

IN THE MATTER OF THE
REQUEST FOR REVIEW BY:

Petitioner.

ALS No.: 24-0025

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

February 29, 2024. The Petitioner filed his Request on March 1, 2024, which the Commission accepts as timely.³

The Commission concludes that further investigation is needed on Counts A and B to ascertain whether there is substantial evidence of discrimination; the dismissal of Counts C, D, E, G, and H is sustained for lack of substantial evidence; and the dismissal of Counts F and I is vacated and Counts F and I are remanded for a finding of substantial evidence. 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 was hired on May 13, 2019, as an Electrical Technician in the Employer’s plant that made passenger and truck tires. The Petitioner worked in the mixing and maintenance department under Supervisor Edward McCracken. The Petitioner stated that he also reported to Team Lead Balee Gay from May 2019 to October 2020, and then reported to Team Lead Josh Bullock beginning in October 2020. The Petitioner stated that his job entailed maintenance, troubleshooting and repair. He stated that, although he received training on the job, he did not receive “E-call training.”

The Petitioner stated that in 2019, McCracken told him that if he had an issue, not to make it a race issue because it would not go well at the Employer’s. The Petitioner stated that McCracken told him if the issue was resolved, he should not make it seem that it was resolved because of race. When he asked McCracken if the Employer accommodated Sundays off for religious purposes, McCracken said he was unsure how that worked. McCracken said that the work schedules were set, and once the schedules were made, he could not shift days.

The Petitioner stated that he typically worked through his breaks, but when he did take a break, he read the Bible or prayed using Biblical devotionals. The Petitioner stated that in 2021, he had a work iPad, and he used an app called “Bible Sword,” to read the Bible. He stated that his work breaks were brief, and that when he prayed, he closed his eyes and prayed out loud if no one was present, or to himself when others were present.

The Petitioner stated that at some point, he asked Gay and Electrical Technician James Stewart if the Employer allowed time to read the Bible. They both chuckled and said that they did not do that at the Employer’s.

³ Because the Petitioner filed his motion for extension of time to file a request for review within the 90-day, jurisdictional time period to file a request for review, *see* 775 ILCS 5/7A-102(D)(3); 56 Ill. Admin. Code § 5300.450, and his motion was granted, the Commission has jurisdiction over this Request. The Commission’s subsequent decision to allow the Petitioner to file his Request instanter was within its discretion. *See, e.g., In re Phyllis J. Jordan and First Nat’l Bank of Peoria*, IHRC, ALS No. S-3324, 1992 ILHUM LEXIS 518, *116-21 (April 17, 1992) (reviewing administrative law judge’s recommended order and decision where complainant timely filed an extension of time to file exceptions, which was granted, even though the complainant did not subsequently file exceptions).

The Petitioner stated that at some point, Stewart told him, “welcome to the good ole boys,” and that it was not going away. Stewart told him that a Black worker with an electrical engineering degree just like the Petitioner got “screwed” out of the job and was discharged, but did not give further details.

The Petitioner stated that in 2019 Gay called him “boy” about five to six times. He stated that there was tension between him and Gay, and that on December 9, 2019, Gay wrote him up for telling Gay to “tear that shit up.” The Petitioner stated that he would never say that to a supervisor. In a follow-up meeting with Gay and Manager Shawn Richeson, Gay just stared at him, and the Petitioner stared back at him in case Gay got up and he had to move or defend himself. The Petitioner also met with Human Resources Business Partner Tanja Trenk about the write-up and told her that Gay called him “boy.” The Petitioner stated that based on their conversation, it seemed like the write-up was not going to be counted against him because Trenk said not to worry about it. The Petitioner stated that it seemed that in December 2021, however, the Employer was using it against him. By then Trenk had left the Employer.

The Petitioner stated that in 2019, Gay and Stewart interrupted him and asked what he was doing. When he told them he was reading his Bible and devotional, they told him that they needed him to go to a job. When he asked if he could finish his reading, they said he needed to go to the job. The Petitioner stated that he asked Gay and Stewart if the Employer provided accommodations to practice his religious beliefs but they did not respond. The Petitioner stated that he left discouraged and did what he was asked to do.

