

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)		
FOR REVIEW BY:	)	CHARGE NO.:	2013CA2929
	)	EEOC NO.:	21BA31531
<b>KIMBERLY K. METCALF</b>	)	ALS NO.:	14-0495
	)		
Petitioner.	)		

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Hermene Hartman, Steve Kim and Cheryl Mainor presiding, upon Kimberly K. Metcalf'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. 2013CA2929 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 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 25, 2013, the Petitioner filed a charge of discrimination with the Respondent alleging that PNC Bank, National Association, ("Employer") issued her a negative performance evaluation due to her age, race, physical disability, and in retaliation for opposing unlawful discrimination, subjected her to unequal terms and conditions of employment due to her age, race, physical disabilities, and in retaliation for opposing unlawful discrimination, and denied her a merit increase due to her age, race, physical disability, and in retaliation for filing previous charges of discrimination in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act"). On July 13, 2014 the Respondent 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 for lack of substantial evidence in its entirety. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the

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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."

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).

Generally, to establish a *prima facie* case for discrimination the Petitioner must show that (1) she falls within a protected class; (2) she was performing her work satisfactorily; (3) that she was subjected to an adverse action; and (4) a similar situated employee outside the Petitioner's protected class was not treated more favorably under similar circumstances. Marinelli v. Human Rights Commission, 262 Ill. App.3d 247, 634 N.E.2d 463 (2<sup>nd</sup> Dist. 1994). In the instant case, the fourth element is not satisfied as the Petitioner failed to establish that a similarly situated younger, non-disabled co-worker committed the same job performance errors and received a different job performance evaluation than the Petitioner.

Additionally, there is insufficient evidence to establish that the Petitioner was retaliated against for opposing unlawful discrimination. Generally, to establish a *prima facie* case for retaliation the Petitioner must show that (1) the Petitioner engaged in a protected activity; (2) the employer committed an adverse action against the Petitioner; (3) a causal connection existed between the protected activity and the adverse action. Carter Coal Co. v. Human Rights Commission, 261 Ill. App. 3d 1,7, 633 N.E.2d 202 (5<sup>th</sup> Dist. 1994). Here, the Petitioner failed to specify any instances in which she opposed racial discrimination for which she was retaliated against. Thus, there is no substantial evidence that the Employer issued the Petitioner a negative performance evaluation due to her age, race, physical disability or in retaliation for opposing unlawful discrimination.

Moreover, there was no substantial evidence to demonstrate that the Petitioner was subjected to unequal terms and conditions of employment due to her age, race, physical disabilities or in retaliation for opposing unlawful discrimination. Insufficient evidence existed to demonstrate that the Petitioner engaged in a protected activity needed to establish a retaliation charge. Additionally, the evidence showed that the changes in both the lunch coverage and occasional absence policies affected all sales and service specialist coordinators, not just the Petitioner.

Furthermore, there was insufficient evidence to establish that the Petitioner was denied a merit increase due to her age, race, physical disability or in retaliation for filing previous charges of discrimination. Only those sales and service specialist coordinators receiving a performance evaluation rating of at least "meets all expectations" qualified for a merit increase in January of 2013. The Petitioner did not receive this rating and there is no evidence of discriminatory or retaliatory statements to establish a pretext for denial of the merit increase.

Accordingly, the Petitioner has not presented any substantial 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 PNC Bank, National Association, as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

**STATE OF ILLINOIS** )  
 ) **Entered this 21st day of November 2018**  
**HUMAN RIGHTS COMMISSION** )

Commissioner Hermene Hartman

Commissioner Steve Kim

Commissioner Cheryl Mainor

