

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST)
FOR REVIEW BY:)
) CHARGE NO.: **2022CP0346**
)
FRED CANNON,) ALS NO.: **22-0233**
)
Petitioner.)

ORDER

This matter coming before the Commission on December 7, 2022, by a panel of three, Commissioners Elizabeth A. Coulson, Demoya R. Gordon, and Stephen A. Kouri II presiding, upon the Request for Review (“Request”) of Fred Cannon (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2022CP0346, 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**.²

DISCUSSION

On August 30, 2021, the Petitioner filed a charge of discrimination with the Respondent alleging that Meijer Stores Limited Partnership (“Meijer”) denied him the full and equal enjoyment of its facilities and services based on his race, in violation of Section 5-102(A) of the Illinois Human Rights Act. On May 26, 2022, the Respondent dismissed the Petitioner’s charge for Lack of Substantial Evidence. The Petitioner filed a timely Request.

The Petitioner stated that he was a regular shopper at Meijer’s retail store in Aurora, Illinois. He stated that he believed that employees and plain-clothes police officers stared at him and followed him frequently while he was shopping because of his race (Black). The Petitioner stated that on March 27, 2021, after purchasing a money order at Meijer’s customer service desk, he shopped in the store for about one hour. He stated that at one point, he began to feel as though employees were watching him closely and communicating about him by code over the store’s loudspeaker. In the checkout line, he noticed a very tall, non-Black man standing behind him. The Petitioner stated that he heard a noise and felt as though the man in line behind him had spat upon him. When the Petitioner turned around, a woman who looked very similar to the man walked up and gestured with her hands as though inviting the Petitioner to do something. The Petitioner stated that he did not say or do anything because of the man’s size and behavior. The Petitioner stated that he thought the

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.”

² This order is entered pursuant to a 3-0-0 vote by the Commissioners.

man and woman were plain-clothes police officers; they were wearing black pants like Meijer employees wore but no name badges or face masks. The Petitioner stated that he believed that the man was possibly a store security employee. He had seen a very tall security guard at the store on a previous occasion and believed that it could have been the same man due to his unusual height.

The Petitioner stated that, after that encounter, he asked the cashier, Justin Flores, about the amount of tax on a bottle of alcohol. The Petitioner stated that Flores seemed nervous and stated that he was only 18 years old and needed to get his manager to sell the alcohol. Flores returned with a manager named Julia, who told the Petitioner that the tax would be about \$8.00 and then walked away quickly with a smirk on her face. The Petitioner stated that he then purchased his items and left the store. He stated that he believed the police were called because all of the employees were acting as though something was about to happen. The Petitioner stated that the store was very quiet and the pharmacy gate was closed, which was highly abnormal.

The Petitioner stated that none of Meijer's employees made any statements related to his race, but all of them were observing him closely. He also stated that he believed that Flores may have witnessed him being spat upon, because he seemed very nervous. He also believed that Julia should have witnessed it too because she was close by and smirked as she walked away.

According to Store Director Nicole Cole, when she became aware of the instant charge, she spoke with her employees and reviewed Meijer's incident reports. Nobody at the store was aware of any incidents matching the Petitioner's allegations. Cole was unable to review video footage from March 27, 2021, because the store's video footage overwrote itself every 30 days.

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)(3). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion and which consists of more than a mere scintilla but may be less than a preponderance. 775 ILCS 5/7A-102(D)(2).

The Act states that it is a violation for any person on the basis of unlawful discrimination to “[d]eny or refuse to another the full and equal enjoyment of the facilities, goods, and services of any public place of accommodation.” 775 ILCS 5-102(A). In order to establish a *prima facie* case of discrimination in a public place of accommodation, the Petitioner must show that 1) he falls within a protected class, 2) he was denied the full and equal enjoyment of the actor's facilities, goods, or services, and 3) similarly situated persons outside the Petitioner's protected class were afforded the full use and enjoyment of the actor's facilities. *In re Walter Henry, Jr. and TCF Nat'l Bank of Ill.*, IHRC, ALS No. 10992, 2003 WL 24045369, *3 (April 28, 2003). Harassment based on race can constitute denial of the full and equal enjoyment of a public place of accommodation. See, e.g., *In re Kenedra Spence and Cerro Gordo, Junior High School, District No. 100, Board of Directors, et al*, IHRC, ALS No. 4653(S), 1997 ILHUM LEXIS 865, *7 (August 1, 1997).

The Petitioner argues that he was denied the full and equal enjoyment of Meijer's store because he was spat upon by a man behind him in a checkout lane. The Petitioner's claim of discrimination fails because he did not establish that the man's actions were because of his race. Our usual query to determine whether there is a causal link between a protected class and an adverse action, identifying a comparative outside the person's protected class who was treated more favorably, is not helpful in this situation. Really, we are looking for any evidence that would establish that the Petitioner's race was a factor in the man's actions. See *Ortiz v. Werner Enterprises, Inc.*, 834 F.3d 760, 765 (7th Cir. 2016) (using a more holistic approach to determine "whether the evidence would permit a reasonable factfinder to conclude that the plaintiff's race, ethnicity, sex, religion, or other proscribed factor caused the discharge or other adverse employment action"). But when we scour the investigative record for any evidence that race was a factor, we find nothing beyond the Petitioner's speculation. See *Folbert v. Dep't of Human Rights*, 303 Ill. App. 3d 13, 25 (1st Dist. 1999) (noting that mere speculation and conjecture does not constitute substantial evidence).

In his Request, the Petitioner implores further investigation into why employees left the company and why the video footage was unavailable, and requiring the Employer to make available the photo identification cards of all of its employees. Even if there were proof that the man who assaulted the Petitioner was a Meijer employee, however, the Petitioner still would not have established a *prima facie* case of discrimination because he did not proffer evidence that the man's actions were because of his race.

For the foregoing reasons, the Petitioner has not presented sufficient evidence to show that the Respondent's dismissal of his charge of discrimination was not in accordance with the Act.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of Petitioner's charge for lack of substantial evidence 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 Meijer Stores Limited Partnership as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION)) Entered this 13th day of December 2022.

Commissioner Elizabeth A. Coulson

Commissioner Demoya R. Gordon

Commissioner Stephen A. Kouri II