

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE)
REQUEST FOR REVIEW BY:)
)
TONI BOGAN,) Charge No.: 2023CN2545
) EEOC No.: 21BA40196
Petitioner.) ALS No.: 24-0142
)
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)
)

ORDER

This matter coming before the Commission on August 28, 2024, by a panel of three, Chair Selma D'Souza and Commissioners Jacqueline Y. Collins and Janice M. Glenn presiding, upon the Request for Review ("Request") of Toni Bogan ("Petitioner"), of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2023CN2545, 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 is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.²

DISCUSSION

On April 26, 2023, the Petitioner filed a charge of discrimination with the Respondent, perfected on December 6, 2023, alleging that Dania Rodriguez harassed her in retaliation for engaging in a protected activity, in violation of Section 6-101(A) of the Illinois Human Rights Act ("Act"). On April 24, 2024, the Respondent dismissed the Petitioner's charge for lack of substantial evidence. The Petitioner filed a timely Request.

The Petitioner was hired in September 2018 and worked most recently as a Customer Experience Representative for Comcast Communications Management, LLC ("Comcast"), a communications services company. The Petitioner reported to Supervisor Aaron Levy, who in turn reported to Manager Dania Rodriguez.

The Petitioner stated that she engaged in a protected activity in March 2023 when she filed a complaint with the Respondent, and in April 2023 when she filed two complaints with the Respondent.

¹ In a Request for Review proceeding, the party filing the Request for Review is 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.

The Petitioner stated that from April 11, 2023, through April 25, 2023, she was subjected to a hostile work environment by Rodriguez when Rodriguez informed other employees that the Petitioner filed several complaints against Comcast, listened to every phone call she made, and remotely viewed her computer screen while she worked. The Petitioner stated that Rodriguez admitted to listening to the phone calls of all employees in an April 25, 2023, meeting. The Petitioner stated that she could hear when someone was listening to her phone calls. Rodriguez would also send side chats in Microsoft Teams while the Petitioner was on a customer phone call. The Petitioner stated that on June 8 or 9, 2023, another employee told her that Rodriguez and Levy were talking about the Petitioner's complaint filed with the Respondent before going into mediation. The Petitioner stated that she told Rodriguez that she felt harassed by her behavior, and complained to Comcast through multiple channels.

Senior Human Resources Manager Nancy Silva stated that on February 7, 2023, the Petitioner filed an internal complaint about misconduct by a supervisor who refused to take a customer call. Silva stated that Rodriguez, Levy, and human resources investigated the matter and determined that the Petitioner had violated Comcast's customer interaction/interface policy by failing to assist the customer, making inappropriate remarks about a supervisor to the customer, and treating the supervisor in an unprofessional and rude manner.

Rodriguez stated that she did not listen to every one of the Petitioner's phone calls. Rodriguez stated that she had to listen to the Petitioner's calls after a February 2023 investigation because she had performance gaps; Rodriguez then listened to her calls to provide support. Rodriguez stated that it was common for calls to be escalated to managers and common for managers to listen to employee calls to gauge performance or provide support. Rodriguez denied informing other employees that the Petitioner filed several complaints against the Employer.

The Commission concludes that the Respondent's dismissal of the Petitioner's charge should be sustained 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)(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 Rodriguez harassed her 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 claim fails because there is no evidence that Rodriguez was personally motivated to harass or discharge the Petitioner, nor that any action was taken against her without the employer’s official knowledge and consent. 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 Dania Rodriguez as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
) **Entered this 4th day of SEPTEMBER 2024.**
HUMAN RIGHTS COMMISSION)

Chair Selma D’Souza

Commissioner Jacqueline Y. Collins

Commissioner Janice M. Glenn