STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	CHARGE NO.: **2014CR2406**
	)	EEOC NO.: **440-2014-01263**
MARK DEL ROSARIO,	)	ALS NO.: **14-0546**
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 Mark Del Rosario ("Petitioner"), of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")[1] of Charge No. 2014CR2406 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 January 15, 2014, the Petitioner filed a perfected charge of discrimination with the Respondent alleging that Golf Surgical Center ("Employer") threatened to discharge him in retaliation for opposing unlawful discrimination, in violation of Section 6-101(A) of the Illinois Human Rights Act ("Act"). On September 25, 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 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 this case, the Petitioner states that he received an email that some coworkers had seen a staff doctor come out of the supply room with a handful of supplies. The Petitioner sent an email to another doctor, asking if he should send an invoice for the supplies, and then sent an email to the Employer's board members about the incident, asking if it were true that the doctor had permission to take the supplies. After the emails were sent, the two doctors confronted the Petitioner, stating that

[1] 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."

the accusations based on hearsay were wrong, that his actions could be considered libelous, and that he should have followed the proper chain of command and investigatory procedure.

In the instant case, the evidence was insufficient to establish a prima facie case of retaliation. In order to prevail, the Petitioner must establish that 1) he engaged in a protected activity; 2) the actor took an adverse action against him; and 3) there was a causal nexus between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill. App. 3d 1027, 1035 (3rd Dist. 2000). Here, the Petitioner cannot show that he engaged in a protected activity. Under Section 6-101(A), protected activities include opposing unlawful discrimination, sexual harassment in employment or sexual harassment in education, discrimination based on citizenship status in employment, and activities related to a charge or accommodation under the Act. See 775 ILCS 5/6-101(A). The Petitioner's reporting that other employees saw alleged misconduct does not fall under any category listed above. See In the Matter of Richard B. Moulton and Bunker Hill Area Ambulance Service & The Bunker Hill Volunteer EMT-A Group, IHRC, Charge No. 1993SP0768, 1996 WL 534362, * 7 (July 24, 1996) (maintaining that the opposition must be to something that could be a violation of the Act).

In addition, the Employer did not take an adverse action against the Petitioner. While there were statements made that the Petitioner's conduct was libelous or that he was threatened with discharge, the Petitioner remained employed by the Employer without any negative consequences after the incident. In June 2014, he received a positive performance evaluation and salary increase. There is no evidence that the Employer took any action against the Petitioner. See In the Matter of Linda M. Hartman and city of Springfield Police Department, IHRC, Charge No. 1993SF0365, 1999 WL 33252975, *11 (October 4, 1999) (noting that there must be adverse action that is sufficiently severe or pervasive to constitute a term or condition of employment in order to give rise to a cause of action).

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 Golf Surgical Center as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

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

Commissioner Michael Bigger

Commissioner Amy Kurson

Commissioner Cheryl Mainor