

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: <b>2012CF1233</b>
	)	EEOC NO.: <b>21BA20251</b>
<b>MARTIN COLIN,</b>	)	ALS NO.: <b>13-0049</b>
	)	
	)	
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 Martin Colin (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)<sup>1</sup> of Charge No. 2012CF1233 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 dismissal of the Petitioner’s charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

**DISCUSSION**

On November 3, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that ConAgra Foods, Inc. (“Employer”) discharged him because of his physical disability, in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”).

On November 12, 2012, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

Petitioner’s claim that he was discharged due to his disability 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 (1<sup>st</sup> Dist. 1989). Petitioner’s claim fails at the fourth prong: following his injury, he was medically evaluated and restricted from lifting or carrying more than twenty-five pounds, but his position required him to lift and carry heavier items. Employers are not obligated to retain an employee if that employee is medically unable to return to their assigned position. La Porte v. Jostens, Inc., 213 Ill. App. 3d 1089, 1093 (1991).

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.

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<sup>1</sup> 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.”

