

IN THE MATTER OF THE
REQUEST FOR REVIEW BY:

Petitioner.

Charge No.: 2022SF2289
EECO No.: 21BA30307
ALS No.: 24-0024

This matter coming before the Commission on August 14, 2024, 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 Vincent Fulton (“Petitioner”),¹ of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”) of Charge No. 2022SF2289, 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 dismissal of Counts A, C, D, and E of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**, and the dismissal of Count B is **VACATED** and the count **REMANDED** for a **FINDING OF SUBSTANTIAL EVIDENCE** and for further proceedings consistent with this Order and the Illinois Human Rights Act ("Act").²

On May 11, 2022, the Petitioner filed a charge of discrimination with the Respondent, perfected on January 14, 2023, alleging that SOI Murray Developmental Center (“Employer”) reduced his supervisory duties on August 31, 2021, (Count A) and in March 2022 (Count B), issued him a 15-day suspension (Count C), subjected him to unequal terms and conditions of employment (Count D), and issued him a 30-day suspension (Count E), all in retaliation for engaging in a protected activity, in violation of Section 6-101(A) of the Act. On October 24, 2023, the Respondent dismissed the Petitioner’s charge for lack of substantial evidence. The Petitioner filed a timely Request.

The Employer is a State of Illinois agency that provides support and habitation services for persons with various behavioral and medical needs. The Employer hired the Petitioner in January

¹ In a request for review proceeding, the party filing the request for review is referred to as the “Petitioner” and the Illinois Department of Human Rights is the “Respondent.”

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

2010, and the Petitioner was promoted to Assistant Center Director (“ACD”) in August 2015. As ACD, the Petitioner oversaw 30 staff members in different departments, including the Social Work Department and the Medical Services Department.

The Petitioner stated in his charge of discrimination that, in January 2020, he filed charge number 2020SF2037 against the Employer with the Respondent, alleging race discrimination. However, the Respondent’s investigation report stated that the Petitioner said that he filed the charge in November 2020, while the Respondent’s Response stated that it was filed on August 19, 2020.

The Petitioner stated that, in March 2020, Center Director Lori Demijan told him that he was being issued a 14-day suspension for continued tardiness. He said that, in March 2020, following this suspension, he complained to the Office of Executive Inspector General (“OEIG”) about the Employer retaliating against him for his January 2020 protected activity.

The Petitioner said that, on August 31, 2021, Demijan emailed him and said that the Employer had reduced his supervisory responsibilities and reassigned responsibility of the Social Work Department to another employee.

In his Request, the Petitioner stated that, on November 10, 2021, he submitted an “official email complaint [to a supervisor]...objecting to disparate treatment.” A copy of this email, which had the subject line “Unprofessional Conduct/Disparate Treatment,” provided by the Petitioner showed that he discussed an “incident”³ and stated that he felt that the Employer was not handling the incident properly.

The Petitioner stated that, on December 6, 2021, the Employer issued him a 15-day unpaid suspension in retaliation for the complaint that he filed in November 2020.⁴ He said that, on December 22, 2021, he complained to the State of Illinois Bureau of Civil Affairs (“BCA”) that he was suspended on December 6, 2021, in retaliation for engaging in a protected activity.

The Petitioner said that, on March 18, 2022, he emailed the BCA asking, “How do I address continued harassment or disparate treatment? Do I follow the Admin Directive and report additional complaints to Ms. Baily’s immediate supervisor? Do I report them via this email?”

The Petitioner stated that, in March 2022, Demijan told him that the Employer had reduced his supervisory responsibilities and reassigned responsibility of the Social Work Department to another employee.⁵ He said that his supervisory duties were further reduced in March 2022 when the Employer reassigned responsibility of the Medical Services Department to a newly-created second ACD position.

³ This email did not explain the details of the incident, nor did it specifically allege any discrimination or retaliation.

⁴ The investigation report did not specify to which complaint the Petitioner was referring.

⁵ The investigation report did not explain how this reassignment of responsibility for the Social Work Department differed from the reassignment that the Petitioner alleged occurred in August 2021.

The Petitioner said that being on-call, working weekends, and working holidays had always been part of his job duties as ACD, and he always performed those duties. He stated that, on August 31, 2022, Demijan gave him a revised copy of his position description, which stated that the ability to work on-call, after business hours, weekends, and holidays became conditions of his continued employment.

The Petitioner stated that, on November 21, 2022, he was suspended for 30 days for alleged failure to perform job duties, conduct unbecoming of a State of Illinois employee, and abuse of time.

Demijan said that, on July 16, 2020, the Employer created a Chief Psychologist position that would supervise the Social Work Department, and the Employer hired a candidate to fill this position. She stated that she did not send an email to the Petitioner on August 31, 2021, telling him that his supervisory duties had been reduced.

Demijan said that the Petitioner was issued a 15-day suspension that began on December 6, 2021, for failure to perform job duties and for conduct unbecoming of a State of Illinois employee.

Demijan stated that the Employer did not reduce the Petitioner's supervisory responsibilities in March 2022, but the Petitioner was advised that his position was being revised because all development centers in State of Illinois facilities had at least two ACD positions. She said that, in March 2022, the Employer created a new ACD position that would be responsible for the Medical Services Department.

Demijan said that the Employer's job requirements for the ACD position always included being on-call, working after business hours, working weekends, and working holidays.

The Commission determines that substantial evidence does not exist as to Counts A, C, D, and E, and that substantial evidence exists as to Count B. 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).

Retaliation and Protected Activity

A *prima facie* case of retaliation requires that: (1) the petitioner engaged in a protected activity; (2) the petitioner was subjected to an adverse action; and (3) there is evidence of a causal connection between the protected activity and the adverse action. *Welch v. Hoeh*, 314 Ill. App. 3d 1027, 1035 (1st Dist. 2006). Each count alleged by the Petitioner requires that this standard be met.

A protected activity is an opposition to what the petitioner reasonably and in good faith believed to be, among other things, unlawful discrimination, and such opposition includes filing a charge; making a complaint; and testifying, assisting, or participating in an investigation, proceeding, or hearing under the Act. 775 ILCS 6-101(A).

Evidence of a causal connection between the protected activity and the adverse action can be shown through a sufficiently short period of time between these events. *See Hoffelt v. Ill. Dep't of Human Rights*, 367 Ill. App. 3d 628, 638 (1st Dist. 2006) (finding that three months between the protected activity and retaliation established causation for a *prima facie* case of retaliation). Additionally, in order to raise the necessary inference of a causal connection, the protected activity must come before the adverse action. *See In re Request for Review by: Valerie Hemmingway*, IHRC, ALS No. 17-0619, 2020 ILHUM LEXIS 212, *3 (Aug. 13, 2020).

The Petitioner alleged in his charge of discrimination that he engaged in numerous protected activities, and each will be analyzed in turn to determine whether they constituted protected activities under the Act. First, the Petitioner stated that he filed charge number 2020SF2037 against the Employer with the Respondent alleging racial discrimination in January 2020. This constituted a protected activity because the Petitioner opposed what he believed to be unlawful discrimination by filing a charge. Though the Petitioner stated during the investigation that this charge was filed in November 2020, and the Respondent's Response stated that it was filed on August 19, 2020, the exact date on which this charge was filed does not affect whether a causal connection exists related to the Petitioner's allegations, as will be shown below.

Next, the Petitioner said that, in March 2020, he complained to OEIG about the Employer retaliating against him for filing charge number 2020SF2037. This constituted a protected activity because the Petitioner opposed what he believed to be unlawful discrimination by making a complaint.

The Petitioner also said that he engaged in a protected activity on November 10, 2021, when he emailed a complaint to a supervisor objecting to disparate treatment. This did not constitute a protected activity because the copy of this email that the Petitioner provided did not reflect that the Petitioner mentioned any discrimination related to his protected classes or retaliation.

