

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009SN3119
HERBERT A. CARRIGER)	EEOC NO.: N/A
)	ALS NO.: 09-0757
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Diane M. Viverito, and Nabi Fakroddin, upon Herbert A. Carriger’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)¹ of Charge No. 2009SN3119; 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 findings of fact and reasons:

1. On March 28, 2009, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner, a Mechanic, alleged that Pactiv Corporation (“Employer”) subjected him to unequal terms and conditions of employment because of his marital status, married, in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On November 25, 2009, the Respondent dismissed the Petitioner’s charge for Lack of Substantial Evidence. On December 29, 2009, the Petitioner filed this timely Request.
2. The Employer instituted a \$25.00 insurance surcharge for its employees who opted to carry their spouse under the Employer’s health insurance plan, if the employee’s spouse was employed and the spouse’s employer also offered health insurance. The Employer stated it implemented the surcharge in response to rising health care costs.
3. The Petitioner’s spouse was employed and her employer also offered health insurance coverage for its employees. Therefore, because the Petitioner opted to have his spouse

¹ 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.”

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carried under the Employer's health insurance plan, the Employer assessed the Petitioner the \$25.00 insurance surcharge.

4. In his charge, the Petitioner alleged that on January 1, 2009, the Employer subjected him to unequal terms and conditions of employment when it assessed him the \$25.00 insurance surcharge.
5. In his Request, the Petitioner asks if all persons of a particular sex and race must be affected by a discriminatory practice in order for sex and race discrimination to exist. He further states that he is only concerned with discrimination against him.
6. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for Lack of Substantial Evidence because the Employer articulated a non-discriminatory reason for assessing the Petitioner the \$25.00 insurance discharge, 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).

There is no substantial evidence that the Petitioner was subjected to marital status discrimination in violation of the Act. The Employer has articulated a non-discriminatory reason for assessing the Petitioner an insurance surcharge and there is no substantial evidence this non-discriminatory reason was pretext for marital status discrimination.

The Employer's insurance surcharge was not triggered by its employee's marital status. Rather, the surcharge was triggered only if the employee's spouse had access to health insurance benefits via his or her own employer, and instead opted to utilize the Employer's health insurance plan.

Had the Petitioner's spouse chosen her employer's health plan, then the Petitioner would not have been assessed the insurance surcharge. Hence, there is no substantial evidence the Employer's decision to assess the Petitioner the surcharge was based on discriminatory animus against married employees.

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Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that 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 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 Pactiv Corporation 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 14th day of July 2010.**

Commissioner Munir Muhammad

Commissioner Diane M. Viverito

Commissioner Nabi Fakroddin