

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE No.:2014 SF 1358
)	EEOC.: 21 BA 40434
Fanfan Makenda,)	ALS No.: 14-0558
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Hermene Hartman, Steve Kim, and Cheryl Mainor, presiding, over the Matter of Fanfan Makenda's (Petitioner) Request for Review (Request) of the Notice of Dismissal issued by the Illinois Department of Human Rights (Respondent¹), of Charge 2014SF1358 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 in 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 26, 2013, the Petitioner filed a perfected charge of discrimination alleging that his employer, Silgan White Cap discharged him because of his race and his national origin in violation 2-102(A) of the Illinois Human Rights Act. 775 ILCS 5/1 *et. seq.* The Respondent dismissed the 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. 1993CA 2747, 1995 WL 793258, (March 7, 1995).

The Petitioner worked for several years for a manufacturing company, Silgan White Cap. During his tenure, he was promoted from packer to equipment operator. He contends that his November 21, 2013 discharge was based on his race and national origin.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

The Petitioner was arrested for alleged sexual assault in late October 2013. The charge was ultimately dismissed, but when the Petitioner returned to work in early November, he alleges that he was told he would not be getting anymore work because he was a “criminal.” At about the same time, the Employer received a complaint of sexual harassment from an employee. The Employer’s investigation revealed two additional complaints of sexual harassment, including unwanted physical contact, against the Petitioner. The Employer suspended the Petitioner pending further investigation. A fourth employee, who had been on vacation, reported that the Petitioner had engaged in sexually inappropriate behavior, including unwanted physical contact such as rubbing against her and taking her hand and placing it on his penis. At the conclusion of the investigation, the Employer discharged the Petitioner.

To establish a *prima facie* case of discrimination, the Petitioner must show that (1) he falls within a protected class; (2) he was performing his work satisfactorily; (3) he was subjected to an adverse action; and (4) the Employer treated a similarly situated employee outside Petitioner’s protected class more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill. App. 3d, 634 N.E. 2nd 463 (2nd Dist. 1994).

Here, the Petitioner fails to establish that he was discharged based on his race or national origin. He failed to establish that there was any discriminatory animus toward him during his five years with the company. He did not identify another employee about whom there were multiple allegations of sexual harassment that included physical contact who was not discharged by the Employer. Another employee received a final written warning for sexual harassment, but the harassment was verbal and did not involve physical contact. Moreover, the Employer articulated a non-discriminatory basis for the adverse action: that the Petitioner violated its sexual harassment policy. In the absence of any evidence that the business consideration relied on by the Employer is a pretext for discrimination, it is improper to substitute judgment for the business judgment of the employer. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997). The Petitioner’s Request for Review did not provide any additional information that would require a different conclusion.

Accordingly, 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 Silgan White Cap, 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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Entered this 21st day of November 2018

HUMAN RIGHTS COMMISSION

Commissioner Hermene Hartman

Commissioner Steve Kim

Commissioner Cheryl Mainor