

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST)		
FOR REVIEW BY:)	CHARGE NO.:	2014CF0792
)	EEOC.:	21BA32660
GUADALUPE FERNANDEZ)	ALS NO.:	14-0526
)		
Petitioner.)		

ORDER

This matter coming before the Commission by a panel of three commissioners, Michael Bigger, Amy Kurson and Cheryl Mainor, presiding upon Guadalupe Fernandez (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”) of Charge No. 2014CF0792 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 charges for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

DISCUSSION

On September 30, 2013, the Petitioner, Guadalupe Fernandez, filed a perfected charge of discrimination with the Respondent, alleging Focal Point Lighting, LLC’s employee discriminated against him due to his disability in violation of Section 2-102(A) of the Illinois Human Rights Act (Act). On September 8, 2014, the Respondent dismissed Petitioner’s charges due to lack of substantial evidence. The Petitioner timely filed a Request for Review on October 21, 2014.

The Commission concludes that the Respondent properly dismissed the Petitioner’s charge for lack of substantial evidence. If no substantial evidence exists after the Respondent’s investigation of a charge, the charge must be dismissed. 775 ILCS 5/7A-102(D)(3). Section 7A-102(D)(2) states substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance.

The evidence was insufficient to establish a *prima facie* case of disability discrimination. In order to establish a *prima facie* case of disability discrimination, Petitioner must establish that 1) he is disabled within the meaning of the Act; 2) the employer had knowledge of the disability 3) the Petitioner suffered an adverse employment action; and 4) the disability is unrelated to Petitioner’s ability to perform the job with or without an accommodation. Habinka v. Human Rights Commission, 192

Ill.App.3d 343, 373, 548 N.E.2d 702, 139 Ill.Dec. 317 (1st Dist. 1989). Department of Corrections v. Illinois Human Rights Commission, 298 Ill.App.3d 536, 540, 699 N.E.2d 143, 145-6 (3rd Dist. 1998). Once Petitioner has established a *prima facie* case of discrimination, then the burden shifts to the employer to rebut the presumption of discrimination and articulate a non-discriminatory reason for its employment actions. McDonald Douglas Corp. v. Green, 400 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973).

Guadalupe Fernandez, an Assembler, alleges he was discharged on September 9, 2013 due to his left rotator cuff tear. The May 16, 2013 doctor's note provided restrictions of no carrying more than 15 pounds and no pulling/pushing of more than 15 pounds. There was no indication of a time frame within which Petitioner could return to normal duties. Petitioner was laid off then discharged as a result of the Employer experiencing a 1.63% reduction in gross revenue in 2013.¹ Because of his disability, Petitioner was performing "light duty" instead of the assembly position. An employee's condition which prevents him from working is related to his ability to perform his job. See Amadio v. Ford Motor Co., 238 F.3d 919 (7th Cir. 2001). The Petitioner failed to establish a *prima facie* case of discrimination. As a result, the burden did not shift to the employer to articulate a non-discriminatory reason for the discharge. The Respondent's dismissal for lack of substantial evidence is proper.

THEREFORE, IT IS HEREBY ORDERED THAT:

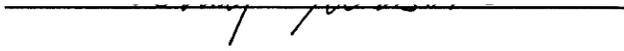
1. The dismissal of the Petitioner's charge is hereby SUSTAINED.
2. This is a final order. A final order may be appealed to the Appellate Court by filing a petition for review naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Focal Point Lighting, LLC as the respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

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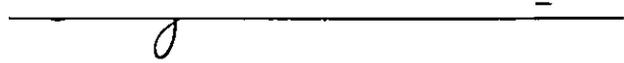
Entered this 21 day of Nov. 2018.

Commissioner Michael Bigger

¹ Prior to September 2013, the supervisor evaluated the assemblers on a scale from 1 to 5. Petitioner received a score of 2.9, which indicated he needed training. The employer laid off 24 workers some of whom had higher scores than the Petitioner and did not recall any of these workers. Employees, including Petitioner, who worked for at least three or four years were offered a severance package, but Petitioner did not accept the severance offer.



Commissioner Amy Kurson



Commissioner Cheryl Mainor