The Petitioner stated that in October 2020, he transferred to the “D” shift, working from 11:00 p.m. to 11:00 a.m. and reporting to Bullock. He stated that there were three electrical technicians on that shift, two of whom were non-Black. He stated that the “D” shift required him to troubleshoot electrical and mechanical issues, which was different from the work he had done in the past, and he had to learn hands on and by observing other technicians. The Petitioner stated that in 2020, Stewart told him that although he had an electrical engineering degree, the Petitioner could not figure out a job that needed to be done. The Petitioner told Stewart that his degree taught him theory, but that the job required hands-on experience.

The Petitioner stated that on January 24, 2021, he asked Team Lead Jeff Schmoll how to time the rack on Mixer 16. Schmoll yelled at him, “Go fucking time the rack like I told you. This is not up for discussion you fuck.” The Petitioner stated that when he asked Schmoll not to talk to him that way, Schmoll walked up to him nose to nose as if to provoke an altercation and then walked out of the office to call the plant supervisor. When the plant supervisor arrived, the Petitioner told him what had happened and that it had happened several times under Schmoll’s supervision. The Petitioner stated that Schmoll apologized to him. The plant supervisor did not take any disciplinary action against Schmoll. The Petitioner stated that it appeared to him that the plant supervisor was sympathizing with Schmoll and condoning his behavior towards him.

The Petitioner stated that on January 25, 2021, he was written up for the incident with Schmoll. He told Schmoll that the full incident was not included in the write-up because it did not include Schmoll yelling at him. Schmoll told him that he ran out of paper to include the full incident, although Schmoll was sitting next to a printer that was full of blank paper. Schmoll also denied his request for a copy of the write-up, telling him he needed to sign it in order to receive a copy.

On January 25, 2021, the Petitioner met with Richeson about the incident. The Petitioner reported discrimination and harassment to Richeson, stating that he had been threatened with write-ups going back to November and December 2019 by Gay, and was experiencing that same level of harassment by Schmoll. He also told Richeson that Gay and Stewart disturbed him when he was practicing his religious beliefs. Richeson told the Petitioner that he would investigate and contact him with the findings, but never did. The Petitioner stated that nothing was said or done to accommodate his religious beliefs.

The Petitioner stated that on February 27, 2021, he was sent to investigate an issue involving a loose wire on one of four photo eyes. The Petitioner stated that he called Bullock and asked for help to look into the matter further to make sure he had not missed anything during his observation because he had not seen the issue happen before. Bullock sent Electrical Technician Gregg Schwartz and Electrical Technician Caleb Meyers to assist.

The Petitioner stated that on February 28, 2021, he was sent on a work order involving stuck sensors. The Petitioner stated that after an hour he was able to get the sensors working properly. He stated that the operators still had faults that would not clear, but that it had nothing to do with his completed work order. When Bullock asked him for a status report, the Petitioner told Bullock that the level sensors were good but there were still faults present and that he could not get them to clear. Bullock did not respond, so the Petitioner continued to investigate the matter. The Petitioner stated that at some point Bullock passed by and he realized that Bullock had sent Schwartz and Meyers to assist him, but he had not seen them. The Petitioner stated that the technicians eventually resolved the matter.

The Petitioner stated that on March 2, 2021, Bullock gave him a notice of unsatisfactory performance because on February 27, 2021, when Bullock checked on the job that he sent Schwartz to help the Petitioner with, he only saw Schwartz working on it, and on February 28, 2021, when Bullock sent Schwartz and Meyers to help the Petitioner, the Petitioner was not observing and was talking to the operators. The Petitioner stated that the notice's allegations were not true, and he refused to sign it. He stated that on February 27, he was waiting for Schwartz to return from checking on something, and on February 28, he was not assisting or observing Schwartz or Meyers because he did not know they were working on his machine.

