

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CF3445
	EEOC NO.: 21BA91897
PATRICK M. LEE)	ALS NO.: 10-0002
)	
)	
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 Patrick M. Lee’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)^[1] of Charge No. 2009CF3445; 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, WHEREFORE, 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. The Petitioner filed a charge of discrimination with the Respondent on April 25, 2008. The Petitioner alleged that the Illinois State Board of Education (“Employer”) harassed him in retaliation for having previously filed a charge of discrimination, in violation of Section 6-101(A) of the Illinois Human Rights Act (“Act”). On December 2, 2009, the Respondent dismissed the Petitioner’s charge for Lack of Substantial Evidence. On January 4, 2010, the Petitioner filed a timely Request. On February 25, 2010, the Petitioner filed a Reply to the Respondent’s Response.
2. The Petitioner was employed as a Principal Consultant.
3. On October 20, 2008, the Petitioner filed a charge of discrimination with the Respondent against the Employer.
4. In the instant charge, the Petitioner alleged the Employer retaliated against him on February 6, 2009, when the Petitioner received an unsolicited email from the Employer’s Chief of Labor

^[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.”

Relations which the Petitioner alleged contained a reference to the October 2008 charge of discrimination.

5. The Petitioner alleged the Employer also retaliated against him on March 27, 2009, when the Employer sent the Petitioner its internal newsletter.
6. In the course of its investigation, the Respondent determined that the email of February 6, 2009, did not make any reference to the October 2008 charge of discrimination. The Respondent determined that the Employer sent the internal newsletter to all of its employees, and not just the Petitioner, and further that the internal newsletter contained no reference to the October 2008 charge of discrimination.
7. For his Request, the Petitioner submitted various documents, including a copy of the February 6, 2009, email and the March 2009 internal newsletter.
8. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for lack of substantial evidence because there was no evidence the Employer had taken an adverse action against the Petitioner following the filing of the October 2008 charge of discrimination.
9. In his Reply, the Petitioner argues that he has clearly established a *prima facie* case of retaliation, and that there is evidence of a nexus between the Petitioner's protected activity and the alleged adverse actions of February 2009 and March 2009.

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, 1995 WL 793258, *2 (March 7, 1995).

In order to establish a *prima facie* case of retaliation, the Petitioner must show that: (1) he engaged in a protected activity; (2) the Employer committed an adverse action against him; and (3) a causal connection existed between the protected activity and the adverse action. See Welch v. Hoeh, 314 Ill.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3rd Dist. 2000).

In this case, there is no substantial evidence the Employer committed an adverse action against the Petitioner. The conduct alleged to be an adverse action must be sufficiently severe or pervasive to constitute a term or condition of employment in order to give rise to a cause of action under the Act. See In the Matter of: Linda M. Hartman and City of Springfield Police Department, IHRC, Charge No. 1993SF0365 (October 4, 1999), 1999 WL 33252975 (Ill.Hum.Rts.Com.). The February 2009 and March 2009 incidents are not adverse actions, as herein defined.

Furthermore, the Petitioner submitted copies of the email and the newsletter to the Commission. Upon review, the Commission finds that neither of those documents reference the October 2008 charge of discrimination. The Commission also notes that the newsletter was distributed to all of the Employer's employees, and not just the Petitioner. Hence, even if the incidents of February 2009 and March 2009 could be broadly construed as adverse actions, there is no substantial evidence of a causal connection between these incidents and the October 2008 charge of discrimination.

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.

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 Illinois State Board of Education, 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 25th day of August 2010

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen