STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST:	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CF3084
	)	EEOC NO.: 21BA81886
ALEXIS OLEA DELGADO	)	HUD NO.: N/A
	)	ALS NO.: 09-0251
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Greg Simoncini, Diane Viverito, and Munir Muhammad 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. 2008CF3084, Alexis Olea Delgado, Complainant, and Sara Lee Coffee, 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 ("Response"); 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

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

1. On April 30, 2008, the Complainant filed a charge of discrimination with the Department, alleging that the Respondent discharged him because of a perceived disability (drug addiction), in violation of § 2-102(A) of the Illinois Human Rights Act ("Act"). On April 13, 2009, the Department dismissed the Complainant's charge for lack of substantial evidence. On May 18, 2009, the Complainant filed a timely request for review.

2. The uncontested facts show that the Complainant was hired by the Respondent as a material handler in March 1998 and was a forklift operator at the time of his discharge.

3. On February 11, 2008, the Complainant was involved in an accident at work. According to the Complainant, he did not report the accident at the time because he believed that the Lead Person, Javier Murillo ("Murillo"), witnessed the accident.

4. On February 14, 2008, the Complainant made a statement to the Respondent about how the accident occurred with Murillo interpreting. In the statement, the Complainant claims that he notified Murillo of the accident. The statement indicates in parentheses that Murillo confirmed the Complainant's claim.

5. The Respondent contends that the Complainant did not report the accident until he told the Plant Manager, Greg Dvorak ("Dvorak") on February 14, 2008.

6. On February 14, 2008, the Complainant left work to go to the hospital because his arm and shoulders were hurting. Upon return to work, he gave the hospital paperwork to Dvorak. Pursuant to the Respondent's work injury policy,[1] Dvorak sent the Complainant for a drug test. Prior to the drug test, the Complainant informed the Respondent and the medical technician that he was taking medication for a toothache, among other ailments.

7. On February 28, 2008, the Respondent received the results of the Complainant's drug test, which showed positive results for codeine, morphine, and 6-acetyl morphine. The Respondent forwarded the results to the Human Resources manager, who consulted with the Respondent's medical doctor at the Respondent's Texas plant. The medical doctor confirmed to the Respondent that the Complainant tested positive for heroin because 6-acetyl morphine is one of two active metabolites in heroin.

8. On March 20, 2008, the Respondent discharged the Complainant for violating its substance abuse policy. The Respondent's articulated non-discriminatory reason for the discharge is that the Complainant failed to report a work accident and tested positive for an illegal substance on a drug test.

9. In his Request, the Complainant attaches a prescription dated February 12, 2008 for Acetaminophen/COD #3.

10. The Commission's review of the investigation file leads it to conclude that the Department properly dismissed the Complainant's charge because the Complainant did not provide any evidence that the Respondent's reasoning for discharging the Complainant was pretext for unlawful 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)(2008).

11. First, it is a well-established principle of the Human Rights Commission that drug addiction is not considered a disability under the Act. 775 ILCS 5/1-103(I)(1), David Osborn and Airborne Express/Airborne Freight Corp., IHRC, 7810, August 12,

[1] The Respondent's policy regarding drug testing explains that the Company will conduct appropriate and legal substance abuse testing of an employee if he or she is involved in a work-related accident or incident that causes an injury to that employee.

1996. The Complainant's allegation in his charge that he was "erroneously perceived [...] to have a disability within the meaning of Section 1-103(I) of the Illinois Human Rights Act" is without merit. Section 1-103(I) of the Act explicitly states that a person's illegal use of drugs or alcohol is not a disability.

12. Second, the Complainant has presented no evidence that the Respondent discharged him because of the Respondent's belief that the Complainant was disabled. The Act does not preclude an employer from terminating an employee because of his use of an illegal substance. The Respondent's articulated non-discriminatory reason for the Complainant's discharge is that the Complainant did not report the work accident and that he tested positive for an illegal substance on a drug test. The Respondent is entitled to make employment decisions based on its reasonable belief surrounding a situation, even if the Respondent's reasonable belief may not be correct. See Carlin v. Edsal Manufacturing Co., IHRC, 7321, October 21, 1996. The Complainant submits no evidence here that the Respondent discharged the Complainant for a discriminatory reason or that the Respondent's non-discriminatory reason for discharge is a pretext for unlawful discrimination.

13. 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 the Respondent, Sara Lee Coffee, 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 2nd day of September 2009.**
HUMAN RIGHTS COMMISSION)

Commissioner Greg Simoncini

Commissioner Diane Viverito

Commissioner Munir Muhammad