

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CF2771
RENALD CARTER)	EEOC NO.: 21BA91388
)	ALS NO.: 10-0110
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Renald Carter’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)^[1] of Charge No. 2009CF2771; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, WHEREFORE, it is hereby **ORDERED** that the Respondent’s dismissal of the Petitioner’s charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following:

1. On October 20, 2008, the Petitioner filed an unperfected charge of discrimination with the Respondent, which charge was perfected on March 12, 2008. The Petitioner alleged that on April 22, 2008, Glazer’s Wholesale Drug Company, Incorporated, formally d/b/a Union Beverage Company (“Employer”) discharged him because of his race, Black (Count A) and in retaliation for having opposed unlawful discrimination (Count B), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”). On January 21, 2010, the Respondent dismissed the Petitioner’s charge for Lack of Substantial Evidence. On February 16, 2010, the Petitioner filed a timely Request.
2. The Petitioner had been employed as a delivery truck driver for the Employer. During all relevant times alleged, the Employer had in place written Rules of Conduct (the “Rules”). According to the Rules, various acts of employee misconduct, including mishandling the Employer’s funds, could lead to termination.

^[1] In a Request for Review Proceeding, the Illinois Department of Human Rights is the “Respondent.” The party to the underlying charge who is requesting review of the Department’s action shall be referred to as the “Petitioner.”

3. On April 17, 2008, the Petitioner made a delivery to one of the Employer's customers. That same day, the Employer determined that the Petitioner had failed to collect payment from a customer for the delivery on a Cash on Delivery ("COD") invoice.
4. On April 22, 2008, the Employer discharged the Petitioner. The Employer stated it discharged the Petitioner because of his failure to collect money on the April 17, 2008 COD delivery, which it stated was both a violation of its policy and of Illinois law. The Employer determined that the April 17th incident was the fifth time that the Petitioner had failed to properly collect funds on COD deliveries. The Employer also stated the Petitioner had a long history of work performance issues and progressive discipline leading up to his discharge, which included the Petitioner's receipt of a "Last Chance Final Warning" due to an incident that had occurred in September 2007.
5. In his charge, the Petitioner alleged that non-Black drivers who failed to collect money on COD deliveries were not discharged by the Employer. The Petitioner identified a non-Black comparable whom he contended had been treated more favorably than the Petitioner under similar circumstances. This comparable submitted a sworn statement, dated November 4, 2009, to the Respondent. In this statement, the comparable contended the Employer had not disciplined him for "missed cash on deliveries." Further, the Petitioner alleged the Employer discharged him as retaliation for having opposed unlawful discrimination because in March 2008, the Petitioner told the Employer that he believed the Employer was racially discriminating against him.
6. During the investigation, the Respondent determined that on October 9, 2007, the Employer had discharged the Petitioner's non-Black comparable for poor performance, which included the non-Black comparable's failure to account for invoices and to collect on invoices. Prior to discharging the non-Black comparable, the Employer had also issued him a "Last Chance Final Warning."
7. In his Request, the Petitioner argues that the Respondent's investigation was incomplete, and that there was conflicting testimony provided by the Petitioner and the Employer. The Petitioner argues that the Respondent's determination was based on disputed evidence, and that a finding of substantial evidence should be entered to allow a trier of fact to resolve the dispute.
8. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for lack of substantial evidence. The Respondent argues the Employer articulated a non-discriminatory and non-retaliatory reason for discharging the Petitioner and there was no evidence that this articulated reason was a pretext for either discrimination or retaliation.

Conclusion

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

As to Count A, the Commission finds no substantial evidence that the Employer was motivated by the Petitioner's race when it discharged him on April 22, 2008. Although the Petitioner contends that his non-Black comparable was not disciplined for failure to collect monies for COD deliveries, in fact the Employer submitted evidence that it had discharged the non-Black comparable for poor performance, which included the non-Black comparable's mishandling of the Employer's funds. Both the Petitioner and the non-Black comparable were discharged by the Employer when they engaged in misconduct after being issued "Last Chance Final Warnings." Therefore, the evidence is insufficient to show the existence of a *prima facie* case of race discrimination because there is no evidence that the Employer treated a similarly situated non-Black employee more favorably than the Petitioner under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994).

As to Count B, assuming *arguendo* there was evidence sufficient to establish a *prima facie* case of retaliation, assuming as true the Petitioner had opposed unlawful discrimination in March 2008 and that he was discharged one month later in April 2008, See Carter Coal Co. v. Human Rights Commission, 261 Ill. App. 3d 1, 633 N.E.2d 202 (5th Dist. 1994), the Employer articulated a legitimate, non-retaliatory reason for discharging the Petitioner, in that he had allegedly failed to properly collect on COD deliveries for the fifth time in a 12 month period, and that the Petitioner had performance and disciplinary issues.

There is no substantial evidence this articulated reason was a mere pretext for retaliation. The comparable identified by the Petitioner does not demonstrate the existence of pretext. Both the Petitioner and his alleged comparable were discharged after they allegedly engaged in additional misconduct following their receipt of "Last Chance Final Warnings." As to both the Petitioner and his alleged comparable, the Employer cited their mishandling of the Employer's funds as reasons for their discharge. Here, it appears the Petitioner was treated no better and no worse than his non-Black comparable.

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

WHEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner'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 Glazer's Wholesale Drug Company, Incorporated, formally d/b/a Union Beverage Company, as Respondents, 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

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Entered this 22nd day of September 2010

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini