STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST:	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CF2922
	)	EEOC NO.: 21BA81749
ORISA FUGATE,	)	HUD NO.: N/A
	)	ALS NO.: 09-0049
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Rozanne Ronen presiding, upon Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2008CF2922, Orisa Fugate, Complainant, and The Travelers Indemnity Company, 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. On April 18, 2008, the Complainant filed a two-count charge of discrimination with the Department, in which she alleged that the Respondent issued a 30-day Final Written Warning and terminated her employment in retaliation for having engaged in a protected activity, in violation of § 6-101(A) of the Illinois Human Rights Act ("Act"). On January 12, 2009, the Department dismissed the Complainant's charge for lack of substantial evidence. On February 10, 2009, the Complainant filed a timely request for review.

2. The Department's investigation revealed that the Complainant was an Account Manager for the Respondent. The Department's investigation also showed that in 2005, Vinnie Gianotti was the Complainant's supervisor and in March 2006, Mary Thul became the Complainant's supervisor. In December 2005, the Complainant engaged in

a protected activity when she made a complaint to Gianotti and the Respondent's Human Resources Manager about a co-worker whom she alleged sexually harassed her and/or created a hostile work environment.[1] The Department's investigation showed that the Complainant contended that the harassing conduct stopped in July 2007.

3. The Department's investigation showed that on February 29, 2008, the Respondent, through Thul and a Human Resources Generalist, issued the Complainant a 30-day Final Written Warning for poor work performance. On April 17, 2008, the Respondent, through Thul and a Human Resources Generalist, terminated the Complainant for failure to improve her performance. The Department's investigation also revealed that the Complainant had previously been disciplined by the Respondent with a written verbal warning in March 2007 for her attitude and lack of professionalism. In August 2007, the Complainant received a 90-day Written Performance Warning for her failure to use the Respondent's account management system properly. Additionally, the Department's investigation showed that the Complainant received a poor performance review for the period of January 2007 through December 2007.

4. In her Request, the Complainant contends that she met the Respondent's performance expectations. The Complainant also takes issue with certain findings of fact issued by the Department. The Complainant does not dispute the finding that she engaged in the protected activity in December 2005 when she complained to Gianotti and the Human Resources Manager about a co-worker's sexually harassing behavior.

5. The Commission's review of the investigation file leads it to conclude that the Department properly dismissed the Complainant's charge because the Complainant did not provide any evidence that the Respondent issued her the 30-day Final Written Warning or terminated her because of her complaint of sexual harassment and/or a hostile work environment. If no substantial evidence of discrimination exists after the Department's investigation of a charge, the charge must be dismissed. *See* 775 ILCS 5/7A-102(D)(2008).

6. A *prima facie* case for retaliation requires: (1) that the Complainant engaged in a protected activity; (2) that the Respondent committed an adverse action against the Complainant; and (3) that a causal connection existed between the protected activity and the adverse action. Welch v. Hoeh, 314 Ill. App. 3d 1027, 1035 (3rd Dist. 2000). Here, the Complainant presents no evidence to establish that a causal connection existed between the protected activity and the adverse action. The Complainant's protected activity occurred almost three years prior to the Respondent's disciplinary warning. Thus, the Complainant's protected activity is too remote in time from the alleged discriminatory conduct to create an inference of retaliatory motivation.

7. Further, the evidence in the investigation file supports the Respondent's articulated non-discriminatory reason for issuing the Final Written Warning and terminating the Complainant. The Complainant had previously received progressive

[1] The Department's investigation file refers to the Complainant having complained about a co-worker sexually harassing the Complainant. In the Complainant's Request, she contends that she only complained that it was sexual harassment due to a hostile work environment. The discrepancy is immaterial for purposes of this Order.

discipline from the Respondent, including two prior warnings and a poor performance evaluation, in the year leading up to her Final Written Warning and ultimate termination.

8. 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 the 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, The Travelers Indemnity Company, 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 22nd day of April 2009.
HUMAN RIGHTS COMMISSION	)	

Commissioner Sakhawat Hussain

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen