

**8jSTATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE)
REQUEST FOR REVIEW BY:)

TJ THOMAS,)
)
Petitioner.)

Charge No.: 2023CF1047)
EEOC No.: 21BA30604)
ALS No.: 24-0144)

ORDER

This matter coming before the Commission on September 25, 2024, by a panel of three, Chair Selma D’Souza, Commissioner Jacqueline Y. Collins, and Commissioner Janice M. Glenn presiding, upon the Request for Review (“Request”) of TJ Thomas (“Petitioner”),¹ of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”) of Charge No. 2023CF1047, 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 the Petitioner’s charge is **VACATED** and the charge **REMANDED** for a **FINDING OF SUBSTANTIAL EVIDENCE** on Counts A and B and for further proceedings consistent with this Order and the Illinois Human Rights Act (“Act”).²

DISCUSSION

On March 15, 2023, the Petitioner filed a perfected charge of discrimination with the Respondent, alleging that Pooh-Bah Enterprises, Inc. d/b/a Rick’s Cabaret (“Employer”) discharged him due to his sex, male (Count A), and in retaliation for engaging in a protected activity (Count B), in violation of Sections 2-102(A) and 6-101(A) of the Act. On February 2, 2024, the Respondent dismissed the Petitioner’s charge for lack of substantial evidence. The Petitioner filed a timely Request.

The Employer is a gentlemen’s club, and it hired the Petitioner as a Host on November 3, 2018. The Petitioner said that he exceeded the Employer’s work performance expectations.

The Petitioner said that, in September 2021, a waitress told him that General Manager Brett Polulak had made unwanted sexual advances towards her. He stated that he reported this complaint

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.

to Regional Manager Shaun Kelvin. He said that Kelvin followed up with him and told him that the Employer investigated and determined that no harassment had occurred.

The Petitioner stated that, on February 15, 2022, he was promoted to Day Shift Manager.

The Petitioner said that, on June 15, 2022, two waitresses reported to him that Polulak had made sexual advances towards them, and he reported this to Kelvin. He stated that, later that day, General Manager Luay Sweilem suspended him because the Employer alleged that he was overcharging clients and stealing the money. The Petitioner said that the allegations were “based on a line script” meant to enhance a client’s experience. He stated that he spoke with Sweilem and Polulak and explained that Senior Manager Ursela Hybridge (female) trained him to use the script and used it as well. The Petitioner said that Polulak said that the Employer considered the Petitioner’s actions to be theft.

The Petitioner said that, on June 18, 2022, Sweilem texted him, “we’re going to separate,” and the Petitioner was discharged.

The Petitioner stated that the Employer treated Hybridge more favorably under similar circumstances because Hybridge trained him to use the script, and Hybridge was not disciplined.

Sweilem said that, regarding the September 2021 sexual harassment allegations, the Employer conducted an investigation and determined that the allegations were unfounded. He stated that he interviewed the waitress who made the allegations, and the waitress denied that she was sexually harassed. Sweilem said that the Petitioner did not report any further sexual harassment allegations.

Sweilem stated that, while the Petitioner did a “great job,” he “could not get along with anyone” and was assessed to not be a “team player.” He said that he brought these issues to the Petitioner’s attention once per week, and the Petitioner had received disciplinary notices on at least two occasions.

Sweilem said that the Petitioner was promoted to Day Shift Manager on February 15, 2022, and he told the Petitioner that “scripts for upsells” were only used for food and beverages.

Sweilem stated that, in June 2022, multiple employees complained that the Petitioner was “upselling guests in a VIP section and pocketing the money.” He said that, because of this, the Petitioner was discharged for theft. Sweilem stated that Hybridge did not steal any money.

Kelvin said that, in September 2021, the Petitioner reported to him that a waitress had alleged that she was harassed. He stated that he investigated, and the waitress denied that Polulak had sexually harassed her, and Polulak denied sexually harassing anyone.

Kelvin stated that the Petitioner admitted that he kept some money that should have been given to the Employer, and the Petitioner was discharged for theft. He said that Hybridge did not steal money.

The Commission concludes substantial evidence exists as to Counts A and 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). The Respondent requests that the Commission vacate its dismissal of the Petitioner’s charge and remand the charge for a finding of substantial evidence, and the Commission agrees.

Count A

The Petitioner alleged that the Employer discharged him due to his sex. A *prima facie* case of employment discrimination requires that: (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 of his protected class more favorably under similar circumstances. *Marinelli v. Ill. Human Rights Comm’n*, 262 Ill. App. 3d 247, 253 (2d Dist. 1994). Though the Respondent dismissed Count A for lack of substantial evidence, it now requests that the Commission vacate its dismissal and remand the count for a finding of substantial evidence.

The Commission determines that a *prima facie* case has been established. The Petitioner is a member of a protected class due to his sex. Next, the Petitioner alleged that he was performing his job satisfactorily, and he was promoted shortly before his discharge. Though the Employer stated differently, we could only conclude that the Petitioner’s performance was not satisfactory if we believed the Employer over the Petitioner, and such credibility determinations are not proper at this stage of the proceedings. See *Cooper v. Salazar*, No. 98 C 2930, 2001 WL 1351121, *21 (N.D. Ill. Nov. 1, 2001). Further, the Petitioner was subjected to an adverse action when he was discharged. Finally, the Petitioner alleged that the Employer did not discharge Hybridge though he and Hybridge engaged in the same behavior, namely, using the line script. Accordingly, the Commission vacates the Respondent’s dismissal of Count A and remands the count for a finding of substantial evidence.

Count B

The Petitioner alleged that the Employer discharged him in retaliation for engaging in a 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). 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). Though the Respondent dismissed Count B for lack of substantial evidence, it now requests that the Commission vacate its dismissal and remand the count for a finding of substantial evidence.

The Commission determines that a *prima facie* case has been established. First, the Petitioner engaged in protected activity on June 15, 2022, when he reported that two waitresses told him that Polulak made sexual advances towards them. Though the Employer stated differently, finding as such would require an improper credibility determination. See *Cooper*, 2001 WL 1351121 at *21. Next, the Petitioner was subjected to an adverse action when he was discharged on June 18, 2022. Finally, due to the short time period between the protected activity and adverse action (three days), evidence of a causal connection exists. Accordingly, the Commission vacates the Respondent's dismissal of Count B and remands the count for a finding of substantial evidence.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is **VACATED** and the charge **REMANDED** for a **FINDING OF SUBSTANTIAL EVIDENCE**.

This Order is not yet final and appealable.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION) **Entered this 1st day of OCTOBER 2024.**

Chair Selma D'Souza

Commissioner Jacqueline Y. Collins

Commissioner Janice M. Glenn