

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2014CF1633
)	EEOC NO.: 21BA40629
)	ALS NO.: 14-0606
REGINA K. BLAIR,)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hermene Hartman, Steve Kim, and Cheryl Mainor presiding, upon Regina K. Blair’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2014CF1633, 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 September 5, 2013, the Petitioner filed an unperfected charge of discrimination with the Respondent, perfected January 23, 2014, alleging that Six Flags Great America (“Employer”) failed to accommodate her disability (hip disorder), and sent her home indefinitely based on her disability, in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On September 24, 2014, the Respondent dismissed the Petitioner’s charge for lack of substantial evidence. The Petitioner filed a timely Request.

For the reasons that follow, the Commission concludes that the Respondent properly dismissed the Petitioner’s claims for lack of substantial evidence. Substantial evidence is that which “a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance.” 775 ILCS 5/7A-102(D); Owens v. Dep’t of Human Rights, 403

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.”

Ill. App. 3d 899, 917, 936 N.E.2d 623, 638 (1st Dist. 2010). If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. Id.

The Act defines a disability as a "determinable physical or mental characteristic of a person . . . which may result from disease, injury, congenital condition of birth or functional disorder and . . . is unrelated to the person's ability to perform the duties of a particular job or position." 775 ILCS 5/1-103(I). The Petitioner bears the burden to establish that she has a disability within the meaning of the Act. 56 Ill. Admin. Code, Ch. II, § 2500.20. However, if a reasonable accommodation can be made so that the employee can perform the essential duties of the job, then the employer must provide such accommodation. 56 Ill. Admin. Code, Ch. II, § 2500.40; Owens v. Dep't of Human Rights, 356 Ill. App. 3d 46, 54, 826 N.E.2d 539, 546 (1st Dist. 2005).

The Commission finds no substantial evidence to support the Petitioner's claims that she had a "disability" within the meaning of the Act because, ultimately, the investigation showed that she was unable to perform the duties of her job, either with or without accommodation. The Petitioner held the seasonal position of "Park Services Hostess," and her duties included maintaining restroom cleanliness, sweeping and mopping floors, wiping down tables, and emptying garbage cans. The job description specified that employees must be able to stand for the length of their shift.

The Petitioner's evidence included two notes from her physician that she provided to the Employer. The first was dated August 6, 2013, and simply stated "Please place Ms. Blair on light duty work for the rest of the season." The second, dated August 19, 2013, stated more specifically that the Petitioner was restricted to lifting no more than 10 pounds and should be placed on activities where she was off her feet. The Petitioner spoke to the Employer's Human Resources department on August 21, 2013, and told them that she experienced hip pain from being on her feet all day and lifting heavy bags of garbage. The Petitioner left that day and filed a worker's compensation claim, which was later denied. The Petitioner never followed up with the Employer after that time about returning to work.

The Petitioner's restrictions clearly rendered her unable to perform the duties of a Park Services Hostess, which regularly required lifting over 10 pounds and remaining on her feet for long periods. The Petitioner has, in fact, acknowledged that she could not perform the essential duties of that position under any circumstances, because even when the Employer placed her in a less trafficked area of the park, she remained unable to complete the lifting and standing requirements.

Rather, the Petitioner has argued that the Employer could have placed her in a different position entirely, such as working the ticket booth, which required less physically demanding work. However, the investigation showed that no consistent work was available for the Petitioner in that area. And, in the end, the Employer need only accommodate a disabled employee in the present position for which she was hired. Owens, 356 Ill. App. 3d at 53–54, 826 N.E.2d at 545–46.

Because the Petitioner did not establish that she has a “disability” within the Act, and the evidence did not show that the Employer failed to make a reasonable accommodation, she cannot meet her burden to show unlawful discrimination.

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 Six Flags Great America as respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

STATE OF ILLINOIS)
) **Entered this 21st day of November 2018**
HUMAN RIGHTS COMMISSION)

Commissioner Hermene Hartman

Commissioner Steve Kim

Commissioner Cheryl Mainor