

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2012CF2545
)	EEOC NO.: 21BA21191
BARBARA ANN SHAIN,)	ALS NO.: 13-0076
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Duke Alden, Charlene Foss-Eggemann,¹ and Patricia Bakalis Yadgir presiding, upon the Request for Review (“Request”) of Barbara Ann Shain (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)² of Charge No. 2012CF2545 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 Petitioner’s charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On October 5, 2011, the Petitioner filed a charge of discrimination with the Respondent alleging that Clearwater Paper Corporation (“Employer”) subjected her to unequal terms and conditions of employment because of her sexual orientation and perceived disability, in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). Petitioner worked in a manufacturing facility. In December 2010, she was in a car accident and did not return to work until April 4, 2011. Employer temporarily placed her in a desk job. In May 2011, Employer required Petitioner to undergo a “functional capacity evaluation” to see whether she could return to her old job. Petitioner passed the evaluation and was returned to her former position.

On February 21, 2013, the Respondent dismissed the Petitioner’s charge in its entirety. The Petitioner filed a timely Request.

Petitioner has not made a *prima facie* case that Employer discriminated against her by requiring her to undergo an evaluation and returning her to her original position. She 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). Petitioner’s claims fail at the third prong. An adverse action

¹ This Order is in accordance with a vote cast by Commissioner Foss-Eggemann 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.”

must be sufficiently severe or pervasive to constitute a term or condition of employment. See In the Matter of: Linda M. Hartman and City of Springfield Police Department, IHRC, Charge No. 1993SF0365 (October 4, 1999), 1999 WL 33252975 (Ill.Hum.Rts.Com.). Adverse action must be “more disruptive than a mere inconvenience or an alteration of job responsibilities.” Traylor v. Brown, 295 F.3d 783, 788 (7th Cir. 2002). Termination, decrease in wages, or material loss of benefits would qualify. Id. The actions taken by Employer do not rise to this level.

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 Clearwater Paper Corporation 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 21st day of November 2018.**
HUMAN RIGHTS COMMISSION)

Commissioner Duke Alden

Commissioner Charlene Foss-Eggemann

Commissioner Patricia Bakalis Yadgir