STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CF2487
	)	EEOC NO.: 21BA81388
SUBBARAO VADREVU,	)	HUD NO.: N/A
	)	ALS NO.: 09-0012
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Rozanne Ronen, Munir Muhammad, and Diane Viverito presiding, upon Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2008CF2487, Subbarao Vadrevu, Complainant, and Metropolitan Water Reclamation District of Greater Chicago, 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 24, 2008, the Complainant filed a charge of discrimination with the Department, which alleged that the Respondent failed to promote the Complainant because of his national origin (India), in violation of § 2-102(A) of the Illinois Human Rights Act ("Act"). On December 11, 2008, the Department dismissed the Complainant's charge for lack of substantial evidence. On January 14, 2009, the Complainant filed a timely request for review.

2. The Department's investigation revealed that the Complainant was employed by the Respondent as a Treatment Plant Operator ("TPO") 1. The Department's investigation showed that from 2004 through 2007, the Complainant was on the Respondent's eligibility list for a promotion to a position of TPO 2. In order to qualify for promotion, the Complainant was required to pass a statutorily mandated

promotional examination. The promotional examination was composed of three tests and/or ratings: written, efficiency, and seniority.

3. The Department's investigation also revealed that the Complainant was involved in a work-related injury in July 2006. The Department states that the Complainant refused the Respondent's offer of light duty work and instead used sick time from September 2006 through November 2006. Additionally, the Department's investigation showed that the Complainant received two warning notices from the Respondent in 2006: one notice was related to the Complainant's failure to properly perform his job duties and the other notice reprimanded the Complainant for failing to timely notify the Respondent that he would be arriving to work late.

4. In April 2007, the Complainant received two evaluations. One evaluation was completed by a TPO 2, and it indicated that the Complainant met the Respondent's standards. The second evaluation was completed by a TPO 3, and it indicated that improvement was required in the Complainant's job performance. The "improvement required" evaluation made the Complainant ineligible for a promotion to a TPO 2 position. In June 2007, the Respondent had a vacancy for the TPO 2 position, but the Complainant was not recommended because of his "improvement required" performance evaluation. This "improvement required" evaluation resulted in the Complainant scoring below the "Meets Standards" requirement in his efficiency rating. The Respondent filled the vacancy with another candidate who had a more favorable performance evaluation and who had passed all aspects of the promotional examination.

5. In his Request, the Complainant contends that the two evaluations in April 2007 were contradictory. The Complainant also alleges that the reason for the "improvement required" evaluation was his use of 256 hours of sick leave, 216 hours of which the Complainant contends were used for time off relating to his work injury.

6. The Respondent's legitimate, non-discriminatory reason for not promoting the Complainant was that as a result of his "needs improvement" evaluation, he had failed the efficiency portion of the promotional examination, which rendered the Complainant ineligible for the promotion. The Respondent states that it promoted the next qualified individual from the eligibility list.

7. The Commission's review of the investigation file leads it to conclude that the Department properly dismissed the Complainant's charge of discrimination because the Complainant did not establish a *prima facie* case: there is no evidence in the file which demonstrates that the Complainant was qualified for the position. Further, there is no evidence in the file, nor does the Complainant present any evidence, which demonstrates that the Respondent's legitimate, non-discriminatory reason for not promoting the Complainant was a pretext for discrimination.

8. The Commission's review of the file demonstrates that the Respondent followed its statutorily mandated procedure for determining promotion eligibility, and the undisputed evidence in the file demonstrates that the Complainant's failure of the efficiency component of the promotional exam rendered him statutorily ineligible for promotion. There is no evidence in the file that a similarly-situated non-Indian employee

received more favorable treatment, i.e., failed any aspect of the promotional exam, but was still promoted. Further, there is no evidence in the file that the Complainant's "needs improvement" evaluation was motivated by his national origin.

9. Accordingly, it is the Commission's decision that the Complainant has not presented any evidence to show that the Department's dismissal of his 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 Metropolitan Water Reclamation District of Greater Chicago, 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 8th day of April 2009.
HUMAN RIGHTS COMMISSION	)	

Commissioner Rozanne Ronen

Commissioner Munir Muhammad

Commissioner Diane Viverito