

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST
FOR REVIEW BY:

JUDY R. EVANS-EPPS,

Petitioner.

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CHARGE NO.: **2021CR2017**

EEOC/HUD NO.: **N/A**

ALS NO.: **23-0057**

ORDER

This matter coming before the Commission on June 7, 2023, 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 Judy R. Evans-Epps (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2021CR2017, 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 17, 2020, the Petitioner filed a charge of discrimination with the Respondent alleging that Vitas Healthcare (“Employer”) discharged the Petitioner because of the Petitioner’s race (Count A) and age (Count B) in violation of Section 2-102 (A) of the Illinois Human Rights Act (“Act”). On December 8, 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 as a Continuous Care Team Manager on April 2, 2018. The Petitioner alleged that she satisfactorily completed her job duties. The Petitioner alleged that on October 18, 2019, the Petitioner received a Written Disciplinary Counseling for an oversight in the scheduling on October 11, 2019. The Respondent’s Investigation Report (“Report”) reveals that the Employer’s Scheduler, Nancy Potts, scheduled a Licensed Practical Nurse for a shift on or about October 11, 2019. The Petitioner alleged that she did not schedule or approve the Licensed Practical Nurse to be scheduled for a shift because the nurse had not completed a formal evaluation. The Petitioner alleged that the Employer’s General Manager, Kathy Carson, was harassing her after she received the Written Disciplinary Counseling.

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 Employer proffered that the Petitioner received the October 2019 Written Disciplinary Counseling for failing to properly supervise a Licensed Practical Nurse on her first assignment. The Report reveals that the Employer has a progressive disciplinary policy. The Employer's Counseling Policy provides that if employees do not adhere to the Employer's expectations, corrective action up to and including termination of employment, may be necessary.

It is uncontested that on or about November 4, 2020, an employee reported to the Petitioner that he was experiencing COVID-19 symptoms. The Petitioner alleged that on November 4, 2020 the Employer's Licensed Practical Nurse, Carl Dumajel³, sent her a text and informed her that he was not feeling well, and Dumajel disclosed that he would be submitting to a COVID-19 test. The Petitioner's Request alleged that Dumajel submitted his positive COVID results directly to the Employer's Infection Control Site Manager (ICSM).

The Petitioner alleged that during a telephone conference on November 11, 2020, the Employer's Vice President of Operations, Douglas Irvin, repeatedly asked the Petitioner if she informed any other staff member that Dumajel contacted her on November 4, 2020. The Petitioner alleged that she did not report Dumajel because he was just calling off sick. The Petitioner alleged that she was discharged on November 13, 2020 because she is Black (Count A), and was 60 years of age at the time of the alleged harm (Count B). The Petitioner alleged that she was subjected to discrimination based on her race and age because all of the participants in the conference call on November 11, 2020 were White and younger than age 60.

The Employer proffered that the COVID-19 process and procedures instructed employees to report to their Patient Care Administrator if they are experiencing COVID-19 symptoms. The Employer's Managers were instructed to report the information of exposure to COVID-19 or an employee feeling unwell to the ICSM. The Employer proffered that the Petitioner failed to report to ICSM when the Petitioner first learned of Dumajel's possible exposure to COVID-19. The Employer proffered that the Petitioner failed to report the possible exposure of two additional employees on or about November 8, 2020. The Employer proffered that the Petitioner was terminated on November 13, 2020 due to her inability to adhere to its COVID-19 safety protocols, in addition to the Petitioner's previous disciplinary history.

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).

³ The Petitioner's Request corrects the spelling of DiMaggio to Dumajel.

To establish a *prima facie* case of discriminatory discharge, the Petitioner must prove that: (1) the Petitioner is a member of a protected class; (2) the Petitioner was performing her work satisfactorily; (3) the Petitioner was subjected to an adverse action; and (4) a similarly situated employee who is not a member of the Petitioner's protected class received more favorable treatment. *Marinelli v. Human Rights Comm'n*, 262 Ill. App. 3d 247, 254-55 (2d Dist. 1994). If the Petitioner establishes her *prima facie* case, the Employer may rebut the presumption of discrimination by articulating a legitimate, nondiscriminatory reason for its decision, and then the Petitioner must prove that the articulated reason was a pretext for discrimination. *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill. 2d 172, 178-79 (1989).

The Petitioner failed to provide sufficient evidence to meet the second and fourth prongs to establish a *prima facie* case of discriminatory discharge. The Report reveals that the Petitioner violated the Employer's policies, which tends to show that the Petitioner was not satisfactorily performing her job as a Continuous Care Team Manager. The Petitioner's performance review also reflected Petitioner's declining ability to meet the Employer's required standards. See *In the Matter of Frank Gonzalez and Ill. State Toll Highway Auth.* IHRC, ALS No. 07-157, 2010 WL 5313821 (Aug. 23, 2010) (stating a worker failed to satisfactorily perform work when the evidence showed a record of repeated warnings and discipline). Additionally, the Petitioner was unable to show that the Employer treated a similarly situated employee outside of the Petitioner's own protected class more favorably for failing to properly supervise a Licensed Practical Nurse, and failing to report potential exposure to COVID-19.

Finally, the Petitioner did not provide sufficient evidence that any discriminatory comments related to the Petitioner's race or age were made during the Petitioner's interactions with the Employer. 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). Therefore, the Petitioner failed to establish a *prima facie* case of discriminatory discharge based on the Petitioner's race and age.

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 Vitas Healthcare as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

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HUMAN RIGHTS COMMISSION

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Entered this 13th day of June, 2023.

Commissioner Elizabeth A. Coulson

Commissioner Demoya R. Gordon

Commissioner Stephen A. Kouri, II
