STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	CHARGE NO.:	**2014CR2927**
	EEOC NO.:	**N/A**
	ALS NO.:	**14-0585**
KIM SYKES,		
Petitioner.		

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hermene Hartman, Steve Kim, and Cheryl Mainor presiding, upon Kim Sykes's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")[1] of Charge No. 2014CR2927, 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 October 31, 2013, the Petitioner, a former sales associate, filed an unperfected charge of discrimination with the Respondent, perfected on April 21, 2014 and amended on September 29, 2014, alleging that Sterling Jewelers, Inc., d/b/a Kay Jewelers ("Employer") fired him because of his race, black, his color, light-skinned, his religion, Islam, and his age, 51, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On October 3, 2014, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. The Petitioner filed a timely Request.

For the reasons that follow, the Commission concludes that the Respondent properly dismissed the Petitioner's claim for lack of substantial evidence. Substantial evidence is that which "a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance." 775 ILCS 5/7A-102(D); Owens v. Dep't of Human Rights, 403 Ill. App. 3d 899, 917, 936 N.E.2d 623, 638 (1st Dist. 2010). If no substantial evidence of

[1] In a request for review proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Illinois Department of Human Rights's action shall be referred to as the "Petitioner."

discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. Id.

To establish his discrimination claims, the Petitioner may ultimately proceed under one of two methods: either with direct evidence that discriminatory animus was a determining factor in the Employer's decision to fire him, or indirectly through the burden-shifting method of proof. Schnitker v. Springfield Urban League, Inc., 2016 IL App (4th) 150991, 67 N.E.3d 583, 591-92 (4th Dist. 2016). To establish a *prima facie* case under the indirect method, the Petitioner must show: (1) he is a member of a protected class; (2) he was performing his work satisfactorily; (3) he was subject to an adverse employment action; and (4) the Employer treated a similarly situated employee or employees outside his protected class more favorably under similar circumstances. Marinelli v. Human Rights Comm'n, 262 Ill. App. 3d 247, 634 N.E.2d 463 (2d Dist. 1994).

The record did not show direct evidence of discriminatory animus. The Respondent's investigation revealed that the Petitioner was employed for less than two months before his termination, and was fired by the Employer's store manager during his 90-day "trial period." During his employment, the Petitioner states that his direct supervisor, also black, asked him how it felt to be "light-skinned." The Petitioner further states that several younger co-workers under 30 years of age would refer to him as "the old man." Moreover, the Petitioner states the Employer was aware of his religion because he requested time off on Fridays for worship, which he was granted.

The supervisor's comment regarding the Petitioner's skin tone, and his co-workers' remarks about his age, while potentially offensive, have not been connected to the store manager's decision to terminate him. In order to qualify as direct evidence, these remarks "would have to prove the particular fact in question, without reliance on inference or presumption." Lalvani v. Illinois Human Rights Comm'n, 324 Ill. App. 3d 774, 791, 755 N.E.2d 51, 65 (1st Dist. 2001). There is simply nothing in the record to establish this connection. Further, the record is entirely devoid of evidence of discriminatory intent on the basis of the Petitioner's religion.

Nor does the evidence support a *prima facie* case under the indirect method. The Petitioner did not identify, and the investigation did not show, any similarly situated probationary employees, outside of the Petitioner's protected classes, who were treated more favorably by the Employer. The only other similarly-situated probationary employee voluntarily quit. Thus, no inference can be drawn of discriminatory animus by any indirect evidence.

Even assuming the Petitioner did establish a *prima facie* case, the investigation did not reveal substantial evidence that the Employer's articulated reasons for its termination decision were a pretext for discrimination. See McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) (adopted by Illinois Supreme Court in Zaderaka v. Human Rights Comm., 131 Ill.2d 172, 179, 545 N.E.2d 684, 687 (1989)). The Employer's position was that the Petitioner displayed unprofessional behavior, was not meeting performance expectations, and was insubordinate towards his supervisor. And the Petitioner does not contest that, on an evening not long before his discharge, the Petitioner refused to accompany his supervisor on a nightly bank drop, after being told he would be disciplined if he did not do so.

Moreover, it is not contested that the Petitioner was hired and fired by the same store manager within less than a two-month time span, and that she was, at a minimum, aware of the Petitioner's race and age at the time he was hired. In cases where "the hirer and firer are the same individual and the termination of employment occurs within a relatively short time span following the hiring, a strong inference exists that discrimination was not a determining factor for the adverse action." Rand v. CF Indus., Inc., 42 F.3d 1139, 1147 (7th Cir. 1994) (internal citation omitted).

In his Request for Review, the Petitioner posits that his previous felony conviction may have formed the basis for his termination. However, even if true, the Act does not provide recourse for the Petitioner in this circumstance; rather, it prohibits adverse employment actions only on the basis of an arrest. See 775 ILCS 5/2-103. Moreover, it is not contested that the Petitioner disclosed the conviction as part of a background check at the time he was hired. Thus, the Employer was aware of the conviction, but decided to hire him anyway.

Accordingly, the Petitioner has not presented enough 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 Sterling Jewelers, Inc., d/b/a Kay Jewelers 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 November 2018**
HUMAN RIGHTS COMMISSION)

Commissioner Hermene Hartman

Commissioner Steve Kim

Commissioner Cheryl Mainor