

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CA3580
)	EEOC NO.: 21BA11929
JILL TKACH,)	ALS NO.: 12-0606
)	
)	
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 Jill Tkach (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2011CA3580 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 June 2, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that First Associates, Ltd. d/b/a FirstStaff Services, Inc. (“Employer”) laid her off because of her race, age, and disability, in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). Petitioner, a staffing consultant, shifted from full time to part time work with Employer in April 2009, and went on disability leave in October 2010. Her doctor cleared her to return to work November 15, 2010, but Petitioner did not return to work. In February 2011, her doctor wrote that Petitioner was still unable to work. Petitioner asked to return to work part time, but Employer refused because it needed full time employees.

On June 22, 2012, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

To show a *prima facie* case that Employer discriminated against her based on her race and age, 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, 253-54 (2d Dist. 1994). 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

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.”

(1989). Employer asserts that it laid Petitioner off because she did not return to work as scheduled and, after the death of Petitioner's supervisor, it needed its staffing consultants to work full time. Petitioner has not shown that this was pretextual.

Petitioner's claim that she was laid off due to her disability also fails. She must show: (1) that she 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. Again, Petitioner has not proven that Employer's proffered reason was pretextual. Further, Petitioner's doctor had not cleared her to return to work when she was laid off.

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 First Associates, Ltd. d/b/a FirstStaff Services, 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 9th day of November 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Robert A. Cantone

Commissioner Hamilton Chang

Commissioner Steve Kim