

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2010CF3634
)	EEOC NO.: 21BA02009
GAIL SCHAMBACH,)	ALS NO.: 11-0515
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Diane M. Viverito¹, David J. Walsh² and Chairman Martin R. Castro³, presiding, upon Gail Schambach’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)⁴ of Charge No. 2010CF3634; 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 May 12, 2010, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged Advocate Good Shepherd Hospital. (“Hospital”) failed to hire her because of her religion, Born Again Christian, in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On June 9, 2011, the Respondent dismissed Petitioner’s charge for Lack of Substantial Evidence. On August 3, 2011, the Petitioner filed a Request for Review.

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

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

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

⁴ 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.”

2. The Petitioner applied for a work position with the Hospital.
3. The Petitioner alleged that she is a born again Christian. The Petitioner alleged that the Hospital was aware of her religion, and that her beliefs were sincere. On October 29, 2009, the Petitioner received a written offer for the Patient Intake position. The Petitioner accepted the Hospital's offer for the Patient Intake Representative, contingent on successfully completing the Hospital's post health screening exam. On November 13, 2009, the Hospital failed to hire the Petitioner. The Petitioner alleged that the reason the Hospital failed to hire her was due to Petitioner's religion. Lastly, the Petitioner alleged the Hospital hired less qualified individuals whose religion is different from the Petitioner's
4. The Hospital denied that it failed to hire the Petitioner because of her religion. Rather, the Hospital stated that it failed to hire the Petitioner due to her failing to successfully complete the Hospital's Post Health Exam, and the Petitioner having interactions with the Hospital's employees that were not consistent with the Hospital's Associate Service Commitment.
5. The Respondent's investigation revealed that the Hospital has a policy entitled Post Offer Physical Examination, which states, "Advocate Health Care intends to assure the adequacy of workers' health within the scope of their employment. This includes assessing the health suitability of potential employees for their assigned job responsibilities as well as freedom from drug abuse/use and communicable diseases. The health assessment process includes a health history, physical examination, diagnostic testing, immunizations and a drug screening. Additional testing may be required for specific positions."
6. The Respondent's investigation revealed that the Hospital's policy further stated that all employees that have ten percent contact with patients are required to take immunizations and be fitted for a respiratory mask as a precaution to ensure the safety of patients and employees. The Hospital's policy is that all employees must comply to a Post Health Screening unless it is an employee that has a medical issue that needs to be accommodated.
7. The Respondent's investigation revealed that the Hospital has an "Associates Services Commitment," which states in summary that, "I will always treat patients, customers and coworkers in a respectful and courteous manner; maintain a quiet environment that promotes healing; trust and willingly cooperate with all members of the health care team; be proud and supportive of Advocate

Health Care at work and in the community; hold myself accountable and other associates accountable for service excellence; and always follow through on commitments made to patients and customers.

8. The Respondent's investigation revealed that the Hospital's work position application does not ask an applicant's religion and that during the Petitioner's interview the Hospital did not ask the Petitioner about her religious beliefs. Furthermore, the Petitioner admits that admits that Hospital's application does not ask an applicant's religion and that during Petitioner's interview the Hospital did not ask Petitioner about her religious beliefs.
9. The Respondent's investigation revealed that on November 4, 2009, during Petitioner's pre-employment physical, the Petitioner told certain employees that she could not take a TB test due to religious reasons. Further, the Petitioner produced a letter from her doctor that stated: "To Whom It May Concern, Please excuse Gail Schambach from having a PPD test due to religious reasons. She will have a chest x-ray." The Hospital accommodated the Petitioner and told her she may take a chest x-ray.
10. The Respondent's investigation revealed that also on November 4, 2009, the Petitioner Complainant stated she was unable to be fitted for a respiratory mask because she was allergic to the saccharine solution used for fitting the mask. The Hospital accommodated the Petitioner by using an alternative method to fit the mask. The Petitioner also objected to a Hepatitis B immunization and at first the Hospital's Nurse, Amy Krigbaum ("Krigbaum"), incorrectly informed the Petitioner that she could sign a declination form. However, Krigbaum later found that the Petitioner could not decline the vaccination and informed Petitioner she must take the vaccination which the Petitioner refused.
11. The Respondent's investigation revealed that on November 13, 2009, the Hospital's Job Recruiter, called the Petitioner and told the Petitioner that due to the fact she did not complete the Post Health Exam and refused the required vaccinations the offer of employment was being rescinded.
12. The Hospital stated during the Respondent's investigation that the Petitioner was very abrupt and argumentative during the post health screening process and did not speak to its employees in a respectful manner. The Hospital stated that the Job Recruiter spoke with two of the Hospital's employees who informed the Job Recruiter that there had been ongoing behavior problems with the Petitioner during the post health screening process. The Hospital further stated that the

Petitioner's behavior and interactions with its employees was not consistent with Hospital's Associate Service Commitment.

13. In her Request for Review, the Petitioner argues the Respondent made a credibility determination in violation of Cooper v. Salazar. The Petitioner contends the Hospital was fully aware of her religious beliefs when she informed the Hospital of her religious beliefs during the Hospital's pre-employment process. The Petitioner further denies that she was argumentative with the Hospital's employees during the process.
14. In its response, the Respondent asks the Commission to sustain the dismissal of the Petitioner's charge for Lack of Substantial Evidence. The Respondent contends that the evidence was insufficient to establish a *prima facie* case of discrimination. The Respondent further argues that the Hospital articulated a non-discriminatory business reason for not hiring the Petitioner and the Respondent found no evidence of pretext.

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).

The Commission finds that the evidence was insufficient to establish a *prima facie* case of discrimination. Generally, to establish a *prima facie* case of discrimination, the evidence must show that: (1) the Petitioner is a member of a protected class; (2) the Petitioner was performing his work satisfactorily; (3) the Petitioner was subject to an adverse action; and (4) the employer treated a similarly situated employee outside the Complainant's protected class more favorably under similar circumstances. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2nd Dist. 1994). In the Petitioner's case, there was no evidence that the Hospital treated a similarly situated job applicant outside the Petitioner's protected class more favorably under similar circumstances. There was no evidence that non- Born Again Christian applicants were hired without taking the Hospital's Post Health exam.

