

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2013SF2894
)	EEOC NO.: 21BA31505
)	ALS NO.: 14-0462
JIMMEY GARRY,)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hermene Hartman, Steve Kim, and Cheryl Mainor presiding, upon Jimmey Garry’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2013SF2894, 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 19, 2013, the Petitioner, a former Asset Manager, filed a charge of discrimination with the Respondent, alleging that the Peoria Housing Authority (“Employer”) discharged him in March 2013 in retaliation for engaging in a protected activity, in violation of Section 6-101(A) of the Illinois Human Rights Act (“Act”). On April 23, 2014, the Respondent dismissed the Petitioner’s charge for lack of substantial evidence. The Petitioner filed a timely Request.

For the reasons that follow, the Commission concludes that the Respondent properly dismissed the Petitioner’s claim for lack of substantial evidence. Substantial evidence is that which “a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance.” 775 ILCS 5/7A-102(D); Owens v. Dep’t of Human Rights, 403 Ill. App. 3d 899, 917, 936 N.E.2d 623, 638 (1st Dist. 2010). If no substantial evidence of

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.”

discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. Id.

Section 6-101(A) of the Act provides that it is a civil rights violation to retaliate against a person because he or she has "opposed that which he or she reasonably and in good faith believes to be unlawful discrimination [or] because he or she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this Act."

To establish a *prima facie* case of retaliation under the Act, the Petitioner must show that: (1) he engaged in a protected activity; (2) the Employer took an adverse action against him; and (3) a causal nexus exists between the protected activity and the adverse action. Welch v. Hoeh, 314 Ill. App. 3d 1027, 1035, 733 N.E.2d 410, 416 (3d Dist. 2000). An adverse employment action arising a short time after protected activity can raise an inference of retaliatory conduct; however, this inference becomes weaker as the timeframe becomes more attenuated. See Maye v. Human Rights Comm'n, 224 Ill. App. 3d 353, 362, 586 N.E.2d 550, 556 (1st Dist. 1991).

The Petitioner's alleged "protected activity" has shifted as this matter has progressed. At the time he filed the instant charge, he cited the protected activity as a previous 2009 charge he filed against the Employer (charge number 2009SA2552), which he claimed to be the impetus for the Employer terminating him in March 2013.

However, perhaps realizing that the time period between these two events is too attenuated to infer retaliatory conduct, the Petitioner now takes the position in his Request for Review that the "protected activity" is an order issued by the Commission in a separate charge he filed in 1998 (charge number 1998SF0757). Specifically, the Petitioner argues that he was fired as a result of the Commission's order on April 3, 2012 in the 1998 case.

The Commission does not find substantial evidence to support the Petitioner's *prima facie* case of retaliation. Under the plain language of Section 6-101(A), protected activity must involve some action by the Petitioner – the filing of a charge, or his participation or assistance in a proceeding under the Act. An order entered by the Commission simply does not meet this definition. The Petitioner has not cited any legal precedent to support his position that orders from the Commission are in and of themselves protected activity.

Moreover, the Commission cannot infer activity on the part of the Petitioner based on the record in the prior charge. The Petitioner points out that the Commission awarded

certain fees and ordered the Employer to “cease and desist” retaliatory conduct in the 1998 charge. But in fact, it was the Commission’s January 5, 2010 order in that case that provided such relief, not the 2012 order. The proceedings leading to the 2012 order involved a hearing before an Administrative Law Judge (“ALJ”), after he which he recommended minimally adjusting the damage award entered on January 5, 2010. The Commission entered its 2012 order after no exceptions were filed to the ALJ’s recommendation. There is no record of the Petitioner’s active participation in these proceedings in any temporal proximity to the events that led to his termination.

In his Request for Review, the Petitioner additionally requests that the Commission enter an order that the Employer violated its previous cease and desist order. However, the Commission is only empowered to consider the charge presently before it. A later-filed charge is not the appropriate mechanism to enforce an alleged violation of a previous order on a separate charge.

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 Peoria Housing Authority 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