

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE No.: 2013 CR3174
Daniel R. Radimecky,)	EEOC No.: N/A
)	ALS No.: 13-0507
)	
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 Daniel Radimecky’s (Petitioner) Request for Review (Request) of the Notice of Dismissal issued by the Illinois Department of Human Rights (Respondent¹), of Charge 2013 CR3174 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 O of the Petitioner’s Charge for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**. Respondent’s dismissal of Counts P through T for **LACK OF JURISDICTION IS SUSTAINED**.

DISCUSSION

On May 3, 2013, the Petitioner perfected a previously filed charge of discrimination with the Respondent alleging that the University of Chicago Medical Center (Medical Center) failed to hire him for five 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 O the charge for lack of substantial evidence and Counts P through T for Lack of Jurisdiction. The Petitioner filed a timely request.

The Commission concludes that the Respondent properly dismissed Counts A through O 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 2747, 1995 WL 793258, (March 7, 1995). In addition, the Commission

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.”

concludes that the Respondent properly dismissed counts P through T 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 In the Matter of Robert Mott and City of Elgin, IHRC, Charge No. 1986CF3090 (1992) WL 721763.

The Petitioner was employed by the Medical Center as a housekeeping assistant from 1998 to 2008. He resigned on April 2, 2008 pursuant to a settlement agreement with the Medical Center. In consideration of the Medical Center's payment to him of \$50,000, he agreed to resign and not seek reemployment with the Medical Center in the future. Despite that agreement, in November 2012, he applied for five jobs at the Medical Center: Clinical Laboratory Assistant, Food Service Worker, Nursing Support Assistant, Pharmacy Technician and Phlebotomist. He was not hired for any of these jobs. He claims that the Center's not hiring him was because of his age and disabilities. He contends that because he previously worked for the Medical Center and had attended a Medical Center open house, it knew his age and was aware of his disabilities. He failed to provide any evidence that the Medical Center's action in not hiring him was because of his age or his disabilities. Moreover, the settlement agreement rendered him not qualified for any position at the Medical Center. The Commission finds no evidence of pretext, and in the absence of pretext, the Commission cannot 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 O 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 P through T.

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 Counts A-O of the Petitioner's charge for Lack of Substantial Evidence is hereby SUSTAINED.
2. The dismissal of Counts P-T of the Petitioner's charge for Lack of Jurisdiction is hereby SUSTAINED.
3. 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 the University of Chicago Medical Center 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

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HUMAN RIGHTS COMMISSION

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden