

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST )  
FOR REVIEW BY: )

**Sherri Hall-Dupart** )

Petitioner. )

CHARGE NO.: **2013CF2725**  
EEOC NO.: **21BA31393**  
ALS NO.: **14-0162**

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Robert A. Cantone, Hamilton Chang, and Steve Kim presiding, upon Sherri Hall-Dupart's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2013CF2725 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** on the following ground:

**LACK OF SUBSTANTIAL EVIDENCE**

**DISCUSSION**

On April 4, 2013, the Petitioner, a Data Entry Operator, filed a charge of discrimination with the Respondent alleging that the City of Chicago-Department of Public Health ("CCDPH") harassed her due to her various physical disabilities (chiari malformation, herniated discs, non-allergic rhinitis and deQuervain's tendinitis) or in retaliation for filing previous charges of discrimination (Counts A-E); failed to accommodate her, because of physical disabilities or in retaliation for filing prior charges of discrimination (Counts F-J); denial of FMLA, because of physical disabilities or in retaliation for filing prior charges of discrimination (Counts K-O); transfer denial, because of physical disabilities or in retaliation for filing prior charges of discrimination (Counts P-T); and issuance of a pre-disciplinary notice, because of physical disabilities or in retaliation for filing prior charges of discrimination (Counts U-Y), in violation of Section 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act").

Petitioner is an individual with disabilities as defined under Section 1-103(l) within the meaning of the Act. Of note, Petitioner's prior charges of discrimination filed on September 17, 2012 (No. 2012CF4025) and October 26, 2012 (No. 2013CF1845) alleged a failure to accommodate based on disability.

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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."

On April 18, 2014, the Respondent dismissed the Petitioner's charge in its entirety for lack of substantial evidence. The Petitioner filed a timely Request for Review on April 29, 2014.

The Commission concludes that the Respondent properly dismissed all counts 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. 1993CA2747, 1995 WL 793258, \*2 (March 7, 1995).

As to Counts A- E, the evidence is insufficient to establish a *prima facie* case of harassment because of physical disabilities or in retaliation for filing prior charges against her employer. Actionable harassment occurs when the workplace is permeated with discriminatory ridicule and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. See *Harris v. Forklift Systems, Inc.*, 510 U.S. 20, 114 S. Ct. 367, 371, 126 L.Ed.2d 295 (1993). The alleged harassment consisted of 1) an e-mail reminding Petitioner and two co-workers that they were required to sign in and out for breaks; 2) criticizing Petitioner's job performance as not in accordance with the employer's standard; 3) criticizing Petitioner for excessive use of FMLA; and 4) forcing Petitioner to smell coffee beans in attempt to check her disability. Timekeeping and performance evaluations are work related and within the scope of CCDPH's reasonable discretion, and therefore does not rise to the level of actionable harassment. Moreover, the record does not show that Petitioner was criticized for excessive use of FMLA or forced to smell coffee beans. Instead, Petitioner was provided clarification on the FMLA process and coffee beans were placed in the common room to absorb food and fragrance odors that Petitioner complained were bothering her. Petitioner fails to specify the date and circumstances of any statements or provide evidence that such statements were made with animus based on her physical disabilities or in retaliation for her filing of previous charges of discrimination.

As to Counts F-J, the evidence is similarly insufficient to establish a *prima facie* case of failure to accommodate because of physical disabilities or in retaliation for filing prior charges against her employer. Petitioner is in the habit of requesting accommodations. Since 2010, CCDPH has provided Petitioner several accommodations of modified work and a complete ergonomic work station which included a chair for back support, ergo rest for arm support, smart beads wrist rest, wireless keyboard and adjustable notebook riser. CCDPH, however, was unaware of Petitioner's disability of herniated discs and Petitioner did not request an accommodation for this condition. Further, Petitioner admitted that as of January 2013, CCDPH continued to provide her a modified work schedule and fails to specify the dates and circumstances that indicate she was prohibited from taking breaks, stretching, or exercise while her amended request for accommodation was pending approval for a 15 minutes break with every 45 minutes of keyboarding. On October 17, 2017, Petitioner requested a reasonable accommodation for her non-allergic rhinitis disability, indicating certain food odors and scents aggravated her condition. Petitioner also proposed a transfer to a larger facility with potential better indoor air quality.

In order to establish a *prima facie* case of failure to accommodate a disability, Petitioner must show that: 1) she is disabled within the meaning of the Act; 2) CCDPH was aware of her disability; 3) she requested a reasonable accommodation to her disability; 4) CCDPH failed to accommodate Petitioner; and 5) she was qualified to perform the job duties with or without a reasonable accommodation. *Caterpillar v. HRC*, 154 Ill. App. 3d 424;429-30, 506 N.E.2d 1029, 1033, 107 Ill.Dec.138 (3d Dist. 1987).

Petitioner again fails to specify the date and circumstances of any statements or provide evidence that such statements were made with animus based on her physical disabilities or in retaliation for her filing of previous charges of discrimination.

As to Counts K-O, the evidence is also insufficient to establish a *prima facie* case regarding denial of FMLA because of physical disabilities or in retaliation for filing prior charges against her employer. Petitioner applied for FMLA in or about January 15, 2013. CCDPH articulated a non-discriminatory reason for denial of FMLA as her request was denied because she had not worked the requisite number of hours during the prior year to be eligible for leave. No other Data Entry operators were provided FMLA during the applicable period. Petitioner again fails to provide any statements of animus concerning Petitioner's FMLA denial because of her physical disabilities or in retaliation for her filing of previous charges of discrimination.

As to Counts P-T, the evidence is equally insufficient to establish a *prima facie* case of a transfer denial of physical disabilities or in retaliation for filing prior charges against her employer. Petitioner made an oral transfer request. CCDPH articulated a non-discriminatory reason for denying Petitioner's request to a larger room in another facility. Her request was simply denied because there were no open positions and no funding for additional positions. Petitioner again fails to provide any proof of animus concerning Petitioner's transfer denial because of her physical disabilities or in retaliation for her filing of previous charges of discrimination.

As to Counts U-Y, the evidence does not reveal that CCDPH issued a written disciplinary warning because of her physical disabilities or in retaliation for filing prior charges against her employer. CCDPH issued a pre-disciplinary notice on February 28, 2013. The pre-disciplinary notice was not an adverse action that affected the terms or conditions of employment or which would discourage Petitioner from filing charges against CCDPH. See *Janet S. Downen v. State of IL. Dept. of Corrections* (Charge 1990SF0486, ALS No. S-10721. Ill HRC January 4, 2002) (a counseling is not an adverse action). Petitioner filed her charge prematurely before any adverse action had occurred against her. The memorandum for a pre-disciplinary hearing scheduled for March 28, 2013 and not a discipline. Further, Petitioner's pre-disciplinary notice was for leaving the office without permission, tardiness, discourteous treatment toward co-workers, loafing, sleeping while on duty, incompetence or inefficiency in the performance of her job duties and responsibilities. Even after additional training, Petitioner continued to make errors. Petitioner also had a history of discipline. Lastly, Petitioner once again fails to provide any proof of animus concerning Petitioner's pre-disciplinary notice was based upon her physical disabilities or in retaliation for her filing of previous charges of discrimination.

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 CCDPH 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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**HUMAN RIGHTS COMMISSION** )

**Entered this 7<sup>th</sup> day of November 2018.**

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Commissioner Robert A. Cantone (Chair)

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Commissioner Hamilton Chang

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Commissioner Steve Kim