STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	CHARGE NO.: **2014CR2174**
	)	EEOC NO.: **440-2014-00741**
	)	ALS NO.: **14-0604**
BOZENA FRACZAK,	)	
Petitioner.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Robert A. Cantone, Hamilton Chang, and Nabi R. Fakroddin presiding, upon Bozena Fraczak's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")[1] of Charge No. 2014CR2174, 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 November 27, 2013, the Petitioner, a former dental product assembler, filed an unperfected charge of discrimination with the Respondent, perfected on December 13, 2013, alleging that Dentsply[2] ("Employer") harassed her because of her physical disability, carpal tunnel syndrome (Count A) and national origin, Polish (Count B), and discharged her because of her physical disability (Count C), national origin (Count D), and in retaliation for opposing unlawful discrimination (Count E), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act"). On September 25, 2014, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. The Petitioner filed a timely Request.

For the reasons that follow, the Commission concludes that the Respondent properly dismissed the Petitioner's claim for lack of substantial evidence. Substantial evidence is that which "a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a

[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."

[2] During the investigation, the Employer indicated its legal name is "Dentsply Professional West, a division of Dentsply LLC, a wholly owned subsidiary of DENTSPLY International, Inc."

preponderance." 775 ILCS 5/7A-102(D); Owens v. Dep't of Human Rights, 403 Ill. App. 3d 899, 917, 936 N.E.2d 623, 638 (1st Dist. 2010). If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. Id.

Counts A and B: Harassment

To establish her harassment claims, the Petitioner must show that the Employer's behavior was motivated by a discriminatory intent and that she was subjected to a pattern of incidents sufficiently severe and pervasive so as to alter the terms and conditions of her employment. Village of Bellwood Bd. of Fire and Police Com'rs v. Human Rights Com'n, 184 Ill. App. 3d 339, 541 N.E.2d 1248 (1st Dist. 1989). Sporadic or isolated incidents do not suffice to meet this standard; rather, the employee must have been subject to a "steady barrage" of offensive conduct to trigger protection under the Act. See id. An employer must accept responsibility when its supervisors fail to respond to reports of discriminatory harassment. Id.

The Petitioner has not alleged a pattern of "severe and pervasive" incidents necessary to establish her harassment claims. Several of the incidents giving rise to the Petitioner's claim involve run-ins with a co-worker named Jolene Brown, who in mid-2012 stated to the Petitioner that she "better watch her health" after having surgery for carpal tunnel syndrome, and in June 2013 pushed a door so hard that it hit the Petitioner. However, the record shows that in December 2012, a meeting was held between Brown and Petitioner to address mutual disrespectful conduct between the two. The Employer also interviewed witnesses to the door incident and viewed surveillance video, and determined that it was an accident.

The Petitioner further alleges the following conduct in support of her claims: (1) in the summer of 2012, she was sent to work in a different department and was not paid for all hours worked; (2) in October 2012, the Employer failed to follow her medical restrictions; and (3) in March 2013, management employees complained to her that her handwriting was poor.

The investigation did not show that these incidents rose to the level of actionable harassment. The Employer acknowledged that the Petitioner was temporarily reassigned in the summer of 2012, but it was a lateral move as she performed the duties of a product assembler. Moreover, the issue of the Petitioner's claimed underpayment was ultimately investigated after she filed a union grievance, and it was determined she was not underpaid. In October 2012, the Employer indicated it could not follow certain medical restrictions after the Petitioner returned from a second carpal tunnel surgery; however, the Petitioner

thereafter left work on her physician's advice, filed a worker's compensation claim, and received benefits for several months until she returned to work in March 2013.

As to the remarks about the Petitioner's handwriting, the investigation showed that the Employer, as a manufacturer of dental devices, was required by the Food and Drug Administration to keep legible records. Although the Petitioner feels the remarks were a reflection upon her medical condition of carpal tunnel syndrome, the Employer had a clear non-discriminatory basis to ask that her handwriting be legible.

In sum, the conduct complained of by the Petitioner simply does not establish a severe and pervasive pattern of conduct against her that was motivated by discriminatory intent.

