

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2014CF2347
)	EEOC NO.: 21BA41159
Sherman Gordon)	ALS NO.: 15-0089
)	
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 Sherman Gordon’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2014CF2347 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 13, 2014, the Petitioner filed a discrimination charge with the Respondent alleging MAC Property Management (“MAC”) discharged him in retaliation for his opposition to unlawful discrimination, in violation of Section 6-101(A) of the Illinois Human Rights Act (“Act”).

On December 4, 2014, the Respondent dismissed Petitioner’s charge for lack of substantial evidence. The Petitioner filed a timely Request for Review on March 9, 2015 and Reply to Respondent’s April 13, 2015 Response to Request for Review on April 30, 2015.

The Commission concludes that the Respondent properly dismissed all counts 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 5/7A102(D). Substantial evidence exists when the evidence is such that a reasonable mind would 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).

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.”

The record shows that Petitioner was hired by MAC as a former Chief Building Engineer of a 220 unit rental property on July 13, 2013. In opposition to unlawful discrimination, Petitioner informed the Human Resources Manager, Stephanie Lupardus (“Lupardus”) that on July 11, 2013 Supervisor, David Sherman (“Sherman”), called a prospective candidate “hillbilly”. According to Petitioner’s employment file, he had a history of disciplinary actions taken against him by MAC. Additionally, some of Petitioner’s discipline preceded his alleged opposition to unlawful discrimination. In December 2013, MAC issued a written warning due to Petitioner’s poor performance, follow through, commitment and communication within the past year which would subject him to disciplinary action, up to and including discharge if his performance did not improve. On February 26, 2014, MAC discharged Petitioner for alleged poor performance in connection with a boiler incident and for a host of prior verbal and written warnings.

To establish a *prima facie case* of retaliation, Petitioner must show: 1) he engaged in protected activity; 2) MAC took an adverse action; and 3) a causal connection exists between the protected activity and the adverse action. See *Welch v. Hoeh*, 314 ILL.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3rd Dist. 2000).

In the instant case, Petitioner fails to meet prongs one and two of his *prima facie case*. Calling a prospective candidate a “hillbilly” does not fall under an area protected by the Act. Thus, Petitioner cannot provide any evidence that he opposed unlawful discrimination. Even still, there is no causal connection between Petitioner’s alleged protected activity and his discharge. The discharge was for poor performance as evidenced by the record and not in retaliation for his opposition to unlawful discrimination. While a causal connection will be inferred if the period of time between the protected activity and the adverse action is sufficiently short. *Mitchell and Local Union*, 146, 20 Ill. HRC Rep. 101, 110-111 (1985)). Six months was too remote to establish connectedness. *Lynell Mims and State of IL, IL Dept. of Lottery*, Charge No. 1989CF1141, 1998 WL 937898 (December 17, 1998). Here, the time between Petitioner’s discharge and the protected activity was too long to create an inference as more than seven months had elapsed. Nonetheless, MAC articulated a legitimate non-discriminatory reason for Petitioner’s discharge which was not a pretext. Therefore, no substantial evidence exists that Petitioner was discharged in retaliation for opposing unlawful discrimination.

In the absence of any evidence that the business consideration relied upon by MAC 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. S1946, Charge No. 1994SA0240 (December 10, 1997). Additionally, MAC 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).

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. In his Reply to Respondent's Request for Review, Petitioner mentions a prior charge, No.: 2014CF2080 filed with Respondent for harassment and retaliation on February 20, 2014 and that the subject charge amends and is otherwise related to that prior charge. The charges cannot be consolidated as such a determination is solely within the discretion of the Administrative Law Judge, and must therefore be presented at the motion call, accordingly. 56 Ill. Admin. Code §5300.730(d).

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 MAC Property Management 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