Further, the Petitioner stated that, on December 22, 2021, he complained to the BCA about being suspended for 15 days in retaliation for engaging in a protected activity. This constituted a protected activity because the Petitioner opposed what he believed to be unlawful discrimination by making a complaint.

Next, the Petitioner said that, on March 18, 2022, he emailed the BCA inquiring how to address continued harassment and disparate treatment. This did not constitute a protected activity because there is no evidence that the Petitioner reported any discrimination or mentioned retaliation in this email; he merely inquired as to how he could go about reporting harassment and disparate treatment.

The Petitioner also stated that, in April 2022, he emailed the Director for the Division of Developmental Disabilities complaining that the Employer had not remedied the harassment and

retaliation that it had subjected him to over the past two years.⁶ Though the Commission has not been provided with a copy of this email or any additional information regarding what this email stated, taking the facts in the light most favorable to the Petitioner, the Commission determines that this constituted a protected activity, because it raised issues of harassment and retaliation. See *Cooper v. Salazar*, No. 98 C 2930, 2001 U.S. Dist. LEXIS 17952, *3-4 (N.D. Ill. Nov. 1, 2001). Regardless, the outcome of the Commission's analysis does not hinge on whether this April 2022 email actually constituted a protected activity.

The Petitioner said that, on April 14, 2022, he complained to the OEIG that the Employer had retaliated against him for filing charge number 2020SF2037.⁷ This constituted a protected activity because the Petitioner opposed what he believed to be unlawful retaliation by making a complaint.

Finally, the Petitioner stated that, in May 2022, he filed a complainant information sheet with the Respondent regarding retaliation by the Employer.⁸ This did not constitute protected activity because a complainant information sheet is meant to provide information to the Respondent regarding an already-filed charge; the Petitioner was not opposing unlawful discrimination by filing this sheet.

Count A

The Petitioner alleged that the Employer reduced his supervisory duties on August 31, 2021, in retaliation for engaging in a protected activity.

The Commission determines that a *prima facie* case has not been established because there is no inference of causal connection, as either the adverse action came before the protected activities or the protected activities and the adverse action were too remote in time from each other. The Petitioner's March 2020 protected activity was the closest in time to the adverse action and did not occur after the adverse action, but the adverse action occurred over one year later, and, thus, there is no causal connection. See *In re Request for Review by: Willie Jones*, IHRC, ALS No. 17-0290, 2019 ILHUM LEXIS 787, *4 (May 21, 2019) (finding that a time span of six months between the protected activity and the adverse action was too remote to establish an inference of connectedness). Accordingly, the Commission sustains the Respondent's dismissal of Count A for lack of substantial evidence.

Count B

The Petitioner alleged that the Employer reduced his supervisory duties in March 2022 in retaliation for engaging in a protected activity. The legal standard for adverse actions in retaliation

⁶ The Petitioner mentioned this alleged protected activity in his charge of discrimination, but it was not discussed in any other filing, including the investigation report.

⁷ The Petitioner mentioned this alleged protected activity in his charge of discrimination, but it was not discussed in any other filing, including the investigation report.

⁸ The Petitioner mentioned this alleged protected activity in his charge of discrimination, but it was not discussed in any other filing, including the investigation report.

claims is lower than in discrimination claims based on protected classes. *In re Latanya Jackson and Bd. of Ed. of City of Chicago*, ILHUM, ALS No. 19-0439, 2023 ILHUM LEXIS 114, *21-22 (May 18, 2023). In the employment context, a retaliation claim must show that a reasonable employee would have found the challenged action to be materially adverse, which means that it would have dissuaded a reasonable employee from making or supporting a claim of discrimination. *Id.*; see also *Hoffelt*, 367 Ill. App. 3d at 635.

