

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CF3026
)	EEOC NO.: 21BA11525
ALFREDO LOPEZ,)	ALS NO.: 12-0377
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hamilton Chang, Steve Kim, and Robert A. Cantone presiding, upon the Request for Review (“Request”) of Alfredo Lopez (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2011CF3026 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 April 13, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Pacific Rail Services, LLC (“Employer”) failed to accommodate his disability (diabetes) and discharged him because of his disability, in violation of Section 2-101(A) of the Illinois Human Rights Act (“Act”).

On April 10, 2012, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

Petitioner has failed to present a *prima facie* case that Employer failed to accommodate his disability. He must show 1) the petitioner is disabled within the meaning of the Act; 2) the employer 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. Illinois Dep’t of Corrections v. Illinois Human Rights Comm’n, 298 Ill. App. 3d 536, 540 (3d Dist. 1998). Further, it is Petitioner’s burden to demonstrate that accommodation was necessary for adequate performance. Owens v. Dep’t of Human Rights, 356 Ill. App. 3d 46, 53–54 (2005).

¹ 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.”

It is undisputed that Employer knew of Petitioner's diabetes, because Petitioner had a long-standing arrangement that he could take twenty minutes of intermittent FMLA time during the work day to take his diabetes medication. Petitioner alleges that Employer failed to accommodate him on one occasion, January 10, 2011, because his supervisor told him he could take a ten-minute break for his medication, or use his lunch break. Petitioner has not shown that the accommodation he wanted (twenty minutes) was necessary for adequate performance, rather than the shorter break offered that day.

Petitioner's claim that he was discharged due to his disability also fails. He 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 state a legitimate nondiscriminatory reason for the discharge, and Petitioner must prove that this reason is a pretext for discrimination. Id. at 372. The Employer asserts that Petitioner was discharged for his second violation of Employer's strict policy prohibiting the use of cell phones while working. Petitioner admits he violated the policy. He has not shown that Employer's reason is pretextual.

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 Pacific Rail Services, LLC 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 23rd day of October 2018.

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Steve Kim