

IN THE MATTER OF THE
REQUEST FOR REVIEW BY:

Petitioner.

ALS No.: 23-0335

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

Terrazas needed to be present for an arrest. Then on April 29, 2021, the Petitioner saw Terrazas and contacted the police to arrest her, but Navarro-Gercone intervened, inserting herself during the police questioning. The Petitioner stated that Navarro-Gercone lied about him being insubordinate and wanted to usurp the natural progression of how investigations were conducted. The Petitioner alleged that on April 30, 2021, Chief Human Resources Officer Maureen T. O'Donnell discharged him for lying about the incident with Terrazas on April 22, 2021. The Petitioner stated that Navarro-Gercone's involvement in the police encounter contributed to his discharge.

The Petitioner stated that the police reports he made on April 22, 2021, and April 29, 2021, were the protected activities for which he was harassed. He stated that he did not know if he mentioned discrimination or referred to his protected categories as part of his police complaints. The Petitioner also stated that his union advocacy was a protected activity.

Navarro-Gercone stated that on April 29, 2021, the sheriff's office contacted her about a report of a battery incident, and that she then went to the entrance area of her office floor, where she was told that the Petitioner reported being struck by Terrazas. Navarro-Gercone stated that she questioned the Petitioner and then sent him back to his workstation, all of which was within her authority as Executive Clerk Court Operations. The notice terminating the Petitioner's employment was signed by O'Donnell, and indicated that the Petitioner "made false accusations on April 22, 2021; made false statements and was insubordinate when responding to questions about his absence from his assigned workplace on April 29, 2021; on April 22, 2021 and on April 29, 2021 caused disruptions to its operations when he falsely reported he was battered by an employee; and misused the Clerk of the Circuit Court of Cook County's office time, equipment, and/or internet for improper reasons including 'non-Clerk's Office related activities and internet services.'"

The Commission concludes that the Respondent's dismissal of the Petitioner's charge should be sustained. However, as the Respondent correctly points out in its Response to Request for Review, the dismissal should be sustained for lack of substantial evidence rather than lack of jurisdiction, because the Respondent and Commission have jurisdiction over retaliation claims. See *In re Request for Review by: Alexandria Waters*, IHRC, ALS No. 23-0043, 2023 ILHUM LEXIS 102, *10 (July 5, 2023) (determining that the Act confers jurisdiction over discrimination claims, rather than a party's ability to prove his *prima facie* case); *In re Request for Review by: Martin Cruz*, IHRC, ALS No. 23-0149, 2023 ILHUM LEXIS 164, *4 (September 12, 2023) (determining that an unsuccessful retaliation charge against an individual should be dismissed for lack of substantial evidence, rather than lack of jurisdiction). 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). 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).

The Petitioner argues that Navarro-Gercone harassed (Count A) and discharged (Count B) him in retaliation for engaging in a protected activity. Under Section 6-101(A), it is a civil rights

violation for “a person” to retaliate against another for opposing unlawful discrimination. 775 ILCS 5/6-101(A). But in the employment context, where an official of the employer undertakes the retaliatory act in the employer’s name, the charge must be against the employer, and not the official in their personal capacity. *Watkins v. Office of State Appellate Def.*, 2012 IL App (1st) 111756, ¶ 37 (citing *Anderson v. Modern Metal Prod.*, 305 Ill. App. 3d 91, 102 (2d Dist. 1999)); see also *In re Request for Review by: Ingrid Gill Richards*, IHRC, ALS No. 18-0334, 2019 WL 4190033, *1 (Aug. 13, 2019). A charge can only be brought against the individual if their actions were “personally motivated” or done without the employer’s knowledge and consent. *Watkins*, 2012 IL App (1st) 111756, ¶ 37-38.

A *prima facie* case of retaliation requires evidence that 1) the petitioner engaged in a protected activity, 2) he suffered an adverse action, and 3) a causal connection exists between the protected activity and the adverse action. See *Welch v. Hoeh*, 314 Ill. App. 3d 1027, 1035 (3d Dist. 2000). Here, the Petitioner’s claims fail for two reasons. First, there is no evidence that Navarro-Gercone was personally motivated to harass or discharge the Petitioner, nor that any action was taken against him without the employer’s official knowledge and consent. Second, there is no evidence that the Petitioner engaged in a protected activity, as he did not know whether he mentioned discrimination when he complained to the police and union advocacy alone is not a protected activity. See 775 ILCS 5/6-101(A) (stating that protected activity includes opposing unlawful discrimination, sexual harassment, or discrimination based on arrest record, citizenship status, or work authorization status; filing a charge, complaint or participating in proceeding under the Act; and requesting a reasonable accommodation). The Commission concludes that there is insufficient evidence that retaliation occurred.

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 Carmen N. Navarro-Gercone 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 30th day of APRIL 2024.

Chair Mona Noriega

Commissioner Jacqueline Y. Collins

Commissioner Janice M. Glenn