STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2009CA0795
	)	EEOC NO.: 21BA83155
LEODEGARIO MARTINEZ,	)	ALS NO.: 09-0342
	)	
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 Leodegario Martinez's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")[1] of Charge No. 2009CA0795; 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 September 18, 2008, the Petitioner filed a two-count charge of discrimination with the Respondent in which he alleged his former employer, SKF USA, Incorporated ("Employer") suspended him on June 25, 2008 (Count A) and discharged him on August 5, 2008 (Count B) because of his age, 63, in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). On June 11, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On July 1, 2009, the Petitioner filed a timely Request for Review.

2. The Petitioner was hired by the Employer as a punch press operator on January 3, 2000. He was fifty-five years of age at the time of hire. The Petitioner later became a Channel Operator ("CO") for the Employer. As a CO the Petitioner had to operate one or more punch presses, perform in-process checks and record data accurately on in-process control charts and perform work to the standard work.

[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 has a Progressive Discipline Policy ("PDP") which provides five steps of progressive discipline: (1) consultation; (2) verbal warning; (3) written warning; (4) suspension; and (5) immediate suspension and investigation, which could result in termination.

4. The undisputed evidence in the investigation file shows that in 2008, the Employer had issued the Petitioner six written warnings, or Disciplinary Notices ("DNs") for either insubordination or negligence: **(i)** May 29, 2008, DN for insubordination; **(ii)** June 18, 2008, two (2) DNs, both for insubordination; **(iii)** June 25, 2008, two (2) DNs, both for negligence, and **(iv)** August 4, 2008, DN for insubordination. This last DN informed the Petitioner that he was suspended pending investigation into his file, and he faced possible termination.

5. On August 8, 2008, the Employer mailed the Petitioner a letter informing him that he was being discharged. The reasons cited for the Petitioner's discharge were that he had been continually negligent in the performance of his duties and because he had accumulated six written warnings within a twelve-month period.

6. The Petitioner contends he was suspended on June 25, 2008, and subsequently discharged on August 8, 2008 because of his age, claiming that similarly situated younger employees were not treated the same under similar circumstances.

7. In the course of investigating the Petitioner's charge, the Respondent obtained evidence from the Employer, which demonstrated that the Employer had suspended younger employees for negligence, which is the same reason it suspended the Petitioner on June 25, 2008. Further, the Employer offered evidence which demonstrated that it had discharged similarly situated younger employees for failing to meet its performance standards.

8. In his Request, the Petitioner offered no additional evidence 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 because there is no substantial evidence in the record the Employer suspended or discharged the Petitioner because of his age. 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).

In this case the Employer states it suspended and discharged the Petitioner due to his continued negligence regarding his job performance and his accumulation of discipline. There is no evidence in the file that this legitimate non-discriminatory reason is a pretext for age discrimination. Rather, the undisputed evidence demonstrates that the Petitioner was treated the same as similarly

situated younger employees. The Petitioner provides no other evidence which would tend to demonstrate the Employer's stated reasons for its actions were pretextual.

The Employer is entitled to make employment decisions based on its reasonable belief of the facts surrounding the situation. The correctness is not important as long as there was a good faith belief by the Respondent in its decision. *See* Carlin v. Edsal Manufacturing Company, Charge No. 1992CN3428, ALS No. 7321 (May6 1996), citing Homes and Board of County Commissioner, Morgan County, 26 Ill HRC Rep. 63 (1986). In the absence of any evidence that the business consideration relied upon a Respondent is a pretext for discrimination, it is improper to substitute judgment for the business judgment of the employer. *See* Berry and State of Illinois, department of Mental Health and Development Disabilities, Charge No. 1994SA0240 (December 10, 1997).

The Petitioner speculates the Employer suspended and discharged him because of his age. However, mere speculation or conjecture does not constitute substantial evidence of discrimination. *See* Willis v. Illinois Dep't of Human Rights, 307 Ill.App.3d 317, 326 N.E.2d 240 (4th Dist. 1999).

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 SFK USA Incorporated, 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