

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CF2324
	EEOC NO.: 21BA91049
NATY TRUJILLO)	ALS NO.: 10-0024
)	
)	
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 Naty Trujillo’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)^[1] of Charge No. 2009CF2324; 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. The Petitioner filed a charge of discrimination with the Respondent on January 29, 2009. The Petitioner alleged in her charge that her former employer, Borg Warner Transmission Systems, Inc. (“Employer”), discharged her on August 14, 2008, in retaliation for having engaged in protected activity on June 17, 2008, in violation of Section 6-101(A) of the Illinois Human Rights Act (“Act”). On December 9, 2009, the Respondent dismissed the Petitioner’s charge for Lack of Substantial Evidence. On January 11, 2010, the Petitioner filed this timely Request.
2. The Petitioner was first hired by the Employer on September 7, 1976. On November 27, 2006, through the date of her termination, the Petitioner worked for the Employer as an NSK Bonder Cell Operator.
3. The Employer has Corrective Disciplinary Guidelines (“Guidelines”). The Guidelines state that if an employee is disciplined four (4) times for the same category of offense within the same year, the employee may be discharged.

^[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.”

4. Between April 2008 and June of 2008, the Petitioner was reprimanded for careless/inefficient performance of duties on three occasions: (1) On April 11, 2008, the Petitioner was orally reprimanded; (2) On May 21, 2008, the Petitioner was issued a written reprimand, and (3) on June 11, 2008, she was suspended from work for three days.
5. Also on June 11, 2008, the Employer gave the Petitioner a final warning and notified her that the next incident of poor performance would lead to the Petitioner's termination.
6. On June 17, 2008, the Petitioner filed a charge of discrimination with the Respondent against the Employer.
7. On August 14, 2008, the Employer discharged the Petitioner. The Employer stated it discharged the Petitioner because on August 8, 2008, for the fourth time in 2008, the Petitioner was careless and/or inefficient in the performance of her duties.
8. The Employer later converted the Petitioner's discharge to a layoff, which allowed the Petitioner to retire with full benefits after 32 years of employment with the Employer.
9. In July 2008, the Employer had discharged another employee, who had not engaged in protected activity, after his fourth incident of poor work performance within a one-year period.
10. In her charge, the Petitioner alleged the Employer discharged her in August 2008 in retaliation for having engaged in protected activity in June 2008. In her Request, the Petitioner argues she was wrongfully terminated.
11. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for Lack of Substantial Evidence because the Employer articulated a non-discriminatory reason for discharging the Petitioner and there was no substantial evidence of pretext.

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) (West 2010). 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).

In this case, there is no substantial evidence the Employer's articulated non-discriminatory reason for discharging the Petitioner was pretext for unlawful discrimination. Rather, the Employer

treated the Petitioner the same as it treated a similarly situated employee who had also committed four work errors within a one-year period, but who had not engaged in protected conduct. No evidence was presented that the Employer was doing anything other than following its Guidelines when it terminated the Petitioner after her fourth work error within a single year. In the absence of any evidence that the business consideration relied upon by the Employer was a pretext for discrimination, it would be improper for the Commission to substitute its judgment for the Employer's business judgment. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997).

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show 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 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 Borg Earner Transmission System, 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 28th day of July 2010

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen