

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: 2008CA2537
DEBORAH CARTER )	EEOC NO.: 21BA81438
)	ALS NO.: 09-0677
Petitioner. )	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee Freeman, and Charles E. Box presiding, upon Deborah Carter’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)<sup>1</sup> of Charge No. 2008CA2537; 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 findings of fact and reasons:

1. On March 18 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged in her charge that her former employer Westshire Nursing Rehabilitation Center (“Employer”) discharged her because of her age, 52, in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On November 16, 2009, the Respondent dismissed the Petitioner’s charge for Lack of Substantial Evidence. On November 23, 2009, the Petitioner filed a timely Request.
2. The Employer is a nursing home and rehabilitation facility. The Employer hired the Petitioner on February 17, 2000, as a Certified Nursing Assistant (“CNA”).
3. On September 27, 2007, the Employer discharged the Petitioner and a second CNA for violating Rule #7 of its Work and Safety Rules and Regulations.
4. In the 12 months preceding the Petitioner’s discharge, the Employer had also discharged a 29-year-old CNA for violating Rule # 7.

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<sup>1</sup> 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.”

5. In her charge the Petitioner alleged the Employer discharged her because of her age. In her Request, the Petitioner further contends that she followed appropriate procedure and denies having violated Rule # 7.
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 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 (March 7, 1995), 1995 WL 793258 (Ill.Hum.Rts.Com.)

In this case, the Commission finds no substantial evidence sufficient to establish a *prima facie* case of age discrimination because there is no evidence the Employer treated a younger employee more favorably under similar circumstances. Rather, the evidence reflects the Employer has also fired a younger employee for the exact reason it discharged the Petitioner.

Further, while the Commission appreciates the Petitioner's assertion that the Employer was mistaken in its determination, and that she did in fact follow correct procedure, it is not the role of the Commission to determine the correctness of the Employer's decision. Rather, the Commission looks to see whether or not there is substantial evidence that the Employer's decision was motivated by unlawful discrimination. See Carlin v. Edsal Manufacturing Company, Charge No. 1992CN3428, ALS No. 7321 (May 6 1996). In the absence of any such evidence, the Commission cannot substitute its judgment for the Employer's judgment. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997).

In this case, there is no substantial evidence the Employer was motivated by unlawful discrimination, and thus no basis upon which to vacate the Respondent's previous determination.

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

**THEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of 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 Westshire Nursing Rehabilitation Center, 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** ) **Entered this 9<sup>th</sup> day of June 2010.**

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box