

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST:	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CF2105
	)	EEOC NO.: 21BA81093
WEIHUA WANG,	)	HUD NO.: N/A
	)	ALS NO.: 09-0124
Complainant.	)	

**ORDER**

This matter coming before the Commission by a panel of two, Commissioners Sakhawat Hussain, M.D. and Rozanne Ronen presiding, upon Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2008CF2105, Weihua Wang, Complainant, and University of 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 11, 2008, the Complainant filed an unperfected charge of discrimination with the Department, in which she alleged that in violation of § 2-102(A), § 2-102(D), and § 6-101(A) of the Illinois Human Rights Act ("Act"): the Respondent discharged her on October 5, 2007 because of her race (Asian), color (dark complexion), national origin (China), sex (female), and in retaliation for opposing unlawful discrimination (**Counts A-E**);<sup>1</sup> the Respondent discharged her on October 20, 2007 because of her race, color, national origin, sex, and in retaliation for opposing unlawful discrimination (**Counts F-J**);<sup>2</sup> the Respondent harassed the Complainant because of her

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<sup>1</sup> The Complainant was not actually discharged on October 5, 2007. On October 5, 2007, the Respondent instructed the Complainant to go home because she was being placed on a paid administrative leave pending investigation into her work behavior.

<sup>2</sup> The Complainant was discharged on October 19, 2007 via letter, which she received on October 20, 2007.

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race, color, national origin, sex, and in retaliation for opposing unlawful discrimination (**Counts K-O**); the Respondent treated the Complainant to unequal terms and conditions of employment because of her race, color, national origin, sex, and in retaliation for opposing unlawful discrimination (**Counts P-T**); the Respondent failed to promote the Complainant because of her race, color, national origin, sex, and in retaliation for opposing unlawful discrimination (**Counts U-Y**); the Respondent sexually harassed the Complainant because of her race, color, national origin, sex, and in retaliation for opposing unlawful discrimination (**Counts Z-DD**). When she filed the charge on January 11, 2008, the charge was notarized, but the notarization was not dated, so the Department could not accept it for investigation. The charge was perfected and resubmitted with a proper notarization on February 25, 2008. On February 19, 2009, the Department dismissed the Complainant's charge for lack of substantial evidence. On March 25, 2009, the Complainant filed a timely request for review.

2. Pursuant to the Act, the Department must investigate a charge within 365 days from when a charge of civil rights violation has been properly filed or within any extension of that period agreed to in writing by all parties. 775 ILCS 5/7A-102(G)(1)(2008). Further, if the Department has not issued its investigation report within 365 days after the charge is filed, or any such agreed longer period, the Complainant has 90 days to file his or her complaint with the Commission or commence a civil action in the appropriate circuit court. 775 ILCS 5/7A-102(G)(2).

3. The Department's investigation revealed that the Complainant was employed as a Senior Research Technologist at the Respondent. On October 5, 2007, the Complainant and Francisco Benzanilla ("Benzanilla"), a professor and Lab Supervisor, were engaged in an argument regarding the Complainant's and other employees' practice of leaving chemical bottles in the "hood area." During the argument, Benzanilla told the Complainant that she was fired. The Complainant replied that she was not fired and returned to her work area. Benzanilla did not have the authority to fire the Complainant.

4. The Department's investigation also showed that later that same day, Nori Taleon ("Taleon"), a Human Resources representative, called the Complainant and told her that she was not discharged, but instructed the Complainant that she must go home. Taleon told the Complainant that she was placed on a paid administrative leave while Respondent conducted an investigation into the Complainant's work behavior.

5. On October 7, 2009, the Complainant sent an e-mail to Taleon indicating that she was being discriminated against.

6. On October 16, 2007, the Respondent had a meeting with the Complainant wherein the Respondent gave the Complainant conditions for returning to work.<sup>3</sup> The Complainant refused to sign the document and requested additional time to review it. The Respondent instructed the Complainant to look it over and return to work the next day, October 17, 2007.

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<sup>3</sup> The Complainant contends that the Respondent gave her a "last chance agreement," whereas the Respondent states it issued the Complainant a performance improvement plan to complete before returning to work. This discrepancy is immaterial to the Commission's decision.

