STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: **2014CF0836**
	)	EEOC NO.: **21BA40024**
Martin M. Camargo	)	ALS NO.: **15-0072**
	)	
Petitioner.	)	

ORDER

This matter coming before the Commission by a panel of three, Chair Rose Mary Bombela-Tobias and Commissioners Patricia Bakalis Yadgir and Duke Alden presiding, upon Martin M. Carmago's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Illinois Department of Human Rights ("Respondent")[1] of Charge No. 2014CF0836 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 October 2, 2012, the Petitioner filed a perfected charge of discrimination with the Respondent, alleging that Allegheny Ludlum ("Ludlum") failed to accommodate his physical disability, back disorder (Counts A and C) and forced him to take a short term disability, due to his medical disability (Counts B and D), in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). 775 ILCS 5/2-102(A).

On December 3, 2014, the Respondent dismissed the Petitioner's charge in its entirety. The Petitioner filed a timely Request for Review on March 9, 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 5/7A102(D).

[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."

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).

The record shows that Ludlum, a producer and marketer of special materials such as steel and metal alloys, hired Petitioner as a Receiver (1st Shift). The shift only had one receiver at its Bridgeview facility. Petitioner's position required him to perform a number of physical tasks, including but not limited to removing coils from incoming trucks using a forklift; loading scrap onto a flatbed truck using a forklift; unloading skids with a forklift; and activating dock levelers prior to and after unloading trucks with a forklift. To perform these essential functions, Petitioner is required to climb, stoop, bend at the waste, and twist among other things.

On May 20, 2006, Petitioner sustained an injury to his back, specifically a herniated disc at L4L5. In November 2009, Ludlum was provided a doctor's note from Petitioner restricting him to medium capacity work, no bending at the waste, or lifting over 40lbs. The restrictions were permanent. In August 2010, Ludlum received another medical note from Petitioner which contained slightly different restrictions. Petitioner was restricted to medium capacity work, no lifting over 30lbs, no repetitive bending at the waste level, and avoid prolonged standing and/or sitting for one hour continuously. In 2011, Petitioner had back surgery. Petitioner was qualified to work in other areas and thus was asked if he wanted to work in those areas despite his restrictions. Although he would sometimes take the offer, Petitioner would not work at full capacity within those positions. From January 2013 to June 2013, Ludlum was moving its operations which meant Petitioner was moving machinery. To accommodate Petitioner, Ludlum had another employee assigned to assist him during the surges. At that time, Petitioner complained of back pain. Ludlum, concerned about Petitioner's heath, told him to see his physician to clarify his restrictions. Ludlum would not allow Petitioner to return to work until he was seen by a physician. Since all employees' workloads were increasing, Petitioner was advised to obtain short-term disability. He was approved for disability benefits beginning June 14, 2013.

On July 23, 2013, Petitioner returned to work with restrictions, again. Petitioner requested an accommodation. Oddly enough, the doctor's note made no reference to Petitioner's ability to perform bending or twisting functions. Ludlum then informed Petitioner that he would have to be re-evaluated by his physician as his restrictions needed to be clarified before being cleared to work and was asked to take short-term medical leave until he was cleared to return to work. Per the Union contract, Petitioner was required to be evaluated for a fitness duty examination before being allowed to return to work. After being evaluated by PT, Angela Solito ("Solito"), she concluded that Petitioner was not capable of performing all of the essentials physical demands of the job of Receiving at the time while maintaining restrictions set forth by Petitioner's physician. Although, Petitioner demonstrated the ability to safely perform tasks meeting the 30lb restriction, Solito also indicated that he was unable to perform other key functions such as driving a forklift, entering/exiting a forklift and pushing a C-hook to change the orientation of the hook as these activities require bending and twisting. On August 30, 2013, Dr. Joseph P. Laluya ("Laluya"), the facility's medical Director, reviewed the August 20, 2013 Functional Capacity evaluation and also concluded that Petitioner was unable to perform the essential functions of his job

