

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )	
FOR REVIEW BY: )	CHARGE NO.: <b>2008CN4113</b>
)	EEOC NO.: <b>440-2008-00396</b>
<b>JOHN BALLO,</b> )	ALS NO.: <b>11-0503</b>
)	
)	
Petitioner. )	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Diane M. Viverito<sup>1</sup>, David J. Walsh<sup>2</sup> and Chairman Martin R. Castro<sup>3</sup>, presiding, upon John Ballo’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)<sup>4</sup> of Charge No. 2008CN4113; 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 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 October 17, 2007, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged the Apira Healthcare (“Employer”) failed to accommodate his physical disabilities, arthritis, carpal and cubical tunnel (Count A), and in retaliation for filing a worker’s compensation claim (Count B); forced him to take a medical leave of absence because of his physical disabilities (Count C); subjected him to harassment in retaliation for filing a worker’s

---

<sup>1</sup> This Order is in accordance with a vote cast by Commissioner Viverito prior to the expiration of her term.

<sup>2</sup> This Order is in accordance with a vote cast by Commissioner Walsh prior to the expiration of his term.

<sup>3</sup> This Order is in accordance with a vote cast by Chairman Castro prior to the expiration of his term.

<sup>4</sup> 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.”

*In the Matter of the Request for Review by: John Ballo*

compensation claim (Count D), in violation of Section 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act"). On May 11, 2011, a Commission panel reviewed the Petitioner's first Request for Review; the panel sustained Counts B and D of the charge and vacated Counts A and C of the charge and remanded Counts A and C for further investigation. On July 5, 2011, the Respondent again dismissed Counts A and C for Lack of Substantial Evidence. On August 5, 2011, the Petitioner filed a second Request for Review as to Counts A and C.

2. The Petitioner was employed as a Bio Medical Technician by Apria Healthcare by the Employer.
3. In Count A, the Petitioner alleged that on June 5, 2007, the Employer denied him a reasonable accommodation for his physical disabilities.
4. In Count C, the Petitioner alleged that on June 7, 2007, the Employer forced him to take a medical leave of absence because of his physical disabilities.
5. As to Count A, the Employer articulated non-discriminatory reason for denying the Petitioner a reasonable accommodation. The Employer stated that it could not accommodate the Petitioner because he refused to cooperate by failing to disclose his alleged disabilities and refused to cooperate with the Employer.
6. As to Count C, the Employer articulated non-discriminatory reason for placing the Petitioner on a "medical hold". The Employer stated the Petitioner indicated that he had a medical condition and failed to disclose what his medical condition was. The Employer further stated that it sent the Petitioner for a fitness of duty evaluation for safety reasons and to determine whether the Petitioner could perform the essential functions of his job.
7. The Respondent's investigation revealed that the essential job functions of Petitioner's position consisted of Petitioner being able to transfer ventilator units weighing approximately 36lbs from warehouse shelves onto a cart up to four times per day. Harper stated that in addition, bio medical technicians must transfer pallets using the pallet jack requiring a force up to 30lbs, up to once per day. Harper indicated that bio medical technicians must utilize upper extremities of push and pulling to adjust the fork height of the pallet jack.
8. During the Respondent's investigation, the Petitioner was unable to articulate any specifics regarding his request for an accommodation. The Petitioner did not

provide a date, documentation or the name of any specific individual to whom he made his request for an accommodation.

