

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2014CF0923
)	EEOC.:	21BA40097
SANDRA SMITH,)	ALS NO.:	14-0513
Petitioner.)		

ORDER

This matter coming before the Commission by a panel of three commissioners, Michael Bigger, Amy Kurson and Cheryl Mainor, presiding upon Sandra Smith's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent") of Charge No. 2014CF0923 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 charges for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On July 30, 2013, the Petitioner, Sandra Smith, filed a charge of discrimination with the Respondent, alleging that her employer, Andrew, LLC. discriminated and retaliated against her in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act. The charge was perfected and amended on December 19, 2013 and May 20, 2014 respectively. On August 4, 2014, the Respondent dismissed the charges for lack of substantial evidence. The Petitioner filed a timely Request for Review on November 3, 2014.

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence exists after the Respondent's investigation of a charge, the charge must be dismissed. 775 ILCS 5/7A-102(D)(3). Section 7A-102(D)(2) states substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance.

The evidence was insufficient to establish a *prima facie* case of harassment. Actionable harassment occurs when the workplace is permeated with discriminatory, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. Harris v. Forklift Systems, Inc., 510 U.S. 17, 20, 114 S.Ct. 367, 371, 126 L.Ed.2d 295 (1993).

Petitioner was diagnosed with disabilities of left and right arm nerve disorder on February 16, 2012 and alleged her employer harassed her by yelling at her, using a harsh tone, nitpicking her work, falsely accusing her of making errors, reprimanding her in front of others and refusing her vacation time (Counts A-B). The January 22, 2013 employer investigation reports revealed a conflict between Petitioner and her team members¹ and that Petitioner made inappropriate remarks.² The investigation revealed the employer did not have knowledge of Petitioner's disability and the Petitioner did not refute the statement with evidence that she informed the supervisor of her disability. Almost a year elapsed between the disability diagnosis and allegations of harassment.³ The employer's conduct is not sufficiently severe or pervasive enough to meet the standard of actionable harassment.

Petitioner alleged her employer issued a written warning and discharged her because of her disabilities of left and right arm nerve disorder (Counts C-D). The investigation revealed Petitioner was placed on a 90-day Performance Improvement Plan (PIP) on October 14, 2011 and November 2, 2012. The October 14, 2011 PIP was issued prior to her disability diagnosis and according to the employer her performance did not improve which led to the issuance of the second PIP. The Petitioner stated she was disciplined but was not issued a written discipline dated February 1, 2013. Requiring the Petitioner to perform the duties of her job does not constitute harassment. See Patel v. Allstate Insurance Co., 105 F.3d 365 (7th Cir. 1997). The investigation also revealed the supervisor was unaware of Petitioner's disability. Even if she was being harassed, the investigation did not reveal a nexus between Petitioner's disability and the employer's actions. Further Petitioner stated she was unsure of her reason for filing counts C and D. Petitioner failed to substantiate a *prima facie* case of harassment or receiving a written warning (Counts A-D) based on her disability and the dismissal for lack of substantial evidence is proper.

The evidence was insufficient to establish a *prima facie* case of retaliation (Counts E-G). A *prima facie* case of retaliation is demonstrated when the Petitioner shows 1. Petitioner engaged in protected activity, 2. Respondent committed an adverse action against her and 3. causal connection exists between the protected activity and the adverse action. Hofflet v. Department of Human Rights, 367 Ill.App.3d 628, 634, 867 N.E.2d 14, 310 Ill.Dec.701 (2006). A good faith belief for an employment decision is sufficient to rebut an intentional discrimination charge. See Shah v. Illinois Human Rights Comm., 192 Ill.App.3d 263, 273-274, 548 N.E.2d 695, 701 (1st Dist. 1989).

Petitioner alleges her employer discharged her on February 8, 2013 in retaliation for filing a harassment case. The Petitioner stated she was disciplined but was not issued a written discipline dated February 1, 2013 and that she was unsure of her reason for filing counts C and D. The investigation revealed that as early as 2010, the employer discussed deficiencies in Petitioner's work⁴ and issued a 90 day Performance

¹ Employer supplied Respondent with Exhibit G Sandra Curry's investigation findings

² Employer supplied Respondent with Exhibit F Sandra Murphy's investigation findings.

³ Petitioner indicated she complained of harassment in early 2010 which is prior to her disability diagnosis.

⁴ Employer provided an April 22, 2010 email indicating Petitioner needs to improve team work.

Improvement Plan (PIP) on October 14, 2011⁵ and November 2, 2012. Petitioner did not identify another employee who failed to meet her PIP that was not also discharged. The investigation demonstrated that Petitioner was terminated because her performance did not improve. The investigation did not reveal a nexus between Petitioner's harassment claim and the employer's actions. Petitioner failed to substantiate a *prima facie* case of retaliation and the employer demonstrated a good faith reason for discharging the Petitioner. The Respondent's dismissal for lack of substantial evidence is proper.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of the Petitioner's charges 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 Andrew, LLC as the respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
) **Entered this 21 day of Nov. 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Michael Bigger

Commissioner Amy Kurson

Commissioner Cheryl Mainor

⁵ The first PIP was issued in October 14, 2011 or prior to the disability diagnosis on February 16, 2012.