

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)
FOR REVIEW BY:)

Awenious Shaw)

Petitioner.)

CHARGE NO.: **2014CA2511**
EEOC NO.: **21BA41275**
ALS NO.: **14-0496**

ORDER

This matter coming before the Commission by a panel of three, Commissioners Robert A. Cantone, Hamilton Chang and Steve Kim presiding, upon Awenious Shaw's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2014CA2511 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, **WHEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

DISCUSSION

On March 19, 2014, the Petitioner, a former Manager of Transportation Instruction, filed a discrimination charge with the Respondent alleging that he was terminated by his employer, Chicago Transit Authority ("CTA") on January 14, 2014 on the basis of his physical disability, diabetes (Count A); age, 45 (Count B); and race, Black (Count C), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act").

On July 28, 2014, the Respondent dismissed the Petitioner's charge in its entirety for lack of substantial evidence. The Petitioner filed a timely Request for Review on October 28, 2014.

The Commission concludes that the Respondent properly dismissed all counts of 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. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

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."

On May 16, 1989, Petitioner was hired by CTA and rehired on December 16, 1991 as a Combined Rail Operator. It appears that since Petitioner reported a safety violation (failure to provide safety training to a film crew filming on the elevated tracks) which resulted in his Acting General Manager, Scott Cook's (44, non-Black) suspension on January of 2013, there had been some animosity between them.

The record further shows that on May and July 2013, the Acting General Manager issued Suspension Notices to Petitioner for failure to timely submit payrolls resulting in two entire classes of students not receiving their paychecks. After a July 19, 2013 Disciplinary Hearing, the VP of Rail Operations & Communications/Power Control issued Petitioner in August of 2013 a one-year probation in lieu of termination for his conduct and behavior, therein. At that time, Petitioner was advised that any future behavioral violation would result in immediate discharge. On January 8, 2014, Petitioner was cited by three employees and his former wife for unprofessional harassing behavior towards them at the O'Hare Blue Line Customer Service kiosk. Subsequently, CTA discharged Petitioner for violating his probationary period and for gross misconduct on January 24, 2014, specifically violations of Rules #7, Obedience to Rules; #14, Personal Conduct; and #24, Use of Best Judgment.

First, to establish a *prima facie* case of disability discrimination, there must be some evidence that 1) he is disabled within the meaning of the Act; 2) CTA had knowledge of the disability; 3) he suffered an adverse employment action; and 4) the disability is unrelated to his ability to perform the job with or without an accommodation. *Habinka v. HRC*, 192 Ill.App.3d 343, 373, 548 N.E.2d 702, 139 Ill.Dec. 317 (1st Dist. 1989). *Department of Corrections v. IHRC*, 298 Ill.App.3d 536,540, 699 N.E.2d 143, 145-6 (3rd Dist.1998).

Second, to establish a *prima facie* case of race or age discrimination, Petitioner must show: 1) he falls within a protected class; 2) he was performing his work satisfactorily; 3) he was subject to an adverse action; and 4) CTA treated a similarly situated employee outside of Petitioner's protected class more favorably under similar circumstances. See *Marinelli v. HRC*, 262 ILL.App.3d 247, 634 N.E.2d 463 (2d Dist. 1994).

As to Counts A-C, Petitioner fails to show that his discharge was due to discrimination based upon disability, age, race. As to Count A, there is no nexus between the Petitioner's termination and his disability. Similarly, as to Counts B & C, there is no proof that Petitioner was treated less favorably than others because of his age or race.

In further analyzing discrimination cases under the Human Rights Act, assuming arguendo that Petitioner proved by a preponderance of the evidence a *prima facie* case of discrimination treatment, CTA then has the burden of stating a legitimate nondiscriminatory reason for its employment decision, which has the effect of successfully rebutting the presumption of unlawful discrimination. The burden then shifts to Petitioner to prove by a preponderance of the evidence that the legitimate reason offered by the employer was not the true reason underlying its decision, but, instead, merely a pretext for discrimination. The ultimate burden of proving that the employer engaged in intentional discrimination

remains at all times with the employee. *Burdine*, 450 U.S. at 252-53, 101 S.Ct. at 1093, 67 L.Ed2d at 215; *Acorn Corrugated Box Co.*, 181 Ill.App.3d at 136-37, 129 Ill.Dec. at 891, 536 N.E.2d at 941; *Kenall Manufacturing Co.*, 152 Ill.App.3d at 701, 105 Ill.Dec. at 524, 504 N.E.2d at 809.

Here, CTA articulated a legitimate and non-discriminatory reason for Petitioner's discharge, namely a violation of probationary status and misconduct. Further, there is no evidence that CTA's articulated reason for discharging Petitioner was pretext for unlawful discrimination. CTA is entitled to make employment decisions based upon its reasonable belief of facts surrounding the situation. The correctness of the reason is not important as long as there was a good faith belief by the [employer] in its decisions." *Carlin v. Edsai Mfg. Co.*, Charge No. 1992CN3428, ALS No. 7321 (May 6, 1996), *citing Homes and Bd. of County Comm'rs, Morgan County*, 26 Ill. HRC Rep. 63 (1986). See also *Shah v. IHRC*, 192 Ill. App. 3d 263, 273-74, 548 N.E.2d 695, 701 (1st Dist. 1989) ("A good faith belief for an employment decision is sufficient to rebut an intentional discrimination charge."). All in all, there is no substantial evidence that Petitioner was discharged because of his disability, diabetes; age, 45; and race, Black.

In his Request for Review, there is no additional evidence provided by Petitioner that would warrant a reversal of Respondent's original determination.

Accordingly, the Petitioner has not presented 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 the CTA 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 7th day of November 2018.


Commissioner Robert A. Cantone (Chair)

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Commissioner Hamilton Chang

Commissioner Steve Kim