

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)		
FOR REVIEW BY:	)	CHARGE NO.:	2014SA0593
	)	EEOC.:	21BA32520
JAMES COMAGE, SR.	)	ALS NO.:	14-0594
	)		
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 James Comage, Sr.'s ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent") of Charge No. 2014SA0593 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 charges for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

**DISCUSSION**

On September 19, 2013, the Petitioner, James Comage, Sr, filed four perfected charges of discrimination with the Respondent alleging his employer, Archer-Daniels-Midland Company, wrongfully suspended then discharged him on July 16, 2013 and July 23, 2013 respectively due to his Race (black) and age (67 years) in violation of Sections 2-102(A) of the Human Rights Act. On May 5, 2014, the Respondent dismissed these charges for lack of substantial evidence. The Petitioner filed a timely Request for Review on July 25, 2014. On September 22, 2014, the Commission granted the Respondent's September 16, 2014 request to Vacate the Respondent's dismissal of Petitioner's charge and remanded it for further investigation. On December 4, 2014, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. On December 22, 2014, the Petitioner filed a timely Request for Review.

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.

The evidence was insufficient to establish a *prima facie* case that the Petitioner was suspended and then discharged because of his Race and age (Counts A-D). Discrimination occurs when a Petitioner demonstrates that (1) he is a member of a protected class; (2) he was performing his work satisfactorily; (3) he was subject to an adverse action; (4) and that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstance. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2<sup>nd</sup> 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).

Petitioner was employed as a Paint Shop Operator from July 1997 to July 23, 2013. On July 16, 2013, Petitioner struck and damaged a gate and railroad car while guiding another employee. Petitioner alleges he was suspended then subsequently discharged for this accident because of his race (black) and age (67 year). Petitioner alleges a white employee involved in this accident was not disciplined although he admitted that he may have left the gate down instead of putting it up. Employer responded that Petitioner was the last person on the catwalk and it was Petitioner's responsibility to raise the gate if it was left down or to notify the other workers to stop the rail car if he noticed it fell. Employer's investigated revealed that the gate did not fall as indicated by the Petitioner.<sup>1</sup> Petitioner failed to prove that he satisfactorily performed his work.

On November 26, 2012, Petitioner left co-workers unattended and in a dangerous situation, but instead of discharging Petitioner, Employer placed him on Last Chance on May 23, 2013.<sup>2</sup> Petitioner did not rebut the Employer's statement that the white comparative was not on Last Chance Agreement and did not have a previous safety violation like the Petitioner. The Employer also did not discharge Petitioner although he was accused of harassing co-workers.<sup>3</sup> Employer stated that neither white worker that had a railroad car accident on December 15, 2012 was disciplined because they did not commit a safety violation nor were they on Last Chance Agreement like the Petitioner.<sup>4</sup> Employer provided proof that white employees were suspended and then discharged for safety violations and that white employees were discharged for less serious safety violations than Petitioner. Employer provided documentation that it also discharged other employees for violating a Last Chance Agreement.<sup>5</sup> Employer provided documentation that it suspended younger comparatives and that it still employs workers older than Petitioner. Petitioner did not prove the Employer treated a

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<sup>1</sup> Group Exhibit – white employees and Petitioner's statements dated July 17, 2013.

<sup>2</sup> Exhibit C Petitioner's Last Chance Agreement dated May 23, 2013 states "you will show exemplary performance in your job and follow all work rules and safety practices. If any of the above conditions are not followed, you will be in violation of this agreement and you will be terminated.

<sup>3</sup> Security was called because Petitioner stated he had two swords but by swords he meant Bible.

<sup>4</sup> Exhibit K Hendricks and Sills' statements dated December 15, 2012. The Employer's investigation revealed the accident occurred due to a non-working radio and the employees tried to apply the brake and stop the car.

<sup>5</sup> Exhibit I Moore's discharge document.

similarly situated employee outside the Petitioner's protected class more favorably under similar circumstances. Petitioner did not establish a *prima facie* case of discrimination and the Respondent's dismissal for lack of substantial evidence was 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 Archer-Daniels-Midland Company, 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