9. The Respondent's investigation revealed that it is Employer's practice is to advise the employee to provide the Employer with medical documentation. The Employer stated that the medical documentation must clearly outline the physician's recommendations for the accommodation and the duration of the accommodation. The Employer stated that if the employee is unwilling to provide the Employer with the required medical documentation, it raises concerns whether the employee can continue to perform their usual and customary job duties safely, to which the Employer moves forward with a fitness for duty evaluation.
10. The Respondent's investigation revealed that on June 5, 2007, the Petitioner telephoned the Employer's Employee Relations Manager, Nadine Edwards ("Edwards"), and requested a detailed job description for the Bio Medical Electronic Technician position in order to make a request an accommodation of his medical conditions. The Petitioner told Edwards that he did not "feel physically comfortable performing his job" and that he had a "pre-existing medical condition." However, the Petitioner did not disclose to Edwards what were his physical disabilities alleged in his charge, (i.e., arthritis, carpal tunnel, and cubical tunnel).
11. The Respondent's investigation revealed that the Employer then arranged for an appointment with its physician, scheduled for June 7, 2007. On that day, the Employer's physician examined the Petitioner and made a report with recommendations. The physician's report indicated that the Petitioner had several medical conditions: ankylosing spondylitis, bilateral cubical tunnel syndrome, right carpal tunnel syndrome, and history of right knee tendinitis. The physician indicated that the Petitioner did not want to disclose his family medical history and therefore, he could not fully perform a fitness for duty exam. The physician recommended among other things: 1) a letter from the Petitioner's specialist, Rheumatologist, regarding his symptoms of ankylosing spondylitis; 2) a more detailed job description from Respondent regarding Complainant's position; and 3) that the Petitioner is not medically cleared until items one and two are obtained as stated above.
12. The Respondent's investigation revealed that on June 15, 2007, the Petitioner's physician, Dr. Koop, submitted to the Employer a return to work slip. The Employer's physician found that Dr. Koop was not a Rheumatologist, as

*In the Matter of the Request for Review by: John Ballo*

specified, and the Employer's physician could not complete a fitness for duty exam for the Petitioner. The Employer's physician recommended that the Petitioner submit to a full functional capacity evaluation in order to determine whether the Petitioner can perform the essential functions of the job with or without an accommodation. On June 27, 2007, the Petitioner submitted to a full functional capacity evaluation with Human Performance Center. The results of the functional capacity exam recommended the Petitioner to return to work with medical restrictions of no pushing or pulling greater than 23 lbs of force. Based on the Petitioner's medical history, the accommodation would be permanent while employed at the Employer. On July 3, 2007, the Petitioner returned to work.

13. In his Request for Review, the Petitioner requests that the Commission review his worker's compensation claim. The Petitioner further argues that a new investigation team should be assigned to his case because the Respondent's investigator failed to properly investigate his charge.
14. In its response, the Respondent argues there is no substantial evidence that the Employer failed to accommodate the Petitioner's physical disabilities or forced him to take a medical leave of absence because of his physical disabilities.

### **Conclusion**

The Commission concludes that the Respondent properly dismissed all counts of 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).

Generally an employee seeking reasonable accommodation under the Human Rights Act bears the burden of asserting the duty to accommodate; showing that an accommodation was, in fact, requested; and demonstrating that accommodation was necessary for adequate performance. Owens v. Department of Human Rights, 356 Ill.App.3d 46, 53 (1<sup>st</sup> Dist. 2005). The individual must ordinarily initiate the request for accommodation and must cooperate in any ensuing discussion and evaluation aimed at determining the possible or feasible accommodations. See 56 Ill. Admin. Code §2500.40(c)

*In the Matter of the Request for Review by: John Ballo*

In the Petitioner's case the Petitioner did not disclose his condition to the Employer when he was initially hired and he was uncooperative in the ensuing discussion and evaluation aimed at determining the possible or feasible accommodations. As a result of the Petitioner not being cooperative, the Employer made the Petitioner submit to a full functional capacity evaluation. Based on the results of the evaluation, the Petitioner accommodated the Petitioner's disabilities by allowing the Petitioner to work with medical restrictions of no pushing or pulling greater than 23 pounds of force. The Employer further placed the Petitioner on a medical hold to determine whether the Petitioner could perform the essential functions of the job.

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.

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

The dismissal of 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 Apira Healthcare, 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 4<sup>th</sup> day of December 2018.**

Commissioner Diane M. Viverito

Commissioner David J. Walsh

Chairman Martin R. Castro