**STATE OF ILLINOIS**
**HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF THE REQUEST FOR REVIEW BY: | ) | CHARGE NO.: **2014CA1637** |
| | ) | EEOC NO.: **21BA40633** |
| **Deloris Blackmon** | ) | ALS NO.: **15-0090** |
| 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 Deloris Blackmon's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")[1] of Charge No. 2014CA1637 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 November 4, 2013, the Petitioner, a former Instructional Assistant, filed an unperfected charge of discrimination, perfected on February 5, 2014 alleging she was discharged on July 30, 2013 by her employer, Legacy Academy of Excellence ("Academy") on the basis of race, black (Count A); age, 57 (Count B) and disability, knee disorder (Count C), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act").

On December 18, 2014, the Respondent dismissed the Petitioner's charge in its entirety for lack of substantial evidence. The Petitioner filed a timely Request for Review on March 10, 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).

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[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 the Academy hired Petitioner in September 2010. According to the Academy's Paid Time Off Leave Policy ("Time Off Policy"), "all personal and vacation days must be approved two weeks in advance by the Director…There are critical times during the school year that require the support of the Academy's full Staff…no faculty member may take a personal day during the first quarter of the school year…The Director may ask for medical certification of illness if a personal day is taken in advance without notice. Failure to provide medical certification of illness or injury upon request may result in disciplinary action, up to and including termination of employment.
Here, the Academy's practice is to require Teachers and Instructional Assistants to participate in an annual, two-week mandatory professional training at the beginning of the school year. Failure to attend this mandatory training will result in termination.

On July 28, 2013, Petitioner provided the Academy with a physician's note from Dr. Scott Nyquist ("Nyquist") stating that Petitioner will be unable to return to work. It was unclear from Dr. Nyquist's note as to when Petitioner could return to work or when she would be able to return. On or about July 30, 2013, Petitioner spoke with the former school Director, Laura Allen ("Allen") (race, black; age,49; and disability status unknown), and indicated that she would not be able to return to work for three weeks as she was undergoing knee surgery. Since the Petitioner would not be able to attend the mandatory two-week training session and the first week of the school year, she was discharged via a termination letter dated July 30, 2013. The letter also stated that the academy regretfully would not be able to offer Petitioner a contract for the 2013/2014 school year due to her inability to return to work on July 29, 2013. Nonetheless, Petitioner could reapply for the Instructional Assistant position, but chose not to reapply.

To establish a *prima facie case* of race or age discrimination, Petitioner must show: 1) she falls within a protected class; 2) she was performing her work satisfactorily; 3) she was subject to an adverse action; and 4) the Academy treated a similarly situated employee outside of Petitioner's protected class more favorably under similar circumstances. *See Marinelli v. HRC*, 262 ILL.App.3d 247, 634 N.E.2d 463 (2d Dist. 1994).

As to Counts A and B, Petitioner fails to satisfy the fourth prong of her *prima facie case* for race and age discrimination. There is no evidence that the Academy treated other similarly situated employees outside Petitioner's protected class more favorably under the similar circumstances because of her race or age. The Instructional Assistant, Jessica Fabiano ("Fabiano") whose race was white, age 27 and disability unknown, previously scheduled time off in advance of the school year. Further, Fabiano missed two days of the mandatory training sessions but attended the remainder of the two weeks. Of note, Fabiano has since separated from her employment at the Academy. Thus, Petitioner fails to show substantial evidence that she was discharged because of race and age discrimination.

Next, to establish a *prima facie case* of disability discrimination, there must be some evidence that 1) she is disabled within the meaning of the Act; 2) the Academy had knowledge of the disability; 3) she suffered and adverse employment action; and 4) the disability is unrelated to her ability to perform

the job with or without an accommodation. *Habinka v. HRC*, 192 Ill.App.3d 343, 373, 548 N.E.2d 702, 139 Ill.Dec. 317 (1st Dist. 1989). *Department of Corrections v. IHRC*, 298 Ill.App.3d 536,540, 699 N.E.2d 143, 145-6 (3rd Dist.1998).

As to Count C, Petitioner is similarly unable to show that she was discriminated against when she was discharged because of her disability. Here, Petitioner could not perform the essential functions of her job as an Instructional Assistant as per her physician's orders. Petitioner's discharge was unrelated to her disability but was the result of missing the mandatory two-week training and the first week of school. Further, Petitioner did not seek an accommodation but simply chose not to work. Thus, Petitioner fails to show substantial evidence that she was discharged because of her disability, knee disorder.

Even if Petitioner could successfully allege a *prima facie case* for age, race and disability discrimination, the Academy articulated non-discriminatory reason for discharging her as to Counts A-C and was not pretextual. In the absence of any evidence that the business consideration relied upon by Academy is a pretext for discrimination, 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, the Academy 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). Thus, there is no substantial evidence to show that the Academy discharged Petitioner because of her race, age or physical disability for engaging in protected activity.

In her Request for Review, there is no additional evidence provided by Petitioner that would warrant a reversal of Respondent's original determination. While Petitioner was unhappy with the investigation, specifically that none of her witnesses were interviewed, there is no indication of who these alleged witnesses were or what they would attest to. Petitioner's request is therefore not persuasive.

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 the Legacy Academy of Excellene, 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