STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	CHARGE NO.: **2012SR4129**
	)	EEOC NO.: **440-2012-00495**
Michelle Baptist	)	ALS NO.: **13-0309**
Petitioner	)	

ORDER

This matter coming before the Commission by a panel of three, Chair Rose Mary BombelaTobias and Commissioners Patricia Bakalis Yadgir and Duke Alden, presiding upon Michelle Baptist's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")[1] of Charge No. 2012SR4129 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 is **SUSTAINED** as to Counts A and C but for **Lack of Jurisdiction** and Counts B and D for **Lack of Substantial Evidence**.

DISCUSSION

On November 21, 2011, the Petitioner filed an unperfected charge of discrimination with the Respondent, perfected on July 24, 2012, alleging that Le Peep ("LP") subjected her to discriminatory terms and conditions of employment because of her association with a disabled person (Count A) and in retaliation for opposing unlawful discrimination (Count B); and discharged because of her association with a disabled person (Count C); and in retaliation for opposing unlawful discrimination (Count D), in violation of Sections 2-102 (A) and 6-101(A) of the Illinois Human Rights Act ("Act").

On December 15, 2014, the Respondent dismissed the Petitioner's charge in its entirety. After being granted an Extension of Time to file a Request for Review, the Petitioner filed a timely Request for Review on March 18, 2015.

The Commission concludes that the Respondent properly dismissed all Counts A and C of the Petitioner's charge for lack of jurisdiction and Counts B and D 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 5/7A102(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*

[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."

for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

The record shows that on or about September 2010, LP hired Petitioner to work part-time as a Hostess. At the time, Petitioner informed LP that she could not work hours prior to 8:00 a.m. or 8:30 a.m. because she had to drop off her disabled son at his school during the week. Since LP opened for business in October of 2010, it had become a popular and busy restaurant. Thus, LP needed more workers to work during the week and weekends. Petitioner was asked to work on weekends but refused to do so. It is unclear as to whether Petitioner's refusal is because she wanted to go out on Friday nights or because she allegedly had another job. That notwithstanding, she was discharged on June 28, 2011 for poor customer service; and for applying for unemployment benefits while still employed and after refusing to work more hours.

To establish a *prima facie case* of disability discrimination, there must be some evidence that 1) she is disabled within the meaning of the Act; 2) the LP had knowledge of the disability; 3) she suffered and adverse employment action; and 4) the disability is unrelated to her ability to perform the job with or without an accommodation. *Habinka v. HRC*, 192 Ill.App.3d 343, 373, 548 N.E.2d 702, 139 Ill. Dec. 317 (1st Dist. 1989). *Department of Corrections v. IHRC*, 298 Ill.App.3d 536,540, 699 N.E.2d 143, 145-6 (3rd Dist.1998).

As to Counts A and C, Petitioner is similarly unable to show that she was subjected to discriminatory terms and conditions of employment and discharged because of her association with a person with a known disability. It is undisputed that the Petitioner is not person with a disability as defined by the Act. While the American with\ Disabilities Act contains an "association provision" which would give rise to EEOC jurisdiction over the Petitioner's disability Counts A and C, the Act contains no provision respecting a relationship or association with a handicapped person. In essence, the Petitioner is requesting that the Commission broaden the scope of the Act to protect employees from discrimination because of the employee's association with a handicapped person. Such a policy decision can only be made by the Illinois General Assembly; the Commission must adjudicate complaints under the Act as it is written. See *Gerald Lapka and Juno Lighting*, IHRC, Charge No. 1998 WL 104765, 1998 WL 104765, *3 (January 13, 1998). Therefore, the Commission concludes that an association relationship with a disabled person does not qualify as a disability under the Act.
As such, the Respondent lacked jurisdiction as to Counts A and C. If the Petitioner's condition does not meet the definition of disability under the Act, there must be a finding of lack of jurisdiction, versus a lack of substantial evidence. *See* 775 ILCS 5/1-103(I).

Next, to establish a *prima facie case* of retaliation, Petitioner must show: 1) she engaged in protected activity; 2) LP took an adverse action; and 3) a causal connection exists between the protected activity and the adverse action. *See Welch v. Hoeh*, 314 ILL.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3rd Dist. 2000).

As to Counts B and D, Petitioner is unable to satisfy the first element of her *prima facie case* for retaliation in opposing unlawful discrimination. Petitioner did not complain about disability or any other form of discrimination. The inability to work certain hours because Petitioner had to take her disabled son to school does not constitute "protected activity" or opposing unlawful discrimination within the meaning of the Act. Therefore, no substantial evidence exists that LP subjected Petitioner to unequal terms and conditions of employment and discharged her in retaliation for opposing unlawful discrimination.

Note that in an action alleging unlawful retaliation, the Commission and the courts have applied a three-step analysis to determine whether there has been a violation of the Human Rights Act. *See Thompson and Hoke Construction Co.*, IHRC, ALS No. S9135, June 2, 1998), and *Loyola University of Chicago v. Illinois Human Rights Commission*, 149 Ill.App.3d 8, 500 N.E.2d 639, 102 Ill.Dec. 746 (1st Dist., 3rd Div. 1986).

Assuming arguendo that Petitioner established a *prima facie case* of retaliation, LP must articulate a legitimate, nondiscriminatory reason for its actions. If this is done, the Petitioner must prove by a preponderance of the evidence that the articulated reason advanced by LP is a pretext. *See Clyde and Caterpillar, Inc.*, IHRC, ALS No. 2794, Nov. 13, 1989, *aff'd sub nom Clyde v. Human Rights Com'n*, 206 Ill. App.3d 283, 564 N.E.2d 265 (4th Dist.1990); and *Texas Dep't. of Community Affairs v. Burdine*, 450 US 248, 254-55 (1981). Here, LP articulated a legitimate, nondiscriminatory reason for scheduling Petitioner lesser hours and discharging her, namely she had issues with customers; had a poor work attitude every time she came in; complained about working too many hours and weekends; and had filed for unemployment benefits while still working for LP. Petitioner failed to present any compelling evidence that LP's proffered reason was a pretext in retaliation for opposing discrimination.

In the absence of any evidence that the business consideration relied upon by LP is a pretext for discrimination, it is improper to substitute judgment for the business judgment of the employer. *See Berry and State of IL, Dept. of Mental Health and Developmental Disabilities*, IHRC, ALS no. S-1946, Charge No. 1994SA0240 (December 10, 1997). Additionally, LP is entitled to make employment decisions based on its reasonable belief surrounding the situation. "Respondent may take its action for good reason, bad reason, reason based upon erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason…The correctness of the reason is not important as there was good faith belief by Respondent in its decision…" *See Carlin v. Edsal Manufacturing Co.*, 1996 WL 652580, Charge No. 1992CN3428 (Ill. HRC, May 6, 1996).

In her Request for Review, there is no additional evidence provided by Petitioner that would warrant a reversal of Respondent's original determination.

Accordingly, the Petitioner has not presented substantial 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 Le Peep 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 17th day of December 2018.**
HUMAN RIGHTS COMMISSION)

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden