

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST
FOR REVIEW BY:

KIMBERLEY D. MILLIRONS,

Petitioner.

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CHARGE NO.: **2021CA2077**
EEOC/HUD NO.: **21BA11066**
ALS NO.: **22-0258**

ORDER

This matter coming before the Commission on December 21, 2022, by a panel of three, Commission Chair Mona Noriega, Vice-Chair Barbara R. Barreno-Paschall, and Commissioner Janice M. Glenn presiding, upon the Request for Review (“Request”) of Kimberley D. Millirons (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2021CA2077, 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 November 13, 2020, the Petitioner filed a charge of discrimination with the Respondent alleging that the Illinois Department of Human Services (“Employer”) subjected the Petitioner to harassment because of her race (Count A), sex (Count B), age (Count C); and issued her a suspension based on the Petitioner’s race (Count D), sex (Count E), and age (Count F) in violation of Sections 2-101(A) of the Illinois Human Rights Act (“Act”). On June 14, 2022, the Respondent dismissed the Petitioner’s charge for Lack of Substantial Evidence. The Petitioner filed a timely Request.

Factual Background

The Employer hired the Petitioner on July 2, 2018 as a Support Service Worker in its Elgin, Illinois facility, and the Petitioner was later promoted to Maintenance Equipment Operator. The Petitioner alleged that one of her job duties is to deliver COVID tests taken at the Employer’s facilities to the Illinois Department of Public Health (IDPH) laboratories in Chicago, IL. The Petitioner alleged that in late July 2020, she made a delivery to IDPH using her personal vehicle instead of the state assigned van because it was most cost effective.

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.

The Petitioner alleged that from July 14, 2020 to August 3, 2020, the Employer subjected the Petitioner to harassment because she is a Black (Count A) female (Count B), who was 63 years of age at the time of the alleged harm (Count C). Specifically, the Petitioner alleged that the Employer's Chief of Security, William Epperson, harassed the Petitioner when he questioned other Maintenance Equipment Operators about their job duties to use against the Petitioner, and when Epperson failed to inform the Petitioner of the allegations against her. The Petitioner alleged that in late July 2020, the Employer's Business Administrator, Nick Kanellopoulos, harassed the Petitioner when Kanellopoulos falsely accused the Petitioner of failing to deliver COVID-19 tests to IDPH, and when he failed to notify the Petitioner of his investigation into the Petitioner's alleged failure to drop off her test results. Further, the Petitioner alleged that Kanellopoulos harassed the Petitioner on August 3, 2020 when he claimed that he reviewed security video of the Petitioner, and when he requested information from IDPH about the Petitioner without notifying the Petitioner.

Kanellopoulos proffered that late in the afternoon on July 22, 2020, the Employer's dispatch office contacted him to ask whether the COVID tests would be delivered to IDPH. He also proffered that it is required for drivers to sign out when they leave the facilities, and the Petitioner did not sign out on July 22, 2020. As part of the investigation into the Petitioner's deliveries, on July 23, 2020 Kanellopoulos took a picture of the sign in sheet which indicated that the Petitioner had not signed out. Additionally, Kanellopoulos proffered that on July 23, 2020, the Petitioner added an entry to sign out on July 22, 2020 at 4:30 p.m. Kanellopoulos denied reviewing any security video. The Report reveals that Kanellopoulos reviewed the tracking data from the Petitioner's Employer assigned vehicle and the Petitioner's previous overtime requests.

The Petitioner alleged that on October 26, 2020, the Employer suspended the Petitioner for 20 days because she is a Black (Count D) female (Count E), who was 64 years of age at the time of the alleged harm (Count F). The Petitioner alleged that the Employer's investigation was inappropriate, and the 20-day suspension was deliberately excessive because the Petitioner did not have prior disciplinary action. Specifically, the Petitioner alleged that the Employer did not properly adhere to their corrective and progressive discipline directive.

Kanellopoulos' investigation revealed that the Petitioner falsified her attendance documentation and she requested overtime which she was not eligible to receive. The Employer's Time and Attendance Records Policy indicates that an employee who falsifies time or attendance may be subject to discipline, up to and including discharge. The Report reveals that other employees have been discharged for engaging in similar conduct as the Petitioner.

