

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )  
FOR REVIEW BY: )

**KIMBERLY M. MASON,** )

Petitioner. )

CHARGE NO.: **2014CF0543**  
EEOC NO.: **21BA32478**  
ALS NO.: **14-0540**

**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 Kimberly M. Mason (“Petitioner”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)<sup>1</sup> of Charge No. 2014CF0543 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 September 9, 2013, the Petitioner filed a charge of discrimination with the Respondent alleging that the City of Chicago, Department of Public Health (“Employer”), subjected her to unequal terms and conditions of employment because of her race and sex; subjected her to unequal pay because of her race and sex; harassed her because of her race and sex; and failed to promote her because of her race, in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On September 23, 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 in its entirety 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).

The Petitioner first argued that she was subjected to unequal terms and conditions of employment based on her race and sex. In order to establish a prima facie case of this type of discrimination, the Petitioner must prove 1) that she is in a protected class; 2) that she was treated in

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<sup>1</sup> 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.”

a particular manner by the employer; and 3) that similarly situated employees outside her protected class were treated more favorably. In the Matter of Pamela Pettis and McDonald's Corp., IHRC, Charge No. 1991CF2143, 2001 WL 34778858, at \*4 (April 9, 2001). The alleged activities consisted of the Employer 1) denying her the opportunity to participate in meetings, visits and calls; 2) denying her the opportunity to interview for a position; 3) refusing to provide her with the criteria used to select candidates for the position; 4) not providing her with personnel updates on positions under her; 5) allowing a coworker to approve edits and vacation requests; and 6) failing to give her credit for her work. The Employer responded that 1) she did attend department meetings, but the visits and calls were unrelated to her job; 2) she lacked the qualifications needed to warrant an interview; 3) it was department policy not to provide such criteria; 4) that she was provided with updates or the department could not operate; 5) that the Deputy Commissioner was allowed to choose someone to approve requests in her absence, and she chose the most senior employee; and 6) a newsletter editor mistakenly omitted her name in mentioning a project, but corrected the error in the updated version. There is no evidence that the alleged unequal terms and conditions were motivated by the Petitioner's race or sex. Moreover, there was no evidence that similarly situated employees outside her protected classes were treated more favorably.

The Petitioner next argued that she was subjected to unequal pay based on her race and sex, in that other people got pay raises and she did not. To establish her claim, she must again show 1) that she is in a protected class; 2) that she was treated in a particular manner by the employer; and 3) that similarly situated employees outside her protected class were treated more favorably. Id. The Employer stated that the Petitioner was at the time ineligible for a pay raise, because she had not been employed long enough. Moreover, the non-black, male employee who did receive a raise had been working for ten years and had not received a raise in four years. There is no evidence that the Petitioner was denied a pay raise because of her race or sex. Nor was there evidence that similarly situated employees outside her race or sex were treated more favorably.

The Petitioner next argued that she was harassed based on her race and sex. A prima facie case of employment discrimination is established when the Petitioner shows 1) that she is a member of a protected class; 2) that she was performing her work satisfactorily; 3) that she 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, 253 (2<sup>nd</sup> Dist. 1994). 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, 21 (1993). The Petitioner alleged that she was told by her supervisor to create an illegal job description for one of her employees. The Employer stated that she was asked to write up her expectations for her employee, who had complained that she did not know what was expected of her. Even if the Employer's request did constitute harassment, there is no evidence that the Petitioner was harassed based on her race or gender, or that the level of harassment altered the conditions of her employment. The Petitioner did not show that a similarly situated employee outside her protected classes was treated more favorably.

The Petitioner's final argument was that the Employer failed to promote her because of her race. Again, the Petitioner's prima facie case must establish 1) that she is a member of a protected class; 2) that she was performing her work satisfactorily; 3) that she 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, 262 Ill. App. 3d at 253. Here, the Petitioner claimed that she was not allowed an interview for a position that she was seeking, and that she was more qualified than the non-black woman who was hired. The Employer maintained that she was not eligible for an interview because she did not score high enough on their eight-factor screening analysis of candidates. Because the Employer asserted a legitimate, nondiscriminatory reason for not hiring her, it fell to the Petitioner to prove that the legitimate reason was not the true reason underlying the decision, but rather a pretext. See Village of Bellwood Board of Fire and Police Commissioners v. Human Rights Commission, 184 Ill. App. 3d 339, 350 (1<sup>st</sup> Dist. 1989). The Petitioner did not prove that the Employer's reason was a pretext for discrimination, but instead only asserted that she was the most qualified person for the position, without evidence to substantiate that claim.

The Petitioner has not presented any 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 City of Chicago, Department of Public Health, as 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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**HUMAN RIGHTS COMMISSION** )

**Entered this 21st day of November 2018.**

Commissioner Michael Bigger

Commissioner Amy Kurson

Commissioner Cheryl Mainor