

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009CF1686
)	EEOC NO.: 21BA90585
ELLA J. WADE)	ALS NO.: 10-0157
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of two, Commissioners Rozanne Ronen and Nabi Fakroddin presiding, upon Ella J. Wade’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)¹ of Charge No. 2009CF1686; 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. On October 28, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged the Cook County Bureau of Administration President’s Office of Employment Training (“P.O.E.T.”), which employs her as an Administrative Assistant I, subjected her to harassment from September 2008 through October 13, 2008, because of her religion, Apostolic (Count A), and issued her a negative performance review in retaliation for having previously filed charges of discrimination against P.O.E.T. (Count B), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”). On January 26, 2010, the Respondent dismissed the Petitioner’s charge for Lack of Substantial Evidence. On March 1, 2010, the Petitioner filed this timely Request.

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.”

2. On September 27, 2007, the Petitioner filed Charge No. 2008CF0746 with the Respondent against P.O.E.T. On June 5, 2008, the Petitioner filed Charge No. 2008CF3482 with the Respondent against P.O.E.T.
3. On September 30, 2008, the Petitioner's supervisor completed a performance appraisal for the Petitioner.
4. In the charge that is the subject of this Request, the Petitioner alleged that P.O.E.T. harassed her from September 2008 through October 13, 2008, because of her religion. The alleged harassment consisted of her being written up and being given a negative performance appraisal on September 30, 2008. The Petitioner further alleged that P.O.E.T. issued her a negative performance review on September 30, 2008, in retaliation for having filed the prior charges of discrimination in September 2007 and June 2008.
5. In her Request, the Petitioner argues the Respondent considered irrelevant evidence and made contradictory determinations. The Petitioner also argues the Respondent erred in its determination that there was no substantial evidence of a causal connection between the alleged adverse acts and the Petitioner's protected activities.
6. In its Response, the Respondent asks the Commission to sustain the dismissal of the Petitioner's charge for lack of substantial evidence. As to both Count A and Count B, the Respondent argues that the issuance of a negative performance review alone is insufficient to rise to the level of actionable harassment, and that it cannot be considered an actionable adverse employment action under the Act.

CONCLUSION

The Commission concludes 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).

As to Count A, there is no substantial evidence of actionable harassment. Actionable harassment occurs when the workplace is permeated with discriminatory, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. Harris v. Forklift Systems, Inc., 510 U.S. 20, 114 S.Ct. 367, 371, 126 L.Ed.2d 295. The Commission may take into consideration the following factors: (1) the frequency of the discriminatory conduct; (2) the severity of the conduct; (3) the physically threatening or humiliating nature of the conduct, as opposed to mere offensive utterances; and (4) the interference that the conduct has on the employee's work performance. Harris, 114 S. Ct at 371. There must also be evidence the alleged harassment was motivated by a discriminatory intent.

The only incident of discriminatory harassment alleged was the September 30, 2008, negative performance review. Generally, a single negative performance review will not meet the standard for actionable harassment under the Act. See, e.g., Emmanuel Davies and Seguin Services, Inc., 1997 WL 311409 (April 17, 1997) (*A single incident involving a single racial slur does not constitute actionable harassment*). Furthermore, there is no substantial evidence P.O.E.T. gave the Petitioner the negative performance evaluation because of her religion. Therefore, Count A was properly dismissed for lack of substantial evidence.

As to Count B, the Petitioner cites the issuance of the September 2008 performance evaluation as the retaliatory conduct. To establish a *prima facie* case of retaliation there must be evidence that: **(1)** the Petitioner engaged in a protected activity; **(2)** P.O.E.T. committed an adverse action against her, and **(3)** a causal connection exists 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). To constitute an "adverse action" the alleged retaliatory conduct must be sufficiently severe or pervasive to constitute a term or condition of employment. See In the Matter of: Linda M. Hartman and City of Springfield Police Department, IHRC, Charge No. 1993SF0365, 1999 WL 33252975 (October 4, 1999).

No evidence was presented from which the Commission could conclude that the issuance of the September 2008 performance evaluation alone was sufficiently severe or pervasive to constitute a change in the terms and conditions of the Petitioner's employment. Therefore, Count B was properly dismissed for lack of substantial evidence.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that 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, Cook County Bureau of Administration President's Office of Employment Training ("P.O.E.T.") 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

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Entered this 13th day of October 2010.

Commissioner Rozanne Ronen

Commissioner Nabi Fakroddin