

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2014SF2219
)	EEOC NO.:	21BA41062
ERIN ZAMBRANO)	ALS NO.:	14-0416
)		
Petitioner.)		

ORDER

This matter coming before the Commission by a panel of three, Chair Rose Mary Bombela-Tobias and Commissioners Patricia Bakalis Yadgir and Michael Bigger presiding, upon Erin Zambrano’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2014SF2219 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 February 20, 2014, the Petitioner filed a charge of discrimination with the Respondent alleging that Cedar Valley Podiatry d/b/a Cervetti & Associates (“Employer”) subjected her to sexual harassment and constructively discharged her in violation of Section 2-102(D) of the Illinois Human Rights Act (“Act”). On August 4, 2014 the Respondent dismissed the Petitioner’s charge for lack of substantial evidence. The Petitioner filed a timely request.

The Commission concludes that the Respondent properly dismissed the Petitioner’s charge for lack of substantial evidence. The Act defines sexual harassment as any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or 3) such conduct has the purpose or effect of substantially interfering with

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.”

an individual's work performance or creating an intimidating, hostile or offensive working environment. 775 ILCS 5/2 – 101 (E).

There is no substantial evidence that the Petitioner was subjected to sexual harassment. Rather, the relationship between the Petitioner and Ting was of a consensual nature and was not unwelcomed or unwanted. The Petitioner and the Employer's employee, Brian Ting ("Ting") engaged in multiple social activities outside of work including meeting the Petitioner's children, attending a wedding together, celebrating holidays together, introducing each other to their relatives and loved ones, and traveling out of state together. Additionally, there is no substantial evidence that submission to a sexual relationship was made explicitly or implicitly a term or condition of the Petitioner's employment. Ting was not involved in the hiring or firing of employees and the Petitioner presented no evidence of threats, coercion, or other behaviors that would indicate she would be terminated if she did not engage in a sexual relationship. Moreover, there is no substantial evidence that any conduct of a sexual nature affected the Petitioner's employment. The Petitioner has presented no evidence that the sexual relationship between the Petitioner and Ting interfered with her job performance or created an intimidating, hostile, or offensive working environment.

Furthermore, there is no substantial evidence to show that the Petitioner was constructively discharged. Constructive discharge will be found where a respondent deliberately made working conditions so intolerable that a reasonable person in Complainant's position would have had no choice but to resign. Steele v. Human Rights Commission, 160 Ill.App.3d 577, 513 N.E.2d 1177,112 Ill. Dec. 568 (3rd Dist. 1987); Here, the Petitioner did not complain about her working conditions until after her relationship with Ting ended. Additionally, the Petitioner chose not to return to work following her paid leave of absence and cannot therefore claim that working with Ting would have been intolerable.

Additionally, the Petitioner's allegation that the Respondent violated the court's injunctive order in Cooper v. Salazar, 196 F.3d 809 (7th Cir. 1999), is without merit as the Petitioner provided no substantial evidence that the relationship between she and Ting was not of a consensual nature. Furthermore, the Petitioner's allegation that the Respondent violated Title 56 Section 2520.430 by not affording Petitioner the opportunity to review any of the text messages sent and received by Ting is without merit. The Respondent is not required to provide the Petitioner with the opportunity to review Ting's text messages until after the Respondent's investigation is complete. Ill. Admin. Code tit. 2 § 926.210 (b)(1) (2017).

Accordingly, the Petitioner has not presented any 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 Cedar Valley Podiatry d/b/a Cervetti and Associates 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 7th day of November 2018

HUMAN RIGHTS COMMISSION

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Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Michael Bigger
