

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2014CA0377
)	EEOC NO.:	21BA32359
DENISE ALSHANSKI)	ALS NO.:	14-0504
)		
Petitioner.)		

ORDER

This matter coming before the Commission by a panel of three, Chair Rose Mary Bombela-Tobias and Commissioners Patricia Bakalis Yadgir and Michael Bigger presiding, upon Denise Alshanski's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2014CA0377 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 August 19, 2013, the Petitioner filed a charge of discrimination with the Respondent alleging that American Litho, Inc. ("Employer") discharged her due to her age, sex, and mental disability in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On August 8, 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. Generally, to establish a *prima facie* case of age or sex discrimination the Petitioner must show that (1) she is a member of 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 (2nd Dist. 1994).

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."

There is no substantial evidence that the Employer treated a similarly situated younger or male employee more favorably than the Petitioner. Moreover, the Employer articulated a legitimate, nondiscriminatory reason for discharging the Petitioner: the evidence established that the Petitioner violated Employer's policy regarding absences without notification. The Commission finds no evidence of pretext, and in the absence of pretext, the Commission cannot substitute its judgment for the Employer's business judgment. Berry and State of Illinois, Dep't of Mental Health and Developmental Disabilities, IHRC, Charge No. 1994SA0240, 1997WL812491. ALS No. S-9146 (Dec. 10, 1997).

Furthermore, there was insufficient evidence to establish a *prima facie* case of disability discrimination. Generally, to establish a *prima facie* case for disability discrimination the Petitioner must show that (1) she had a disability within the meaning of the Act; (2) the employer had knowledge of the disability; (3) an adverse action was taken against the Petitioner; and (4) the Petitioner's disability is unrelated to her ability to do the job, with or without a reasonable accommodation. In the instant case, the fourth element is not satisfied as the evidence established that the Petitioner's mental disability was directly related to her ability to do her job. The Petitioner stated she was unable to properly do her job, would be unable to return to work until gaining clearance from her doctor, and then failed to notify Employer as to when she would be returning.

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 American Litho, Inc. as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

)

)

HUMAN RIGHTS COMMISSION

)

Entered this 7th day of November 2018

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Michael Bigger