The Petitioner stated that on March 2, 2021, he was in the storeroom looking for a part for a mixer that needed to be replaced. He asked Storeroom Clerk Jennifer Newcomb for assistance with the model number. Newcomb tried to help him identify the part. When another technician came in

looking for a part, Newcomb walked away from her desk to help them. The Petitioner stated that he continued to look for the part on the computer. He became flustered and began to pray while waiting for Newcomb to return.

The Petitioner stated that on March 4, 2021, Johnson informed him that he was suspended without pay pending an investigation for sleeping on the job. Johnson later told the Petitioner that he had received multiple pictures that disclosed that he was sleeping on the job. The Petitioner stated that he told Johnson that he was not sleeping, but praying. The Petitioner stated that he heard that in 2019 Operator Clark Sain (Black, religion unknown) was discharged for sleeping on the job. The Petitioner stated that he witnessed Schwartz, Meyers, Chase Rodgers (non-Black), and Gay sleeping on the job in the break room, but they were not discharged. The Petitioner stated that he did not report that they were sleeping on the job.

According to Bullock, he never saw the Petitioner reading the Bible during the time that he worked for the Employer, and the Petitioner did not report that he was interrupted on his breaks when he was reading his Bible on his iPad. Bullock stated that the Petitioner did not request a religious accommodation. Bullock stated that the Petitioner received on-the-job training between May 2019 and February 2021. Bullock stated that during the Petitioner's six-month probationary period, May 2019 to November 2019, the Employer noted that he needed more hands-on experience. Bullock stated that the Petitioner was provided training on the job and by observing other electrical technicians.

On December 19, 2019, the Petitioner received an unsatisfactory work performance notice. The notice indicated that the Petitioner was sent on a job, did not acknowledge a text he received not to worry about the job, and then said, "tear that shit up." Bullock stated that the Petitioner disagreed with the notice and refused to sign it. Bullock stated that on January 13, 2020, the Petitioner spoke with Trenk about the notice, but did not mention that he had been called "boy" by Gay. Bullock stated that the Petitioner never reported to anyone that he had been called "boy" by Gay.

Bullock stated that the Petitioner did not report to anyone that on January 24, 2021, Schmoll yelled at him and used profane language.

Bullock stated that on January 25, 2021, the Petitioner was issued a notice of unsatisfactory performance for insubordination and unsatisfactory work performance, because he did not follow a supervisor's instruction on January 24, 2021, and the supervisor completed the Petitioner's work order.

Bullock stated that when an electrical technician asked for support on a work order, they are requested to assist, participate and/or observe to learn and better understand how to perform the task. Bullock stated that on February 27, 2021, the Petitioner was sent to look into an issue, and asked for support. Bullock sent Schwartz to support, but when Bullock went to check the status of the job, he only saw Schwartz working on the issue and did not see the Petitioner observing and/or assisting.

Bullock stated that on February 28, 2021, the Petitioner was sent on a job involving mixer sensors being stuck. Bullock stated that the Petitioner worked on the sensors but after an hour the machine was still down. Bullock stated that he sent Schwartz and Meyers to assist the Petitioner, but when they arrived, the Petitioner was sitting in the server room on his phone. Bullock stated that while Schwartz and Meyers worked on the machine, the Petitioner was sitting on his phone in the server room and then was talking to the operators and not observing or assisting with the job.

Bullock stated that on March 2, 2021, he gave the Petitioner one unsatisfactory performance notice for both the February 27 and February 28 occurrences because he should have been assisting and/or observing on the job. The notice indicated that there had been complaints from the Petitioner's coworkers and production operators/supervision about his performance and attitude and requests not to send him to jobs.

Bullock stated that the Petitioner never reported discrimination or harassment on any basis during his employment. Bullock stated that the Petitioner did not report to Richeson or anyone else that he was interrupted while he was praying.

Bullock stated that on March 2, 2021, Newcomb reported that she was assisting the Petitioner to search for a part and left to locate the part. Bullock stated that the Petitioner was expected to be in Stewart's office, but he was not, and Stewart called and texted, but the Petitioner did not respond. Bullock stated that Stewart called the storeroom and asked Newcomb to tell the Petitioner to go to Stewart's office. Bullock stated that Newcomb reported that when she saw the Petitioner, she witnessed him sleeping in a chair.

