

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CF1767
)	EEOC NO.: 21BA90646
CHRISTOPHER F. TATCHOUM)	ALS NO.: 10-0014
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini, presiding, upon Christopher F. Tatchoum's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009CF1767; 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 findings of fact and reason:

1. On December 10, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged Alden-North Shore Rehabilitation and Health Care Center, Inc. ("Employer") unlawfully discharged him because of his race, Black, in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). On December 2, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On January 3, 2010, the Petitioner filed this timely Request.
2. The Petitioner worked as a Certified Nursing Assistant ("CNA") for the Employer from August 14, 2001, to December 3, 2008.
3. On October 4, 2001, the Petitioner signed a disciplinary memorandum, which instructed the Petitioner to take his breaks in the employee lounge, not in the resident's rooms. Further, the Petitioner was instructed not to watch television in the resident's rooms.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent". The party to the underlying charge requested review of the Department's action shall be referred to as the "Petitioner".

4. In 2008, the Employer had in place Work Rule 17, which provided that employees found sleeping while on duty would be discharged.
5. On December 3, 2008, the Employer discharged the Petitioner for violating Work Rule 17 after several co-workers had reported to a supervisor that they had witnessed the Petitioner asleep in a resident's room.
6. In his charge, the Petitioner alleged he was discharged because of his race, and he alleged non-Black CNAs found sleeping while on duty were not discharged by the Employer.
7. In his Request, the Petitioner argues the investigation was "one-sided" in favor of the Employer. The Petitioner argues there was racial bias in the Employer's workplace, but presents no evidence that non-Black employees found sleeping in a resident's room were not fired by the Employer.
8. In its Response, the Respondent argues there was no substantial evidence the Employer's articulated, non-discriminatory reason for discharging the Petitioner was mere pretext for race discrimination. The Respondent found no evidence that the Employer had treated similarly situated non-Black employees more favorably than the Petitioner under similar circumstances.

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).

In this case, the Commission found no evidence sufficient to demonstrate the existence of a *prima facie* case of racial discrimination. In particular, there was no evidence that the Employer had treated the Petitioner less favorably than similarly situated non-Black employees who were caught sleeping in resident's rooms. See Warren Achievement Center, Inc. v. Human Rights Commission, 159 Ill. Dec. 122, 216 Ill.App.3d 604, 575 N.E.2d 929 (3rd Dist. 1991).

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.

THEREFORE, 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 Alden-North Shore Rehabilitation and Health Care Center, Inc., 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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Entered this 28th day of July 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini