

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012SF0136
)	EEOC NO.: 21BA12269
STEVEN HARPER,)	ALS NO.: 12-0527
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Diane M. Viverito,¹ Michael Bigger, and Amy Kurson presiding, upon Steven Harper's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")² of Charge No. 2012SF0136 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**:

- A. The Respondent's dismissal of Counts A and B is **SUSTAINED** for **LACK OF JURISDICTION**.
- B. The Respondent's dismissal of Counts C and D is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.

DISCUSSION

On July 5, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Komatsu America Corporation ("Employer") forced him on medical leave and replaced him with another employee because of his disability (Counts A and B) and discharged him because of his disability and in retaliation for filing a charge of discrimination (Counts C and D) in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act"). On August 21, 2012, the Respondent dismissed Counts A and B of the Petitioner's charge for lack of jurisdiction and Counts C and D for lack of substantial evidence. The Petitioner filed a timely Request.

The Commission finds that the Respondent properly dismissed Counts A and B of the Petitioner's charge for lack of jurisdiction. The Act provides that a charge must be filed within 180 days after the date that a civil rights violation allegedly has been committed. 775 ILCS 5/7A-102(A). This requirement is jurisdictional, meaning that if the Petitioner does not file his charge within the 180 day time limit, neither the Respondent nor the Commission have the jurisdiction to proceed on the charge. Trembczynski v. Human Rights Comm'n, 252 Ill. App. 3d 966, 969 (1st Dist. 1993). Because

¹ This Order is in accordance with a vote cast by Commissioner Viverito prior to the expiration of her 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."

the Petitioner's charge was filed on July 5, 2011, the discrimination complained of must have occurred on or after January 6, 2011. Count A alleges that the Petitioner was forced to take medical leave in October and November of 2009. Count B alleges that the Petitioner was replaced by another employee in April of 2010. Because both of these allegations fall outside of the 180 day time limit, the Respondent properly dismissed them for lack of jurisdiction.

The Commission further concludes that the Respondent properly dismissed Counts C and D 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. 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).

To establish a *prima facie* case of discrimination, the Petitioner must show: 1) he is a member of a protected class; 2) he was performing his job satisfactorily; 3) he was subject to an adverse action; and 4) the Employer treated a similarly situated employee outside his protected class more favorably under similar circumstances. Marinelli v. Human Rights Comm'n, 262 Ill. App. 3d 247, 253 (2d Dist. 1994).

To prove a *prima facie* case of retaliation, the Petitioner must prove the following three elements: (1) Petitioner engaged in a protected activity, (2) the employer took an adverse action against him, and (3) there was a causal nexus between the protected activity and the adverse action. Carter Coal Co. v. Human Rights Commission, 261 Ill. App. 3d 1, 7 (5th Dist. 1994).

There is no substantial evidence that Petitioner was discharged either because of his disability or in retaliation for filing a charge of discrimination. The investigation revealed that the Petitioner was discharged due to his repeated violations of the attendance policy. The Employer has a very clear attendance policy that relies on a point system to determine the appropriate disciplinary action. This policy provides that once an employee accumulates more than 11 points, he is to be suspended pending discharge. Between May 6, 2011 and June 13, 2011, the Petitioner accumulated 13 points. The investigation did not reveal any similarly situated employee who had accrued as many points who was not suspended pending discharge. The Petitioner pointed to coworker Bell, who had accumulated 12.5 points and was only issued a reprimand; however, Bell was working under a different point system, and was allowed up to 14 points before discharge, so he was not similarly situated.

Likewise, the Petitioner cannot demonstrate that his discharge was in retaliation for filing a previous charge of discrimination. The Petitioner filed his charge on June 3, 2011, and he was suspended on June 14, 2011. However, he cannot point to any causal nexus between the protected activity and the discharge. The Employer articulated a legitimate, non-discriminatory reason for the discharge: the Petitioner violated the clear mandates of the attendance policy. The Petitioner cannot

