

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)
FOR REVIEW BY:)

SHABBIR AHMED,)

Petitioner.)

CHARGE NO.: **2021CF0902**
EEOC/HUD NO.: **21BA10341**
ALS NO.: **22-0007**

ORDER

This matter coming before the Commission on July 20, 2022 by a panel of three, Panel Chair Robert A. Cantone, Commissioners Barbara R. Barreno-Paschall and Janice M. Glenn presiding, upon the Request for Review (“Request”) of Shabbir Ahmed (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2021CF0902, 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 Petitioner’s charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.²

DISCUSSION

The Petitioner filed a charge of discrimination against Woodward MPC (“Employer”) on December 3, 2020, which was perfected on April 1, 2021. He alleged that the Employer discriminated against him in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”) by discharging him because of his disability, COVID-19 (Count A), his perceived disability, COVID-19 (Count B), and his history of disability, COVID-19 (Count C). On December 3, 2021, the Respondent issued a finding of substantial evidence with respect to Count B and dismissed Counts A and C for lack of substantial evidence. The Petitioner filed this timely request, which is accordingly limited to Counts A and C of his charge.

Factual Background

The Petitioner worked for the Employer as a mechanical assembler. On August 13, 2020, he tested positive for COVID-19, at which time he submitted documentation to the Employer from his physician and the Illinois Department of Public Health (“IDPH”) that stated he was required to quarantine for 30 days. On September 13, 2020, the Petitioner submitted documentation from his

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 Illinois Department of Human Rights’s action shall be referred to as the “Petitioner.”

² This order is entered pursuant to a 3-0-0 vote by the Commissioners.

physician and the Skokie Public Health Department (“SPHD”) indicating he was cleared to return to work and was no longer infectious, though SPHD’s letter stated he might continue to test positive for up to three months.

Following this clearance, the Petitioner returned to work on September 14, 2020. On September 16, 2020, his supervisor told him to go home because he looked unwell, and his pace of work was slowed. The supervisor additionally stated the Petitioner looked fatigued and coughed. The Petitioner stated he had some fatigue but had otherwise recovered at this point. Nonetheless, later that day, the Petitioner received another positive test result, and was told by his physician to quarantine again. The physician noted issues with generalized weakness, fatigue, and shortness of breath, but did not opine as to the severity of these symptoms. The physician indicated that he was cleared to end isolation and return to work on October 26, 2020.

The Petitioner received a call from the Employer’s human resources department on October 23, 2020, to advise him to call their Human Resources Director, Scott Newby, prior to returning to work. On October 26, 2020, the day the Petitioner was scheduled to return, Newby allegedly called the Petitioner and told him, “You pissed off the heads. They don’t want you working here.” The Petitioner then received an email informing him without explanation that he was terminated. The Employer later stated it fired him for dishonesty and for putting other employees at risk by reporting to work on September 14, 2020, while purportedly still symptomatic.

In his Request, the Petitioner explains that he took a test at the end of his initial quarantine for “peace of mind” on September 10, 2020, the results of which he did not receive until he had already returned to work. He further states that at the time of his return to work, he experienced “general fatigue,” which he notes is common after recovering from COVID-19, and he states the fatigue did not impact his ability to work.

Analysis

The Commission concludes that the Respondent properly dismissed the Petitioner’s charge with respect to Counts A and C 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. 775 ILCS 5/7A-102(D). Under the Act, substantial evidence is “evidence which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance.” 775 ILCS 5/7A-102(D)(2).

An individual is protected by the Act’s prohibition of disability discrimination if they fall into one of three categories: (1) they have a disability, “mean[ing] a determinable physical or mental characteristic of a person . . . which may result from disease” or other medical conditions; (2) they have a history of a disability; or (3) they are perceived as having a disability. 775 ILCS 5/103(I). The burden is on the Petitioner to establish they meet the definition of disability in one of these three ways. *In re*

Request for Review of Daniel E. Wagemann, IHRC, ALS No. 17-0079, 2019 ILHUM LEXIS 775, at *6 (May 21, 2019) (citation omitted). To make out a *prima facie* case of disability discrimination, the Petitioner had to show evidence of the following: (1) he was disabled as defined by the Act; (2) his “disability [was] unrelated to his ability to perform his job, or if [so related], after his request, the Employer did not make reasonable accommodations”; and (3) “the Employer took adverse action against the Petitioner because of his disability.” *Id.* (citation omitted).

Here, the Respondent found the Petitioner had demonstrated substantial evidence that he was discriminated against because of his perceived disability, COVID-19 (Count B). That claim will proceed. The narrow question before the Commission in this Request, then, is whether he may *also* proceed with his claims based on his status as a “disabled” individual (Count A) or an individual with a history of disability (Count C).

Under the Act, “conditions that are transitory and insubstantial, or not significantly debilitating”—those that are “of brief duration” or “temporary” in nature—are not disabilities. *In re Request for Review of Jose M. Alvarez*, IHRC, ALS No. 20-0354, 2021 ILHUM LEXIS 61, at *4 (Aug. 10, 2021) (internal quotation marks and citations omitted). By his own account, the Petitioner’s COVID-19 infection did not cause more than transitory or insubstantial symptoms. In his Request, the Petitioner states that, despite some lingering fatigue, he felt relatively well by early September of 2020, only a few weeks after he became ill. He expressed to the Employer and the Respondent that he was ready and able to return to work after his initial 30-day quarantine period ended on September 13, 2020; he was cleared to work by his physician and the local health department. The Petitioner did not establish, or even claim, that his course of infection was particularly severe or that he suffered lasting functional limitations. *See id.* (finding an individual was not “disabled” where “his injury was relevant for only a few weeks, and was minor and not permanent”). As such, the Petitioner cannot demonstrate the first element of his *prima facie* case with respect to Count A.

For much the same reasons, the Petitioner cannot demonstrate he is an individual with a history of disability. An individual is protected from discrimination based on their history of disability if two conditions are met: (1) they had a condition that constituted a “disability” within the meaning of the Act, and (2) they have since recovered from that condition. 56 Ill. Admin. Code § 2500.30. Because the Petitioner was not disabled, he is not protected by the Act as having a history of disability; thus, Count C must be dismissed.

Accordingly, Petitioner has not presented sufficient evidence to show that the Respondent’s dismissal of Counts A and C was not in accordance with the Act.

