STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CF2771
	)	EEOC NO.: 21BA81643
EDUARDO MARTINEZ,	)	ALS NO.: 09-0369
	)	
Petitioner.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Rozanne Ronen, presiding, upon Eduardo's Martinez's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")[1] of Charge No. 2008CF2771; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request and supporting materials, and the Respondent's response to the Petitioner's Request; 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 April 9, 2008, the Petitioner filed a charge of discrimination with the Respondent in which he alleged his employer, Fresh Express ("Employer"), suspended him in retaliation for assisting in an investigation of a discrimination charge filed with the Respondent by a co-worker, in violation of Section 6-101(A) of the Illinois Human Rights Act (the "Act"). On June 26, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On July 14, 2009, the Petitioner filed a timely Request for Review.

2. The undisputed evidence in the investigation file shows the Petitioner was hired by the Employer on April 19, 1992, as a mechanic in its maintenance department.

[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. In late January 2008, the Petitioner provided witness testimony for a co-worker who had filed a charge of discrimination with the Respondent against the Employer. Specifically, the Petitioner signed a written statement in support of the co-worker's discrimination charge.

4. The Petitioner believes the Employer was aware that he had signed the statement because he speculates that the Employer had received a copy of this statement.

5. During the relevant time period, the Employer had in place a Non-Union and Union Attendance Policy, which required all employees to . . ."be on the job and at their designated work areas at the time they are scheduled to begin." The Attendance Policy required the employee to "punch in" to work at the beginning of their scheduled work time. Further the Attendance Policy set forth certain Rules of Conduct, which required the employee to be at his or her workstation at the designated starting time.

6. On March 31, 2008, the Petitioner was scheduled to begin work at 6:00 a.m. Nancy Morales, the Employer's Human Resources Representative, observed the Petitioner walking in late and she reported the Petitioner's conduct to the Employer's Human Resources Safety Supervisor, Jennifer Quinn ("Quinn").

7. Quinn conducted an investigation into Morales' allegations, including reviewing security cameras of the Petitioner's work area. Quinn's investigation revealed that the Petitioner had "punched in" at 6:05 a.m. and that he had not actually entered the work area until 6:12 a.m., making him 12 minutes late for work.

8. As a result of Quinn's investigation, the Employer suspended the Petitioner from work for one day on April 1, 2008. On the Corrective Action Form submitted by the Employer which documents the suspension, it is noted that the Employer had taken previous corrective action against the Petitioner in 2001, 2003, and 2005.

9. In the course of its investigation into the Petitioner's charge, the Respondent determined the Employer had disciplined similarly situated employees for engaging in the same conduct as the Petitioner. Those employees had not engaged in any protected activity.

10. In his Request, the Petitioner states he believes the Employer was unfair. However, he failed to submit substantiating evidence in support of his suspicion for the Commission's consideration.

Conclusion

The Commission's review of the Respondent's investigation file leads it to conclude 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).

Assuming *arguendo* the Petitioner established a *prima facie* case of retaliation, the Employer put forth a legitimate, non-retaliatory business reason for its conduct. There is no substantial evidence in the file that this reason was a pretext for retaliation.

In addition to evidence in the file that the Petitioner actually engaged in the conduct for which he was disciplined, the Employer presented evidence that it had suspended similarly situated employees for engaging in the same conduct as the Petitioner, namely violating its Attendance Policy. There was no evidence these other employees had engaged in protected activity prior to their suspension. Hence, the evidence in the file shows the Employer treated the Petitioner the same as any other employee who violated its Attendance Policy

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 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 Fresh Express as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
) Entered this 27th day of January 2010.
HUMAN RIGHTS COMMISSION)

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen