

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2014SF1037
)	EEOC NO.: 21BA40187
)	ALS NO.: 14-0473
EMMA CLEGGETT,)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Robert A. Cantone, Hamilton Chang, and Steve Kim presiding, upon Emma Cleggett's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2014SF1037, 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 October 2, 2013, the Petitioner filed an unperfected charge of discrimination with the Respondent, perfected on October 21, 2013, alleging that B.C.M.W. Head Start ("Employer") discharged her because of her race (black), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On June 30, 2014, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. The Petitioner filed a timely Request.

The Petitioner was a Teacher's Aid with the Employer, who operates an early education program for children 3-5 years old. On April 16, 2013, an incident occurred in the Petitioner's classroom where the Petitioner was accused of striking a child.

Maria Koehler, the Employer's Director, stated that she received a report that day from Hope Uhls, a Mental Health Consultant present in the classroom, that she had observed the Petitioner strike the child across the face with her hand. Ms. Koehler stated

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."

that an unnamed teenage classroom volunteer also reported the incident. Ms. Koehler thereafter brought the Petitioner in to question her about the incident, and the Petitioner admitted to “tapping” the child on the forehead while he was in the midst of a tantrum. The Petitioner was thereafter immediately terminated in accordance with the Employer’s “zero tolerance” policy pertaining to corporal punishment.

The Petitioner identified two other white employees, Doris Huelsman (Teacher) and Karen McQuade (Education Clerk), who were both accused of striking a child, but who she says were suspended with pay pending investigations by the Illinois Department of Children and Family Services (“DCFS”), and who were ultimately not terminated.

Keith Brown, the Employer’s Executive Director, acknowledged that Ms. McQuade was accused of striking a child, but stated that Ms. McQuade denied the incident, and that subsequent investigation showed no credible witness was present. Mr. Brown stated that he does not have knowledge that Ms. Huelsman was accused of striking a child. In her Request for Review, the Petitioner provides a letter dated July 22, 2014, from Rita Poore, a former employee, who states she witnessed the incident involving Ms. Huelsman, and that Ms. Huelsman was suspended while the investigation was ongoing.

To establish a *prima facie* case of discrimination, the Petitioner must show: (1) she is a member of a protected class; (2) she was performing her work satisfactorily; (3) she was subject to an adverse employment action; and (4) the Employer treated a similarly situated employee or employees outside her protected class more favorably under similar circumstances. Marinelli v. Human Rights Comm’n, 262 Ill. App. 3d 247, 634 N.E.2d 463 (2d Dist. 1994).

The record does not contain substantial evidence to support the elements of the Petitioner’s *prima facie* case, because it does not show that the Employer treated other non-black employees more favorably under similar circumstances. Although the Petitioner points to two others who were only suspended after accusations of striking a child, the key difference between those employees and the Petitioner is that the Petitioner did not deny contact with the child. Rather, she admitted to the Employer that she tapped the child on the forehead after he scratched her. Thus, the evidence does not support an inference of discriminatory intent based on disparate treatment.

Following the Petitioner’s admission, the Employer discharged the Petitioner in accordance with its “zero tolerance” policy. Ultimately, it is not the Commission’s role to substitute its judgment for the Employer’s in interpreting its own policy, so long as the

evidence does not otherwise support a finding of discriminatory animus. See Bd. of Educ. v. Human Rights Comm'n, 135 Ill. App. 3d 206, 210, 481 N.E.2d 994, 997 (5th Dist. 1985).

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 B.C.M.W. Head Start as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

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Entered this 7th day of November 2018

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Steve Kim