

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2011CN3998
)	EEOC NO.: 846-2011-24818
JACQUELINE REASNOVER,)	ALS NO.: 12-0748
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Michael Bigger, Amy Kurson, and Cheryl Mainor presiding, upon Jacqueline Reasnover's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2011CN3998 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 May 5, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Marquette Bank ("Employer") failed to accommodate her physical disabilities, harassed her, subjected her to unequal terms and conditions, and discharged her due to her physical disabilities, race, and sex as well as discharged her in retaliation for opposing unlawful discrimination in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act"). On September 26, 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).

Petitioner's charge first alleges that the Employer failed to accommodate her physical disabilities. An 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

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."

business. 56 Ill. Adm.Code, § 2500.40. The employee 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 Petitioner's allegations of failure to accommodate were properly dismissed because the investigation did not reveal that the Petitioner had made a reasonable accommodation request. The Petitioner informed the Employer that she would be "in and out," and may need to use the bathroom frequently. She provided medical documentation to the Employer when she went on medical leave, but no formal request for accommodation was made, and the Petitioner cannot point to any accommodations that were requested and denied.

The Petitioner next alleges that she was harassed due to her physical disabilities, her race, and her sex. In order to prove discriminatory harassment, the Petitioner must establish that she was harassed on the basis of her membership in a protected class 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 only alleged one incident of harassment: that she was told by a supervisor not to use her cell phone on company time. This one, isolated incident is not severe enough to constitute actionable harassment. Further, it is undisputed that the Employer has a policy restricting personal cell phone use while at work, so the supervisor was merely reminding the Petitioner of the policy.

The Petitioner's charge of unequal terms and conditions is based on the same incident with her personal cell phone. However, again, the supervisor was merely reminding the Petitioner to stay off of her personal cell phone during work hours. Further, the Petitioner could not point to any coworkers who were allowed to use their cell phones during work hours, so she could not prove that she was subject to any unequal terms or conditions.

Lastly, the Petitioner alleges that she was discharged due to her physical disabilities, her race, her sex, and in retaliation for opposing unlawful discrimination. 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). The investigation revealed that the Petitioner was discharged after a confrontation with a coworker. The Employer stated that this incident, coupled with the Petitioner's past incidents of insubordination and inability to follow the rules, resulted in her discharge. The Petitioner was unable to point to, and the investigation did not reveal, any employees who were not members of the Petitioner's protected classes who had histories of insubordination and were not discharged.

