S STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST:	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CF1866
	)	EEOC NO.: 21BA80889
MELISSA DEES,	)	HUD NO.: N/A
	)	ALS NO.: 08-0453
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Rozanne Ronen presiding, upon Complainant's Request for Review ("Request") of the Notice of Dismissal ("Notice") issued by the Department of Human Rights ("Department") of Charge No. 2008CF1866, Melissa Dees, Complainant, and System Parking, Inc., Respondent; and the Commission having reviewed *de novo* the Department's investigation file, including the Investigation Report ("Report") and the Complainant's Request and supporting materials, and the Department's response to the Complainant's Request; and the Commission being fully advised of the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Department's dismissal of the Complainant's charge is **SUSTAINED** on the following grounds:

LACK OF SUBSTANTIAL EVIDENCE AND LACK OF JURISDICTION

In support of which determination the Commission states the following findings of fact and reasons:

1. On January 24, 2008, the Complainant filed a charge of discrimination with the Department. The first count alleged that the Respondent discharged her because of her sex (female), the second count alleged that the Respondent discharged her because of her physical disability (right knee disorder), and the third count alleged that the Respondent discharged her because of her mental disability (anxiety/panic disorder), in violation of § 2-102(A) of the Illinois Human Rights Act ("Act"). On September 18, 2008, the Department dismissed the Complainant's charge for lack of substantial evidence of discrimination based on the Complainant's sex and mental disability and lack of jurisdiction in regards to the Complainant's physical disability. On October 18, 2008, the Complainant filed a timely request for review.

2. The Department's investigation revealed that the Complainant was employed by the Respondent as a valet parker from December 1992 through October 2007. The Department's investigation showed that the Respondent's employee policy provided that violence, threats, or horseplay may result in immediate termination. During its investigation, the Department discovered that the Complainant had been issued multiple warnings by the Respondent for violations of the Respondent's policy. The most recent of the warnings, issued by the Respondent in February 2007, notified the Complainant that future violations would result in immediate discharge.

3. The Department's investigation also showed that the Complainant and a male, non-disabled co-worker engaged in an argument on October 15, 2007 regarding whose turn it was to service a customer. The investigation showed that a supervisor intervened and told the Complainant that it was not her turn to service a customer, whereupon the co-worker took the car keys from the Complainant's hand. The supervisor then observed the Complainant slap the co-worker on the head. Both the Complainant and the co-worker were subsequently discharged by the Respondent for this altercation. However, pursuant to the co-worker's union grievance, the Respondent reconsidered its decision to discharge the co-worker and transferred him to another division.

4. The Complainant contends that the Respondent discharged her because of her sex, physical disability, and mental disability. The Complainant states that she was falsely accused of hitting her co-worker. The Complainant argues that she received unfavorable treatment from the Respondent in that she was discharged whereas the male, non-disabled co-worker was transferred to a different division. The Complainant also alleges that the Department failed to interview a witness; however, the Complainant failed to provide contact information for this witness.

Lack of Substantial Evidence

5. The Commission's review of the investigation file leads it to conclude that the Department properly dismissed the Complainant's charge that the Respondent discharged the Complainant because of her sex and mental disability because the Respondent demonstrated legitimate, non-discriminatory reasons for its actions in that the Respondent discharged the Complainant for misconduct. Specifically, the uncontradicted evidence in the investigation file shows that the Respondent has a discipline policy that allows for immediate termination if an employee engages in fighting, horseplay, or provoking a fight on company property. A good faith belief for an employment decision is sufficient to rebut an intentional discrimination charge. Shah v. Ill. Hum. Rights Comm'n, 192 Ill.App.3d 263, 273-4 (1st Dist. 1989). The investigation file shows that the supervisor observed the Complainant hit the co-worker and informed the Division Manager of his observation; thus, the Respondent had a reasonable belief that the Complainant violated company policy.

6. The Commission's review of the record found no evidence that the

Respondent discharged the Complainant because of her sex or her mental disability. Further, the record indicates that the Respondent was not aware of the Complainant's mental disability and the Complainant provided no evidence alleging the Respondent's awareness of her mental disability.

7. The evidence further sustains the Department's finding that the Complainant could not raise an inference that the Respondent's proffered reason for its actions was mere pretext for unlawful discrimination because the Complainant did not present any evidence that similarly situated non-disabled males were treated more favorably. The Respondent initially treated the male, non-disabled co-worker in the same manner as the Respondent treated the Complainant by terminated the co-worker. Although pursuant to a union grievance, the Respondent reconsidered its decision and transferred the co-worker, the co-worker was ultimately terminated again for his history of arguing with fellow employees. The Complainant did not present any evidence that suggested that the Respondent's actions were motivated by the Complainant's sex or mental disability.

8. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal of the first and third counts of her charge was not in accordance with the Act. The Complainant's Request is not persuasive.

Lack of Jurisdiction

9. The Commission's review of the record found no evidence that the Complainant's medical condition qualified as a physical disability under the Act. Conditions that are transitory and insubstantial or not significantly debilitating or disfiguring are excluded from the definition of disability under the Act. 56 Ill. Adm. Code 2500.20(b). The burden to qualify a medical condition as a physical disability under the Act is on the Complainant. 56 Ill. Adm. Code 2500.20(c). The record indicates that the Department had no statutory authority to investigate the Complainant's allegations that the Respondent discharged her because of her physical disability because the Complainant failed to provide any documentation showing that she has a physical disability.

10. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal of the second count of her charge was not in accordance with the Act. The Complainant's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Complainant's charge is hereby **SUSTAINED.**

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 Respondent System Parking, Inc. as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS	)	
	)	Entered this 28th day of January 2009.
HUMAN RIGHTS COMMISSION	)	

Commissioner Sakhawat Hussain

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen