

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE No.: 2014 CA 0399
Deborah Whitehead,)	EEOC No.: 21BA 32378
)	ALS No.: 14-0423
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Robert Cantone, Hamilton Chang, and Steve Kim, presiding on the Matter of Deborah Whitehead's (Petitioner) Request for Review (Request) of the Notice of Dismissal issued by the Illinois Department of Human Rights (Respondent¹), of Charge 2014 CA 0399 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 in 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 August 20, 2013, the Petitioner filed a charge of discrimination with the Respondent alleging that the City of Chicago, Office of Emergency Management and Communications discharged her because of her race, black, (Count A., age, 59, Count B) sex, female, (Count C), and physical disability, back disorder, Count D) in violation of Section 2-102 of the Illinois Human Rights Act. 775 ILCS 5/2-102(A). On June 12, 2014, the Department 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 in its entirety 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 (March 7, 1995).

Petitioner worked as a Traffic Control Aid for the City of Chicago. She was diagnosed with back problems prior to 2010 and as her condition worsened, she requested a leave of absence (LOA). Per the Employer's policy, LOA requests and

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."

extensions of those requests require Employer approval. The Petitioner received approval and began a LOA in September 2010. The LOAs were extended in three-month increments until September 2011, when Petitioner requested that her leave be extended to August 20, 2012. The request form, like all the request forms, included an acknowledgement that if she did not return to work within five days, she would be deemed to have resigned her position. Petitioner did not return to work nor did she request another extension of her leave within five days of August 20, 2012. In May 2013, the Employer notified Petitioner that she was deemed to have resigned effective August 20, 2012.

To establish a prima facie case of discrimination for race, age, or sex discrimination, the Petitioner must show that (1) she falls within a protected class; (2) she was performing her work satisfactorily; (3) she was subjected to an adverse action; and (4) that the Employer treated a similarly situated employee outside Petitioner's protected class more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill. App. 3d, 634 N.E. 2nd 463 (2nd Dist. 1994).

Here, the Petitioner failed to establish that she was performing her work satisfactorily; indeed, she was not working and did not return to work within five days of the LOA's expiration. She provided no evidence that a similarly situated employee outside her protected class was treated more favorably under similar circumstances, while the Employer provided evidence that it *had* discharged a younger, male co-worker, whose race is non-black, when he failed to return to work after a LOA.

As to the claim of disability discrimination, the Petitioner's back problems rendered her unable to perform her duties. Thus, she did not have a disability under the Act. 775 ILCS 5/1-103(I)(1).

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 the City of Chicago, Office of Emergency Management & Communications 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
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HUMAN RIGHTS COMMISSION

Commissioner Robert Cantone

Commissioner Hamilton Chang

Commissioner Steve Kim