The Commission determines that a *prima facie* case has been established due the protected activity of December 22, 2021. The Petitioner engaged in a protected activity on December 22, 2021, when he told BCA that he was suspended in retaliation for engaging in a protected activity. Next, he was subjected to an adverse action when the Employer removed his essential duty of managing the Medical Services Department in March 2022; in considering the lower bar used to analyze adverse actions in retaliation claims, a reasonable employee could have been dissuaded from making or supporting a claim of discrimination after having an essential job duty removed. See *Young v. Ill. Human Rights Comm'n*, 2012 IL App (1st) 122204, ¶ 35 (using the higher standard for adverse action in a discrimination claim based on a protected class, finding that reassignment with significantly different job responsibility can constitute an adverse action). Finally, an inference of a causal connection exists because, though we do not know the exact date on which the Employer removed this duty, at most, four months had passed between the protected activity and the adverse action. See *In re Request for Review by: Jacob Harbison*, IHRC, ALS No. 20-0148, 2019 ILHUM LEXIS 1473, *8 (Aug. 31, 2019) (finding that five months between the protected activity and retaliation established causation for a *prima facie* case of retaliation). Accordingly, the Commission vacates the Respondent's dismissal of Count B and remands the count for a finding of substantial evidence.

Counts C and E

The Petitioner alleged that the Employer suspended him for 15 days on December 6, 2021, (Count C) and suspended him for 30 days on November 21, 2022, (Count E) in retaliation for engaging in a protected activity.

The Commission determines that a *prima facie* case has not been established because an inference of causal connection between any of the Petitioner's protected activities and the adverse actions does not exist, as either the adverse actions came before the protected activities or the protected activities and adverse actions were too remote in time from each other.

As to Count C, the closest protected activity in time to the December 6, 2021, adverse action that did not occur after the adverse action was in March 2020. However, because the adverse action occurred over one year later, there is no inference of a causal connection. As to Count E, the closest protected activity in time to the November 21, 2022, adverse action that did not occur after the adverse action was the protected activity in April 2022. However, because the adverse action occurred more

than seven months later, there is no inference of a causal connection. Accordingly, the Commission sustains the Respondent's dismissal of Counts C and E for lack of substantial evidence.

Count D

The Petitioner alleged that the Employer subjected him to unequal terms and conditions of employment on August 31, 2021, in retaliation for engaging in a protected activity when it revised his ACD job description to include "ability to work on-call, after business hours, weekends, and holidays" as a condition of employment.

The Commission determines that a *prima facie* case has not been established as to Count D. The second prong of the *prima facie* case has not been established because the Petitioner was not subjected to an adverse action. The Petitioner alleged that he was subjected to an adverse action when the Employer revised his ACD job description to include "ability to work on-call, after business hours, weekends, and holidays" as a condition of employment. However, the Petitioner stated during the investigation that these duties had always been part of his job, and he had always performed them. Therefore, the Petitioner did not suffer any actual harm, and there is insufficient evidence that being asked to perform the duties of one's job would dissuade a reasonable worker from making or supporting a charge of discrimination. See *In re Jose Maldonado and O'Reilly Auto Enterprises LLC (D/B/A O'Reilly Auto Parts)*, IHRC, ALS No. 19-0400, 2023 ILHUM LEXIS 151, *23 (Sept. 6, 2023) (finding no merit in the petitioner's argument that being ordered to do your job would dissuade any employee from asserting a discrimination claim). Accordingly, the Commission sustains the Respondent's dismissal of Count D for lack of substantial evidence.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of Counts A, C, D, and E for lack of substantial evidence is **SUSTAINED**.
2. The dismissal of Count B is **VACATED** and the count **REMANDED** for a **FINDING OF SUBSTANTIAL EVIDENCE**.

This Order is not yet final and appealable.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 20th day of AUGUST 2024.

Commissioner Elizabeth A. Coulson

Commissioner Demoya R. Gordon

Commissioner Stephen A. Kouri II