

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2014CF1179
)	EEOC.:	21BA40295
IRA NELSON,)	ALS NO.:	14-0515
Petitioner.)		

ORDER

This matter coming before the Commission by a panel of three commissioners, Michael Bigger, Amy Kurson and Cheryl Mainor, presiding upon Ira Nelson’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”) of Charge No. 2014CF1179 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 November 7, 2013, the Petitioner, Ira Nelson, filed a charge of discrimination with the Respondent, alleging that his employer, Illinois Bell Telephone Company, discriminated against him in violation of Section 2-102(A) of the Illinois Human Rights Act. On August 21, 2014, the Respondent dismissed the charge for lack of substantial evidence. The Petitioner filed a timely Request for Review on September 30, 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 discrimination based on unequal terms and conditions of employment. To establish a *prima facie* case of discrimination, the Petitioner must show: (1) that he is a member of a protected class; (2) that he was performing his work satisfactorily (3) that he was subject to an adverse action and (4) that the employer treated a similarly situated employee outside the Petitioner’s protected class more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994). Additionally, to satisfy adverse action Petitioner must establish alterations in duties or

working conditions that caused a materially significant disadvantage. See In the Matter of Diane Allen, IHRC, Charge No. 1995CF0836 (October 20, 1999), 1999 WL 33252953 (Ill.Hum.Rts.Com).

Petitioner alleges he was subjected to unequal terms and conditions of employment from October 2013 to November 2013 when his employer provided him an old meter and provided newer meters to a non-black employee. Petitioner cannot prove adverse action because he only used an outdated meter for a month which is not long enough to cause a “materially significant disadvantage.” Additionally, Petitioner stated on November 4, 2013, he was placed on disability instead of light duty after his back injury flared up and was not offered the Lead position. Evidence demonstrated that a black employee refused the opportunity to become Lead and as a result, Steve Darlinger, a non-black employee received the position. Mr. Darlinger was previously denied a light duty request and worked in the office as part of his management training. Therefore, Petitioner cannot establish that similarly situated non-blacks are treated more favorably under similar circumstances. Terence White, a new black employee, stated both senior black and non-black employees were overlooked for the manager position. Further, he received a new meter as part of a company practice of issuing new meters to new employees and old meters to senior employees. Petitioner cannot establish a nexus between his race and the employer’s actions. The Petitioner failed to establish two elements of a *prima facie* case and the Respondent’s dismissal of the charge for lack of evidence is proper.

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 Illinois Bell Telephone Company as the 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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Entered this 21 day of Nov. 2018.

Commissioner Michael Bigger

Commissioner Amy Kurson

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