

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CF3901
)	EEOC NO.: 21BA12198
TIMMY LINN,)	ALS NO.: 12-0259
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Lauren Beth Gash, David J. Walsh, and Diane M. Viverito¹ presiding, upon the Request for Review (“Request”) of Timmy Linn (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)² of Charge No. 2011CF3901 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 Petitioner’s charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On April 6, 2011, Petitioner filed a charge with the Respondent alleging that Supan’s Wheels, Inc., d/b/a Fender Menders (“Employer”) discharged him because of his mental disabilities, in violation of Section 2-102(A) of the Act.

On March 29, 2012, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

To present a *prima facie* case of discrimination based on disability, Petitioner must show (1) that he is disabled within the meaning of the Act; (2) the employer had knowledge of the disability; (3) the Petitioner suffered an adverse employment action; and (4) the disability is unrelated to Petitioner’s ability to perform the job with or without an accommodation. Habinka v. Human Rights Commission, 192 Ill.App.3d 343, 373, (1st Dist. 1989). The Employer may then produce a legitimate, nondiscriminatory reason for its action, and Petitioner must prove that this reason is a pretext for discrimination. Zaderaka v. Illinois Human Rights Comm’n, 131 Ill. 2d 172, 179 (1989). Petitioner’s claim fails at this point: both parties agree that Employer wanted Petitioner to work particular days after he was cleared to return from medical leave, but Petitioner did not work on those days. Employer discharged him for not working those days. Petitioner has not proven that this reason is pretextual.

¹ This Order is in accordance with votes cast by Commissioners Gash, Walsh, and Viverito prior to the expiration of their terms.
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.”