as a Receiver due to his physician's restrictions. Petitioner's September 25, 2013 doctor's note revealed that Petitioner's may only perform medium capacity work. He may lift up to 30 lbs occasionally, up to 20lbs frequently, and up to 8lbs constantly; no bending or twisting at the waste level; and may squat down. Petitioner applied for short-term disability which ended on December 31, 2013. The medical questionnaire submitted for Petitioner by Dr. Francisco Espinosa ("Espinosa") dated October 16, 2013 for short-term disability stated that Petitioner was diagnosed with a herniated disc at L4-L5, and that the condition was the result of a back injury in March 2006. Thus, Petitioner developer severed low back pain that was significantly disabling during the applicable period and which could reoccur. Further, Dr. Espinosa stated that the condition was not insubstantial.

In order to establish a *prima facie case* for failure to accommodate a disability, Petitioner must show that: 1) he is disabled within the meaning of the Act; 2) Ludlum was aware of his disability; 3) he requested a reasonable accommodation to her disability; 4) Ludlum failed to accommodate Petitioner; and 5) he 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 and C, Petitioner is unable to prove his *prima facie case* for failure to accommodate a disability as he did not suffer from a disability as defined within the Act. According to the medical documentation, Petitioner was unable to perform the essential physical demands of the job, namely bending and twisting at the waste level, driving a forklift and the like. Also, Petitioner has not established that his accommodation request to have another employee work alongside him during heavy work periods was reasonable. Ludlum is not required to permanently provide Petitioner with a helper to assist him. Section 2500.40 of the Joint Committee on Administrative Rules, Administrative Code, states that "No employer is required to hire two full-time employees to perform one job in order to accommodate a disabled individual." In *Majors v. General Electric Co.*, 714 f3d 527, 534 (7th Cir. 2013), the 7th Circuit held "To have another employee perform a position's essential function and to a certain extent perform the job for the employee, is not a reasonable accommodation." See also *Cochrum v. Old Ben Coal Co*., 102 F3d 908, 912 (7th Cir. 1996). Thus, there is no substantial evidence to show a failure to accommodate her physical disabilities, impairment.

Next, to establish a *prima facie case* for disability discrimination, the Petitioner must prove: 1) he is "disabled" within the meaning of Act; 2) Petitioner's disability is unrelated to his ability to perform his job, or if the disability is related to that ability to perform, after his request, Ludlum did not make reasonable accommodations to perform his job; and 3) Ludlum 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 B and D, the evidence is equally insufficient to establish a *prima facie case* that Petitioner was discriminated based upon his disability. Here, there is no indication from Petitioner's medical evidence to indicate that he was disabled within the Act or that his disability is unrelated to his ability to perform the essential functions of his job. Further, Petitioner has not established that an adverse job action was taken against him simply because of his physical disability. "An adverse action occurs when an employee is fired or demoted, suffers a decrease in benefits or pay, or is given significantly lesser job. *Hill v. American General Finance, Inc.*, 218 F.3d 639, 645 (7th Cir. 2000). Not every unwelcome employment action qualifies as an adverse action. *Id*. Since he could not perform the essential functions of his position of Receiver in June 2013 and July 2013, Ludlum suggested that Petitioner, in the interim and for his own benefit, seek short-term disability until he was cleared to return to work.

Even if Petitioner could successfully allege a *prima facie case* of disability discrimination, Ludlum 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 him from performing the essential functions of his job with or without an accommodation; and not pre-textual. In the absence of any evidence that the business consideration relied upon by Ludlum 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, Ludlum 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 to show that Ludlum forced Petitioner to take a short-term disability due his medical disability.

In his 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 Allegheny Ludlum

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 17th day of December 2018.**
HUMAN RIGHTS COMMISSION)

Chair Rose Mary Bombela-Tobias

Commissioner Patricia Bakalis Yadgir

Commissioner Duke Alden