

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CF2709
)	EEOC NO.: 21BA91340
ERNEST PAUL JONES)	ALS NO.: 10-0140
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Charles E. Box presiding, upon Ernest Paul Jones’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)¹ of Charge 2009CF2709; 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, **THEREFORE**, 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. The Petitioner filed a charge of discrimination with the Respondent on March 5, 2009. The Petitioner alleged that Comcast Cable, Inc. (“Employer”) subjected him to sexual harassment from November 2008 through February 18, 2009 (Count A) in violation of Section 2-102(D) of the Illinois Human Rights Act (the “Act”). The Petitioner further alleged the Employer discharged him because of his physical disability, hearing impaired, (Count B), and his sex, male (Count C), in violation of Section 2-102(A) of the Act, and that he was also discharged in retaliation for having opposed unlawful discrimination (Count D) and for having previously filed a charge of discrimination against the Employer (Count E), in violation of Section 6-101(A) of the Act. On January 26, 2010, the Respondent dismissed the Petitioner’s charge for Lack of Substantial Evidence. On February 25, 2010, the Petitioner filed this timely Request.

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

2. On March 10, 2008, the Employer hired the Petitioner as a Customer Account Executive. The Petitioner was responsible for taking incoming calls and assisting the Employer's customers with questions regarding cable, internet, and phone services.
3. At all relevant times alleged in the charge, the Employer had in place a Sales and Ethics and Integrity Policy ("SEIP"), as well as a Customer Interaction/Interface Policy ("CIIP").
4. From August 12, 2008, through December 2008, the Employer documented various instances when the Petitioner had been progressively disciplined for alleged poor performance and for violating the SEIP and/or the CIIP. For example, in December 2008, the Petitioner received coaching or disciplinary warnings from the Employer at least three times.
5. On December 8, 2008, the Petitioner reported to the Employer's Human Resources Manager that he was being sexually harassed by his female supervisor. The Petitioner alleged his supervisor was showing him "before and after" weight loss pictures of herself. She also allegedly asked the Petitioner out for a drink. Finally, according to the Petitioner, she wore clothing that was too small.
6. On December 11, 2008, the Petitioner filed a charge of discrimination with the Respondent against the Employer.
7. In January 2009, during a randomly monitored call, the Employer contends that it caught the Petitioner making inappropriate statements to a customer.
8. On February 18, 2009, the Employer discharged the Petitioner. The Employer stated it discharged the Petitioner because the Petitioner violated the SEIP, the CIIP, and failed to meet the Employer's performance standards.
9. In his charge, the Petitioner alleged he was sexually harassed by his manager from November 2008 through the date of his discharge in February 2009. The Petitioner further alleged the Employer discharged him because he is disabled and because he is male. Finally, the

Petitioner alleged he was discharged as retaliation for having opposed unlawful discrimination on December 8, 2008, and on December 11, 2008.

10. In his Request, the Petitioner argues the Respondent's investigator acted improperly. The Petitioner presents no additional evidence in support of his charge.
11. In its Response, the Respondent asks the Commission to sustain its dismissal of all Counts A through E of the Petitioner's charge for lack of substantial evidence. As to Count A, the Respondent argues the alleged conduct did not rise to the level of sexual harassment under the Act. As to Counts B through E, the Respondent argues the Petitioner failed to establish *prima facie* cases of discrimination or retaliation. Further, even if the evidence was sufficient to establish *prima facie* cases, the Respondent argues the Employer articulated a legitimate reason for discharging the Petitioner, and there was no substantial evidence of pretext.

Conclusion

The Commission concludes the Respondent properly dismissed the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination or retaliation 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, taking as true the Petitioner's allegations regarding his supervisor's conduct, and assuming *arguendo* that any or all of this conduct could be construed as ... "conduct of a sexual nature," see 775 ILCS §5/2-101(E), the Commission concludes there is insufficient evidence to establish sexual harassment under the Act. The alleged conduct was not sufficiently severe or pervasive to have altered the conditions of the Petitioner's work environment. See Motley v. The Illinois Human Rights Commission, et al., 263 Ill.App.3d 367, 636 N.E.2d 100, 200 Ill.Dec. 909 (4th Dist. 1994); see also Mary Booker v. Able Detective Agency, IHRC, ALS No. 9141(S), 1999 WL

3325293 (April 23, 1999) (*Whether or not conduct constitutes sexual harassment is measured by an objective standard*).

As to Counts B through E, the Commission finds no substantial evidence of either disability or sex discrimination, or of retaliation. Before the Employer discharged the Petitioner in February 2009, the Petitioner had accumulated numerous disciplinary warnings due to alleged poor performance and policy violations. There is no evidence that the Employer's legitimate articulated reason for discharging the Petitioner was a pretext either for discrimination or retaliation.

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 Comcast Cable, Inc., as Respondents, 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 13th day of October 2010.

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box