

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE No.: 2013 CR3164
Daniel R. Radimecky,)	EEOC No.:440-2013-01750
)	ALS No.: 13-0495
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Chair Rose Mary Bombela-Tobias, Commissioners Patricia Bakalis Yadgir, and Duke Alden, presiding upon the Matter of Petitioner Daniel Radimecky’s Request for Review (Request) of the Notice of Dismissal issued by the Illinois Department of Human Rights (Respondent¹), of Charge 2013 CR3164 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 in the premises;

NOW, THEREFORE, it is hereby ORDERED that the Respondent’s dismissal of Counts A through I of the Petitioner’s Charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**. Respondent’s dismissal of Counts J through L for **LACK OF JURISDICTION IS SUSTAINED**.

DISCUSSION

On May 3, 2013, the Petitioner filed a charge of discrimination with the Respondent alleging that Gottlieb Hospital (Hospital) failed to hire him for three positions because of his age, (46) his disabilities, Marfan Syndrome and Asperger’s, and his genetic information in violation of Section 2-102(A) of the Illinois Human Rights Act. The Respondent dismissed the Petitioner’s Counts A through I the charge for Lack of Substantial Evidence and Counts J through L for Lack of Jurisdiction. The Petitioner filed a timely request.

The Commission concludes that the Respondent properly dismissed Counts A through I of 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. 1993CA

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the “Respondent.” The party to the underlying charge who is requesting review of the Department’s action shall be referred to as the “Petitioner.”

2747, 1995 WL 793258, (March 7, 1995). In addition, the Commission concludes that the Respondent properly dismissed counts J through L for lack of jurisdiction.

In order to prevail on a failure to hire case, the Petitioner must show: 1) that he was a member of a protected class; 2) that he applied for and was qualified for a job for which the employer was seeking applicants; 3) that he was rejected despite being qualified; and 4) after his rejection, the position remained open, and the employer sought other applicants. See C.R.M. v. Chief Legal Counsel of Illinois Dep't of Human Rights, 372 Ill. App. 3d 730, 866 N.E.2d 1177 (2007)

The Petitioner, who is a member of two protected classes; age and disabilities, applied for three jobs at the Hospital: Locker Room Attendant, Patient Care Assistant, and Phlebotomy Specimen Processing Coordinator. He was not hired for any of these positions. Although his online application did not indicate his age or disabilities, he posits that the Hospital likely knew his age and was aware of his disabilities because some of his healthcare providers have a relationship with the Hospital and probably so advised it. At best, this assertion is speculative and does not provide substantial evidence of discrimination required by the Act. Willis v. Illinois Dep't. of Human Rights, 307 Ill. App. 3d 317, 326, 718 N.E. 2d 240 (4th Dist. 1999).

He did not establish that he was qualified for the Locker Room Attendant position because it was for the women's locker room and the Petitioner is a male. Moreover, his name did not appear healthcare worker registry, as required by the Hospital pursuant to statute. That he was not listed on the registry also precluded his being hired for the Patient Care Assistant position. Additionally, because he did not have recent relevant work experience, his application for the was viewed less favorably.

Finally, as to the phlebotomist position, the Hospital's Human Resource Department forwarded his December 7, 2012 application to the hiring manager. But the successful candidate had already been interviewed on December 6, 2012 and confirmed his written job offer on December 14, 2012.

Even assuming that the Petitioner established a prima facie case of age and disability discrimination, there is no evidence of pretext. In the absence of any evidence that the business consideration relied on by the employer is a pretext for discrimination, it is improper for the Commission to substitute its judgment for the Employer's business judgment. Berry and State of Illinois, Dep't of Mental Health and Developmental Disabilities, Charge No. 1994SA0240 (Dec. 10, 1997). Accordingly, the Respondent properly dismissed Counts A through I for lack of substantial evidence.

The Respondent lacked jurisdiction to consider the Petitioner's claims of discrimination based on genetic information. The actions of an administrative agency must be authorized by statute. Alvarado v. Industrial Comm'n, 216 Ill.2d 547, 553 (2005). The Illinois Human Rights Act prohibits discrimination against persons based on race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, or unfavorable discharge from military

service. 775 ILCS 5/1-103(Q) Because the Act does not include genetic information as a protected category, the Respondent is not authorized to investigate the Counts J through L.

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 Gottlieb Hospital as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS

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Entered this 21st day of December 2018

HUMAN RIGHTS COMMISSION

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden