

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2014CR2666
)	EEOC.:	N/A
MOHAMMAD VASEEMUDDIN)	ALS NO.:	14-0589
)		
Petitioner.)		

ORDER

This matter coming before the Commission by a panel of three commissioners, Chair Rose Mary Bombela-Tobias and Commissioners Patricia Bakalis Yadgir and Duke Alden presiding upon Mohammad Vaseemuddin's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent") of Charge No. 2014CR2666 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:

- A) The Respondent's dismissal of Counts A-L and R of the Petitioner's charges is **SUSTAINED** for **LACK OF JURISDICTION**.
- B) The Respondent's dismissal of Counts M-Q of the Petitioner's charges is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.

DISCUSSION

On January 30, 2014, the Petitioner, Mohammad Vaseemuddin, filed eighteen charges of discrimination with the Respondent alleging his employer, Cook County Health and Hospital System, discriminated with denial of promotion, unequal terms and conditions, and wrongful discharge on January 22, 2013 in violation of Sections 2-102(A) and 6-101(A) of the Human Rights Act. The Petitioner perfected his charges on January 31, 2014. On September 25, 2014, the Respondent dismissed Counts A-L and R for lack of jurisdiction and dismissed Counts M-Q for lack of substantial evidence. On December 18, 2014, the Petitioner timely filed a Motion for an Extension of Time to File a Request for Review. On February 6, 2015, the Commission entered an order granting Complainant a 60-day extension to file his Request for Review. The Petitioner filed a timely Request for Review on April 10, 2015.

The Commission concludes that the Respondent properly dismissed the Petitioner's Counts A through L and R for lack of jurisdiction. Section 7A-102(A)(1) provides that an aggrieved party must file a charge of discrimination under oath or affirmation within 180 days after the date that the alleged civil rights violation has been committed. The petitioner's compliance with the 180-day filing requirement of section 7A-102(A)(1) is a

condition precedent to his right to seek a remedy and is required to vest the Respondent with subject matter jurisdiction. Board of Educ. Of City of Chicago v. Cady, 369 Ill.App.3d 486, 860 N.E.2d 526, 307 Ill.Dec. 872, 215 Ed. Law Rep. 991 (2006).

The Petitioner was hired as an Attending Physician in 2005. Petitioner alleges that his employer denied him a promotion based on his race, (Asian), sex, (male), religion (Muslim), national origin (India) and in retaliation for engaging in a protected activity. (Counts A-E). The investigation revealed that Petitioner was denied a promotion on May 7, 2013 and received notification of the denial on May 9, 2013.¹ In order to satisfy the 180 day requirement, Petitioner must file his charge by November 8, 2013. Petitioner filed his charge on January 30, 2014 or over 60 days after the 180 day deadline. The Commission concludes the Respondent properly dismissed these charges for lack of jurisdiction.

The Petitioner alleges on July 8 and 15, 2013 he was subjected to unequal terms of employment based upon his race (Asian), sex (male), religion (Muslim), national origin (India), and in retaliation for engaging in protected activity. (Counts E and K). The investigation revealed the unequal terms of employment related to his being denied an extended leave of absence is memorialized in his disciplinary hearing documentation dated July 8, 2013 and July 15, 2013. In order to satisfy the 180 day requirement, Petitioner must file his charge by January 14, 2014. Petitioner filed his charge on January 30, 2014 or 19 days after the 180 day deadline. The commission concludes the Respondent properly dismissed these charges for lack of jurisdiction.

The Petitioner alleges he was denied a promotion on May 9, 2013 (Count F), subjected to unequal terms and conditions of employment between July 8 and 15, 2013 (Count L) and discharged on December 4, 2013 based on genetic information (Count R). Genetic information is not a protected class as defined by section 5/1-102(B)(2). Additionally, charges F and L were filed after the 180 day deadline. The Commission concludes the Respondent properly dismissed these charges based on lack of jurisdiction.

The Commission concludes that the Respondent properly dismissed the Petitioner's charges for lack of substantial evidence. If no substantial evidence exists after the Respondent's investigation of a charge, the charge must be dismissed. 775 ILCS 5/7A-102(D)(3). Section 7A-102(D)(2) states substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance.

