STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	CHARGE NO.: **1995CF2627**
	)	EEOC NO.: **21B951844**
JANINE HERNANDEZ,	)	ALS NO.: **N/A**
Petitioners.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Michael Bigger, Amy Kurson, and Cheryl Mainor presiding, upon Janine Hernandez's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")[1] of Charge No. 1995CF2627; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request, and the Respondent's response to the Petitioner's Request; 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 is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

A. PROCEDURAL HISTORY

1. On March 30, 1995, the Petitioner filed a charge of discrimination with the Respondent. The Petitioners alleged the City of Chicago, Department of Fire ("CFD") harassed her because of her sex, female, and harassed in retaliation for opposing sex discrimination, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act").

2. On April 21, 1999, the DHR dismissed the Petitioner's charge for Lack of Substantial Evidence.

3. On May 20, 1999, the Petitioner filed her first Request for Review. On June 21, 1999, pursuant to the Respondent's response to the Request, the Commission vacated the Respondent's dismissal of the charge and remanded the charge for further investigation.

[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 Department's action shall be referred to as the "Petitioner."

4. On December 10, 1999, the Respondent again dismissed the Petitioner's charge for Lack of Substantial Evidence.

5. On January 14, 2000, the Petitioner filed her second Request for Review.

6. On February 25, 2000, the Respondent again requested that the dismissal be vacated and that the Petitioner's charge be remanded to the Respondent for further investigation[2].

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. The Petitioners was employed as a personnel technician II.

2. The Petitioner alleged that on December 2, 1994, the Petitioner had a conversation with Stan Tokarz (male), Assistant Director of Personnel, in which she stated that the Director of Personnel, Charles Stewart, was calling her names.

3. The Petitioner alleged that on December 8, 1994, the Petitioner met with Deputy Fire Commissioner James Joyce ("Joyce") to complain that she believed she was being harassed in the workplace by her female co-workers, that Mark Edingburg (male), Fire Fighter, had called her names, and her co-workers constantly made comments about, her weight. Most of Petitioner's complaints were about her weight and her claim that she was subjected to animal sounds (mooing like a cow).

4. On March 28, 1995, Petitioner filed a sexual harassment complaint, in the form of a personal log to CFD's sexual harassment office. The personal log, which Petitioner provided, is documentation of her allegations of sexual and non-sexual harassment. However, many of Petitioner's complaints were not that comments were directed at her, but that she heard comments made in other offices, and the comments were not directed towards the Petitioner.

5. The Petitioner further alleged that her work and home telephones were tapped, and cameras had been placed over her desk at work, and in her bedroom at home by CFD's employees. The Petitioner also alleged she had also been videotaped with that camera, and had been followed.

6. On March 31, 1995, Petitioner was placed on paid administrative leave following complaints raised about her by her co-workers.

7. CFD has a zero tolerance policy on discrimination and/or harassment against an individual. CFD also has a policy against sexual harassment which gives an employee an effective complaint mechanism.

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[2] Due to an inadvertent clerical error the Commission never issued an order vacating the second dismissal of the Petitioner's charge. Subsequently over a matter of time, the Petitioner's case file was lost.

8. CFD denied that it harassed the Petitioner and further stated that it had a meeting with its employees to remind them of CFD's zero tolerance policy. CFD also informed their staff that it would not tolerate any name-calling nor would it tolerate animal sounds (mooing like a cow).

9. CFD further stated that it interviewed its staff and was unable to locate any witnesses who overheard anyone call the Petitioner names. Every complaint the Petitioner made was looked into.

10. CFD stated that it began receiving complaints from his entire staff (37 females and five males) that Petitioner was accusing them of calling her names. CFD started receiving notes that Petitioner was leaving for staff members, accusing them of calling her names. CFD again investigated Petitioner's complaints and found no witness that verified the name calling.

11. CFD also stated that it received several complaints in which the Petitioner accused interns and students working for CFD of calling her names. CFD concerned for Petitioner sent her to the Employee Assistance Program (EAP) where she reported the EAP counselor, Meg Backas, of calling her names.

12. In March of 1995, CFD was made aware that the Petitioner had filed a sexual harassment complaint with CFD's sexual harassment office. CFD investigated the allegations were found un-sustained.

13. CFD stated that on March 31, 1995, the Petitioner was placed on paid administrative leave, following complaints raised by her co-workers because they were disrupting the workplace. It was recommended that the Petitioner seek professional help. She returned to work April 17, 1995.

14. CFD stated, on one day in June 1996, the Petitioner came into work with a legal pad, which had six pages of accusations, claiming that the janitors at her apartment building were bouncing balls off her shower, and her telephones were tapped, etc. She also stated that a black helicopter was watching her. The Petitioner asked one of CFD's architects to come and check out her building for the cameras, and he stated that she had 1,000 pieces of surgical tape on her walls, and tape covering the eye of the cameras. CFD addressed her concerns and advised the Petitioner that her concerns made no logical sense.

15. In her request the Petitioner the Petitioner did not address the basis for the dismissal of her charge. Rather, the Petitioner raised a new allegation of discrimination that was not part of the original charge. The Petitioner argued that CFD failed to promote her.

16. In its response, the Respondent asks the Commission to vacate the dismissal of the charge and remand the charge for further investigation.

C. DISCUSSION & DETERMINATION

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. See 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. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

The Commission concludes that the evidence was insufficient to establish a *prima facie* case of harassment. Generally, in order to establish a *prima facie* case of discrimination. Actionable harassment occurs when the workplace is permeated with discriminatory, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. See Harris v. Forklift Systems, Inc., 510 U.S. 20, 114 S.Ct. 367, 371, 126 L.Ed.2d 295. The Petitioner alleged that she was harassed because of her sex in that her co-workers made remarks and sounds about her weight. Even if taken as true, there was no evidence that the name calling was based on her sex. There was no evidence that the alleged name calling was gender related or had a gender animus. Additionally, based on the Respondent's investigation of the charge and the log the Petitioner kept, the log indicated that she heard co-workers and/or supervisors talking in other offices, and perceived their comments to be about her. There were no comments made directly to the Petitioner.

The Commission further concludes that the evidence was insufficient to establish a *prima facie* case of retaliation. Generally to establish a *prima facie* case of retaliation the Petitioner must show: (1) she engaged in a protected activity; (2) the Employer committed an adverse action against her; and (3) a causal connection existed 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 Petitioner's matter, there was no adverse action. Generally, an adverse action is an essential element of a *prima facie* case of unlawful discrimination. The adverse action must be sufficiently severe or pervasive as to alter the terms and conditions of Petitioner's employment, if it is not, it does not give rise to a cause of action under the Human Rights Act. See In the Matter of: Linda M. Hartman and City of Springfield Police Department, IHRC, Charge No. 1993SF0365, WL 33252975 *11 (October 4, 1999). The Petitioner alleged in her charge that the retaliation took the form of cat calling by co-workers, being placed her on a paid administrative leave and sent her to EAP. There was no

evidence that her terms and conditions of employment were altered. As such, there was no evidence of an adverse action.

D. CONCLUSION

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of the Charge was not in accordance with the Act. The Petitioners' Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED.**

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 City of Chicago, Department of Fire *a*s Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
) **Entered this 10th day of December 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Michael Bigger

Commissioner Amy Kurson

Commissioner Cheryl Mainor