

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

|                              |   |             |            |
|------------------------------|---|-------------|------------|
| IN THE MATTER OF THE REQUEST | ) |             |            |
| FOR REVIEW BY:               | ) | CHARGE NO.: | 2015CA0043 |
|                              | ) | EEOC.:      | 21BA42037  |
| GAIL B. KAYIWA               | ) | ALS NO.:    | 14-0597    |
|                              | ) |             |            |
| 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 Gail B. Kayiwa’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”) of Charge No. 2015CA0043 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 July 9, 2014, the Petitioner, Gail B. Kayiwa, filed two charges of discrimination with the Respondent alleging her employer, ChildServ, wrongfully discharged her on January 10, 2014 due to her Race (black) and age (59 years) in violation of Sections 2-102(A) of the Human Rights Act. On December 23, 2014, the Respondent dismissed these charges for lack of substantial evidence. The Petitioner filed a timely Request for Review on December 31, 2014.

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 of employment discrimination based on Race and age (Counts A and B). 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 hired on September 23, 2013, as a Grant Manager, on a six month probationary period. The Petitioner alleges she was discharged on January 10, 2014 because of her race (black) and age (59 years). Employer indicated Petitioner was discharged due to poor job performance. The Petitioner alleged she was unable to access [www.grants.gov](http://www.grants.gov) to submit employer's federal grants from September 23, 2013 to November 2013 and that the employer distracted her and requested she work on corporate grants. Petitioner stated on an unspecified date Glass told her he would fire her if she did not do what he tells her. Glass allegedly told Petitioner "you black woman, your services are no longer needed here." From September 23 to 27, 2013, an unidentified white woman gave Petitioner dirty looks and refused to answer her questions about her job as Grant Manager. On an unspecified date, Hernandez asked Glass to hire his non-black friends to replace Petitioner. On an unspecified date, Glass shouted, threatened and intimidated Petitioner. Petitioner could not identify the nature of the threats. Between September 23, 2013 and January 10, 2014, Glass instructed employees not to demonstrate how to make PDF's with the employer's copier knowing Petitioner needed to submit the grants in PDF format.

The investigation revealed on September 23, 2013, Petitioner signed a form indicating she was trained on all the employer's equipment.<sup>1</sup> From October 17, 2013 to October 21, 2013, Bradshaw reviewed and rejected Hernandez and Petitioner's proposal twice, sent them sources for writing proposals and reports on October 25, 2013 and gave them an electronic file with sample reports and proposals on October 31, 2013.<sup>2</sup> Bradshaw believed that Petitioner had little or no experience with this area of grant management. October 24 to 25, 2013, Bradshaw notified Glass that she was working with Petitioner on a report even though Petitioner submitted three versions and that Petitioner was struggling to write a report that an experienced grant writer could complete in an hour.<sup>3</sup> On November 21, 2013, Hernandez sent Glass a memo indicating Petitioner had difficult utilizing computer software and that co-workers expended hours assisting Petitioner. Petitioner failed to demonstrate that she was performing her work satisfactorily.

Between September 23, 2013 and January 10, 2014, Petitioner alleged she submitted six grant proposals one of which was funded in the amount of \$20,000.

---

<sup>1</sup> Employer's Exhibit H Program/Department Orientation for New Employees dated September 23, 2013. Employer's Exhibit I Employer's New Employee Orientation Day Two dated October 15, 2013. Employer's Exhibit J indicates the Grant Manager must have an intermediate to advanced level of knowledge and skills with Employer's software, such as Outlook, Word, Access, EVOLV, etc.

<sup>2</sup> Employer's Group Exhibit M: email correspondence from October 17, 2013 through October 31, 2013.

<sup>3</sup> Employer's Group Exhibit M: email correspondence from October 17, 2013 through October 31, 2013.

Employer indicated from September 23, 2013 to January 10, 2014, Hernandez completed 53% of the total grant applications and letters, Bradshaw contributed 29% and Petitioner contributed 18%. Bradshaw and Hernandez contributed 99% of the funds the employer received during that period.<sup>4</sup> Petitioner failed to rebut this evidence. Petitioner failed to demonstrate that she was satisfactorily performing her work. Petitioner failed to establish and the investigation did not reveal that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstance. As a result, the Petitioner did not establish a *prima facie* case of discrimination and the Respondent's dismissal of her claims 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 ChildServ, 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 Marv Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

---

<sup>4</sup> From September 30, 2013 to January 3, 2014, Petitioner was the lowest producing Grants Manager, producing \$1,850 in grants compared to \$51,000 for Hernandez (non-black) and \$142,000 for Bradshaw (non-black).

Commissioner Duke Alden