff'd sub nom Clyde v. Human Rights Com'n*, 206 Ill. App.3d 283, 564 N.E.2d 265 (4th Dist.1990); and *Texas Dep't. of Community Affairs v. Burdine*, 450 US 248, 254-55 (1981).

Here, Petitioner fails to meet the second and fourth elements of her *prima facie* case for race and gender discrimination. As to the second prong, Petitioner failed to perform her job duties according to her employer's legitimate expectations as evidenced by the lack of interpersonal skills confrontational attitude with management, co-workers and vendors; inability to adjust to the requirements of KQMS to bring the necessary quality procedures and processes to the site level; or propose a project plan for the Mars internal audit. As to the fourth prong, Petitioner has not shown that a similarly situated non-black male employee whose job performance was comparable to hers, was not placed on a PIP and discharged as she was. Petitioner was the only Quality Engineer at the facility. The Seventh Circuit has made it clear that an employee's failure to identify a comparator is detrimental to their ability to maintain an action for discrimination. *Everroad v. Scott Truck Systems, Inc.*, 604 F3d 471, 480-482.

Being placed on a PIP and discharged by KLS were for reasons unrelated to her race or gender. Thus, KLS articulated a legitimate, nondiscriminatory reason for terminating Petitioner. Petitioner failed to present any, much less compelling, evidence that KLS's articulated reasons for terminating her were a pretext for racial discrimination. In the absence of any evidence that the business consideration relied upon by KLS is a pretext for discrimination, it is improper to substitute judgment for the business judgment of the employer. See *Berry and State of IL, Dept. of Mental Health and Developmental Disabilities*, IHRC, ALS no. S-1946, Charge No. 1994SA0240 (December 10, 1997). Additionally, KLS is entitled to make employment decisions based on its reasonable belief surrounding the situation. "Respondent may take its action for good reason, bad reason, reason based upon erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason...The correctness of the reason is not important as there was good faith belief by Respondent in its decision..." See *Carlin v. Edsal Manufacturing Co.*, 1996 WL 652580, Charge No. 1992CN3428 (Ill.HRC, May 6, 1996). Therefore, Petitioner failed to show substantive evidence that she was issued a PIP and terminated because of her race or gender.

To prove a *prima facie* case for retaliation, the following must be established by Petitioner: 1) she engaged in protected activity; 2) KLS committed an adverse action against her; and 3) a causal

connection existed between the protected activity and the adverse action. *Hoffelt v. Ill. Dep't of Human Rights*, 367 Ill. App.3d 628, 867N.E.2d 14 (1st Dist. 2006); *Welch v. Hoeh*, 314 Ill.App.3d 1027, 1035, 733 N.E. 2d 410,416 (3d Dist. 2000).

As to prong three, Petitioner provided no evidence of a causal connection between the protected activity of complaining to human resources as she perceived to being treated differently based on her race or gender and her placement on a PIP and ensuing August 9, 2013 termination. While Petitioner's PIP and discharge followed her participation in a protected activity within such a short period of time to raise an inference of retaliatory motive, KSL articulated a legitimate, nondiscriminatory reason that Petitioner was placed on a PIP due to her inability to perform her job duties and terminated thereafter for failure to improve upon her deficiencies outlined in the PIP. Additionally, Petitioner failed to present any evidence that these reasons were pretextual. Therefore, Petitioner fails to show substantial evidence that she was placed on a PIP and discharged in retaliation for opposing discrimination.

In her Request for Review, there is no additional evidence provided by Petitioner that would warrant a reversal of Respondent's original determination.

Accordingly, the Petitioner has not presented substantial evidence to show that the Respondent's dismissal of the charge was not in accordance with the Act.

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 Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and KLS as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 21st day of November 2018.

Commissioner Hermene Hartman

Commissioner Steve Kim

Commissioner Cheryl Mainor