STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CF2199
	)	EEOC NO.: 21BA81158
DONNA JONES,	)	ALS NO.: 09-0189
	)	
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, Spencer Leak, Sr., and Rozanne Ronen, 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. 2008CF2199, Donna Jones, Complainant, and State of Illinois Department of Human Services, 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 upon 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 February 19, 2008 (the "February 2008 Charge" or "the current charge"), alleging that the Respondent subjected her to unequal terms and conditions of employment in retaliation for her having filed a previous charge of discrimination with the Department against the Respondent, in

violation of Section 6-101(A) of the Illinois Human Rights Act (the "Act"). The Department dismissed the Complainant's current charge on March 16, 2009, for lack of substantial evidence. The Complainant thereafter filed a timely Request on April 17, 2009.

2. The undisputed evidence in the investigation file shows that the Respondent hired the Complainant on April 16, 2001, as an Executive I.

3. On April 13, 2006, the Complainant filed a charge of discrimination with the Department against the Respondent (the "April 2006 Charge").

4. The Department's investigation revealed that a collective bargaining agreement entered into between the American Federation of State, County, and Municipal Employees and the State of Illinois, Central Management Services ("AFSCME Agreement"), dated July 1, 2004 through June 30, 2008, defines how the State of Illinois, including state agencies such as the Respondent, must fill permanent vacancies.

5. Essentially, the AFSCME Agreement requires that: (1) A job posting must be created for the open position; (2) If an employee of the State of Illinois seeks a promotion, then, at the employee's request, the employer must provide the employee with a Form CMS-100B; (3) The employee must bid on the position in which she or he is interested, and (4) When filling the position, the employer must select the employee with the most seniority.

6. In the current charge, the Complainant alleged that on August 1, 2007, the Respondent's Associate Director for Community Health and Prevention, Deyon Dean ("Dean") promoted her to be his personal executive assistant. She further alleged that 26 days later, on August 27, 2007, Dean demoted her and reassigned her to her former position of Executive I. The Complainant alleged that she was demoted in retaliation for having filed the April 2006 Charge.

7. The Respondent contended that in August of 2007, Dean asked the Complainant's supervisor, Hector Tellez ("Tellez"), if the Complainant could assist him with some of his clerical duties, and that Tellez approved his request. The Respondent further contended that the Complainant was never officially promoted, given an increase in her salary, or given a job title change.

8. There is no evidence in the file that the Complainant had ever applied to be promoted to the position of personal executive assistant in accordance with the AFSCME Agreement procedure. There is also no evidence that between August 1, 2007 and August 27, 2007, her job title ever changed from Executive I.

9. In her Request, the Complainant argues that she established a *prima facie* case of retaliation because the alleged adverse action occurred after she engaged in a protected activity, and that she showed a causal connection between the alleged demotion and the filing of the April 2006 Charge.

10. In its Response, the Department argues that the Complainant did not prove a *prima facie* case because she failed to prove that the Respondent had taken an adverse action against her, and because she failed to show a nexus between the protected act and the alleged adverse action.

11. The Commission's review of the investigation file leads it to conclude that the Department properly dismissed the Complainant's charge of discrimination for lack of substantial evidence.

12. A *prima facie* case of retaliation requires proof that the Complainant engaged in a protected activity; that thereafter the Respondent took an adverse action against the Complainant, and that there is a nexus between the protected act and the adverse action. *See* Frankenburg and State of Illinois, Department of Corrections, 38 Ill. HRC Rep. 334 (1988).

13. In the instant case, the Complainant has failed to prove that the Respondent took an adverse action against her because there is no evidence that the Complainant was promoted on August 1, 2007; thus, she could not have been demoted on August 27, 2007. The undisputed evidence in the file shows that from the time that the Complainant was hired by the Respondent until the time that the Complainant filed the February 2008 Charge , the Complainant was employed as an Executive I.

14. The Complainant also fails to show a nexus between the filing of the April 2006 Charge and the alleged adverse action of August 27, 2007. In order to prove a nexus between the protected act and the adverse action, the Complainant must show that the time period between the protected activity and the adverse action was short enough to create an inference of connectedness. In the past, the Commission has found that seven months was not a short enough period of time to raise an inference of connectedness. *See* Andre and Whiteshide County Board, CETA, 18 Ill. HRC. Rep. 159 (1985). In this case over 15 months passed between the protected act and the alleged adverse action, which is too remote in time to create an inference of connectedness.

15. 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 State of Illinois, Department of Human Services, 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 July 2009.
	)	
HUMAN RIGHTS COMMISSION	)	

Commissioner Sakhawat Hussain

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen