

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2014SF0645
)	EEOC NO.:	21BA32556
LUCIO G. BARRAGAN)	ALS NO.:	14-0592
)		
Petitioner.)		

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hermene Hartman, Steve Kim, and Cheryl Mainor presiding, upon Lucio G. Barragan’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2014SF0645 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 September 3, 2013, the Petitioner filed a charge of discrimination with the Respondent alleging that Champaign Park District, (“Employer”) discharged him due to his national origin in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On August 28, 2014 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. 1993CA2747, 1995 WL 793258, *2 (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 requesting review of the Illinois Department of Human Rights’s action shall be referred to as the “Petitioner.”

Generally, to establish a *prima facie* case for discrimination the Petitioner must show that (1) he falls within a protected class; (2) he was performing his work satisfactorily; (3) that he was subjected to an adverse action; and (4) a similar situated employee outside the Petitioner's protected class was not treated more favorably under similar circumstances. Marinelli v. Human Rights Commission, 262 Ill. App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994).

In the instant case, the Employer articulated a legitimate, nondiscriminatory reason for discharging the Petitioner: the evidence established that the Petitioner had engaged in multiple acts of sexual harassment which had resulted in both counseling and a suspension for the Petitioner prior to being discharged. The Commission finds no evidence of pretext, and in the absence of pretext, the Commission cannot substitute its judgment for the Employer's business judgment. Berry and State of Illinois, Dep't of Mental Health and Developmental Disabilities, Charge No. 1994SA0240 (Dec. 10, 1997).

Additionally, there is insufficient evidence to establish the Employer treated similarly situated employees more favorably than the Petitioner. The evidence showed the Employer similarly disciplined another employee after he was found to have engaged in a single incident of sexual harassment.

Accordingly, the Petitioner has not presented any substantial 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 Champaign Park District, as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

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HUMAN RIGHTS COMMISSION

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Entered this 21st day of November 2018

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Commissioner Hermene Hartman

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Commissioner Steve Kim

Commissioner Cheryl Mainor