

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE No.: 2014 CF 0608
Sherry L. Green,)	EEOC No.: 21BA32536
)	ALS No.: 14-0563
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Chair Bombela-Tobias, Commissioners Duke Alden and Patricia Bakalis Yadgir presiding, upon the Matter of Petitioner Sherry L. Green’s Request for Review (Request) of the Notice of Dismissal issued by the Illinois Department of Human Rights (Respondent¹), of Charge 2014 CF 0608, 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 July 15, 2013, the Petitioner filed a four-count charge of discrimination with the Respondent alleging that her employer, First Source, subjected her to unequal terms and conditions of employment,(Count A) issued her verbal and written warnings (Counts B and C), and discharged her (Count D),because of her physical disability, left shoulder disorder, in violation of Section 2-102(A) of the Illinois Human Rights Act. 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. 1993CA 2747, 1995 WL 793258, (March 7, 1995).

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.”

To establish a *prima facie* case of disability discrimination, the Petitioner must show: 1) she was disabled within the Act; 2) her disability is unrelated to her ability to perform the functions of the job she was hired to perform; and 3) an adverse job action was taken against her related to her disability. The burden then shifts to the Employer to rebut the presumption of discrimination and articulate a non-discriminatory basis for its action. Kreczko v. Triangle Package Mach. Co., 2016 IL App (1st) 151762, 37, 53 N.E.3d 1070, 1078. The burden then shifts back to the Petitioner to show that the Employer's stated reason for its action was pretextual. Zaderaka v. Human Rights Commission, 131 Ill. 2nd 172, 179, 545 N.E. 2d 684 (1989).

The Petitioner was hired by First Source as a Claims Examiner on July 8, 2011. She was assigned to work on the "GEHA" account in 2011 but was moved in February 2013 along with other employees, to another account when the employer's contract with GEHA ended. The Petitioner alleges that assigning her to the other account changed the terms and conditions of her employment and was based on her disability. The Employer assigned other, non-disable people to the other account as well, undercutting the Petitioner's claim of disability discrimination.

In March of 2013, the Employer issued the Petitioner a verbal warning for poor performance for not meeting her goals. She received a written warning in April 2013, for poor performance and the Employer placed her on a performance improvement plan. An adverse employment action has been defined as "more disruptive than a mere inconvenience or an alteration of job responsibilities. A materially adverse change might be indicated by a termination of employment, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation." (citation omitted). Hoffelt v. Illinois Dep't. of Human Rights, 367 Ill.App.3d 628, 633, 867 N.E.2d 14, 18,), as modified on denial of reh'g (Oct. 20, 2006).

Moreover, courts have repeatedly held that oral and written reprimands without more, do not constitute an adverse employment action for purposes of establishing a *prima facie* case of employment discrimination. Because the Petitioner did not establish an adverse action by the Employer, she failed to establish a *prima facie* case. See Owens v. Department of Human Rights, 403 Ill.App.3d 899, 920, 936 N.E.2d 623, 640-41, 344 Ill. Dec. 94, 111-12.

The Petitioner's discharge was, of course, an adverse action. However, the Employer set forth a legitimate non-discriminatory basis for its action. The Petitioner failed to meet the Employer's performance measures. The Employer established that it also discharged a non-disabled employee for poor performance. The Petitioner did not establish that she met the Employer's performance requirements or establish any disability-related animus to her by the Employer. Finally, she did not show that the basis for her discharge was pretext for disability discrimination.

The Petitioner's Request for Review does not provide a basis for reversing the Respondent's determination.

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 First Source 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 December 2018
HUMAN RIGHTS COMMISSION)

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden