STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST	)		
FOR REVIEW BY:	)	CHARGE NO.:	2013CF3665
	)	EEOC.:	21BA32065
DEBORAH ANTLITZ	)	ALS NO.:	14-0520
	)		
Petitioner.	)		

ORDER

This matter coming before the Commission by a panel of three commissioners, Michael Bigger, Amy Kurson, and Cheryl Mainor, presiding upon Deborah Antlitz ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent") of Charge No. 2013CF3665 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 May 8, 2013, the Petitioner, Deborah Antlitz, filed a charge of retaliation with the Respondent alleging the Forest Preserve District of Cook County's employee retaliated against her for filing a sex discrimination complaint by issuing a suspension and a negative performance review in violation of Section 6-101(A) of the Illinois Human Rights Act (Act). On August 20, 2014, the Respondent dismissed Petitioner's charges due to lack of substantial evidence. The Petitioner timely filed a Request for Review on November 24, 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 that a preponderance.

To establish a *prima facie* case of retaliation the Petitioner must show 1) she engaged in a protected activity 2) the Employer committed an adverse action against her and 3) a causal connection existed 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). Once a Plaintiff establishes a *prima facie* case against the employer, the

employer has the burden of rebutting the *prima facie* case with evidence of a legitimate, nonretaliatory reason for discharging the Petitioner. McDonnell Douglas Corp. v. Green, 411 U.S. 472, 802-04, 93 S.Ct. 1817, 1824-25, 36 L.Ed.2d 668, 677-79(1973). Zaderaka v. Human Rights Comm., 131 Ill.2d 172, 179, 545 N.E.2d 684, 687 (1989). If the employer meets this burden, the Petitioner must prove that the nonretaliatory reason asserted by the employer is pretextual. Id.

Respondent concedes the Petitioner is female, performs her work satisfactorily and was subjected to adverse action when she was suspended on November 26, 2012 and therefore established a p*rima facie* case of retaliation. Petitioner filed a sex discrimination complaint on September 12 and 24, 2012. Petitioner indicated employer[1] ignored her work related requests because she is female.[2] However, the investigation revealed on September 25, 2012[3], Petitioner sent a disrespectful email to an employee, appeared to have a personality conflict with staff and needed training to address the conflict issue. On October 1, 2012, an independent contractor sent the employer an email indicating Petitioner interrupted their project, causing a half day delay. The contractor also stated Petitioner made disparaging comments about several co-workers and threatened to go to the media and create a scandal for the Employer. The contractor felt threatened by Petitioner's actions. Petitioner was issued a 3 day suspension on November 13, 2012 because of the nature of this infraction and because it involved an outside party.[4] Petitioner did not identify another male employee who was similarly situated but treated differently. From November 13, 2010 to November 13, 2012, the Employer suspended five employees other than Petitioner that had not filed a complaint. The employer's policy indicates suspension may be used where there has been previous disciplinary action or for the first infraction of a more serious offense. As a result, the employer has rebutted the *prima facie* case with evidence of a legitimate, nonretaliatory reason for discharging the Petitioner. The Respondent's dismissal for lack of substantial evidence was proper.

Petitioner failed to establish a *prima facie* case of retaliation. Petitioner alleged she received a poor performance evaluation in retaliation for complaining of unlawful discrimination based on sex. (Count B). During an investigation, employer ended his meeting with Petitioner after he saw her pushing buttons and thought she was recording him. Petitioner received a poor performance evaluation on December 27, 2012.[5] An undeserved poor performance evaluation is not an adverse employment action. Smart

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[1] . During a 2011 investigation of Petitioner's complaint that a male employee avoided Petitioner because she is female, the male employee was issued a one day suspension after stating he found Petitioner combative and difficult to work with and that he felt that he was bullied by her.
[2] Petitioner began making this allegation in 2011.
[3] Investigation revealed Exhibit G, an email from Petitioner to Michelle Gage dated September 24, 2012 and the Employer provided Exhibit I, an email from Michell Gage to Complainant dated September 25, 2012
[4] Prior to the suspension, Petitioner was presented with a pre-disciplinary notice on October 23, 2012 for failing to follow instructions and negligence in performing her duties and had a hearing on this issue on November 7, 2012.
[5] Employer initiated a formal evaluation process of all employees in 2012. The performance was on a scale of 1-4. Employer indicated Petitioner received a 2.2 out of 4 rating which indicates she met most requirements.

v. Ball State Univ., 89 F.3d 437, 441 (7th Cir. 1996). An unfair reprimand or undeserved negative performance evaluation without a tangible job consequence does not amount to an adverse employment action. See Watson v. Potter, 351 Fed. Appx 103, 105(7th Cir. 2009). During the same period, many employees received performance ratings that were comparable to or lower than Petitioner's but none of those employees filed a discrimination complaint prior to receiving their reviews. Since the Petitioner cannot prove that the employer committed an adverse action, the Petitioner failed to substantiate a *prima facie* case of retaliation. The Respondent's dismissal for lack of substantial evidence was 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 Forest Preserve District of Cook County 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