In order to establish a *prima facie* case for employment discrimination, Petitioner must show: (1) that he is a member of a protected class; (2) that he was performing his work satisfactorily; (3) that he was subject to an adverse action; (4) and that the Employer treated a similarly situated employee outside the Petitioner's protected class

¹ Employers Exhibit C and D are Complainant's e-mail notification from Respondent and disciplinary hearing documentation.

more favorably under similar circumstance. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994). Once the Petitioner establishes a prima facie case of discrimination, then the burden shifts to the Employer to rebut the presumption of discrimination and articulate a non-discriminatory reason for its employment action. McDonald Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). Additionally, in the absence of any evidence that the business consideration relied upon by the Employer is a pretext for discrimination, it is improper for Respondent to substitute its judgment for the business judgment of the employer. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997).

Petitioner alleges he was discriminated against due to his race (Asian), sex (male), religion (Muslim), national origin (India) and retaliation (Counts M-Q). The employer alleged it discharged the petitioner for failing to return to work after being denied another extension of his previous leave of absence. Petitioner requested seven weeks off beginning May 11, 2013 due to his wife expecting his child on June 19, 2013. On June 29, 2013, the employer approved an additional five weeks of FMLA for a maximum of twelve weeks. On July 13, 2013, the employer denied his request for vacation time and his request for additional FMLA time because Petitioner did not state that either his children or wife had health issues and because of the operational needs of the employer. On July 15, 2013, the Employer denied additional paternity leave from August 4, 2013 through November 10, 2013 because Petitioner was not entitled to it. Petitioner did not return to work on August 4, 2013 because allegedly the union stated it would fight for him to have additional leave time. On October 24, 2013, a pre-disciplinary hearing was scheduled for job abandonment² and at that time, Petitioner declined the employer's option to return to work. The Petitioner was informed of the employer's decision to terminate him on December 4, 2013 at the second hearing on job abandonment held November 12, 2013. The investigation did not reveal a connection between the employer's actions and the Petitioner's race (Asian), sex (male), religion (Muslim), or national origin (India) rather it revealed the Employer was motivated by its' operational needs. The Petitioner did not establish, and the investigation did not reveal, a similarly situated employee outside the Petitioner's protected class who was treated more favorably under similar circumstances. It is improper for the Respondent to substitute its' judgment for the business judgment of the employer. The Petitioner failed to establish a *prima facie* case and the Respondent's dismissal for lack of substantial evidence was proper.

To establish a *prima facie* case of retaliation the Petitioner must show 1) he engaged in a protected activity 2) the Employer committed an adverse action against him and 3) a causal connection existed between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3rd dist. 2000). Once a Plaintiff establishes a *prima facie* case against the employer, the employer has the burden of rebutting the *prima facie* case with evidence of a legitimate,

² The employer defines job abandonment as absence of three consecutive scheduled work days without notification with disciplinary measures utilized by employer to include: counseling, verbal reprimand, written reprimand, suspension, and discharge.

nonretaliatory reason for discharging the Petitioner. McDonnell Douglas Corp. v. Green, 411 U.S. 472, 802-04, 93 S.Ct. 1817, 1824-25, 36 L.Ed.2d 668, 677-79(1973). Zaderaka v. Human Rights Comm., 131 Ill.2d 172, 179, 545 N.E.2d 684, 687 (1989).

Petitioner alleges he was discharged on December 4, 2013 in retaliation for filing a September 2013 complaint (Count Q). Petitioner alleged he made a safety related complaint regarding a patient death in March of 2013. Petitioner also indicated he and several other Indian physicians filed a complaint with the Independent Inspector General regarding his denial of leave. The Employer stated it had no record of Petitioner's complaint. Petitioner did not rebut this denial. Approximately nine months elapsed between the protected activity and the adverse action which is too long to establish connectivity. The Employer stated, and the investigation revealed, that Petitioner was discharged after he failed to return to work despite the employer offering to allow him to do so in October 24, 2013 which was after the filing of the September 2013 complaint and after going to the Inspector General's office. The Petitioner failed to establish a *prima facie* case and the Respondent's dismissal for lack of substantial evidence is proper.

THEREFORE, IT IS HEREBY ORDERED THAT:

- 1.The dismissal of the Petitioner's charges is hereby SUSTAINED.
- 2.This is a final order. A final order may be appealed to the Illinois Appellate Court by filing a Petition for Review naming the Illinois Human Rights Commission, the Illinois Department of Human Rights and Cook County Health and Hospital System, as named party respondents, with the Clerk of the Illinois Appellate Court within 35 days after the date of service of this Final Order.

STATE OF ILLINOIS)
) **Entered this 14 day of Dec. 2018.**
HUMAN RIGHTS COMMISSION)

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden