STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)		
	)		
RONALD COLEMAN,	)		
	)		
	)		
Complainant,	)	CHARGE NO(S):	2005CF2471
	)	EEOC NO(S):	21BA51305
and	)	ALS NO(S):	07-206
	)		
ODW LOGISTICS, INC.,	)		
	)		
	)		
Respondent.	)		

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION) Entered this 17th day of March 2009

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
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RONALD COLEMAN,	)	
	)	**Charge No. 2005CF2471**
Complainant,	)	**EEOC No. 21 BA 51305**
	)	**ALS No. 07-206**
and	)	
	)	
ODW LOGISTICS, INC.,	)	
	)	**Judge Reva S. Bauch**
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter comes before the Commission on Respondent's Motion for Summary Decision/ Motion to Dismiss for Want of Prosecution ("Motion"). Complainant filed a Response to the Motion. Respondent filed a Reply. Accordingly, this matter is now ripe for a decision.

The Illinois Department of Human Rights ("Department") is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

Based on the discussion below, I recommend that the Motion as it relates to a summary decision be **GRANTED**.

Findings of Fact

The following facts were derived from the record in this case:

1. On February 17, 2005, Complainant filed a Charge of Discrimination against Respondent with the Department alleging physical handicap discrimination and retaliation ("Charge").

2. On March 21, 2007, Complainant filed a Complaint with the Commission alleging that Respondent violated the Illinois Human Rights Act ("Act"), and attached the Charge to his Complaint.

3. On June 20, 2007, the Commission set a discovery schedule.

4. On September 14, 2007, Respondent filed a Motion to Compel.

5. On September 19, 2007, there was a status hearing at the Commission's Chicago Office.

6. At the September 19, 2007 status hearing, Complainant provided Respondent with several documents.

7. On September 19, 2007, I entered and continued the Respondent's Motion to Compel and ordered the parties to confer. The September 19, 2008 Order also gave leave for Respondent to file a supplemental motion, if necessary.

8. The September 19, 2007 Order also required Complainant to file and serve Respondent with a verification of his interrogatory responses.

9. On October 10, 2007, Respondent filed an Amended Motion to Compel.

10. On October 17, 2007 there was a status hearing at the Commission's Chicago Office where Respondent's Amended Motion to Compel was considered. Both parties had an opportunity to be heard.

11. Chief Administrative Law Judge Michael Evans's Order dated October 17, 2007, barred Complainant from subsequently submitting evidence relating to the interrogatories and requests for production in question in Respondent's Amended Motion to Compel.

Conclusions of Law

1. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined in the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2-101(B).

2. The Commission has jurisdiction over the parties and the subject matter of this action.

3. Complainant has failed to establish a *prima facie* case for physical handicap discrimination, as well as for retaliation.

4. There is no genuine issue of material fact on the issue of physical handicap and retaliation, and Respondent is entitled to a recommended order in its favor as a matter of law.

Discussion

I. Standards for Summary Decision

Under Section 8-106.1 of Act, either party to a complaint may move for summary decision. **775 ILCS 5/8-106.1**. *See also* **86 Ill. Admin. Code §5300.735.** A summary decision is the administrative agency procedural analog to the motion for summary judgment in the Code of Civil Procedure. **Cano v. Village of Dolton, 250 Ill App3d 130 (1993).** Such a motion should be granted when there is no genuine issue of material fact and the undisputed facts entitle the moving party to a recommended order in its favor as a matter of law. **Fitzpatrick v. Human Rights Comm'n, 267 Ill App3d 386 (1994).** The purpose of a summary judgment is not to be a substitute for trial but, rather, to determine whether a triable issue of fact exists. **Herrschner v. Xttrium Lab. Inc., 26 Ill App3d (1969)**. All pleadings, depositions, affidavits, interrogatories and admissions must be strictly construed against the moving party and liberally construed against the nonmoving party. **Kolakowski v. Voris, 76 Ill App3d 453, (1979)**. If the facts are not in dispute, inferences may be drawn from undisputed facts to determine if the movant is entitled to judgment as a matter of law. **Turner v. Roesner, 193 Ill App3d 482 (1990)**. Where the facts are susceptible to two or more inferences, reasonable inferences must be drawn in favor of the nonmoving party. **Purdy County of Illinois v. Transportation Insurance Co., Inc., 209 Ill App3d 519 (1991)**. Although not required to prove his/her

case as if at hearing, a nonmoving party must provide *some* factual basis for denying the motion. **Birck v. City of Quincy, 241 Ill App3d 119 (1993).** Only evidentiary facts, and not mere conclusions of law, should be considered. **Chevrie v. Gruesen, 208 Ill App3d 881 (1991).** If a respondent supplies sworn facts that if uncontradicted, warrant judgment in its favor as a matter of law, a complainant may not rest on his/her pleadings to create a genuine issue of material fact. **Fitzpatrick at 392.** Where the moving party's affidavits stand uncontradicted, the facts contained therein must be accepted as true and, therefore, the failure to oppose a summary judgment motion supported by affidavits by filing counter-affidavits in response is frequently fatal. **Rotzoll v. Overhead Door Corp., 289 Ill App3d 410 (1997).** Summary decision is a drastic means of resolving litigation and should be granted only if the right of the movant to judgment is clear and fee from doubt. **Purtill v. Hess, 111 Ill2d 229 (1986).**

II. Analysis

There are two methods to prove an employment discrimination case, direct and indirect. Either one or both may be used. **Sola v. Human Rights Comm'n, 316 Ill App3d 528 (2000)**. Since there is no direct evidence in this case, the indirect analysis will be used. The method of proving a charge of discrimination through indirect means was described in the U.S. Supreme Court case of **McDonnell Douglas Corp. v. Green, 411 US 792 (1973)**, and is well-established.

