STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CA2890
	)	EEOC NO.: 21BA81730
TADEUSZ PALKA,	)	ALS NO.: 09-0204
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert Enriquez and Greg Simoncini presiding, upon the Complainant's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Department") of Charge No. 2008CA2890, Tadeusz Palka, Complainant, and the Cook County Sheriff's Office, 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 upon the premises;

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

I. LACK OF SUBSTANTIAL EVIDENCE (Count A); and

II. LACK OF JURISDICTION (Counts B and C)

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

1. On March 17, 2008, the Complainant filed a charge of discrimination with the Department, No. 2008CA2890 (herein referred to as the "March 2008 Charge" or "the charge"), in which he alleged that on March 12, 2008, following a *Loudermill* probable cause hearing, the Respondent referred him for termination in retaliation for filing a charge of discrimination on September 18, 2007, No. 2008CA0947 (the "September 2007 Charge"), in violation of Section 6-101(A) of the Illinois Human Rights Act (the "Act") (Count A), and because of his disabilities, diabetes and depression (Counts B and C), in violation of Section 2-102(A) of the Act. After an investigation, on March 17, 2009, the Department dismissed the March 2008 Charge, finding no substantial evidence as to Count A of the charge, and finding that it lacked jurisdiction as to Counts B and C of the charge. On April 20, 2009, the Complainant filed a timely Request for the Commission to review the dismissal of the March 2008 Charge.

2. The undisputed evidence in the investigation file shows that the Respondent hired the Complainant for a part-time position in February 1978. In August 1980, the Complainant became a full-time Deputy Sheriff with the Respondent.

3. On May 11, 2007, the Respondent de-deputized the Complainant after Deputy Superintendant of the Chicago Police Department, Matthew Tobias ("Tobias") filed a written complaint with the Respondent's Office of the Inspector General ("OIG"), in which Tobias alleged that the Complainant had called the school attended by Tobias's children and had made inquiries about Tobias's children.

4. Beginning May 14, 2007, pursuant to its Complaint and Disciplinary Procedure, the OIG began an investigation into the alleged phone call. On September 5, 2007, the OIG detectives met with three Cook County Special Prosecution Assistant States Attorneys (the "States Attorneys"), who reviewed the case. The States Attorneys advised the Respondent to pursue the matter at an administrative level and that the States Attorneys would pursue the matter as a continuing investigation. The OIG detectives concluded their investigation on September 5, 2007. One of the OIG detectives wrote a Summary Report of the OIG's findings and conclusions, which included findings that the Complainant had violated three of the Respondent's Rules of Conduct and seven of the Respondent's Merit Board Rules and Regulations. The Summary Report was dated November 14, 2007. The Respondent's Assistant Executive Director, Henry Barsh, signed the Summary Report and recommended that the Complainant be "separated from employment."

5. Following a *Loudermill* probable cause hearing on February 20, 2008 before the Respondent's Merit System Protection Board (MSPB), the Complainant was suspended without pay pending discharge. A Preliminary Disciplinary Hearing before the MSPB was scheduled for March 12, 2008. However, the Preliminary Hearing was rescheduled to April 10, 2008. On April 8, 2008, before the Preliminary Hearing could proceed, the Complainant voluntarily retired.

6. In his Request, the Complainant continues to contend that the Respondent de-deputized and referred him for termination in retaliation for engaging in a protected activity. Specifically, in the March 2008 Charge, the Complainant alleged: *"I believe I have been retaliated against based on my having filed a discrimination charge based on age, and national origin, charge Number 2008CA0947 filed with the IDHR and EEOC on September 18, 2007."* The March 2008 Charge contains the Complainant's notarized signature next to the following attestation: *"I swear or affirm that I have read the above charge and that it is true to the best of my knowledge information, and belief."*

7. However, for the first time in his Request, the Complainant now alleges that the Respondent actually retaliated against him for a complaint he made in February of 2007 to Tobias, regarding the circumstances under which Tobias had terminated the Complainant's son from the Chicago Police Academy. Also in his Request, the Complainant argues that the Department has jurisdiction over <u>Counts B and C</u> of the charge, which allege discrimination due to disabilities, because the Complainant argues that he returned the medical release forms to the Department.

8. In its Response, as to Count A of the March 2008 Charge, the Department argues that there was no substantial evidence of discrimination, because as of September 5, 2007, following its investigation, the Respondent's OIG had already recommended the Complainant for termination. Further, as to the Complainant's new allegation raised for the first time in his Request that the Respondent retaliated against him for opposing unlawful discrimination on February 1 2007, the Department states that the allegation was untimely because he did not raise it in the March 2008 Charge, and this allegation refers to actions that took place more than 180 days after the alleged civil rights violation was committed. Further, the Department argues that even if this new allegation could be considered, there was no evidence of a nexus between the February 2007 protected act and the adverse act in September of 2007 because the seven months time period between the protected act and the adverse act was too remote to establish an inference of connectedness.

