STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	CHARGE NO.: **2014SF1038**
	)	EEOC NO.: **21BA40189**
YOLANDA WEDDINGTON,	)	ALS NO.: **15-0105**
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 the Request for Review ("Request") of Yolanda Weddington ("Petitioner") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")[1] of Charge No. 2014SF1038 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 October 15, 2013, the Petitioner filed a perfected charge of discrimination with the Respondent alleging that Home Depot USA, Inc., ("Employer") discharged her due to her physical disability, mental disability, race, and sex, and in retaliation for filing a prior charge of discrimination, and failed to accommodate her physical and mental disabilities, in violation of Sections 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. 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 order to establish a prima facie case of employment discrimination, the Petitioner must show that 1) she is a member of a protected group; 2) she performed her job satisfactorily; 3) the employer took an adverse action against her despite the adequacy of her work; and 4) a similarly situated

[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."

employee, who is not a member of the protected group, was not subjected to the same adverse action. Anderson v. Chief Legal Counsel, Ill. Dep't of Human Rights, 334 Ill. App. 3d 630, 634 (3rd Dist. 2002). A prima facie case of retaliation requires that 1) the Petitioner engaged in a protected activity; 2) the employer took an adverse action against her; and 3) there was a causal nexus between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill. App. 3d 1027, 1035 (3rd Dist. 2000). If the employer rebuts the presumption of unlawful discrimination by articulating a legitimate, nondiscriminatory reason for its employment decision, the Petitioner must prove that the reason was merely a pretext for unlawful discrimination. In the Matter of F. Gene Beenenga, IHRC, Charge No. 1993SA0101, 1997 WL 313423, *6 (April 4, 1997).

Discharge due to physical disability, mental disability, race, and sex, and in retaliation for filing a prior charge of discrimination

The Petitioner first argues that the Employer unlawfully discharged her. Her argument fails because the Employer's reason for the discharge was that she had falsified the arrival time on a tardy coworker's attendance sheet. The Petitioner admitted that she had done so, and justified her action by stating that she knew that the coworker had been at work at that time. It was against company policy for employees to falsify time and attendance sheets, and the Employer discharged another employee, a white male, for the same exact misconduct. There is no evidence that the Employer was motivated by anything other than its determination of the Petitioner's wrongdoing. 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).

Failure to accommodate physical disability and mental disability

The Petitioner argues that the Employer failed to accommodate her disabilities. 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 for adequate performance. Owens v. Department of Human Rights, 356 Ill. App. 3d 46, 53 (1st Dist. 2005). In this case, the Petitioner presented the Employer with a doctor's note on March 30, 2013, stating that she could only work 40 hours per week, although her job required 55 hours per week, and that she could not lift more than 10 pounds. Although the Employer's request from her healthcare provider for more information was not answered, the Employer did adjust her work hours and did not require her to lift more than 10 pounds. This continued until April 20, at which time the Petitioner went on a medical leave of absence. When she returned to work on July 20, she requested and was granted the accommodation of not lifting more than 10 pounds. Because the Employer accommodated each request made by the Petitioner, her claim of discrimination fails.

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 Home Depot USA, Inc., as respondents, with the Clerk of the Illinois Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
) **Entered this 18th day of December 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

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