Johnson stated that on March 4, 2021, Newcomb provided evidence via various pictures showing different angles which disclosed that the Petitioner was sleeping on the job. Johnson stated that he notified the Petitioner that he was suspended pending an investigation. Johnson interviewed the Petitioner, who denied that he was sleeping on the job and stated that his eyes were closed because he was praying. Johnson reviewed photographs from three different angles that showed the Petitioner leaning back on a chair with his eyes closed and his mouth open, and with a tablet almost falling out of his hand. Johnson stated that, based on the pictures, he determined that the Petitioner was sleeping on the job and not praying. Johnson stated that the Petitioner was discharged on March 10, 2021, for sleeping on the job.

Johnson stated that Sain was found sleeping on the job, was suspended, and then was discharged on January 31, 2020. The Employer's records indicated that Schwartz, Meyers, Rodgers, and Gay were not found sleeping on the job.

Counts A and B

The Petitioner argues that he was subjected to harassment because of his religion (Count A) and race (Count B). In order to establish a *prima facie* case of harassment, the petitioner must allege

misconduct that is “sufficiently severe or pervasive ‘to alter the conditions of [his] employment and create an abusive work environment.’” *Motley v. Ill. Human Rights Comm’n*, 263 Ill. App. 3d 367, 374 (4th Dist. 1994). The harassment must be related in some way to the petitioner’s claimed protected class. See *Sola v. Ill. Human Rights Comm’n*, 316 Ill. App. 3d 528, 542 (1st Dist. 2000). The Commission will consider “the severity of the alleged conduct, its frequency, whether it is physically threatening or humiliating (or merely offensive), and whether it unreasonably interferes with the employee’s work performance” in determining whether it is severe or pervasive enough to alter the conditions of Petitioner’s employment. See *Robinson v. Perales*, 894 F.3d 818, 828 (7th Cir. 2018).

The Petitioner stated that in 2019, he did not receive “E-call training”; in 2019, McCracken told him that if he had an issue, not to make it a race issue because it would not go well at the Employer’s; when he asked Gay and Stewart if the Employer allowed time to read the Bible, they both chuckled and said that they did not do that at the Employer’s; Stewart told him, “welcome to the good ole boys,” and told him that a Black worker with an electrical engineering degree just like the Petitioner got “screwed” out of the job and was discharged; in 2019, Gay called him “boy” about five to six times; in December 2019, Gay wrote him up for saying “tear that shit up,” although he would never say that; in a follow-up meeting with Gay and Richeson, Gay stared at him; Trenk told him not to worry about Gay’s write-up, but in December 2021 the Employer used it against him; in 2019, Gay and Stewart interrupted him reading his Bible and devotional and told him they needed him to go to a job, and when he asked them if the Employer provided accommodations to practice his religious beliefs, they did not respond; in 2020, Stewart told him that although he had an electrical engineering degree, he could not figure out a job that needed to be done; on January 24, 2021, Schmoll yelled at him, “Go fucking time the rack like I told you. This is not up for discussion you fuck,” and walked up to him nose to nose as if to provoke an altercation; and the plant supervisor appeared to sympathize with Schmoll and condone his behavior.

In its Response, the Respondent recommends that the Commission vacate the dismissal of Counts A and B and remand for further investigation to determine whether any alleged acts of religious or race harassment occurred within 300 days of the date of the filing of the charge of discrimination. See *In re Archie Stone and Vill. of S. Chicago Heights*, IHRC, ALS No. 19-0063, 2023 ILHUM LEXIS 49, *5 (March 29, 2023) (noting that a charge of harassment under the Act that is based on a hostile work environment is timely as long as any of the acts that contributed to the hostile environment occurred within the statutory time period); 775 ILCS 5/7A-102(A)(1). Under the “continuing violation doctrine,” in a hostile environment claim, acts outside the statutory time period and acts within the period may form one continuing violation, unless 1) the acts within the jurisdictional period had no relation to those outside the period, or 2) the later act was no longer part of the same hostile environment claim. *Gusciara v. Lustig*, 346 Ill. App. 3d 1012, 1019 (2d Dist. 2004). The Commission agrees that further investigation is needed to ascertain whether the allegations in Counts A and B are timely and whether the aggrieved acts constituted harassment.