Analysis

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). Under the Act, substantial evidence is "evidence which a reasonable mind accepts as sufficient to support a particular

conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance.” 775 ILCS 5/7A-102(D)(2).

To establish a *prima facie* case of discrimination, the Petitioner must show that: (1) the Petitioner is a member of a protected class, (2) the Petitioner performed her job satisfactorily, (3) the Petitioner suffered an adverse employment action, and (4) a similarly situated employee who was outside of the Petitioner’s protected class was treated more favorably. *Wal-Mart Stores, Inc. v. Ill. Human Rights Comm’n*, 307 Ill. App. 3d 264, 267 (2d Dist. 1999). 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 petitioner’s employment and create an abusive working environment. *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 20 (1993). Harassment must be based on the Petitioner’s membership in a protected class or as retaliation for participation in a protected activity. *Boss v. Castro*, 816 F.3d 910, 920 (7th Cir. 2016); *In re Request for Review by: Kevin Despiou*, IHRC, ALS No. 12-0588, 2018 WL 6625329 (November 16, 2018).

Racial harassment has been defined to include a steady barrage of opprobrious racial comments. *In Village of Bellwood Board of Fire and Police Commissioners v. Human Rights Commission*, 184 Ill.App.3d 399, 350 (1st Dist. 1989); *In re Request for Review by: Reba Lockett*, IHRC, ALS No. 14-0595, 2018 ILHUM Lexis 730 (December 14, 2018). More than a few isolated incidents of harassment; however, must have occurred; racial comments that are merely part of casual conversation, are accidental, or are sporadic do not trigger civil rights protective measures. *Id.*

Count A: Harassment Based on the Petitioner’s Race

Count B: Harassment Based on the Petitioner’s Sex

Count C: Harassment Based on the Petitioner’s Age

In Counts A, B, and C, the Petitioner failed to meet the third and fourth prongs to establish a *prima facie* case of harassment. The act of conducting an investigation, failing to inform the Petitioner of the allegations against her, reviewing a security video of the Petitioner, and requesting information from IDPH about the Petitioner are not actions that arise to a level of harassment as contemplated by the Act. Additionally, the Petitioner failed to provide sufficient evidence of a steady barrage of opprobrious racial comments, or any comments regarding the Petitioner’s race, sex, or age. A petitioner’s discrimination charge consisting of mere speculation and conjecture does not constitute substantial evidence. *Folbert v. Dep’t of Human Rights*, 303 Ill. App. 3d 13, 25 (1st Dist. 1999). Finally, the Petitioner failed to identify a similarly situated comparator who received favorable treatment in the same or similar situation. Therefore, the Petitioner failed to establish a *prima facie* case of harassment in Counts A, B, and C.

Count D: Suspension Based on the Petitioner's Race

Count E: Suspension Based on the Petitioner's Sex

Count F: Suspension Based on the Petitioner's Age

In Counts D, E, and F, the Petitioner failed to meet the fourth prong to establish a *prima facie* case of discrimination. The Petitioner failed to identify an employee who was not suspended for falsifying documents. Even if the Petitioner were able to establish a *prima facie* case of discrimination in Counts D, E, or F, the Employer proffered a legitimate and non-discriminatory reason for suspending the Petitioner for violating the Employer's Time and Attendance Records Policy. The Employer's decision to suspend the Petitioner for violating the Employer's policy was a business decision in which the Commission does not substitute judgment or act as super-personnel in this matter. *See In the Matter of Fitzgerald and State of Illinois Dep't. of Public Aid*, IHRC, Charge No. 1993SA0460, 1997 WL 812479, *8 (November 7, 1997). Therefore, the Petitioner failed to establish a *prima facie* case of discrimination in Counts D, E, and F.

Accordingly, the Petitioner has not presented sufficient 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 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 Illinois Department of Human Services 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

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Entered this 27th day of December, 2022.

Commission Chair Mona Noriega

Vice-Chair Barbara R. Barreno-Paschall

Commissioner Janice M. Glenn
