

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: <b>2014CF2153</b>
	)	EEOC NO.: <b>21BA41016</b>
<b>Jennifer Marie Odems</b>	)	ALS NO.: <b>15-0061</b>
	)	
Petitioner.	)	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners Hermene Hartman, Steve Kim, and Cheryl Mainor, presiding upon Jennifer Marie Odems's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")<sup>1</sup> of Charge No.2014CF2153 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 January 7, 2014, the Petitioner filed an unperfected charge of discrimination with the Respondent which was perfected on April 1, 2014, alleging that the Chicago Transit Authority ("CTA") discriminated against her when it failed to return her to work (Count A); failed to accommodate her physical disability, neurological disorder (Count B); and discharged her based on her disability (Count C), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). 775 ILCS 5/2-102(A)

On December 1, 2014, the Respondent dismissed the Petitioner's charge in its entirety. The Petitioner filed a timely Request for Review on February 23, 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 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).

<sup>1</sup> 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."

The record shows that the CTA hired Petitioner as a part-time Bus Operator on October 8, 2012. In July 2013, Petitioner went on medical leave as she was experiencing tingling and numbness in her hands and legs, as well as difficulties driving. However, Petitioner had failed to provide Sedgwick Claims Management Services with the necessary medical documentation required for short term disability or the claim would be denied. CTA then notified Petitioner on October 25, 2013 that failure to provide the additional medical documentation or return to work by November 11, 2013 would be considered Absent Without Leave (“AWOL”), resulting in a discharge. On or about November 8, 2013, per her physician’s order, Petitioner could return to work, but could not drive a bus. CTA does not have light duty positions for Bus operators. Thereafter on November 25, 2013, Petitioner was discharged for being AWOL.

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) CTA was aware of her disability; 3) she requested a reasonable accommodation for her disability; 4) CTA 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 (1<sup>st</sup> 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 (3<sup>rd</sup> Dist. 1991).

As to Count B, Petitioner is unable to satisfy the fifth prong of her *prima facie* case for failure to accommodate a disability as she could not operate a bus and therefore was unable to perform the essential functions of the job. CTA does not have light duty positions for bus drivers. The record is devoid of any evidence revealing that other bus drivers were given light duty. Thus, there is no substantial evidence that shows a failure to accommodate Petitioner because of her physical disability, neurological disorder.

Next, to establish a *prima facie* case for disability discrimination, the Petitioner must prove: 1) she is “disabled” within the meaning of the 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, CTA did not make reasonable accommodations to perform his job; and 3) CTA 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 (4<sup>th</sup> Dist. 1995).

As to Counts A and C, Petitioner is similarly unable to show that she was discriminated against when she was not returned to work and discharged because of her disability. Here, Petitioner could not perform the essential functions of her job as a bus driver per her physician's orders. Further, her discharge was unrelated to her disability but was the result of Petitioner having gone AWOL.

Even if Petitioner could successfully allege a *prima facie* case of disability discrimination, the CTA articulated non-discriminatory reasons for taking actions as to Counts A and C and not pretextual. In the absence of any evidence that the business consideration relied upon by CTA 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, CTA 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 CTA discriminated against Petitioner when it failed to return her to work or discharged Petitioner 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 CTA as respondents, 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 21st day of November 2018.

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Commissioner Hermene Hartman

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Commissioner Steve Kim

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Commissioner Cheryl Mainor