

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST:)	
FOR REVIEW BY:)	CHARGE NO.: 2008CF1743
)	EEOC NO.: 21BA80981
MILDRED TURNER,)	HUD NO.: N/A
)	ALS NO.: 08-0523
Complainant.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Yonnie Stroger presiding, upon Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 21BA80981, Mildred Turner, Complainant, and Evanston Northwestern Healthcare, Respondent; and the Commission having reviewed *de novo* the Department's investigation file, including the Investigation 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 ground:

LACK OF SUBSTANTIAL EVIDENCE

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

1. On January 10, 2008, the Complainant filed a charge of discrimination with the Department, alleging that the Respondent failed to accommodate her because of her race, African American, and her physical disability, autoimmune chronic relapsing pancreatitis, and forced her to take a medical leave of absence because of her physical disabilities (autoimmune chronic relapsing pancreatitis, vasculitis of the aorta, and bladder cancer) in violation of § 2-102(A) of the Illinois Human Rights Act ("Act"). On October 24, 2008, the Department dismissed the Complainant's charge for lack of substantial evidence of discrimination. On December 1, 2008, the Complainant filed a timely request for review.

2. The Department's investigation revealed that the Complainant was hired in 2002 as a Phlebotomist by the Respondent. The Phlebotomist position at the Respondent included the following job requirements: physical stamina to meet walking requirements of the job and a healthy back capable of enduring consistent and prolonged bending over patients while performing phlebotomy techniques. In August 2007, the Complainant presented the Respondent with a doctor's note recommending work restrictions due to the Complainant's disabilities. The Respondent had one of its doctors perform a fitness for duty examination on the Complainant and the doctor determined that the Complainant could not perform the essential functions of the phlebotomist position. The Respondent then placed the Complainant on a paid medical leave.

3. The Department's investigation showed that in October 2007, when the Complainant returned to work, the Respondent placed the Complainant in a temporary secretarial position while the regular secretary was on maternity leave. In December 2007, the regular secretary returned from maternity leave and the Complainant was informed that her temporary position had ended.

4. The Department's investigation revealed that the Respondent's articulated non-discriminatory reason for failing to accommodate the Complainant and for placing the Complainant on medical leave was because the Complainant's medical restrictions did not allow her to perform the essential functions of her position.

5. In her Request, the Complainant states that the Respondent failed to accommodate her disability because the Respondent did not adequately train her for the secretarial position in which she was temporarily placed. The Complainant alleges that the Respondent praised her performance in the secretarial position until the Respondent became aware that the regular secretary was returning from her maternity leave. The Complainant also contends that the Respondent never considered accommodating the Complainant through a transfer to an outpatient phlebotomist position.

6. The Commission's review of the investigation file leads it to conclude that the Department properly dismissed the Complainant's charge because there is no evidence that the Respondent had a duty to accommodate the Complainant. § 1-103(I) of the Act defines disability as "a determinable physical or mental characteristic of a person [...] unrelated to the person's ability to perform the duties of a particular job or position." 775 ILCS 5/1-103(I). The Complainant's doctor's note recommended no lifting, pulling, pushing over thirty pounds, bending, stooping, or standing for more than thirty minutes. These recommendations directly relate to the Complainant's ability to perform the duties of her position of Phlebotomist at the Respondent. Thus, the Complainant is not "disabled" within the meaning of the Act.

7. Further, the Complainant's allegations that the Respondent failed to properly train the Complainant in a different position does not support the Complainant's charge that the Respondent failed to accommodate her disability. The duty to accommodate an employee's disability only requires employers to accommodate a disabled employee in the employee's present position for which he or she was hired. Caterpillar v. Human Rights Commission, 154 Ill. App. 3d 424, 429-30 (3d Dist. 1987).

The duty to accommodate does not include a requirement to transfer the employee to a different position which the employee may be able to perform. Id. The Respondent had no duty to accommodate the Complainant by training her in a different position as a secretary.

8. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal 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 Evanston Northwestern Healthcare as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
)
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Entered this 4th day of March 2009.

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Yonnie Stroger