First, the Complainant must establish a *prima facie* showing of discrimination against him by Respondent. If he does, Respondent must articulate a legitimate, non-discriminatory reason for its actions. If this is done, the Complainant must prove by a preponderance of the evidence that the articulated reason advanced by the Respondent is a pretext. *See also* **Texas Dep't. of Community Affairs v. Burdine, 450 US 248, 254-55 (1981)** This method of proof has been adopted by the Illinois Human Rights

Commission ("Commission") and approved by the Illinois Supreme Court. **Zaderaka v. Human Rights Comm'n, 131 Ill2d 172 (1989).**

The issues in this case revolve around physical handicap discrimination, as well as retaliation.

A. Physical Handicap Discrimination Claim

Generally, to establish a *prima facie* case for handicap discrimination, Complainant must demonstrate that: (1) he was handicapped within the definition of the Act; (2) his handicap was unrelated to his ability to perform the duties of the job he was hired to perform or, if the handicap was related to his ability to perform, after his request, the employer failed to make a reasonable accommodation which was necessary for his performance; and (3) an adverse job action was taken against him related to his handicap. **Whipple v. Ill. Dept. of Rehabilitation Services, et al., 269 Ill App3d 554 (1995).**

Respondent contends that Complainant failed to adequately respond to a number of interrogatories and requests for production. In addition, a Commission Order dated October 19, 2007 barred Complainant from submitting evidence relating to these requests. As such, Respondent argues that Complainant cannot show there is a genuine issue of material fact and cannot present any factual basis that would arguably entitle him to judgment.

By way of example, Respondent alleges that Complainant has not submitted any evidence, and is barred from submitting any evidence, that Respondent failed to hire him because of his alleged physical handicap or failed to accommodate him. In support of this the Respondent points to Complainant's response, or lack thereof, to its discovery.

Interrogatory No. 12 asked, "[w]ith respect to your claim that Respondent failed to hire you due to your alleged physical handicap, provide.... each and every fact which you

believe supports this claim; the name, address and telephone number of each person who you believe had knowledge of facts related to your claim or our answer to this interrogatory and the information you believe each person possesses; and the identity of all documents related to this interrogatory." In response, Complainant said nothing other than to state, "they had the opportunity to hire me but they did not." Given the Commission's October 17, 2007 Order, Complainant is limited to this response related to this interrogatory.

Interrogatory No. 14 requested that Complainant set forth each and every fact to support his allegation that Respondent failed to accommodate him. Complainant's response consisted solely of the names of two alleged witnesses. Given the Commission's October 17, 2007 Order, Complainant is barred from submitting any additional evidence related to this interrogatory. Thus, Complainant has not submitted evidence, and is barred from submitting evidence, that Respondent failed to hire him because of his alleged physical handicap or failed to accommodate him.

As a further example to support its argument that Complainant has not, and cannot, support his claim, Respondent points to Complainant's response to Respondent's Document Request No. 1, which sought, "[a]ll documents that relate in any way to the allegation in the Complaint that the Respondent violated the Illinois Human Rights Act." Complainant failed to answer or provide documents specifically responding to that request.

Respondent also argues that since Complainant failed to respond to its discovery requests, he cannot present any evidence at the hearing regarding: (1) any alleged mitigation of damages (Interrogatory Nos. 6, 7 and 9); (2) any alleged damages he claims to have suffered (Interrogatory Nos., 17, 18 and Doc. Req. Nos. 4, 9 and 10); (3) documents he ever received from Respondent or relate to his employment with

Respondent (Doc. Req. Nos. 6, 7 and 8); and (4) any communications he had with any individuals regarding the allegations in his Complainant (Interrogatory No 16).

In fact, the Commission Order dated October 17, 2007 confirms Complainant "acknowledged that he has provided all information and documents responsive to Respondent's written discovery requests."

In response to the Motion, Complainant seeks to strike the Motion because of alleged attorney misconduct. Complainant claims that he was intentionally misquoted by Respondent with the intent to deceive the Commission. Next, Complainant references an alleged settlement discussion regarding his lawsuit, attaching some forms sent to the Attorney Registration & Disciplinary Commission. Finally, Complainant describes his account of the events and discussions leading up to Chief Administrative Law Judge Michael Evans's October 17, 2007 Order barring Complainant from submitting subsequent evidence relating to matters raised in Respondent's Amended Motion to Compel.

I find Complainant's arguments irrelevant and/or inappropriate. None of his arguments rebut Respondent's arguments to support its Motion for Summary Decision. Thus, I find Respondent is entitled to a summary decision in its favor. As such, it is unnecessary to address Respondent's alternative theory of dismissal for want of prosecution.

Recommendation

Based on the foregoing, I find that there are no genuine issues of fact as to the physical handicap and retaliation claims. Accordingly, Respondent is entitled to a recommended order in its favor as a matter of law. I recommend that the Complaint be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY:

REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: May 6, 2008