

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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

Joanne Nugent)

Petitioner.)

CHARGE NO.: **2014CP1484**

EEOC NO.: **N/A**

ALS NO.: **14-0430**

ORDER

This matter coming before the Commission by a panel of three, Commissioners Robert A. Cantone, Hamilton Chang, and Steve Kim presiding, upon Joanne Nugent's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")¹ of Charge No. 2014CP1484 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 December 3, 2013, the Petitioner filed a charge of public accommodation discrimination based on the use of her support dog (Count A) and physical disability (Count B) against Jewel Osco ("Jewel") in violation of Section 5-102(A) of the Illinois Human Rights Act ("Act").

On June 24, 2014, the Respondent dismissed the Petitioner's charge in its entirety. The Petitioner filed a timely Request on September 23, 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).

The record shows that on or about August 21, 2013, Petitioner, along with her "service or support dog" in a bag, entered the Jewel to purchase groceries. Petitioner's dog had been barking while in the premises and even attempted to bite one of Jewel's employees. At which point, employees, in

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."

accordance with the company's policies and procedures regarding service animals, questioned Petitioner whether her dog was a service animal and what her dog was trained to do. Petitioner completed her purchases and left the premises. On September 16, 2013, prior to making any purchases, Petitioner sought the use of the Jewel's restroom facilities on the second floor and was told by the grocery store's employees that the elevator was non-operational and that she needed to use the stairs instead. Unfortunately, Petitioner had an accident and urinated in her pants. On October 9, 2013, Petitioner visited the grocery store and again sought the use of the restroom. To gain access to the restroom, Petitioner had to use the stairs again as the elevator had not been repaired, yet. At no time on the dates in question was Petitioner ever denied use of any of Jewel's services or denied from making any purchases.

Public accommodation is defined in Section 5-101 (A) as a business, accommodation, refreshment, entertainment, recreation, or transportation facility of any kind, whether licensed or not, whose goods, facilities, privileges, advantages or accommodation are extended, offered, sold, or otherwise made available to the public. 775 ILCS 5/5-102(A). Section 5-101(A)(5) lists a grocery store as a place of public accommodation. 775 ILCS 5/5-102(A)(5). Jewel is a retail grocer. Generally, to establish a *prima facie* case of public accommodation discrimination, the Petitioner must prove as follows: 1) she is within a protected class; 2) she was denied full enjoyment of Jewel's facilities; and 3) that others not within her protected class were given full enjoyment of those facilities. *In the Matter of Velma J. Henderson and Steak 'n Shake, Inc.*, IHRC, Charge No. 1996CP2939, 1999 WL 33252627, *9 (March 24, 1995).

As to Count A, Jewel had no knowledge as to whether Petitioner's dog was a "service or support animal" as defined by the American with Disabilities Act. Persons with disabilities can bring their service animals to all public accommodations, including a grocery store. However, the same is not true for patrons who have emotional support animals. Often, the confusion centers on the differences between a service animal and an emotional support animal. In any event, Petitioner failed to state how the dog helped or assisted her alleged physical disability, arthritis. Petitioner also failed to show how her dog is deemed a service animal within the meaning of the American with Disabilities Act. Even in her charge, Petitioner refers to her animal as a "support dog" and not a "service animal". Finally, Petitioner was able to purchase what she needed and was not denied any services, even though her dog seemed "out of control and a direct threat to the safety of others" by barking incessantly in the premises and attempting to bite one of the grocery store's employees. Thus, Petitioner is unable to show that she was "denied the full and equal enjoyment of the facilities, goods and services of a place of public accommodation based on the use of a support dog.

As to Count B, the Petitioner cannot show that Jewel's employees had any knowledge of her physical disability, arthritis. It is unclear whether Petitioner is an individual with disabilities as defined under Section 1-103(l) of the Act. According to the diagnosis in Petitioner's August 3, 2011 medical documentation, she suffers left hip pain with degenerative disease from post-op multiple surgeries. As to the second and third prongs, there is no evidence that she was denied access to Jewel's restrooms. Although the elevator was inoperable, she could have used the stairs to access the restrooms on both

occasions as other non-disabled customers would have had to use the stairs to access Jewel's restrooms, as well. Similarly, Petitioner is unable to show that she was "denied the full and equal enjoyment of the facilities, goods and services of a place of public accommodation based on physical disability, arthritis discrimination.

In her Request for Review, there is no additional evidence provided by Petitioner to the contrary. She simply states that she was dissatisfied with the handling of the investigation. While Petitioner listed Diane G as a witness, she denied any first-hand knowledge of Petitioner's allegations. As to other potential witnesses, Petitioner did not provide the names or identifiers of these individuals.

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. The Petitioner's Request is not persuasive.

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 Jewel, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 7th day of November 2018.

Commissioner Robert A. Cantone (Chair)

Commissioner Hamilton Chang

Commissioner Steve Kim