STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST:	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008SA1663
	)	EEOC NO.: 21BA80756
MALINDA JACKSON,	)	ALS NO.: 08-0444
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of two, Commissioners Marti Baricevic and Robert S. Enriquez presiding, upon the Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2008SA1663, Malinda Jackson, Complainant, and Mt. Zion Community Unit School District #3, Respondent; and the Commission having reviewed *de novo* the Department's investigation file, including the Investigation Report and the Complainant's Request and supporting materials, and the Department's response to the Complainant's Request; and the Commission being fully advised of the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Department's dismissal of the Complainant's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. The Complainant filed an unperfected charge of discrimination with the Department on January 3, 2008, perfected on January 16, 2008, alleging that the Respondent had given her a negative work evaluation, a notice of discharge, and eventually discharged her from employment because of her age, 61 years old, in violation of Section 2-101(A) of the Illinois Human Rights Act (the "Act"). The Department dismissed the charge on September 10, 2008, finding that there was no substantial evidence that a violation of the Act had occurred. The Complainant thereafter filed a timely request for review on October 14, 2008.

2. The undisputed evidence in the investigation file shows that the Complainant was initially hired by the Respondent in 1982 as a Payroll Clerk. Her title was later changed to Fiscal Services Assistant.

3. The Respondent's termination policy allows it to terminate an employee for any reason or for no reason at all. It further provides that a superintendent or supervisor may recommend termination, subject to the approval of the Board of Education.

4. On July 11, 2007, after the Complainant received a poor performance evaluation from her immediate supervisor, the Respondent's associate superintendent and the superintendent, she then received notice of her recommended termination, pending the Board's approval. The Board approved the recommendation and the Complainant was terminated. The Complainant was replaced by a 51-year-old woman.

5. The investigation file, which includes personnel documents submitted by the Respondent, demonstrates that prior to July 11, 2007, the Complainant had had various performance and disciplinary issues beginning in 2002.

6. In June of 2002, the Complainant was issued a poor performance evaluation for payroll errors, not working well with her co-workers and completing assignments in an untimely manner. When the Complainant did not improve, she was placed on a remedial plan in October of 2002.

7. The Respondent contended that the Complainant had gotten it into trouble with the Internal Revenue Service (IRS) when she inaccurately filed its Federal Tax Deposits. On September 30, 2006, February 26, 2007, and July 23, 2007, the IRS served the Respondent with notices that it was going to impose a penalty on the Respondent because of the inaccurate filing.

8. Between November 10, 2006 and July 11, 2007, a series of additional troubles occurred, including: **(a)** On November 10, 2006, the Respondent formally disciplined the Complainant for failing to follow procedure before using compensatory time; **(b)** On February 26, 2007, the Illinois Municipal Retirement Fund notified the Respondent that it was assessing the Respondent a second penalty due to the Complainant's error in assigning the wrong payroll week to a deposit; **(c)** On April 24, 2007, the Complainant was formally disciplined for failing to obtain written prior approval for dock days; **(d)** On May 5, 2007, the Respondent received notice from the Illinois Department of Employment of Security that it was being assessed a delinquency and penalty because of the Complainant's incorrect reporting; **(e)** As of June of 2007, the Complainant was having difficulty learning a new software called "Skyward," on which she had been trained since December of 2006, and **(f)** The Complainant made numerous other payroll errors that resulted in staff being underpaid, overpaid, and not paid at all.

9. The Complainant does not dispute that these incidents occurred, although she has a different explanation regarding her level of accountability for and the seriousness of the incidents.

10. For example, the Complainant admits that she was having some issues or conflict with her "Skyward" software trainer. However, the Complainant contends that the trainer was "obstinate" about "…doing what she had been told to do…" and apparently would not take the Complainant's suggestions on how to switch to the new

system. The Complainant also does not deny that the Respondent had IRS problems in 2006, but she states that a computer error or glitch caused the IRS not to receive all the necessary forms, and that her superiors signed off on the forms. Finally, the Complainant does not deny that she made payroll errors over the course of her employment with the Respondent. Nonetheless, she stated that any payroll errors she made were minimal.

11. The Respondent contended that its actions were lawful and not motivated by the Complainant's age, but rather by her history of poor work performance and her unwillingness to improve.

12. The Complainant alleged in her charge that the Respondent was motivated by her age and stated that similarly-situated younger employees outside of her protected class were treated more favorably under similar circumstances.

13. In her Request, the Complainant argues that the documents that the Respondent submitted to the Department were misleading and contained "half truths" or "no truth." The Complainant offers no additional documentation or statements to refute the information contained in those documents.

14. The Commission's review of the Department's investigation file leads it to conclude that the Department properly dismissed the Complainant's charge for lack of substantial evidence because the Complainant could not establish a *prima facie* case of age discrimination. Further, even assuming *arguendo* that the Complainant established a *prima facie* case, the Respondent articulated a legitimate, non-discriminatory business reason for terminating the Complainant, and there is no evidence in the file to suggest that the Respondent's reason was a mere pretext for age discrimination.

15. First, the investigation file is absent any evidence that demonstrates or even suggests that similarly-situated younger employees who had extensive disciplinary and performance issues similar to the Complainant's were treated more favorably than the Complainant. The Complainant also submits no additional evidence with her Request that would tend to establish this element of her *prima facie* case.

16. Second, even assuming *arguendo* that the Complainant had established her *prima facie* case, the Respondent put forth a legitimate, non-discriminatory business reason for its actions, namely that the Complainant was making numerous and costly work errors, was not working well with her co-workers, and was not able to learn the new software that she was required to use in order to perform her duties. The Commission finds no evidence in the investigation file that would tend to show that this reason proffered by the Respondent was a mere pretext for discrimination.

17. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal of her charge was not in accordance with the Act. The Complainant's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Complainant's charge is hereby **SUSTAINED.**

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the Respondent Mt. Zion Community Unit School District # 3, as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
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HUMAN RIGHTS COMMISSION)

Entered this 28th day of January 2009.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez