

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	
)	CHARGE NO.: 2014CA0942
KIMBERLY MCCULLOCH-)	EEOC NO.: 21BA40119
TUMBARELLO)	ALS NO.: 15-0037
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hermene Hartman, Steve Kim, and Cheryl Mainor presiding, upon Kimberly McCulloch-Tumbarello’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2014CA0942 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 January 7, 2014, the Petitioner filed a charge of discrimination with the Respondent alleging that Presence Hospitals PRV d/b/a Provena Mercy Medical Center, (“Employer”) issue her a written warning and discharged her due to her age and in retaliation for making a prior internal complaint of discrimination in violation of Sections 1-103(A), 2-102(A), and 6-101(A) of the Illinois Human Rights Act (“Act”). On November 5, 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

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.”

conclusion. In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

Generally, to establish a *prima facie* case for age discrimination the Petitioner must show, (1) she was 40 or older; (2) she performed her job satisfactorily; (3) the employer took an adverse action against her despite the adequacy of her work; (4) a similarly situated employee, who is not a member of the protected group, was not subjected to the same adverse action. Anderson v. Chief Legal Counsel, 334 Ill. App. 3d 630,634, 778 N.E.2d 258, 268 Ill. Dec. 272 (3rd Dist., 2002). In the instant case, the Petitioner failed to satisfy element four. Along with the Petitioner, three other nurses under the age of 40 and significantly younger than the Petitioner were disciplined in accordance with the Employer's policies for their improper care of a patient. Additionally, the Petitioner failed to identify another nurse who failed to complete the mandatory training and was not discharged. Moreover, 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, IHRC, Charge No. 1994SA0240, 1997WL812491. ALS No. S-9146 (Dec. 10, 1997).

Furthermore, there was insufficient evidence to establish a *prima facie* case of retaliation. Generally, retaliation is established by showing that the (1) Petitioner engaged in a protected activity; (2) the employer committed an adverse act against the petitioner, and (3) a causal connection existed between the protected activity and the adverse act. Stone v. Department of Human Rights, 299 Ill.App.3d 306, 316, 700 N.E.2d 1105, 233 Ill. Dec. 397 (1998). Here, the Petitioner failed to establish that she engaged in a protected activity. While the Petitioner made complaints to her supervisor regarding unfair treatment of subordinates, she failed to indicate she felt the treatment was based on the subordinate's race. There is no evidence to demonstrate that the Petitioner was issued a written warning or was discharged based on retaliation. Additionally, the Commission found no evidence of pretext.

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 Presence Hospitals PRV d/b/a Provena Mercy Medical Center, as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

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Entered this 21st day of November 2018

Commissioner Hermene Hartman

Commissioner Steve Kim

Commissioner Cheryl Mainor