

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST
FOR REVIEW BY:

CHARGE NO.: 2008CA3393

JAMES H. STOKES, JR.

ALS NO.: 09-0322

Complainant.

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee 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. 2008CA3393, James H. Stokes, Jr., Complainant, and City of Kankakee Fire Department, 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 May 8, 2008 alleging that the Respondent placed him on administrative leave because of his race (Black) (Count A), age (49) (Count B), and in retaliation for filing a previous charge of unlawful discrimination with the Department (Count C), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act"). On May 13, 2009, the Department dismissed the Complainant's charge for Lack of Substantial Evidence. On June 16, 2009, the Complainant filed a timely Request.

2. The Complainant is employed by the Respondent as a firefighter. Between August of 1991 and April of 2003, the Respondent disciplined the Complainant nine times, including three (3) oral reprimands, three (3) written reprimands, and three (3) suspensions.

3. On January 8, 2008, the Complainant and the Respondent's Fire Chief, Ron Young ("Young") were in an argument at the Respondent's fire station. At several points during the argument, Young repeatedly directed the Complainant to leave Young's office. The Complainant refused Young's directive several times before finally leaving the station.

4. On January 8, 2008, the Complainant contacted the Kankakee Police Department and reported that Young had assaulted him.

5. On or about January 22, 2008, Young recommended the Complainant for discharge because of the January 8th incident.

6. On May 23, 2008, the Respondent placed the Complainant on administrative leave pending a disciplinary hearing before the City of Kankakee Police and Fire Commission ("Fire Commission").

7. The Respondent's disciplinary procedure is a progressive policy. The penalties are as follows: a) oral reprimand, b) written reprimand, c) suspension, and d) discharge. A Collective Bargaining Agreement provides that the Respondent may place an employee on administrative leave when an employee is recommended for discharge.

8. On August 20, 2008, the Fire Commission determined that the Complainant should be disciplined. The Fire Commission declined to terminate the Complainant, and instead suspended him without pay for 30 days.

9. The Commission's review of the investigation file leads it to conclude that the Complainant's charge was properly dismissed by the Department for lack of substantial because he has failed to provide sufficient evidence in support of a prima facie case as to any of his claims.

10. First as to Counts A and B, a prima facie case of discrimination requires evidence that 1) the Complainant is a member of a protected class; 2) he was performing his work satisfactorily; 3) he was subjected to an adverse action, and 4) similarly situated employees outside his protected class were treated more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill. App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994).

11. The Complainant's claims as to Counts A and B fail because there is no evidence in the file which demonstrates that the Respondent treated a similarly

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situated younger, non-black employee more favorably under similar circumstances. There is no evidence that the Respondent failed to suspend or discipline a younger, non-black employee who was insubordinate to a superior, made a false report, disobeyed orders, and engaged in conduct unbecoming to a Firefighter.

12. Even assuming that there is sufficient evidence in the file to establish a prima facie case of discrimination, there is no evidence that the Respondent's articulated non-discriminatory reason for suspending the Complainant was a pretext for unlawful discrimination.

13. As to Count C, in order to establish a prima facie case of retaliation, there must be evidence in the file that : 1) the Complainant engaged in a protected activity; 2) the Respondent committed an adverse action against the Complainant; and 3) a causal connection existed between the protected activity and the adverse action of the Respondent. Welch v. Hoeh, 314 Ill. App.3d 1027, 733 N.E.2d 410, 416 (3rd Dist. 2000). A causal connection will be inferred if the period of time between the protected activity and the adverse action is sufficiently short. See Mitchell and Local Union, 146, 20 Ill. HRC Rep. 101, 110-11 (1985) (six months was too remote to establish connectedness); Mims and State of Illinois, Department of Lottery, Ill. HRC Rep.____, Charge No. 1988SF0171 (July 26, 1991) (nineteen-month time period between protected activity and adverse action to long to create an inference of retaliation).

14. The Complainant had filed four previous charges with the Illinois Department of Human Rights: (1) 2007CA1795 filed on December 28, 2006; (2) 2008CF0058 filed on July 12, 2007; (3) 2008CF1174 filed on January 15, 2008, and (4) 2008CF2293 on February 28, 2008.

15. Charges 2007CA1795 and 2008CF0058 were filed more than six months before the Respondent initiated the action to place the Complainant on administrative leave; six months between the protected activities and the adverse act is too remote in time to infer a nexus.

16. Charge No. 2008CF1774 was not served on the Respondent until after January 22, 2008. The adverse action took place on January 22, 2008, therefore, the Respondent could not have known of the charge when it initiated its action to place the Complainant on administrative leave. Similarly charge no. 2008CF2293 was filed after the Respondent initiated its action to place the Complainant on administrative leave pending discharge, and thus it cannot form the basis for the Complainant's retaliation claim.

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17. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal of his 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 City of Kankakee Fire Department, as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
) HUMAN RIGHTS COMMISSION)

Entered this 4th day of November
2009.

Commissioner David Chang

Commissioner Marylee Freeman

Commissioner Yonnie Stroger