

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2013CF3261
)	EEOC NO.: 21BA31741
MENDA MITCHELL)	ALS NO.: 14-0577
)	
)	
)	
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 Menda Mitchell (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”) of Charge No. 2013CF3261 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 May 28, 2013, the Petitioner filed a perfected charge of discrimination with the Respondent against the Board of Education of the City of Chicago (the “Employer”) alleging that the Employer discriminated against her because of her sex when it discharged her by failing to renew her appointment for the 2013-14 school year in violation of Section 2-102(A) of the Illinois Human Rights Act.

On September 25, 2014, 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 claims 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). Here, the Petitioner has failed to make a *prima facie* case of discrimination.

Generally, to establish a *prima facie* case of discrimination, the Petitioner must show: 1) that she is a member of a protected class; 2) she was performing her work satisfactorily; 3) that she was subject to an adverse action; 4) and that the Employer treated similarly situated employees outside the Petitioner's protected class more favorably under similar circumstances. Marinelli v. Human Rights Commission, 262 Ill.App.3d. 247, 634 N.E.2d 463 (2d Dist. 1994). Once the *prima facie* case has been established, the burden shifts to the respondent to articulate a legitimate, non-discriminatory reason for its actions. Then, to prevail, the complainant must prove that the respondent's proffered reason is a pretext for unlawful discrimination. McDonnell-Douglas Corp v. Green, 411 U.S. 792, 93 S.Ct. 1817 (1913).

In this case, the Petitioner fails to prove the fourth requirement of the *prima facie* case. The Department's investigation identified four similarly situated employees, four women and one man. The Employer evaluated each teacher, in class, to determine whether to renew their appointment. At the end of school year, the Employer recommended Sierra Dockery (female) and Aaron Wilcox (male) for renewal. The Employer did not recommend Petitioner, Lisa Hendricks (female), and Elizabeth McGlynn (female) for renewal. The Employer rehired McGlynn as a special education teacher.

In her Request for Review, Petitioner argues that Dockery was not a similarly situated employee because she was a teacher for Visually Impaired (VI) students. Petitioner's supports her argument by citing an email from December 2014 from a Union official arguing in favor of using a different evaluation system for VI teachers. This email is not persuasive here, however, because there is no proof that the Employer implemented the Union's proposed changes and the 2014 email has no bearing on the evaluation system used in 2012.

Finally, the Petitioner did not prove that the Employer's legitimate, non-discriminatory reason, that the Petitioner's evaluation did not warrant renewal, was a pretext for discrimination. The Petitioner attempts to prove pretext by alleging that Wilcox was involved in an incident in which he told a group of students that they were "stupid black children" and walked out of the school but was still recommended for renewal; however, the Petitioner had no record of misconduct.

The principal conceded that an incident occurred involving Wilcox, but the Department's investigation includes different versions of the alleged incident. Even if the Petitioner's allegations are taken as true, she has not proven pretext. First, the principal stated that Wilcox was disciplined for the incident. Second, the Employer asserts that the renewal decision was based on in class performance standards, which Petitioner did not meet, regardless of her lack of misconduct. Petitioner has presented no evidence that her lower ratings were merely a pretext, so she has not met the burden of proof.

The Department's investigation revealed that the Employer recommended one female teacher for renewal and rehired one female teacher who was not recommended for renewal. Furthermore, the Petitioner has presented no evidence to rebut the

