

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2013CF1370
)	EEOC NO.: 21BA40443
DENISE LONG)	ALS NO.: 14-0521
)	
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Michael Bigger, Amy Kurson, and Cheryl Mainor presiding, upon the Request for Review (“Request”) of Denise Long (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”) of Charge No. 21BA40443 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 27, 2013, Petitioner filed a charge of discrimination with the Respondent alleging that the Board of Education of the City of Chicago (the “Employer”), terminated her employment due to her disability (Count A) and in retaliation for filing a charge of discrimination (Count B); subjected her to unequal terms and conditions of employment due to her disability (Count C) and in retaliation for filing a charge of discrimination (Count D); and constructively discharged her due to her physical disability (Count E) and in retaliation for filing a charge of discrimination (Count F) in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act.

On August 12, 2014, the Department dismissed Counts A through D of Petitioner’s charge for Lack of Substantial Evidence and dismissed Counts E and F for Lack of Jurisdiction.

The Commission finds that the Respondent properly dismissed 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). In the instant case, the Petitioner fails to provide substantial evidence that we was subjected to discrimination or retaliation.

Generally, to establish a *prima facie* case of discrimination, the Petitioner must show: 1) that she is a member of a protected class; 2) she was performing her work satisfactorily; 3) that she was subject to an adverse action; 4) and that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. Marinelli v. Human Rights Commission, 262 Ill.App.3d. 247, 634 N.E.2d 463 (2d Dist. 1994). Once the *prima facie* case has been established, the burden shifts to the respondent to articulate a legitimate, non-discriminatory reason for its actions. Then, to prevail, the complainant must prove that the respondent's proffered reason is a pretext for unlawful discrimination. McDonnell-Douglas Corp v. Green, 411 U.S. 792, 93 S.Ct. 1817 (1913).

In order to establish a *prima facie* case of retaliation, the Petitioner must show 1) she engaged in protected activity, 2) the Employer committed an adverse action against her; 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). Petitioner can establish the causal link required to prove a *prima facie* case by showing: 1) direct evidence of retaliation; 2) evidence of unequal treatment of similarly situated persons who did not engage in the protected activity; or 3) that the time period between the protected activity and the adverse action is short enough to create an inference of "connectedness." See In the Matter of: Giuseppe Scalera and Village of Oak Park, IHRC, Charge No. 1997CF1270, 2002 WL 32828292, *5 (September 23, 2002).

Counts A & B – Wrongful Discharge

The Commission concludes that the Respondent properly dismissed Counts A and B of the Petitioner's charge for Lack of Substantial Evidence. The Petitioner has failed to make a *prima facie* case because she has offered no proof that the Employer treated similarly situated employees, outside of Petitioner's protected class, differently than Petitioner. The Respondent's investigation showed that the Employer honorably discharged Petitioner, along with 8 other teachers, from the Reassigned Teachers Pool ("RTP") because she failed to secure a permanent teaching position within 10 school months. The honorable discharge was completed in accordance with the terms of the RTP agreement that governs the employment of all teachers in the RTP. Petitioner takes issue with her placement in the RTP in 2012, but that is unrelated to her discharge from the RTP. Neither Petitioner, nor Respondent's investigation, has presented any evidence that Petitioner was treated any differently than the other 8 teachers who were discharge from the RTP. As a result, the Commission sustains Respondent's dismissals of Counts A and B.

Counts C & D – Unequal Terms and Conditions of Employment

The Commission concludes that the Respondent properly dismissed Counts C and D of Petitioner's charge because the Employer provided a legitimate, non-discriminatory reason for the error in Petitioner's evaluation status. After the employer transferred to a new evaluation database, a technical problem caused errors to appear in many teachers' evaluations, including the Petitioner's. The Petitioner argues that the Employer's legitimate, non-discriminatory reason is pretextual because the erroneous evaluation was left in her file with "reckless indifference" to her rights and that the errors caused her to miss out on job opportunities. Even if Petitioner's assertions are true, she does not prove that discrimination or retaliation was the reason for the errors. Furthermore, the Employer admits that the technical issue created errors on other teachers' evaluations, so the Petitioner was not singled out because of her disability or previous protected activity. The Commission sustains the dismissals of Counts C and D.

Counts E & F – Constructive Discharge

The Commission concludes that the Respondent improperly dismissed Counts E and F for Lack of Jurisdiction, however, Counts E & F should still be dismissed for Lack of Substantial Evidence.

Petitioner asserts that she was constructively discharged in September 2012 when she entered into a settlement agreement with the Employer in which she agreed to be placed into the RTP in exchange for removal of a 2012 "Unsatisfactory" performance evaluation. Petitioner argues that she was not aware of the alleged constructive discharge until October 9, 2013 when she saw that the Employer had not removed the 2012 rating from its performance evaluation database. Because Petitioner was not aware of alleged violation until October 9, 2013, her claim is timely, and the Commission has jurisdiction over Counts E and F.

To sustain a claim of constructive discharge, Petitioner must show that, "her work environment has been made so hostile by the respondent employer's actions that a reasonable person would have been compelled to resign." In the Matter of Cynthia Ann Robbins and Department of Military and Naval, Charge No. 1988SF0212, 1991 WL 698772, *1 (October 3, 1991). Even if Petitioner's claims in Counts E and F are true, she has not made a claim for constructive discharge because she has not made any allegation of a hostile work environment or of being compelled to resign. Her allegation is that the Employer breached the terms of the 2012 settlement agreement. Because the Petitioner has not alleged any facts related to constructive discharge, Counts E and F must be dismissed for Lack of Substantial Evidence.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of the Petitioner's charge is hereby SUSTAINED.

