

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: <b>2014SF2124</b>
)	EEOC NO.: <b>21BA40990</b>
)	ALS NO.: <b>14-0461</b>
<b>DALE FLEENOR,</b> )	
)	
Petitioner. )	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Robert A. Cantone, Hamilton Chang, and Steve Kim presiding, upon Dale Fleenor's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2014SF2124, 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 21, 2014, the Petitioner filed a charge of discrimination with the Respondent, alleging that Shippers Rental Company<sup>2</sup> ("Employer") discharged him due to his physical disability (heart disorder), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On July 22, 2014, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. The Petitioner filed a timely Request.

The Petitioner worked as an over-the-road truck driver for the Employer beginning in 2006, until he was ultimately discharged on November 3, 2013. The Petitioner had a heart attack in approximately May 2012, after which he took a leave of absence and subsequently returned to work a few months later. At some point in the Spring of 2013, the Employer asked that the Petitioner take another leave of absence for (apparently unrelated) breathing issues, and return when he had a doctor's note clearing him to work.

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<sup>1</sup> 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."

<sup>2</sup> The Petitioner's charge identifies the Employer as "Sharkey Transportation;" however, the Respondent's investigation showed the Employer's correct legal name is Shippers Rental Company, which is owned by Jack Sharkey.

The Petitioner did so, returning about a month later with a physician's note. The Petitioner indicates he had a good record with the Employer, but that after the heart attack the Employer appeared to have a bias against his medical condition.

The Respondent's investigation revealed two incidents that also occurred after the Petitioner's heart attack. On February 19, 2013, the Employer's Safety Department received a complaint that on February 18, 2013, the Petitioner crossed a center line of traffic on a roadway, running one vehicle off the roadway, and causing two other vehicles to pull off onto the shoulder. The Petitioner recalls the Employer discussing this incident with him, but he did not personally observe those vehicles pull off the road on that date, and he was not subject to any other discipline at that time.

The second incident occurred on October 9, 2013, when the Petitioner lost control of his truck and trailer on a highway exit ramp. This caused the truck to overturn, spilling its cargo, and resulting in substantial re-loading and clean-up costs for the Employer, including environmental clean-up costs for spilled gasoline. The Petitioner was hospitalized for injuries sustained during the accident. The Petitioner indicates that there were no posted speed limit signs on the exit ramp, and that after filing the police report, he was not issued a ticket for any traffic violations.

To establish a case of disability discrimination, the Petitioner must first make a *prima facie* showing of unlawful discrimination. Kreczko v. Triangle Package Machinery Co., 2016 IL App (1st) 151762, 53 N.E.3d 1070 (1st Dist. 2016). Once the Petitioner has established a *prima facie* case, the burden shifts to the Employer to articulate a legitimate, non-discriminatory reason for its employment action. *Id.*; see McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) (adopted by Illinois Supreme Court in Zaderaka v. Human Rights Comm., 131 Ill.2d 172, 179, 545 N.E.2d 684, 687 (1989)). The Petitioner must then show that the Employer's legitimate, articulated reason for its employment action was a pretext. *Id.*

To establish a case for disability discrimination, the Petitioner must ultimately show: (1) that he is disabled within the meaning of the Act; (2) the disability is unrelated to Petitioner's ability to perform the job; and (3) the Petitioner suffered an adverse employment action related to the disability. Kreczko v. Triangle Package Machinery Co., 2016 IL App (1st) 151762, 53 N.E.3d 1070 (1st Dist. 2016).

For the reasons that follow, the Commission concludes that the Respondent properly dismissed the Petitioner's discharge claim 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).

The Commission does not find substantial evidence that would support the Petitioner's *prima facie* showing of a nexus between his disability and the Employer's decision to fire him. Although the Petitioner feels the Employer treated him differently after his heart attack, no specific incidents or statements have been produced to support this feeling. The Petitioner, in fact, continued to work for the Employer for over a year after he returned from his leave of absence.

Moreover, the Employer provided evidence that within the twelve (12) months preceding the Petitioner's discharge, it also discharged four other non-disabled drivers for driving-related issues, including Robert Calhoon ("culmination of accidents"), Douglas Gamble ("lane change sideswipe accident"), James Neathery ("left turn in front of motorcyclist who had right of way"), and John Street ("lane change sideswipe accident"). The Petitioner avers that these drivers did not have as many years of experience as he did; nevertheless, they did hold the same position that he did with the Employer.

Even if evidence did exist to support the Petitioner's *prima facie* case, the Employer offered a legitimate, non-discriminatory reason for discharging the Petitioner, which the Petitioner has not shown is pretextual. The Respondent's investigation found that the Employer had a general policy of discharging truck drivers after two incidents that endanger public safety. The Petitioner was involved in two incidents that the Employer reasonably determined posed issues to public safety.

The Petitioner does not deny that these incidents occurred, but essentially states that they have been overblown – for the first, he was not subject to any formal discipline, and for the second, he was not ticketed for a violation of posted signage or traffic laws. But even so, this evidence does not show the Employer's rationale for firing the Petitioner was pretextual – i.e., insufficient to motivate its decision. The Employer's decision need not be the best one, or even a fair one – rather, it must have a reasonable, good faith basis under the circumstances. See Carlin v. Edsal Manufacturing Company, IHRC, Charge No. 1992CN3428, 1996 WL 652580 \*7 (Oct. 21, 1996). Here, the fact that the Employer had information about two incidents involving the Petitioner, where the public's safety was endangered, formed a reasonable basis for its decision.

Accordingly, the Petitioner has not presented enough 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 Shippers Rental Company 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** )

**Entered this 7<sup>th</sup> day of November 2018**

  
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Commissioner Robert A. Cantone

  
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Commissioner Hamilton Chang

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Commissioner Steve Kim