

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CF3870
)	EEOC NO.: 21BA82663
NATHAN CURRY)	ALS NO.: 10-0178
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Charles Box, Marylee V. Freeman and David Chang presiding, upon Nathan Curry’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)^[1] of Charge No. 2008CF3870; 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. On February 7, 2008, the Petitioner filed an unperfected charge of discrimination with the Respondent. The Petitioner perfected the charge on August 14, 2008, and amended the charge on June 29, 2009. The Petitioner alleged that his employer, Food 4 Less (“Employer”), suspended him on September 14, 2007 (Count A), and issued him a written warning on September 17, 2007 (Count B), because of his race, Black, in violation of Section 2-102(A) of the Illinois Human Rights Act (the “Act”). On February 4, 2010, the Respondent dismissed the Petitioner’s charge for Lack of Substantial Evidence. On March 9, 2010, the Petitioner timely filed this Request.
2. The Petitioner is employed as a Meat Cutter.

^[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. The Employer suspended the Petitioner and issued him a written warning in September 2007 for allegedly violating the Employer's policy regarding the timely and accurate recording of meat temperatures in the Employer's cold-holding display case log.
4. In his charge the Petitioner alleged he was suspended and issued the written warning because of his race. The Petitioner alleged non-Black employees were treated more favorably under similar circumstances.
5. In his Request, the Petitioner states that he asked a Black, a Hispanic, and a White employee whether the Employer had ever approached them regarding the way they logged temperatures in the logbook. According to the Petitioner, each of the individuals he spoke to stated that the Employer had never approached them about logging temperatures.
6. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for lack of substantial evidence.

CONCLUSION

The Commission concludes 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 (March 7, 1995).

There is no substantial evidence of a nexus between the Petitioner's race and his written warning and suspension. In general, the Respondent determined the Employer routinely suspended and issued written warnings to non-Black employees who violated the Employer's policies. Specifically, regarding the Petitioner's alleged violation, there is no substantial evidence the Employer's legitimate, articulated reason for disciplining the Petitioner was a pretext for race discrimination. In the absence of any evidence of pretext, the Commission cannot substitute its

judgment for the Employer's. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, Charge No. 1994SA0240 (December 10, 1997).

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that 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 Food 4 Less, 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

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Entered this 3rd day of November 2010.

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box