The dismissal of Counts A and B is vacated and the counts remanded for further investigation.

Count C

The Petitioner argues that the Employer wrote him up due to his race on March 2, 2021. A *prima facie* case of race discrimination is established when 1) the petitioner is a member of a protected class, 2) he was performing his job satisfactorily, 3) he was subjected to an adverse action, and 4) the employer treated a similarly situated employee outside his protected class more favorably under similar circumstances. *Marinelli v. Ill. Human Rights Comm'n*, 262 Ill. App. 3d 247, 253 (2d Dist. 1994).

The Petitioner's claim fails because he was not subjected to an adverse action, as written warnings do not alter the terms and conditions of employment. See *In re Latanya Jackson and Bd. of Educ. of the City of Chicago*, IHRC, ALS No. 19-0439, 2023 ILHUM LEXIS 114, *23 (May 18, 2023) (noting that it has long been established that written warnings are not adverse actions when they put the employee on notice of possible future discipline but are not discipline *per se*). Moreover, there is no evidence that the Employer treated a similarly situated, non-Black employee more favorably under similar circumstances.

The dismissal of Count C is sustained.

Counts D, E, F, G, H, and I

The Petitioner argues that the Employer suspended him due to his race (Count D) and religion (Count E), and subsequently discharged him due to his race (Count G) and religion (Count H). Under the *Marinelli* standard articulated above, the Petitioner's claims fail because there was no evidence that a similarly situated employee outside his protected class was not suspended after it was reported that they were sleeping on the job or discharged for sleeping on the job, which would have created the inference of discriminatory causation.

The Petitioner also argues that the Employer suspended him (Count F) and discharged him (Count I) in retaliation for engaging in a protected activity. 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). Protected activity includes opposing unlawful discrimination, filing a charge or otherwise participating in a matter under the Act, and requesting a reasonable accommodation. 775 ILCS 5/6-101(A).

The Petitioner engaged in a protected activity on January 25, 2021, when he complained to Richeson about discrimination and harassment. He stated that he told Richeson that Gay and Stewart disturbed him when he was practicing his religious beliefs, and that nothing was done to accommodate him to practice his religious beliefs. The Petitioner suffered an adverse action on March 4, 2021, when he was suspended without pay, and on March 10, 2021, when he was discharged. Because the protected activity was close enough in time to the suspension and discharge, the Commission concludes that there is more than a mere scintilla of evidence that there was a causal connection. See *Hoffelt v. Ill. Dep't of Human Rights*, 367 Ill. App. 3d 628, 638 (1st Dist. 2006) (finding that three months

between protected activity and alleged retaliation established causation for *prima facie* case of retaliation).

The dismissal of Counts D, E, G, and H is sustained, and the dismissal of Counts F and I is vacated and Counts F and I remanded for a finding of substantial evidence.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Respondent's dismissal of Counts A and B of the charge is **VACATED**, and Counts A and B are **REMANDED** to the Respondent for **FURTHER INVESTIGATION** and for further proceedings that are consistent with this Order and the Act.

2. The dismissal of Counts C, D, E, G, and H is **SUSTAINED** for lack of substantial evidence.

3. The dismissal of Counts F and I is **VACATED** and Counts F and I are **REMANDED** for a **FINDING OF SUBSTANTIAL EVIDENCE** and for further proceedings that are consistent with this Order and the Act.

This Order is not yet final and appealable.

STATE OF ILLINOIS)	
)	Entered this 16th day of JULY 2024.
HUMAN RIGHTS COMMISSION)	

Commissioner Elizabeth A. Coulson

Commissioner Demoya R. Gordon

Commissioner Stephen A. Kouri II