

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE No.: 2013 CA 1814
)	EEOC.: 21 BA 30740
Elayne Weathersby,)	ALS No.: 14-0484
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Robert Cantone, Hamilton Chang, and Steve Kim, presiding, over the Matter of Elayne Weathersby's (Petitioner's) Request for Review (Request) of the Notice of Dismissal issued by the Illinois Department of Human Rights (Respondent¹), of Charge 2013 CA 1814 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 January 7, 2013, the Petitioner filed a charge of discrimination alleging multiple violations of the Illinois Human Rights Act, 775 ILCS 5/1 *et seq.*, based on her race, age, sex, and physical disability. The allegations arose from three employer actions: 1) issuing her a poor performance evaluation; 2) requiring her to conduct an additional training meeting for staff; and 3) failing to accommodate her disability.

The Commission concludes that the Respondent properly dismissed the Petitioner's charge 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. 1993CA 2747, 1995 WL 793258, (March 7, 1995).

To establish a *prima facie* case of discrimination, the Petitioner must show that 1) she is a member of a protected group, 2) she performed her job satisfactorily, 3) the employer took an adverse action against her, and 3) a similarly situated employee, not a member of the protected group, was not subjected to the same adverse action.

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."

Anderson v. Chief Legal Counsel, 334 Ill. App. 3d 630, 634, 778 N.E. 2nd 258 (3rd Dist. 2002).

For claims alleging disability discrimination, the Petitioner must show 1) that she is disabled within the meaning of the Act; 2) that her disability is unrelated to her ability to perform the essential functions of her job; and 3) that an adverse job action was taken against her.

The Petitioner has worked for the Illinois Department of Human Services since 2003, and in 2012 and 2013 served as an Assistant Bureau Chief. On October 6, 2012, she received a performance evaluation that rated her, overall, as “Accomplished” rather than the prior year’s “Exceptional” rating. She contends that this rating was discriminatory based on her race, sex, age, and disability. Even assuming that the performance evaluation was negative because it reflected unmet objectives, the Petitioner failed to assert any adverse action by her employer. Because the Petitioner failed to identify any negative work-related consequences arising from the evaluation, she failed to meet her burden of establishing a *prima facie* case. See Andres Santiago and Board of Education City of Chicago, Charge No. 2008CF2479, 2010 WL 3457712 (Jan. 13, 2010)

The Petitioner also claims that being assigned to conduct a training program in addition to her previously scheduled presentations constituted discrimination under the Act. This insignificant alteration of job duties did not subject her to “severe or pervasive changes” in the conditions of employment and therefore fails to establish the third prong of a *prima facie* case. See Washington v. Illinois Department of Revenue, 420 F.3d 658, 661 (7th Cir.2005).

Finally, the Petitioner claimed that the employer failed to accommodate her disability by declining to adjust her schedule. She had requested the schedule change on December 3, 2012, citing travel restrictions due to vision problems. She did not request an accommodation. Her immediate supervisor recommended that she submit the request as an accommodation and denied the request. He also encouraged her to speak to the director, who approved the request. The Petitioner began working her requested schedule on December 6, 2012. Because the Petitioner did not establish that any adverse action was taken against her, she is unable to establish a *prima facie* case of disability discrimination. See Illinois Department of Corrections v. Illinois Human Rights Commission, 298 Ill. App. 3d 536, 540, 699 N.E. 2nd 143, 145-46 (3rd Dist. 1998).

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 Illinois Department of Human Services 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

HUMAN RIGHTS COMMISSION

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Steve Kim