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7. The Complainant did not return to work on October 17, 2007. The Respondent called the Complainant on October 17, 2007 and instructed her to return to work on October 18, 2007. On October 18, 2007, the Complainant sent an e-mail to the Respondent expressing that she could not return to work until she was less traumatized. On October 19, 2007, the Respondent sent a letter to the Complainant indicating that she was terminated due to job abandonment. The Complainant received the letter on October 20, 2007.

8. In her Request, the Complainant alleges that the Department lacked jurisdiction to dismiss her charge on February 19, 2009. The Complainant argues that the date of perfection of the Complainant's charge should have been prior to February 19, 2008. Thus, the Complainant argues that the dismissal was improper because the Department no longer had jurisdiction over the Complainant's charge. Prior to February 19, 2009, the Complainant filed her charge with the Commission under the belief that she was within the 90-day filing period pursuant to § 7A-102(G)(2) of the Act.

9. The Commission's review of the investigation file leads it to conclude that the Department properly dismissed the Complainant's charge because (A) it had proper jurisdiction to dismiss the Complainant's charge and (B) the Complainant did not provide substantial evidence that the Respondent discharged her on October 5, 2007, discharged her on October 20, 2007, harassed her, treated her on unequal terms and conditions of employment, failed to promote her, or sexually harassed her because of her race, color, national origin, sex, or in retaliation for opposing unlawful discrimination.

**(A) Jurisdiction**

10. The Complainant contends that the Department did not properly calculate its jurisdiction to investigate her charge.<sup>4</sup> The Complainant's counsel argues that it was his absolute duty, according to correspondence from the Department, to calculate the Department's 365-day jurisdiction period. The Complainant's counsel believed that date should have been calculated from the date of the filing of the unperfected charge on January 11, 2008.

11. The investigation file and the exhibits attached to the Complainant's Request show that the Complainant's attorney miscalculated the 365-day jurisdiction period. The jurisdictional period was scheduled to end 365 days from the date of filing of the perfected and properly notarized charge on February 25, 2008. See 775 ILCS 5/7A-102(G)(1) & (2).

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<sup>4</sup> The Complainant appears to allege that the Department impeded the charge filing process because it did not accept the originally filed charge as "perfected" because it was not properly notarized. The Complainant alleges that the letter that the Department sent stated that the "charge was notarized but not by a notary." The Complainant argues that this letter was illogical and incorrect. The Commission's review of the letter, attached as an exhibit to the Complainant's Request, shows that the letter actually says that the "charge was notarized but not dated by a notary." The date of a notarial act is required by Section 6-103(a) of the Illinois Notary Public Act.

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12. The file shows that the Complainant was on notice that the charge was deemed properly filed on February 25, 2008. First, the charge filed by the Complainant is file-stamped twice by the Department, with dates of January 11, 2008 and February 25, 2008.

13. Second, the Department sent a letter to the Complainant on March 6, 2008, which provided estimated dates of February 25, 2009 through May 25, 2009, as the 90-day timeframe in which the Complainant would be eligible to either file a Complaint with the Commission or commence a civil action in circuit court. The letter explained that the date range was calculated as 365 days from the date of the "PERFECTED signed and notarized charge."

14. Third, the Department sent an additional letter to the Complainant on December 31, 2008, which the Complainant attaches as an exhibit to her Request. This letter provided estimated dates of February 26, 2009 through May 26, 2009, as the window in which the Complainant would be eligible to either file a Complaint with the Commission or commence a civil action in circuit court. The letter again explained that the date range was calculated as 365 days from the date of the "PERFECTED signed and notarized charge."

15. The Complainant twice received notice that the Department's calculation of the date of the 90-day filing period was not the same date that the Complainant appeared to have calculated. There was adequate time to reconcile and understand the discrepancy prior to the Complainant's filing of a Complaint with the Commission and prior to the Department's dismissal of the Complainant's charge. Therefore, the Department had jurisdiction over the Complainant's charge when it issued its dismissal on February 19, 2009.

**(B) Lack of Substantial Evidence**

16. Although the Complainant's Request does not specifically address whether there was substantial evidence of her allegations, the Commission reviewed the merits of the investigation file to determine whether the Department's dismissal was proper. The Complainant had ample opportunity to make additional arguments as to the merits of her charge. The Department's Response addressed the merits of the Complainant's charge and the Complainant had an opportunity to file a substantive Reply. See 56 Ill. Adm. Code 5300.440. The Complainant chose not to file any additional briefs in this matter. The Commission's review of the investigation file leads it to conclude that there was no substantial evidence supporting any of the Complainant's allegations of discrimination. If no substantial evidence of discrimination exists after the Department's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D).

