

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2014CA2463
)	EEOC NO.: 21BA41250
Kary Raines)	ALS NO.: 15-0071
)	
Petitioner)	

ORDER

This matter coming before the Commission by a panel of three, Chair Rose Mary Bombela-Tobias and Commissioners Patricia Bakalis Yadgir and Duke Alden presiding upon Kary Raines's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2014CA2463 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, **WHEREFORE**, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

DISCUSSION

On March 25, 2014, the Petitioner filed a discrimination charge with the Respondent alleging University of Illinois at Chicago ("UIC") denied him an annual wage increase because of his race, black (Count A); age, 56 (Count B); sex, male (Count C), and in retaliation for filing a previous charge of discrimination (Count D); failed to promote him because of age (Count E); age (Count F); and in retaliation for filing a previous charge of discrimination (Count G); and subjected him to unequal terms and conditions of employment because of Race (Count H); age (Count I); sex (Count J); and in retaliation for filing a previous charge of discrimination (Count K), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act").

On July 9, 2014, pursuant to Petitioner's request, Respondent administratively closed Counts A-C and E-K. On December 3, 2014, the Respondent dismissed the only remaining Count D of Petitioner's charge for lack of substantial evidence. The Petitioner filed a timely Request for Review on March 9, 2015.

The Commission concludes that the Respondent properly dismissed the remaining Count D of 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

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."

find the evidence sufficient to support a conclusion. *In re Request for Review of John L. Schroeder*, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

The record shows that Petitioner was hired by UIC on September 17, 1974. From 2005 through 2012, Petitioner held the position of Assistant Director of Environmental Services. Executive Director of Operations and Maintenance, Clarence Bridges (“Bridges”), was Petitioner’s supervisor during the relevant time. Petitioner was given an annual merit wage increase of 2% in 2011 and 2012. On November 24, 2011, a fatal shooting occurred at the medical center involving two building service workers. The Illinois Department of labor then issued a citation for failure to maintain safety in the workplace on May 3, 2012. UIC reassigned Petitioner to Superintendent/Zone Manager in October 2012. Petitioner was the only Superintendent/Zone Manager of buildings and grounds. On July 1, 2013 UIC implemented a merit based discretionary salary increase program where the highest raise increase would be at 2.75%. Per the UIC President, every employee, except in special circumstances, would receive a minimum pay increase of ½ of 1%. Further, UIC’s Classification and Compensation Policy states that “individual pay increases are determined based upon the scope of responsibility, internal equity, external market factors and fiscal availability”, meaning pay increases are discretionary and not mandatory. Petitioner filed a discrimination Charge No. 2013CF3618 on March 28, 2013 and otherwise engaged in protected activity. For the fiscal year 2013 and 2014, Petitioner received a 1% annual wage increase on or about September 12, 2013.

To establish a *prima facie* case of retaliation, Petitioner must show: 1) he engaged in protected activity; 2) UIC took an adverse action; and 3) a causal connection exists between the protected activity and the adverse action. See *Hofflet v. Department of Human Rights*, 367 Ill.App. 628, 634, 867 N.E.2d 14, 310 Ill.Dec. 701 (2006), *Welch v. Hoeh*, 314 ILL.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3rd Dist. 2000).

Petitioner fails to meet prong three of his *prima facie* case. The filing of Petitioner’s previous charge of discrimination and his annual wage increase were too remote to establish an inference of retaliatory motivation. See *Reams and Santa Fe Railroad*, 16 Ill. HRC Rep. (1985) (five months and twenty-three days was insufficient to establish an inference of connectedness). There is no nexus between Petitioner filing his previous charge of discrimination and his annual wage increase. Annual wage increases were also discretionary and not guaranteed. Further, four other similarly situated Zone Managers received no wage increase or a higher wage increase. Petitioner does not allege that UIC made any comments about filing a previous charge of discrimination. Petitioner cannot show that UIC harbored some sort of retaliatory animus towards him for filing a previous charge of discrimination. Therefore, no substantial evidence exists that Petitioner was denied a wage increase in retaliation for filing a previous charge of discrimination.

In the instant case, UIC articulated a legitimate nondiscriminatory reason for giving Petitioner a 1% annual wage increase and was not a pretext. In the absence of any evidence that the business consideration relied upon by UIC is a pretext for retaliation, it is improper to substitute judgment for the business judgment of the employer. See *Berry and State of IL, Dept. of Mental Health and*

Developmental Disabilities, IHRC, ALS no. S-1946, Charge No. 1994SA0240 (December 10, 1997). Additionally, UIC is entitled to make employment decisions based on its reasonable belief surrounding the situation. “Respondent may take its action for good reason, bad reason, reason based upon erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason...The correctness of the reason is not important as there was good faith belief by Respondent in its decision...” See *Carlin v. Edsal Manufacturing Co.*, 1996 WL 652580, Charge No. 1992CN3428 (Ill.HRC, May 6, 1996).

In his Request for Review, there is no additional evidence provided by Petitioner that would warrant a reversal of Respondent’s original determination.

Accordingly, the Petitioner has not presented 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 University of Illinois at Chicago as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
) **Entered this 17th day of December 2018.**
HUMAN RIGHTS COMMISSION)

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden