

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2013CF2487
)	EEOC NO.: 21BA31243
DONNELL WALTON)	ALS NO.: 15-0041
)	
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 Donnell Walton's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2013CF2487 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 March 14, 2013, the Petitioner filed a charge of discrimination with the Respondent alleging that United Food Commercial Workers Union Local 3485 (the "Union") failed to represent him due to his race, physical disability, and in retaliation for opposing unlawful discrimination in violation of Sections 1-103(I), 1-103(Q), 2-102(A), and 6-101(A) of the Illinois Human Rights Act ("Act"). On December 3, 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 in its entirety. 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

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."

support a 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 discrimination the Petitioner must show that (1) he falls within a protected class; (2) he was performing his work satisfactorily; (3) that he was subjected to an adverse action; and (4) a similar situated employee outside the Petitioner's protected class was not treated more favorably under similar circumstances. Marinelli v. Human Rights Commission, 262 Ill. App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994).

In the instant case, the Petitioner failed to establish element four in showing that a similarly situated employee not in his protected class was treated more favorably than he under similar circumstances. Additionally, the Union articulated a legitimate, nondiscriminatory reason for not filing a grievance on the Petitioner's behalf: the internal investigation completed by the Petitioner's former employer, Jetro Goose Island/Restaurant Depot ("Jetro"), resulted in a reasonable belief that the Petitioner committed theft of its merchandise. As such, Jetro's discharge of the Petitioner did not violate the terms of the Collective Bargaining Agreement with the Union and, based on business practices, the Union was not required to file a grievance on the Petitioner's behalf. 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, Charge No. 1994SA0240 (Dec. 10, 1997).

Moreover, The Petitioner failed to present sufficient evidence to establish a *prima facie* case of disability discrimination. Generally, to establish a *prima facie* case for disability discrimination the Petitioner must show that (1) he suffers from a disability within the meaning of the Act; (2) the employer had knowledge of the disability; (3) he suffered an adverse employment action; and (4) the disability is unrelated to the Petitioner's ability to do the job, with or without an accommodation. Habinka v. Illinois Human Rights Commission, 192 Ill. App.3d 343, 373, 548 N.E.2d 702, 139 Ill.Dec. 317 (1st Dist. 1989). Here, it is not evident that the Petitioner's ankle injury constituted a disability within the meaning of the Act and the Petitioner failed to provide any medical documentation regarding the injury. Additionally, the Petitioner failed to establish the second element in that while the Petitioner's direct supervisor was aware of the Petitioner's ankle injury, the Petitioner admits that Union representatives were never informed of his injury.

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, while the Petitioner satisfied the first two elements of his *prima facie* case in that he complained to his Union Representative regarding alleged harassment and his Union failed to file a grievance on his behalf, he failed to establish that a causal connection existed between the protected activity and the adverse act. As previously stated, the Union presented a legitimate, nondiscriminatory reason for not filing a grievance on the Petitioner's behalf: the internal investigation completed by Jetro resulted in a reasonable belief that the Petitioner committed theft of its merchandise.

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 Illinois Appellate Court by filing a Petition for Review, naming the Illinois Department of Human Rights, the Illinois Human Rights Commission, and United Food Commercial Workers Union Local 3485, 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 20th day of December 2018**
HUMAN RIGHTS COMMISSION)

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Nabi R. Fakroddin