**Counts A-E**

17. **Counts A-E** of the Complainant's charge allege that the Respondent discharged her on October 5, 2007 because of her race, color, national origin, sex, and in retaliation for opposing unlawful discrimination. The investigation file contains no

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substantial evidence supporting these allegations. It is undisputed that the Complainant was not discharged on October 5, 2007; rather, the Complainant was placed on paid administrative leave. Further, the Complainant did not oppose unlawful discrimination until after she was placed on administrative leave. The Commission's review of the investigation file leads it to conclude that the dismissal of **Counts A-E** was in accordance with the Act.

**Counts F-J**

18. **Counts F-J** of the Complainant's charge allege that the Respondent discharged the Complainant on October 20, 2007 because of her race, color, national origin, sex, and in retaliation for opposing unlawful discrimination. The Respondent's articulated non-discriminatory reason for discharging the Complainant on October 20, 2007 is that the Complainant failed to return to work when mandated and was considered to have abandoned her job. The Complainant presents no evidence that this articulated reason is pretext for unlawful discrimination. During the Complainant's meeting with the Respondent following the Respondent's investigation, the Complainant was told she would have to report to work on October 17, 2007. She failed to report on October 17, October 18, and October 19 despite a telephone call to her by the Respondent requesting that the Complainant report to work. On October 19, 2007, the Respondent sent a letter to the Complainant, indicating that she was terminated on October 19, 2007 due to job abandonment.

19. Further, the investigation file is replete with prior warnings from the Respondent to the Complainant about her abuse of time and failure to properly perform her job duties. There is no evidence in the investigation file that the Complainant's termination was based on unlawful discrimination or in retaliation for the Complainant's opposition to unlawful discrimination.

**Counts K-O**

20. **Counts K-O** of the Complainant's charge allege that the Respondent subjected the Complainant to harassment from January 2007 through October 2007 because of her race, color, national origin, sex, and in retaliation for opposing unlawful discrimination. The Complainant's allegations of harassment include allegations that the Respondent harassed, humiliated, and intimidated her in e-mails about her work and attendance. Further, the Complainant alleges that the Respondent treated other employees more favorably and at times made the Complainant work late.

21. During the Department's investigation, the Complainant conceded that other employees would also have to work late. Further, the e-mails from the Respondent regarding the Complainant's work and attendance were seeking performance improvement from the Complainant. These allegations simply do not present substantial evidence of a pervasive, hostile, and adverse work environment as required by the Act.

**Counts P-T**

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22. **Counts P-T** of the Complainant's charge allege that the Respondent subjected the Complainant to unequal terms and conditions of employment from January 2007 through October 2007 because of her race, color, national origin, sex, and in retaliation for opposing unlawful discrimination. Specifically, the Complainant, a Senior Research Technologist, alleges that the Respondent treated a Junior Research Technologist, with preference. The Complainant alleges that the Respondent gave the Complainant more work and held the Complainant to higher standards than the Junior Research Technologist.

23. Complainant's allegations are not supported by substantial evidence in the investigation file. The Complainant held a more senior position than the Junior Research Technologist. Without evidence of a contrary work practice, holding a different job title than a co-worker by itself subjects an employee to a different term of employment. Additionally, the Complainant presents no evidence that the Junior Research Technologist had similar job performance to the Complainant. In sum, the Complainant presented no evidence that she was similarly situated to the Junior Research Technologist, but was treated less favorably.

**Counts U-Y**

24. **Counts U-Y** of the Complainant's charge allege that the Respondent failed to promote the Complainant between January 2007 and October 2007 because of her race, color, national origin, sex, and in retaliation for opposing unlawful discrimination. During the Department's investigation, the Complainant denied the allegations contained in **Counts U-Y** and admitted that she suffered no harm from the Respondent in regards to being denied any promotional opportunities. Therefore, there is no substantial evidence to support the allegations contained within **Counts U-Y**.

**Counts Z-DD**

25. **Counts Z-DD** of the Complainant's charge allege that the Respondent subjected the Complainant to sexual harassment from January 2007 through October 2007 because of her race, color, national origin, sex, and in retaliation for opposing unlawful discrimination. During the Department's investigation, the Complainant admitted that she had not been sexually harassed by the Respondent. Thus, there is no substantial evidence to support the allegations contained within **Counts Z-DD**.

26. 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**.

