

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CA3577
	)	EEOC NO.: 21BA82264
<b>JANET WILLIAMS,</b>	)	HUD NO.: N/A
	)	ALS NO.: 09-0390
Petitioner.	)	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon the Petitioner’s Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)<sup>1</sup> of Charge No. 2008CA3577, Janet Williams, (“Petitioner”), and Bedford Motors Services, Inc., (“Employer”); and the Commission having reviewed *de novo* the Respondent’s investigation file, including the Investigation Report and the Petitioner’s Request, 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:

- (1) The Respondent’s dismissal of Count B of the Petitioner’s charge is **SUSTAINED**; and,
  
- (2) The Respondent’s dismissal of Count A and Count C of the Petitioner’s charge is **VACATED** and Counts A and Count C are **REINSTATED** and **REMANDED** to the Respondent for entry of a finding of **SUBSTANTIAL EVIDENCE** as to both Count A and Count C, and for further proceedings in accordance with this Order and the Act.

In support of which determination the Commission states the following findings of fact and reasons:

1. On June 13, 2008, the Petitioner filed a three-count (Counts A- C) charge of discrimination with the Respondent, in which she alleged the Employer

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<sup>1</sup> 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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discharged her from employment because of her sex, female (Count A), her age, 52 (Count B), and in retaliation for having previously opposed unlawful discrimination (Count C), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (the "Act").

2. On June 24, 2009, the Respondent dismissed all three counts of the charge for lack of substantial evidence. On July 23, 2009, the Petitioner filed a timely Request.
3. The undisputed evidence in the investigation file shows the Petitioner was hired by the Employer's predecessor as a Director of Transportation. On April 1, 2007, the Employer hired the Petitioner as its Dispatch Manager for the same salary she was then making at her predecessor, \$ 80,000.00 annually.
4. In or about February of 2008, the Petitioner opposed unlawful discrimination in the workplace when she told her supervisor, Mike Hovan, that the Employer could not discriminate against an employee because he spoke "broken English" or because of his national origin.
5. In March of 2008, the Employer hired Greg Dowdy, male, age 49, as a Dispatch Manager at a salary of \$ 66,001.00 annually.
6. On April 17, 2008, the Employer discharged the Complainant. The reason given for her discharge was that the Employer was restructuring in order to cut costs. Thereafter, the Petitioner's duties were assumed by Dowdy.
7. In her charge and in her Request, the Petitioner asserted that she was actually discharged because of her age, sex, and in retaliation for having opposed unlawful discrimination in the workplace.
8. In its Response, the Respondent argues there is no substantial evidence to support Count B of the charge, and asks the Commission to sustain its dismissal of that Count.
9. However, the Respondent asks the Commission to vacate its dismissal of Count A and Count C, and enter a finding of substantial evidence as to those Counts.

### **Count B: Age Discrimination in Employment**

10. The Commission's review of the Respondent's investigation file leads it to conclude that the Respondent properly dismissed Count B of the Petitioner's charge for lack of substantial evidence.

11. The Petitioner alleges the Employer discharged her because of her age, which at the time was 52. The Petitioner's duties were subsequently assumed by a 49 - year-old employee.
12. In order to prove a prima facie case of age discrimination, there must be substantial evidence that a person *outside* of the protected class was not subjected to the same adverse action. See Anderson v. Chief Legal Counsel, 334 Ill.App.3d 630, 634, 778 N.E.2d 258, 268 Ill. Dec. 272 (3<sup>rd</sup> Dist. 2002).
13. In this case, the Petitioner was replaced with an employee who was within the same protected class. This is evidence that the Employer did not harbor animus toward employees in the Petitioner's protected age class. Therefore the Commission finds that no reasonable inference of age discrimination could arise. See In re Martha Anderson and County of Cook, Oak Forest Hospital, ALS No 6495, September 2, 1998 (1998WL834688, \* 5).
14. There is no other evidence in the file which would suggest that age was the motivating factor for the Petitioner's discharge.
15. Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of Count B of her charge was not in accordance with the Act.

#### **Count A and Count C, Sex Discrimination and Retaliation**

16. In its Response to the Petitioner's Request, the Respondent does not oppose the Petitioner's Request as to Count A and Count C. The Respondent asks that the Commission vacate its dismissal of Count A and Count C, enter a finding of substantial evidence as to Counts A and Count C, and remand Count A and Count C to the Respondent for further proceedings.

#### **THEREFORE, IT IS HEREBY ORDERED THAT:**

- (1) The Respondent's dismissal of Count A and Count C of the Petitioner's charge is **VACATED**, and Count A and Count C of the charge are **REINSTATED** and **REMANDED** to the Respondent for entry of a finding of **SUBSTANTIAL EVIDENCE** as to those Counts, and for further proceedings, consistent with this Order and the Act; and,
- (2) The Respondent's dismissal of Count B, of the Petitioner's charge is **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

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Department of Human Rights, and Bedford Motor Services, Inc., as appellees, 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 27<sup>th</sup> day of January 2010.**

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini