

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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

ROSA M. BARRIOS,)

Petitioner.)

CHARGE NO.: **2011CF2389**

EEOC NO.: **21BA11067**

ALS NO.: **11-0813**

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang¹, Robert A. Cantone, and Brad Cole² presiding, upon Rosa M. Barrios's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")³ of Charge No. 2011CF2389; 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 SUBSTANTIAL EVIDENCE

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

A. PROCEDURAL HISTORY

1. On February 22, 2011, the Petitioner filed a perfected charge of discrimination with the Respondent. The Petitioner alleged SOI, Department of Human Services ("DHS") subjected her to unequal terms and conditions of employment (Count A), subjected her to harassment (Count B), and failed to accommodate her physical disability, back injury (Count C), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act").
2. Pursuant to the Petitioner's request, the Respondent administratively closed Counts A and B of the charge on July 18, 2011.
3. In Count C, The Petitioner alleged that on November 22, 2010, the Petitioner requested and DHS denied her a reasonable accommodation for her physical disability. The Petitioner further alleged that it requested DHS to provide her with an ergonomic chair to accommodate her physical disability and that DHS denied her request.
4. On October 21, 2011, the Respondent dismissed Count C of the Petitioner's charge for Lack for Lack of Substantial Evidence.
5. On November 3, 2011, the Petitioner filed a timely Request. On January 24, 2012, the Respondent filed its Response to the Petitioner's Request.

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

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

³ 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."

B. FACTUAL HISTORY, ALLEGATIONS, & ARGUMENTS

1. The Petitioner is employed as a Case Worker by DHS.
2. DHS's Reasonable Accommodation Policy provides "a reasonable accommodation to a qualified individual who makes a request, unless the accommodation would create an undue hardship on [DHS]". DHS's Accommodation Policy indicates that a determination of what accommodation, if any, is appropriate shall be made on a case-by-case basis. DHS's Accommodation Policy further provides that, "an employee with a disability has the right to refuse an accommodation. However, if the individual cannot perform the essential functions of the job without an accommodation, he or she will not be considered to be an otherwise qualified individual with a disability."
3. On November 22, 2010, the Petitioner filled out a form from DHS ("request for a reasonable accommodation form letter") and gave the form to Karen Hamilton ("Hamilton")(non-disabled), Public Service Administrator, requesting an accommodation to her physical disability. In Complainant's form letter, she requested a "correct ergonomic chair" and she identified her physical disability as "chronic thoracic back pain/mild interscapular tenderness."
4. On or about April 13, 2011, DHS offered the Petitioner an ergonomically adjustable chair. The Petitioner refused the chair.
5. The Petitioner stated that on April 13, 2011, Gholston offered her a chair, but it was unacceptable, and she refused to sit in it because it was not what her doctor requested. The Petitioner stated that she continued to use the non-adjustable chair she had previously.
6. On April 18, 2011, Felicia Gholston ("Gholston") (non-disabled), Local Office Administrator, filled out a form recommending Petitioner's request for accommodation to the State of Illinois, Bureau of Accessibility and Job Accommodation ("BJA").
7. On or about May 9, 2011, DHS again offered the Petitioner another ergonomically adjustable chair and the Petitioner refused the chair.
8. The Petitioner stated that on or around May 9, 2011, the Englewood Family Community Resource Center, (FCRC) received new, adjustable chairs, and Gholston offered her one. Complainant stated that she did not utilize the chair because it was not doing any good to the pain she was feeling throughout the day.
9. On May 9, 2011, BJA sent a letter to the Petitioner asking her to clarify what exactly the Petitioner was requesting as an accommodation.
10. On June 20, 2011, the Petitioner's physician, Dr. Won J. Baylis, filled out DHS's form entitled, Physician Medical Review, and recommended "working at computer with correct ergonomic chair."
11. Other than stating "correct ergonomic Chair", the Petitioner's physician's recommendation did not specify what type of chair, features, brand, or requirements the chair must have⁴.

⁴ The Petitioner attached her doctor's recommendation to her Request. The Petitioner's doctor states "ergonomic chair" on his notes. The doctor did not giving any further details concerning the chair.

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12. On August 15, 2011, DHS sent a letter to the Petitioner stating that her request for an accommodation was denied due to her medical documentation not substantiating a disability as defined by the Americans with Disabilities Act.
13. In her request the Petitioner argues that she was not offered a chair on two occasions. The Petitioner contends that she was only offered a chair for her disability on April 13, 2011 and that chair was unacceptable. The Petitioner further argues that she complied with all of DHS's requirements to accommodate her disability and that her doctor's note was specific enough for DHS to accommodate her disability.
14. In its response, the Respondent asks the Commission to sustain its dismissal of Count C of the Petitioner's charge for Lack of Substantial Evidence. The Respondent argues that the evidence is insufficient to establish even a *prima facie* case of failure to accommodate a disability.

C. DISCUSSION & DETERMINATION

The Commission concludes that the Respondent properly dismissed Count I 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 the evidence insufficient to establish even a *prima facie* case of failure to accommodate a disability. Generally, to establish a *prima facie* case of failure to accommodate a disability, there must be evidence that: (1) the Petitioner is disabled within the meaning of the Act; (2) the Respondent had knowledge of the Petitioner's disability; (3) the Petitioner requested a reasonable accommodation; (4) the Employer failed to accommodate the Petitioner, and (5) with or without a reasonable accommodation, the Petitioner could perform the essential functions of the job. See *Illinois Department of Corrections v. Illinois Human Rights Commission*, 298 Ill.App.3d 536, 540, 699 N.E.2d 143, 145-46 (3rd Dist. 1998), citing *Truger v. Department of Human Rights*, 293 Ill. App.3d 851, 859, 688 N.E.2d 1209, 1213 (2nd Dist. 1997). It is the duty of the individual seeking an accommodation to apprise the employer or labor organization involved of the employee's disabling condition and submit any necessary medical documentation. 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). Additionally, both the employee and the employer must participate in an "interactive process" to determine whether an accommodation request is reasonable or appropriate.

In the Petitioner's case, the evidence was insufficient to show that DHS had failed to accommodate the Petitioner. The evidence revealed that Petitioner and DHS participated in an "interactive process" to determine whether the Petitioner's accommodation request was reasonable or appropriate. The evidence revealed DHS had endeavored to accommodate the Petitioner on two separate occasions. DHS obtained an ergonomic chair for the Petitioner and the Petitioner refused the chair on both occasions. The Petitioner stated that she refused the chairs because the chairs did not alleviate her pain. The evidence further revealed that the Petitioner did not specify exactly what type of ergonomic chair she was requesting. It is the burden of the Petitioner to disclose her physical disability with DHS and specify what exactly she is requesting (i.e., type of ergonomic chair) in order for DHS to determine whether it could accommodate her physical disability. Other than the Petitioner

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stating that the chairs did not alleviate her back pain, she offered no details as to what chair would meet her needs. As such, there was no evidence that DHS failed to accommodate the Petitioner's disability.

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 Petitioners' 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 SOI, Department of Human Services 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 3rd day of December 2018.

Commissioner David Chang

Commissioner Robert A Cantone

Commissioner Brad Cole