

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CF0999
)	EEOC NO.: 21BA10061
MICHELLE MITCHELL,)	ALS NO.: 12-0638
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Michael Bigger, Amy Kurson, and Cheryl Mainor presiding, upon Michelle Mitchell's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2011CF0999 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 October 7, 2010, the Petitioner filed a charge of discrimination with the Respondent alleging that Illinois Bell Telephone d/b/a AT&T Illinois ("Employer") issued her a written warning because of her sex and disability, failed to accommodate her disability, harassed her because of her disability, and discharged her because of her sex and disabilities in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On July 18, 2012, 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).

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 job 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 (2d Dist. 1994).

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."

There is no substantial evidence that any of the adverse actions taken against the Petitioner were due to her sex or her disability. The Petitioner's charge alleges that the written warning and the discharge were both discriminatory, but the investigation revealed otherwise. The Employer stated that the written warning was given to the Petitioner upon her return to work because she had exceeded her 60-day FMLA limit. The written warning was the first step according to the Employer's progressive discipline policy. The Petitioner was unable to point to another employee who had exceeded his or her FMLA time who was not given a written warning. As for the Petitioner's discharge, the Employer explained that Petitioner was discharged for violating its Code of Business Ethics by posting derogatory comments about the Employer on Facebook while on company time. The investigation did not reveal an employee who was not a member of the Petitioner's protected classes who had engaged in the same conduct and was not fired. Therefore, the Petitioner cannot prove her *prima facie* cases regarding the adverse employment actions taken by the Employer.

The Petitioner's charge next alleges that she was denied her reasonable accommodation requests. The Employer must provide reasonable accommodation for known physical limitations of otherwise qualified disabled employees unless the Employer can demonstrate that such accommodations would be prohibitively expensive or would unduly disrupt the ordinary conduct of business. 56 Ill. Adm.Code, § 2500.40. The Petitioner bears the burden of asserting the duty to accommodate; showing that accommodation was, in fact, requested; and demonstrating that accommodation was necessary for adequate job performance. Illinois Dept. of Corrections v. Illinois Human Rights Comm'n, 298 Ill. App. 3d 536, 541 (3d Dist. 1998).

The investigation revealed, and the Petitioner conceded, that most of the Petitioner's accommodation requests were granted within one and a half months of her return to work. The Petitioner was, among other things, allowed longer breaks and seated closer to the restroom. The only accommodation request that was denied was the Petitioner's request to work on the third floor to be closer to a restroom. This request was made while the Petitioner was in training, and the training was occurring on the fourth and second floors. The Petitioner was never moved to the third floor, but once training was complete she was moved within 30 feet of a restroom. Therefore, the Petitioner cannot establish that the Employer denied any of her reasonable accommodation requests.

The Petitioner next alleges that she was subject to a hostile work environment. In order to prove workplace harassment, the Petitioner must establish that she was harassed on the basis of her disability and that the harassment was so severe or pervasive that it altered the conditions of her employment and created an abusive environment. In re Luisa Tapia, et al. and Genlyte Thomas Group, IHRC, Charge No. 2000CF0871, 2002 WL 32828305 (December 16, 2002).

The Petitioner cites as harassing behavior that she was denied vacation requests and that she was told to take long-term disability. The Employer explained that the Petitioner was denied her vacation request because she was in training, and the managers who suggested she take long-term disability were merely informing the Petitioner of her time-off options. Nothing cited as harassment by the Petitioner is so severe or pervasive as to create an abusive workplace.

