STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	CHARGE NO.:	2014SF1174
	)	EEOC NO.:	21BA40290
REBA LOCKETT	)	ALS NO.:	14-0595
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 Reba Lockett's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent") of Charge No. 2014SF1174 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 and B of the Petitioner's charges is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.

DISCUSSION

On October 7, 2013, the Petitioner, Reba Lockett, filed a charge of harassment and retaliation with the Respondent alleging her employer, State of Illinois Department of Juvenile Justice, Illinois Youth Center, harassed her and retaliated against her due to her Race (black) in violation of Sections 1-103(Q), 2-102(A) and 6-101(A) of the Human Rights Act. On December 8, 2014 the Respondent dismissed the charges for lack of substantial evidence. The Petitioner filed a timely Request for Review on December 17, 2014.

The Commission concludes that the Respondent properly dismissed the Petitioner's charges for lack of substantial evidence (Counts A and B). 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 that a preponderance.

The evidence was insufficient to establish a prima facie case of racial harassment.

Racial harassment is defined to include a steady barrage of opprobrious racial comments. Johnson v. Bunny Bread Co. 646 F.2d 1250 (1981). Village of Bellwood Board of Fire and Police Commissioners v. Human Rights Commission, 184 Ill.App.3d 339, 541 N.E.2d 1248, 133 Ill.Dec. 810, 817 (1st Dist. 1989). More than a few isolated incidents of harassment, however, must have occurred; racial comments that are merely part of casual conversation, are accidental, or are sporadic do not trigger civil rights protective measures. Id. Once the Petitioner establishes a prima facie case of racial discrimination, then the burden shifts to the Employer to rebut the presumption of discrimination and articulate a non-discriminatory reason for its employment action. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). If the employer is successful, the presumption of unlawful discrimination no longer is present in the case. Id. The employee then must prove by a preponderance of the evidence that the legitimate reason offered by the employer was not the true reason underlying its employment decision, and that it is only a pretext. Id.

From March 24, 2013 to October 2013, Petitioner reported Martin, a white male employee, for failing to timely return from breaks to Wilt, a white male supervisor.[1] On July 1, 2013, Petitioner submitted an incident report to Rose, a white female employee, stating that Martin told another staff that Petitioner had stolen a book, was screening one of her telephone calls by asking her daughter who is calling,[2] walked up upon her in a threatening manner and was prejudiced against her.[3] Petitioner did not present evidence that there was a steady barrage of opprobrious racial comments or that the employer made any comments regarding her race.

On July 9, 2013, Superintendent House forwarded Petitioner's incidence report to the employer's Office of Affirmative Action.[4] After an August 24, 2013 meeting, Petitioner submitted a letter expressing concerns that her issues were not addressed at the meeting. Both the Petitioner and Martin submitted incidence reports regarding the other's job performance and at an October 10, 2013 meeting between Martin, House, Wilt, Petitioner and her Union Representative both were told to cease their behavior, or they would be reported to the Disciplinary Review Board. The Petitioner cannot prove a connection between her race and the employer's actions since both she and the white comparative were treated similarly under similar circumstances. The Petitioner has failed to establish a prima facie case of racial harassment and the Respondent's dismissal for lack of substantial evidence is proper.

[1] Employer indicated that Wilt was not the only worker who failed to timely return from breaks.
[2] Petitioner later admitted there was nothing wrong with asking "who is calling."
[3] Petitioner June 30, 2013 incidence report indicated "I told him (Martin) that he was prejudice because he doesn't mind lying to be right." Petitioner's August 25, 2013 letter reveals "That's just my opinion that I shared with him. My believing he is prejudice was never a concern. I've been black for 49 years. He's not the first and won't be the last.
[4] On October 29, 2013, Petitioner received a memo from the Office of Affirmative Action stating that after her interview, it was determined that it was not necessary to conduct further internal investigation.

The evidence was insufficient to establish a *prima facie* case of retaliation. To establish a *prima facie* case of retaliation the Petitioner must show 1) she engaged in a protected activity 2) the Employer committed an adverse action against her 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). Further, an adverse action occurs when an employee is fired or demoted, suffers a decrease in benefits or pay, or is given a significantly lesser job. Hill v. American General Finance, Inc., 218 F.3d 639, 645 (7th Cir. 2000) citing Smart v. Ball State Univ., 89 F.3d 437 (7th Cir.1996). Not every unwelcome employment action qualifies as an adverse action. Negative reviews, a change in job title, an increased distance to travel to work or a lateral transfer do not, by themselves, qualify." Id.

Petitioner alleged the employer retaliated against her for opposing unlawful discrimination when the employer refused to allow her to utilize a previously occupied parking space which she used to avoid sap from getting on her car and to use her remote starter. Petitioner parked in employer's handicap parking space without permission and or a valid handicap placard, license plate or medical condition which qualified her for handicapped parking. The Petitioner was told to cease her usage of the handicap space on October 5, 2013. The employer also informed employee Burnette who is white, to move his vehicle because he was parking in a handicap space without a handicap placard or plate. The Petitioner did not establish a nexus between the employer's action on October 5, 2013 and her July 2013 discrimination complaint against Wilt. Petitioner cannot prove Employer treated a person outside her protected class differently under similar circumstances. Last, while arguable a further parking space is a slight increase in distance it is not enough to rise to an adverse action. Petitioner failed to prove a *prima facie* case of retaliation 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 State of Illinois Department of Juvenile Justice, Illinois Youth Center, 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