

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: <b>2010SA0378</b>
	)	EEOC NO.: <b>21BA92997</b>
<b>RANDY HOWARD,</b>	)	ALS NO.: <b>11-0582</b>
	)	
Petitioner.	)	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Terry Cosgrove<sup>1</sup>, Patricia Bakalis Yadgir and Duke Alden presiding, upon Randy Howard's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>2</sup> of Charge No. 2010SA0378; 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 the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

**LACK OF JURISDICTION**

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

**A. PROCEDURAL HISTORY**

1. On July 30, 2009, the Petitioner filed a perfected charge of discrimination with the Respondent. The Petitioner alleged Caterpillar, Inc. ("Caterpillar") demoted him because of his age, 54, in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act")
2. On April 18, 2011, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence.
3. On May 23, 2011, the Petitioner filed his first Request
4. On July 5, 2011, pursuant to the Respondent's Response to the Request, the Commission vacated the dismissal of the charge and remanded the matter for further investigation.
5. On August 8, 2011, the Respondent again dismissed the Petitioner's charge for Lack of Jurisdiction.

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

<sup>2</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."

6. On September 11, 2011, the Petitioner filed his second Request. On October 19, 2011, the Respondent filed its Response.

## **B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS**

1. The Petitioner was employed as a Business Support Manager.
2. During the Respondent's investigation, the Petitioner averred that on November 10, 2008, the Caterpillar informed him that he was being assigned to a different job effective February 1, 2009.
3. The Petitioner further averred that on November 10, 2008, the Caterpillar notified him that he was being demoted from salary Grade 27 to a Salary Grade 25 position effective February 1, 2009.
4. The Petitioner filed his charge on July 30, 2009, 262 days from the date he was made aware of the alleged civil rights violation.
5. In his Request, the Petitioner argued that the Respondent has jurisdiction over the matter because numerous instances of discrimination occurred within the 180 day filing period. However, the Petitioner did not provide any dates for this assertion.
6. In its response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge for Lack of Jurisdiction. The Respondent argued that the charge was not timely filed.

## **C. DISCUSSION & DETERMINATION**

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for Lack of Jurisdiction. Section 7A-102(A)(1) of the Act provides that in all cases (except housing discrimination cases), a complainant must file a charge of discrimination with the Respondent within 180 days after the date of the alleged civil rights violation. This 180-day filing requirement is jurisdictional. Failure to file a charge within the prescribed time deprives the Respondent and the Commission of jurisdiction to proceed further. See Trembczynski v. Human Rights Commission, 252 Ill.App.3d 966, 625 N.E.2d, 215, 218 (1<sup>st</sup> Dist 1993).

Furthermore, the Commission has previously held that .... "the 180 day period begins to run from the time that the adverse action is communicated to the Petitioner." See Fletcher Barnes and Chicago Transit Authority, 36 Ill. HRC Rep. 211, 2 (1987). In other words ..."the 180-day period begins when the employer gives notice of the discriminatory action, which is when the injury is deemed to have occurred." See Jesse Lofton and Brown & Williamson Tobacco Corp., IHRC, ALS No. 4306, June 29, 1992, 1992 WL 721759, \* 5.

*In the Matter of the Request for Review by: Randy Howard*

In the Petitioner's matter, the Petitioner became aware of the adverse act on November 10, 2008. The Petitioner filed his charge 262 days after the alleged civil rights violation. As such, the charge was not timely filed and the Respondent lack jurisdiction to investigate the charge.

#### **D. CONCLUSION**

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of the 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 Caterpillar, Inc. as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

**STATE OF ILLINOIS**                    )  
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**HUMAN RIGHTS COMMISSION**    )

**Entered this 7<sup>th</sup> day of December 2018.**

■

Commissioner Terry Cosgrove

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden