

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2014CF3090
)	EEOC NO.: 21BA41705
Latonya Beard)	ALS NO.: 15-0062
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Hermene Hartman, Steve Kim, and Cheryl Mainor, presiding upon Latonya Beard’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2014CF3090 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 June 3, 2014, the Petitioner filed a perfected charge of discrimination with the Respondent. The Petitioner alleges that United Parcel Service, Inc. (“UPS”) failed to accommodate her physical disabilities, neck and back (Count A), sciatica (Count B), herniated lumbosacral disc (Count C), and right hip bursitis (Count D); and failed to return her to work due to her disabilities, neck and back disorder (Count D); sciatica (Count E), and herniated lumbosacral disc (Count G), and right hip bursitis (Count H), in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). 775 ILCS 5/2-102(A).

On December 4, 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

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.”

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).

The record shows that UPS, a package delivery service, hired Petitioner as a part-time Loader/Unloader on October 31, 2005. As of June 2008, Petitioner was promoted to a Hub Supervisor, working five days per week, up to 5 ½ hours per day as needed. The job description for Petitioner's position is described as "Heavy" because of the grueling physical demands, including performing office tasks, assisting in moving packages weighing up to 150lbs; lifting and carrying packages from 10lbs up to 70lbs, grasping, reaching, frequent stairs and ladder climbing, as well as constant standing and walking associated with delivering, loading and unloading packages.

Effective June 28, 2013, Petitioner, then pregnant, was placed on paid disability leave, after being diagnosed with her alleged disabilities. In January 2014, she was released to return to work with restrictions, including "no heavy lifting greater than 10lbs, no prolonged standing greater than 30 minutes at a time, no pushing, pulling, climbing or overhead reaching for 4 weeks". Petitioner's physician was also uncertain as to when Petitioner would be released from the restrictions. Based upon the Petitioner's medical restrictions, she would not be able to perform the essential functions of her position. Thus, Petitioner would not be able to return to work and perform her required duties as a part-time supervisor.

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) UPS was aware of her disability; 3) she requested a reasonable accommodation to her disability; 4) UPS 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). The duty to accommodate does not include reassigning or transferring the employee

As to Counts A-D, Petitioner is unable to satisfy the first, third 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. Petitioner's medical provider stated that her conditions were non-permanent, "minor" conditions. Next, Petitioner's request for an accommodation to do sedentary work was unreasonable given her medical restrictions and job responsibilities. There was no other assignment that UPS could provide Petitioner within her designated position classification which did not require standing, walking and the need to lift parcels. Petitioner also couldn't lift over ten pounds, pushing/pulling of parcels, climbing up and down ladders, constant standing and walking, and overreaching; and was therefore unable to perform the essential functions of the job. Thus, there is no substantial evidence to show a failure to accommodate her physical disabilities.

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, UPS did not make reasonable accommodations to perform his job; and 3) UPS took adverse action against Petitioner because of her disability. *In re Request for Review of Charles J. Salerno*, IHRC, Charge No. 2009 CA1238, ALS No. 10-0171, 2010WL 7634124, *2(October 27,2010) citing *Habinka v. HRC*, 192 Ill.App.3d 343, 373, 548 N.E.2d (1st Dist. 1989); *Whipple v. Ill. Dept. of Rehabilitative Services*, 269 Ill. App.3d 554, 646 N.E.2d 275 (4th Dist. 1995).

As to Counts E-H, the evidence is equally insufficient to establish a *prima facie* case that Petitioner was discriminated based upon her disability. Here, there is no indication from Petitioner's medical evidence to indicate that she was disabled within the Act or that she could perform the essential functions of her position.

Even if Petitioner could successfully allege a *prima facie* case of disability discrimination, UPS articulated a non-discriminatory reason for failing to provide an accommodation and for failing to return Petitioner to work, namely Petitioner's medical restrictions preventing her from performing the essential functions of her job with or without an accommodation and not pre-textual. In the absence of any evidence that the business consideration relied upon by UPS 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, UPS 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 UPS's failure to provide an accommodation and failure to return Petitioner to work, was because of Petitioner's disabilities.

In her Request for Review, there is no additional evidence provided by Petitioner that would warrant a reversal of Respondent's original determination.

