

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2013CF2908
)	EEOC NO.: 21BA31517
BASHARATH KHAN)	ALS NO.: 14-0420
)	
)	
)	
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 the Request for Review (“Request”) of Basharath Khan (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”) of Charge No. 2013CF2908 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 April 24, 2013, the Petitioner filed a charge of discrimination with the Respondent alleging that Local #1111 AFSCME (the “Union”) discriminated against him because of his physical disability (polio) and mental disability (depression) when it failed to represent him in violation of Section 2-102(A) of the Illinois Human Rights Act (the “Act”). On June 12, 2014, the Department dismissed Complainant’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. Generally, to establish a *prima facie* case of discrimination, the Petitioner must show: 1) that he is a member of a protected class; 2) he was performing his work satisfactorily; 3) that he was subject to an adverse action; 4) and that the Union treated a similarly situated employee outside the Petitioner’s protected class more favorably under similar circumstances. Marinelli v. Human Rights Commission, 262 Ill.App.3d. 247, 634 N.E.2d 463 (2d Dist. 1994). Once the *prima facie* case has been established, the burden shifts to the respondent to articulate a legitimate, non-discriminatory reason for its actions. Then, to prevail, the complainant must prove that the respondent’s proffered reason is a pretext for unlawful discrimination. McDonnell-Douglas Corp v. Green, 411 U.S. 792, 93 S.Ct. 1817 (1913).

The Commission finds that the Union articulated a legitimate, non-discriminatory reason for declining to pursue arbitration of Petitioner’s claim. The Union represented Complainant through the grievance process but declined to pursue arbitration. The Union weighed the evidence against Petitioner and determined that the employer, Stroger Hospital, would likely prevail—Petitioner threatened his supervisor in front of multiple witnesses, he could not produce any witnesses to support his defense, and Petitioner had a history of insubordinate behavior. See In the Matter of the Request for Review by: Jose Reynoso, IHRC, Charge No. 2009CF0390, 2010 WL 3760280 (May 26, 2010). There is no substantial evidence, and Petitioner has offered no evidence, that the Union’s stated reason for declining to arbitrate was a pretext for discrimination.

Accordingly, 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:

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 Local #1111 AFSCME as respondents, with the Clerk of the Appellate Court within 35 Days after the date of service of this order.

STATE OF ILLINOIS)
) Entered this 7th day of November 2018.
HUMAN RIGHTS COMMISSION)

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yagdir

Commissioner Michael Bigger