

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)		
FOR REVIEW BY:	)	CHARGE NO.:	2013CF3423
	)	EEOC.:	21BA31871
ROSA GONZALEZ,	)	ALS NO.:	14-0600
Petitioner.	)		

**ORDER**

This matter coming before the Commission by a panel of three commissioners, Chair Rose Mary Bombela-Tobias and Commissioners Patricia Bakalis Yadgir and Duke Alden presiding upon Rosa Gonzalez’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”) of Charge No. 2013CF3423 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 for **LACK OF SUBSTANTIAL EVIDENCE** is **SUSTAINED**.

**DISCUSSION**

On June 17, 2013, the Petitioner filed a charge of discrimination with the Respondent alleging on May 15, 2013, her employer, Azteca Foods, Incorporated failed to accommodate her disability and discharged her because of her disability in violation of Sections 2-102(A) of the Illinois Human Rights Act (Act). On September 12, 2014, the Respondent dismissed the Petitioner’s charge for lack of substantial evidence. The Petitioner filed a timely Request for Review on January 15, 2015.

The Commission concludes that the Respondent properly dismissed 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)(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 failure to accommodate a disability (Count A). To establish a *prima facie* case of failure to accommodate, the Petitioner must demonstrate: 1) that she is disabled within the meaning of the Act; 2) that the employer had knowledge of the disability 3) the Petitioner requested a reasonable accommodation 4) the Employer failed to accommodate the Petitioner and 5) with or without a reasonable accommodation, the

Petitioner has the ability to perform the job. Truger v. Department of Human Rights, 293 Ill.App.3d 851, 859, 688 N.E.2d 1209, 1213 (2<sup>nd</sup> Dist. 1997).

Petitioner's position as general laborer required her to handle objects weighting up to 30 pounds and occasionally 50 pounds. Petitioner returned to work after back surgery in October 22, 2012, with a fitness for duty restriction of no lifting more than 5 pounds and a reevaluation date of January 2013. Petitioner's undated fitness for duty certification restricted Petitioner to no lifting, pushing or pulling greater than 10 pounds and stated she would be reevaluated in January 2013. Employer accommodated Petitioner by moving her from the assembly line to putting tortillas in bags. However, Petitioner was unable to perform her job without the assistance of other employees. Petitioner stated she was unable to move around as required to straighten the tortillas and put them in bags. The employer continuously requested an updated medical statement because the restrictions expired on January 18, 2013. Petitioner provided a new medial statement on May 8, 2013 from Dr. Troy but it was dated November 30, 2012. The November 30, 2012 note stated work a maximum of eight hours and lift a maximum of 10 pounds. The Petitioner's May 14, 2013 fitness certification indicated Petitioner can return to work on June 5, 2013 with restrictions of **no lifting, pushing, or pulling greater than 10 pounds**. Employer's memo informed the Petitioner that her inability to lift more than 10 pounds created a hardship on the Employer. The Employer indicated it was unaware that Petitioner had a disability but thought she had a medical condition. Employer indicated during the 24 months prior to Petitioner, no non-disabled or disabled employees have requested an accommodation. Petitioner failed to substantiate a *prima facie* case that she could perform her job duties as a general laborer with or without an accommodation. The Respondent's dismissal for lack of substantial evidence was proper.

The evidence was insufficient to establish a *prima facie* case of discharge based on disability. To establish a *prima facie* case of unlawful discharge, Petitioner must show: (1) that he is a member of a protected class; (2) that he was performing his work satisfactorily; (3) that he was subject to an adverse action; and (4) that the Employer treated a similarly situated employee outside the Petitioner's protected class more favorably under similar circumstance. See Marinelli v. Human Rights Commission, 262 Ill.App.3d 247, 634 N.E.2d 463 (2<sup>nd</sup> Dist. 1994). Once the Petitioner establishes 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 action. McDonald Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). As discussed earlier, Petitioner cannot establish that she was performing her work satisfactorily. Despite the employer moving Petitioner from the assembly line to sorting and packing bags, Petitioner was unable to perform this function without constant assistance from other employees. Further, the most recent doctors order indicated Petitioner could not lift, push or pull greater than 10 pounds which was a job requirement. Petitioner failed to establish a *prima facie* case and the Respondent's dismissal for lack of substantial evidence is proper.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

1.The dismissal of the Petitioner’s charges are hereby SUSTAINED.

2.This is a final order. A final order may be appealed to the Illinois Appellate Court by filing a Petition for Review naming the Illinois Human Rights Commission, the Illinois Department of Human Rights and Azteca Foods, Incorporated, as named party respondents, with the Clerk of the Illinois Appellate Court within 35 days after the date of service of this Final Order.

**STATE OF ILLINOIS** )  
 ) **Entered this 14 day of Dec. 2018.**  
**HUMAN RIGHTS COMMISSION** )

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden