STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	CHARGE NO.: **2013CF3766**
	)	EEOC NO.: **21BA32372**
Anita Charbonneau	)	ALS NO.: **15-0022**
Petitioner.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hermene Hartman, Steve Kim, and Cheryl Mainor, presiding upon Anita Charbonneau's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")[1] of Charge No. 2013CF3766 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 May 30, 2013, the Petitioner filed an unperfected charge of discrimination with the Respondent, which she perfected on October 11, 2013. The Petitioner alleges that Orland-Hommer Donuts, Inc., d/b/a Dunkin Donuts ("DD") failed to accommodate her physical disability, orthopedic knee impairment (Count A) and reduced her hours; removed her from the work schedule; and issued a written reprimand based upon her disability (Counts B-D), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). 775 ILCS 5/2-102(A)

On October 30, 2014, the Respondent dismissed the Petitioner's charge in its entirety. The Petitioner filed a timely Request for Review on January 29, 2015.

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

[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."

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 DD hired Petitioner as a Crew Member on December 18, 2008. On October 12, 2012, Petitioner fell and injured her knee which resulted in her disability, orthopedic knee impairment. Per her physician's order, Petitioner was off work from October 12, 2012 through December 13, 2012 when she was released to return to work with restrictions of no kneeling, bending, or squatting. Petitioner requested a reasonable accommodation for her disability which was denied on December 22, 2012 because kneeling, bending and squatting were essential functions of Petitioner's job. Petitioner was released to return to full duty on January 3, 2013.

In order to establish a *prima facie case* for failure to accommodate a disability, Petitioner must show that: 1) she is disabled within the meaning of the Act; 2) DD was aware of her disability; 3) she requested a reasonable accommodation to her disability; 4) DD failed to accommodate Petitioner; and 5) she was qualified to perform the job duties with or without a reasonable accommodation. *Habinka v. HRC*, 192 Ill.App.3d 343, 373, 548 N.E. 2d 702 (1st Dist. 1989); *Caterpillar v. HRC*, 154 Ill. App. 3d 424;429-30, 506 N.E.2d 1029, 1033, 107 Ill.Dec.138 (3d Dist. 1987). The definition of "disability" is interpreted as excluding: a) conditions that are transitory and insubstantial; and b) conditions that are not significantly debilitating or disfiguring. See 56 Ill. Admin. Code, Sec. 2500.20(b). Also, a disability must be unrelated to the Petitioner's ability to perform the duties of a particular job position. 775 ILCS 5/1-103 (I)(1). Petitioner has the burden to initiate the accommodation request, provide medical documentation in support, thereof, and cooperate in the evaluation of that request. 56 Ill. Admin. Code, CH II, Section 2500.40(c). Dept. of Corrections v. HRC, Ill.App.3d 536, 541, 699 N.E. 2d 143 1998). In Illinois, the duty to accommodate only requires employers to accommodate a handicapped employee in the employee's present position for which she was hired. Fitzpatrick v. Human Rights Comm'n, 267 Ill.App.3d 386, 392, 204 Ill.Dec. 785, 642 N.E.2d 486 (1994). An employer is not required to return Petitioner to work if Petitioner cannot perform the essential functions of the job. *LaPorte v. Jostens*, 213 Ill.App.3d 1089, 1093, 572 N.E.2d 1209, 1212 (3rd Dist. 1991).

As to Count A, Petitioner is unable to satisfy the first and fifth prongs of her prima facie case for failure to accommodate a disability as she did not suffer from a disability as defined within the Act. Also, Petitioner couldn't kneel, bend or squat and therefore was unable to perform the essential functions of the job. No evidence has been presented that DD had alternative temporary positions available that would allow Petitioner to work light duty without kneeling, bending or squatting. Thus, there is no substantial evidence to show a failure to accommodate her physical disability, orthopedic knee impairment.

Next, to establish a *prima facie case* for disability discrimination, the Petitioner must prove: 1) she is "disabled" within the meaning of Act; 2) Petitioner's disability is unrelated to her ability to perform her job, or if the disability is related to that ability to perform, after her request, DD did not make reasonable accommodation to perform her job; and 3) DD took adverse action against

Petitioner because of her disability. *Whipple v. Ill. Dept. of Rehabilitative Services*, 269 Ill. App.3d 554, 646 N.E.2d 275 (4th Dist. 1995).

As to Counts B-D, the evidence is equally insufficient to establish a *prima facie case* that reducing Petitioner's work hours; removing her from the work schedule; and issuing her a written reprimand was based on her disability. As to the first prong, there is no indication from Petitioner's medical evidence that she continued to suffer any persistent effects of her October 2012 injury or that she had an ongoing diagnosis that would satisfy the definition of disability under the Act. As to the third prong, there is also no indication that Petitioner suffered an adverse action. Prior to October 12, 2012, Petitioner worked on average of 29-32 hours per week. Her job duties included working the drive thru, taking orders, cleaning, stocking, and working the front counter. Petitioner's hours were gradually increased in January 2013 after she was released to work because she had increased other existing and new employees' hours to adjust while Petitioner was off work on medical leave. DD scheduled Petitioner as many as 20 to 28 hours after she returned to full duty which was akin to her hours prior to her injury. Some of the reduction in Petitioner's hours was the result of Petitioner's own decision not to show up to work for the afternoon shifts. Further, the March 25, 2012 written reprimand was also unrelated to her disability but instead, issued for poor performance. Petitioner was reprimanded for giving a senior discount to which a customer was not entitled to; giving a customer a coupon price for an item without the coupon; calling the store manager a "bitch"; putting a sign in her vehicle while it was parked at DD protesting her hours being reduced; and encouraging customers to give bad reviews online.

Even if Petitioner could successfully allege a *prima facie case* of disability discrimination, DD articulated non-discriminatory reasons for taking actions as to Counts B-D and not pretextual. In the absence of any evidence that the business consideration relied upon by DD is a pretext for discrimination, it is improper to substitute judgment for the business judgment of the employer. *See Berry and State of IL, Dept. of Mental Health and Developmental Disabilities*, IHRC, ALS no. S-1946, Charge No. 1994SA0240 (December 10, 1997). Additionally, DD is entitled to make employment decisions based on its reasonable belief surrounding the situation. "Respondent may take its action for good reason, bad reason, reason based upon erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason…The correctness of the reason is not important as there was good faith belief by Respondent in its decision…" *See Carlin v. Edsal Manufacturing Co.*, 1996 WL 652580, Charge No. 1992CN3428 (Ill.HRC, May 6, 1996). Thus, there is no substantial evidence show that DD reduced Petitioner's hours; removed her from the work schedule; and issued her a written reprimand because of her physical disability.

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 DD 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)

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Commissioner Hermene Hartman

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Commissioner Steve Kim

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Commissioner Cheryl Mainor