

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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

Diane Morris-Alexander)

Petitioner.)

CHARGE NO.: **2014CA1323**
EEOC NO.: **21BA40407**
ALS NO.: **14-0498**

ORDER

This matter coming before the Commission by a panel of three, Commissioners Robert A. Cantone, Hamilton Chang, and Steve Kim presiding, upon Diane Morris-Alexander's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2014CA1323 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 November 21, 2013, the Petitioner, a Residential Associate Caregiver, filed a discrimination charge with the Respondent alleging she was laid off on November 15, 2013 by her employer, Brookdale Senior Living, Inc. ("BSL") on the basis of race, Black (Count A); age, 56 (Count B) and disability, right shoulder disorder (Count C); and in retaliation for engaging in protected activity (Count D), in violation of Section 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act").

On August 13, 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 24, 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."

First, to establish a *Prima Facie* Case of race or age discrimination, Petitioner must show: 1) she falls within a protected class; 2) she was performing her work satisfactorily; 3) she was subject to an adverse action; and 4) BSL 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).

Second, to establish a *prima facie* case of disability discrimination, there must be some evidence that 1) she is disabled within the meaning of the Act; 2) BSL had knowledge of the disability; 3) she suffered an adverse employment action; and 4) the disability is unrelated to her 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).

Third, to establish a *prima facie* case of retaliation, Petitioner must show: 1) she engaged in protected activity; 2) BSL took an adverse action; and 3) a causal connection exists between the protected activity and the adverse action. See *Welch v. Hoeh*, 314 ILL.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3rd Dist. 2000).

As to Counts A-D, the evidence is insufficient to establish a *Prima Facie* Case of discrimination, based upon race, age, disability, and in retaliation for engaging in protected activity. The record shows that Petitioner was a "pool" employee" with a set number of hours, not a full-time employee. After sustaining a work injury to her right shoulder in or about January 2013, Petitioner returned to light duty work approximately 6 months later. Light duty meant that Petitioner could not work more than 4 hours per day. Since it was difficult to schedule hours for her, BSL assigned her hours to work in various departments. On November 8, 2013, BSL offered Petitioner an assignment in the Assisted Living Department. However, Petitioner refused to work that assignment. While there were available hours in the Personal Living Department, Petitioner needed additional training to work in that department. No adverse action was taken as Petitioner was not laid off. BSL did not issue a layoff notice. Instead, Petitioner refused to work for about a week after November 15, 2013, and therefore was not compensated for this time. Thus, Petitioner fails to show that she was laid off, because of race, age, and disability discrimination; and in retaliation for complaining about disability discrimination.

In her 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 BSL, 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