

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)
FOR REVIEW BY:)

ZACHARY BANKS,)

Petitioner.)

CHARGE NO.: **2014SF1827**
EEOC NO.: **21BA40778**
ALS NO.: **15-0104**

ORDER

This matter coming before the Commission by a panel of three, Commissioners Robert A. Cantone, Hamilton Chang, and Nabi R. Fakroddin presiding, upon the Request for Review (“Request”) of Zachary Banks (“Petitioner”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2014SF1827 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 21, 2014, the Petitioner filed a perfected charge of discrimination with the Respondent alleging that SDH Services West, LLC, (“Employer”) failed to accommodate his disability, hearing impairment, and suspended and discharged him due to his disability, in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On December 29, 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 conclusion. In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

In Illinois, employers must make reasonable accommodations for any known physical limitations of employees to enable them to perform their duties. 56 Ill.Admin.Code ch II, Section 2500.40(a). The Petitioner seeking accommodation bears the burden of asserting the duty to accommodate; showing that an accommodation was, in fact, requested; and demonstrating that accommodation was necessary

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.”

for adequate performance. Owens v. Department of Human Rights, 356 Ill. App. 3d 46, 53 (1st Dist. 2005). In this case, the Petitioner argues that for the duration of employment the Employer did not accommodate his hearing impairment by providing an interpreter, thus making it difficult for him to understand given instructions. He concedes, however, that he never requested this accommodation from the Employer. Because the Employer was never asked to accommodate his hearing impairment, it cannot be held liable for failing to do so.

The Petitioner also claims that the Employer unlawfully suspended and then discharged him based on his disability. In order to establish a prima facie case of disability discrimination, the Petitioner must show that 1) he has a disability within the meaning of the Act; 2) that his disability is unrelated to his ability to perform the essential functions of his job; and 3) an adverse job action was taken against him because of the disability. Illinois Dep't of Corrections v. Illinois Human Rights Comm'n, 298 Ill. App. 3d 536, 540 (3rd Dist. 1998). Here, there was no evidence that the Petitioner was discharged because of his disability. The Employer showed that the Petitioner had a history of unprofessional conduct, which involved losing his temper, swearing at a coworker, and exhibiting rage. He was suspended pending an investigation and then discharged for a November 21, 2013, incident, in which he became confrontational and argumentative with a supervisor and swore at him. The Petitioner was discharged for using profanity and vulgar and obscene language while at work. Even though the Petitioner maintains now that he never swore at work, the general manager reasonably believed that he had again engaged in inappropriate behavior, only two months after a poor performance evaluation for unprofessionalism, and decided, after consulting with human resources and the legal department, to discharge him. See Carlin v. Edsal Mfg. Co., IHRC, Charge No. 1992CN3428, 1996 WL 652580, *7 (May 6, 1996) (noting that an employer is entitled to make employment decisions based on its reasonable belief of the facts surrounding the situation).

The Petitioner has not presented any 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 Human Rights Commission, the Illinois Department of Human Rights, and SDH Services West, LLC, as respondents, with the Clerk of the Illinois Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
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Entered this 18th day of December 2018.

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Nabi R. Fakhroddin, P.E., S.E.