

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011SF2210
)	EEOC NO.: 21BA10933
ALICIA OAKLEY,)	ALS NO.: 12-0199
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Duke Alden, Patricia Bakalis Yadgir, and Terry Cosgrove¹ presiding, upon Alicia Oakley’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)² of Charge No. 2011SF2210 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 for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On January 28, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Wal-Mart Stores, Inc., (“Employer”) discriminated against her based on her physical disability (degenerative disc disease) by discharging her, in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On December 30, 2011, the Respondent dismissed the Petitioner’s charge for lack of substantial evidence. The Petitioner filed a timely Request.

The Commission concludes that the Respondent properly dismissed 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. 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. In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

Generally, to establish a *prima facie* case of discrimination, the Petitioner must show: 1) she is a member of a protected class; 2) she was performing her work satisfactorily; 3) she was subject to an adverse action; and 4) the Employer treated a similarly situated employee outside her protected class more favorably under similar circumstances. Marinelli v. Human Rights Comm’n, 262 Ill. App. 3d 247, 634 N.E.2d 463 (2d Dist. 1994). Petitioner’s charge fails on the second and fourth elements. Before being discharged, Petitioner had been on unpaid medical leave for six months due to her

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

² 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.”

degenerative disc disease. Wal-Mart contends, and Petitioner admits, that it requested updated medical paperwork to renew her unpaid leave, but Petitioner did not provide that paperwork and continued to be absent from work. Wal-Mart then terminated her employment for job abandonment, so Petitioner has not shown that she was performing her work satisfactorily.

Further, Petitioner has provided no evidence that a similarly-situated employee without a physical disability was treated more favorably under similar circumstances. In fact, Wal-Mart contends that it discharged a number of employees for absenteeism or job abandonment.

Accordingly, the Petitioner has not presented any evidence to show that the Respondent's dismissal of the charge was not in accordance with the Act.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The dismissal of the Petitioner's charge is hereby **SUSTAINED**.
2. 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 Wal-Mart Stores, Inc., as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
) **Entered this 10th day of October 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Duke Alden

Commissioner Terry Cosgrove

Commissioner Patricia Bakalis Yadgir