Counts C and D: National Origin and Disability Discrimination

To establish a *prima facie* case of discrimination, the Petitioner must show: (1) she is a member of a protected class; (2) she was performing her work satisfactorily; (3) she was subject to an adverse employment action; and (4) the Employer treated a similarly situated employee or employees outside her protected class more favorably under similar circumstances. Kreczko v. Triangle Package Mach. Co., 2016 IL App (1st) 151762, ¶ 27, 53 N.E.3d 1070, 1076 (1st Dist. 2016).

Once the Petitioner has established a *prima facie* case, the burden shifts to the Employer to articulate a non-discriminatory reason for its employment action. McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) (adopted by Illinois Supreme Court in Zaderaka v. Human Rights Comm., 131 Ill.2d 172, 179, 545 N.E.2d 684, 687 (1989)). The Petitioner must then show that the Employer's articulated reason for its employment action was a pretext. Id.

It is not contested that the Petitioner is Polish, has a disability, and was terminated on November 8, 2013. However, the Petitioner has not pointed to any evidence to establish element four of her *prima facie* case, because she does not identify other similarly situated employees, who were not Polish or not disabled, who the Employer treated more favorably. The Employer stated that the Petitioner was not replaced. Thus, the record does not contain evidence tending to raise an inference that her termination was motivated by a discriminatory animus.

Moreover, the Employer articulated a non-discriminatory basis for discharging the Petitioner in November 2013, and the record does not contain substantial evidence suggesting that basis was a pretext. The Petitioner acknowledges that on September 24,

2013, she did not complete all steps in assembling a set of hoses, but somehow, the inspection report for those hoses reflected her initials for all steps on that date. Differing versions of events arose among the Petitioner and other involved employees, with the Petitioner maintaining that she left the form blank for the steps she did not complete. However, after interviewing the Petitioner and the other employees, the Employer determined the Petitioner was not truthful in her statements, and thereafter terminated her.

Ultimately, it is not the Commission's role to determine whether the Employer was correct in deciding to believe the other employees' version of events. See Carlin v. Edsal Manufacturing Company, IHRC, Charge No. 1992CN3428, 1996 WL 652580 *7 (Oct. 21, 1996). The Employer's decision must simply have a reasonable, good faith basis under the circumstances. Id. Here, the Employer determined after to speaking to all the involved employees, including the Petitioner, that she was the one most likely to have falsified the inspection report. Even if the Employer was incorrect in this conclusion, this nevertheless does not establish that the Employer acted in bad faith. Something more must be shown to infer a discriminatory intent under these circumstances.

Count E: Retaliation

Section 6-101(A) of the Act provides that it is a civil rights violation to retaliate against a person because he or she has "opposed that which he or she reasonably and in good faith believes to be unlawful discrimination [or] because he or she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this Act." To establish a *prima facie* case of retaliation, the Petitioner must show: (1) she engaged in a protected activity; (2) the Employer took an adverse action against her; and (3) a causal nexus between the protected activity and the adverse action. Welch v. Hoeh, 314 Ill. App. 3d 1027, 1035, 733 N.E.2d 410, 416 (3d Dist. 2000).

The Petitioner has not established a causal nexus between her termination on November 8, 2013 and any complaints of discrimination that preceded it. The record only shows activity that arose after the Petitioner was terminated – a union grievance dated November 12, 2018, and the instant charge filed November 27, 2018.

In her Request for Review, the Petitioner notes, apparently for the first time, that she hired an attorney in July 2012, which she states made the Employer mad. However, only an adverse employment action arising a relatively short time after protected activity raises a reasonable inference of retaliatory conduct. See Maye v. Human Rights Comm'n, 224 Ill. App. 3d 353, 362, 586 N.E.2d 550, 556 (1st Dist. 1991). This inference becomes weaker as the timeframe becomes more attenuated, and retaliation over a year after the protected activity is not sufficient. See id.

Accordingly, the Petitioner has not presented enough 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 Dentsply as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 21st day of December 2018

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Nabi R. Fakroddin