9. As to Counts B and C, the Department argues that it was the Complainant's burden to prove that he had a disability within the meaning of the Act. Otherwise, the Department has no jurisdiction to investigate those Counts of the charge.

10. Pursuant to Section 1-103(I)(1) of the Act, a "disability" is a "determinable physical or mental characteristic of a person" which is "unrelated to the person's ability to perform the duties of a particular job or position…" *See* 775 ILCS 5/1-103(I)(1) (West 2009). The Complainant has the burden to establish that his condition qualifies as a disability under the Act. *See* 56 Ill. Admin. Code, Ch. II, Section 2500.20(c) (West 2009).

11. Therefore, in order to establish that the Complainant had a disability within the meaning of the Act, the Department requested that the Complainant complete a Consent for Inspection and Copying of Medical Information Form (the "Consent Form"), and have a doctor complete a Medical Questionnaire. The Complainant was instructed to return to the Department both the completed Consent Form and the completed Medical Questionnaire. The completed Medical Questionnaire would contain the medical information necessary to show that the Complainant had a disability within the meaning of the Act.

12. The Department argues that the Complainant failed to meet his burden of proving that his conditions qualified as disabilities within the meaning of the Act because he never returned a completed Medical Questionnaire, even though the Department asked him to do so on at least four separate occasions. Therefore, the Department argues, because the Complainant failed to provide it with evidence that he was disabled under the Act, it lacked jurisdiction to investigate Counts B and C of the March 2008 Charge.

13. The Commission's review of the investigation file leads it to conclude that the Department properly dismissed the Complainant's charge.

14. As to Count A, the Commission finds that there is not substantial evidence of retaliation. In order to establish a *prima facie* case of retaliation under the Act, the Complainant must present evidence which demonstrates: (1) that he engaged in a protected act; (2) that the Respondent took an adverse action against him, and (3) that there is a causal connection or nexus between the protected activity and the adverse act. *See* Carter Coal Co. v. Human Rights Commission, 261 Ill.App.3d 1, 7, 633 N.E.2d 202 (5th Dist. 1994).

15. The Complainant does not present substantial evidence of a nexus between the filing of the September 2007 Charge and the alleged adverse act. First, the Complainant alleges that the Respondent referred him for termination on March 12, 2008 in retaliation for filing the September 2007 Charge. However, the evidence in the file clearly shows that the Respondent could not have made any recommendations concerning the Complainant's employment status on March 12, 2008 because no disciplinary hearing took place on that date. The Merit Board hearing that was supposed to have occurred on March 12, 2008 was rescheduled to April 10, 2008. However, the Complainant retired on April 8, 2008, and no Merit Board hearing ever took place.

16. The file does show that the Respondent signed the Summary Report on November 14, 2007, in which it recommended that the Complainant be terminated. However, there is no substantial evidence in the file which demonstrates that the Respondent was motivated by retaliation. In fact, the evidence shows that the recommendation was the culmination of an investigation into the Complainant's alleged misconduct, an investigation which commenced in May of 2007, some four months before the Complainant filed the September 2007 Charge. The mere fact that the Complainant filed a charge of discrimination with the Department in the middle of the Respondent's on-going investigation does not give rise to an inference of a retaliatory motive simply because the investigation ultimately resulted in a finding against him.

17. Finally, the Complainant's attempt to raise new allegations in his Request relative to Count A is not well taken. On a request for review, the Commission only has jurisdiction to review the Department's decision to dismiss those charges or allegations that were before the Department. The Commission does not have jurisdiction to review new allegations or charges of discrimination raised for the first time in a request for review. *See* 775 ILCS 8-103 (West 2009). Therefore, the Commission has no jurisdiction to consider the Complainant's new allegation that he engaged in a protected activity in February of 2007, which was raised for the first time in his Request.

18. As to Counts B and C of the charge, the Commission finds that the Department lacked jurisdiction over the Complainant's allegations that he was terminated due to his alleged physical disabilities because the Complainant failed to submit the completed Medical Questionnaire to the Department. The Complainant had the burden of establishing that he was disabled within the meaning of the Act before the Department could acquire the jurisdiction to investigate the allegations of Counts B and C of the charge. The Complainant failed to meet this burden when he repeatedly and inexplicably failed to return the completed Medical Questionnaire to the Department.

19. 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 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 the Respondent Cook County Sheriff's Office, as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION) Entered this 22nd day of July 2009.

Commissioner Marti Baricevic

Commissioner Robert Enriquez

Commissioner Gregory Simoncini