

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE No.: 2014 CN 0265
Juan Herrera,)	EEOC No.: N/A
)	ALS No.: 14-0561
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Hermene Hartman, Steve Kim, and Cheryl Mainor, presiding upon the Matter of Petitioner Juan Herrera's Request for Review (Request) of the Notice of Dismissal issued by the Illinois Department of Human Rights (Respondent¹), of Charge 2014CN0265, 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 August 5, 2013, the Petitioner filed a charge of discrimination with the Department alleging that his employer, Smith Maintenance Company, discharged him because of his citizenship status, U.S. Citizen, in violation of Section 2-102(A) of the Illinois Human Rights Act. The Department 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. 1993CA 2747, 1995 WL 793258, (March 7, 1995).

In March 2013, the Petitioner began working as a janitor for a firm that provides maintenance services to a variety of business and government clients. The Petitioner was assigned to work at a community college. Two months after he was hired, his employer issued a written warning to him about not showing up to work as scheduled noting that as a probationary employee, he may be discharged for an additional offense.

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."

Shortly thereafter, on June 12, 2013, a representative from the college contacted the employer and directed that the Petitioner not return there due to concerns that he was vandalizing the very property he was supposed to be cleaning. On June 15, 2013, the employer discharged the Petitioner. The employer also notified *all* employees assigned to the college that they were being terminated, effective June 29, 2013, because the contract with the college was ending.

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) that 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 failed to show that he was performing his work satisfactorily or that the employer treated a similarly situated employee outside his protected class more favorably. He did not provide any evidence that he was discharged because of his citizenship status, U.S. citizen. His argument that his former co-workers probably used fake documents to establish their eligibility to work is conjecture and speculation, which does not constitute evidence of discrimination. See Willis v. Illinois Dep't. of Human Rights, 307 Ill. App. 3d 317, 326, 718 N.E. 2nd 240. (4th Dist. 1999)

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 Smith Maintenance Company 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