

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2014CF1390
)	EEOC NO.: 21BA40462
JESSICA BORROR)	ALS NO.: 14-0576
)	
)	
)	
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 Jessica Borrer (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”) of Charge No. 2014CF1390 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 December 3, 2013, Petitioner filed a charge discrimination with the Respondent alleging that Tobe Direct (the “Employer”) discharged her because of her sex, female related to pregnancy, in violation of Section 2-102(A) of the Illinois Human Rights Act.

On September 24, 2014, the Respondent dismissed Petitioner’s charge for Lack of Substantial Evidence. Petitioner filed a timely Request.

The Petitioner contends that the Respondent erred in its dismissal because Petitioner established a *prima facie* case of discrimination using the direct method and the Respondent applied the indirect method analysis in reaching its decision. The Petitioner’s charge is based on her allegation that when her manager informed her of her discharge, the Petitioner asked if she could try a different position with the Employer. Petitioner alleges that her manager responded that the Petitioner couldn’t move to another position because she was pregnant. The Commission agrees that the direct method analysis should be used; however, the Commission sustains the dismissal 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).

When a Petitioner establishes a *prima facie* case of discrimination using direct evidence, the burden shifts to the Employer to prove by a preponderance of the evidence that it would have made the same adverse decision even if the complainant's protected status had not been considered.” See In the Matter of: Jean Wood and Marvin Keller Trucking, Inc., Charge No. 2004SA3451, 2008 WL 5622603, *8 (Dec. 30, 2008).

Here, in addition to denying that it made any statement about Petitioner’s pregnancy, the Employer provides three reasons for its decision to terminate Petitioner’s employment: 1) the Employer wanted to hire an employee with more Quality Control experience, 2) Petitioner’s repeated incidents of leaving work before the end of her shift; and 3) Petitioner’s gossiping about, and poor relationships with, her colleagues. Petitioner provides no evidence to rebut the Employer’s stated reasons other than to assert that the Employer could have determined her work experience prior to hiring her. Petitioner also contends that she was not gossiping about colleagues but reporting what she believed to be workplace misconduct. The Petitioner did not respond to the allegation that she frequently left work before the end of her shift.

Furthermore, the Respondent’s investigation also found that the Employer discharged four male employees for poor performance and allowed three female employees to take maternity leave and return to work. While the Petitioner and Employer disagree on whether a statement was made about Petitioner’s pregnancy, the Employer has established that it would have discharged Petitioner, regardless of her protected status, because of her performance and behavior in the workplace.

Therefore, the Commission finds that the Respondent’s dismissal was not in violation of 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 Tobe Direct as respondents, with the Clerk of the Appellate Court within 35 Days after the date of service of this order.

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

Commissioner Michael Bigger

Commissioner Amy Kurson

Commissioner Cheryl Mainor