STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CF1785
	)	EEOC NO.: 21BA80806
LESLIE L. CASH,	)	ALS NO.: 08-0547
	)	
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman and Yonnie Stroger 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. 2008CF1785, Leslie L. Cash, Complainant, and Avon Products, Inc., 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 a charge of discrimination with the Department on January 16, 2008, amended August 18, 2008, alleging that the Respondent suspended and terminated her from her employment because of her race (African American) in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). The Department dismissed the charge on December 1, 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 December 23, 2008.

2. The undisputed evidence in the investigation file shows that the Complainant was first hired by the Respondent on May 31, 1991. In 2002, the Complainant was a Manual Assembly Floater for the Respondent. Beginning sometime in September 2006, the parties agree that the Complainant was having conflict was some of her co-workers.

3. The undisputed evidence in the file shows that between November 2006 and September 2007, the Complainant had received several "write-ups" from the Respondent regarding her behavior in the workplace. Specifically, the Complainant received "write-ups" on November 1, 2006; June 27, 2007; September 6, 2007 and September 13, 2007. Further, the September 13, 2007 "write-up" advised the Complainant that any further incidents would result in disciplinary action up to, and including, her termination from employment with the Respondent.

4. On October 5, 2007, the Complainant left work early.

5. On October 5, 2007, Respondent's Operations Manager (African American) called the Complainant on the telephone and informed the Complainant that she was suspended with pay until further notice pending an investigation into whether or not she committed an act of insubordination by leaving work early that day, allegedly without her supervisor's permission.

6. The Complainant's supervisor (white) completed a report wherein she stated that she had not given the Complainant permission to leave work early on October 5, 2007. The Respondent's Human Resources (HR) Manager (white) reviewed the supervisor's report, as well as the Complainant's history of previous unprofessional conduct. Based on the supervisor's report and the Complainant's prior history, the HR Manager recommended to the Respondent's HR Director (African American) that the Complainant be terminated from employment. Thereafter, on October 10, 2007, the Respondent's HR Director terminated the Complainant for misconduct.

7. The Complainant alleged in her charge that she was suspended and terminated arbitrarily due to her race. In her Request, the Complainant contends that her supervisor had given her permission to leave work early on October 5, 2007. The Complainant states that she believed that her absence would be deemed excused pursuant to the Respondent's Convenience Leave policy, which allowed employees to leave work early under certain circumstances. Finally, the Complainant acknowledges that her last six (6) months in the Respondent's employ were a challenge, but she hoped that this fact would not overshadow 17 years of prior excellent service.

8. The Commission's review of the Department's investigation file leads it to conclude that the Department properly dismissed the Complainants' charge because there is no substantial evidence in the record that the Respondent's decision to terminate the Complainant was motivated by the Complainant's race. The Complainant did not establish a *prima facie* case of discrimination. Further, even assuming that the Complainant had established a *prima facie* case, the undisputed evidence demonstrated that the Respondent's proffered reason for terminating the Complainant was legitimate and not a mere pretext for discrimination.

9. In order to establish a prima facie case, the Complainant had to show that (1) she fell within a protected class, (2) she was performing her work satisfactorily, (3) she was subjected to an adverse action, and (4) the Respondent treated a similarly situated employee outside of the Complainant's protected class more favorably under similar circumstances. *See* Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994).

10. In the instant case, the Commission finds that there is no evidence in the record that the Respondent treated a similarly-situated non-African American employee more favorably under similar circumstances. As the Department correctly indicated, in order for an employee to have been similarly situated to the Complainant, the Complainant must have identified an employee who was directly comparable to her in "all material respects," *see* Patterson v. Avery Dennison Corporation, 281 F.3d 676, 680 (7th Cir. 2002)(*internal citations omitted*). The Complainant failed to identify, and the investigation did not uncover, a directly comparable employee who was treated more favorably than the Complainant under similar circumstances.

11. Further, the investigation revealed that the Respondent had in fact suspended and subsequently terminated non-African American employees for various acts of misconduct, including safety violations, falsifying documentation, and violating its policy on taking days off.

12. Even assuming *arguendo* that the Complainant established a *prima facie* case, there is no evidence in the file that suggests that the stated reason for her suspension and termination was a mere pretext for discrimination. The Complainant does not deny that she had periodically gotten into conflict or verbal altercations with one or more of her co-workers. Further, at least four "write-ups" issued to the Complainant prior to her suspension and termination document the Complainant's poor work performance relative to these altercations.

13. The undisputed evidence in the file shows that the Respondent typically suspends employees pending its investigation into alleged acts of misconduct, and that the Complainant was treated the same as other employees in this regard. Further, there is no evidence in the record to suggest that the Respon-

dent's HR Director, who was the ultimate decision-maker, was motivated by the Complainant's race when he decided to terminate the Complainant for misconduct.

14. 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 Avon Products, Inc., as appellees, 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 March 2009**
HUMAN RIGHTS COMMISSION	**)**	

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Yonnie Stroger