STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CF3055
	)	
FRANK PARISI	)	ALS NO.: 09-0287
	)	
Complainant.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. 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. 2008CF3055, Frank Parisi, Complainant, and Cintas, 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 ground:

LACK OF JURISDICTION

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

1. The Complainant filed an charge of discrimination with the Department on April 29, 2008, alleging that the Respondent suspended him on April 11, 2008, and discharged him on April 18, 2008, because of his physical disability (back disorder), in violation of Section 2-102(A) of the Act. On May 8, 2009, the Department dismissed Complainant's Charge for Lack of Jurisdiction. On June 3, 2009, the Complainant filed a timely Request.
2. The Complainant worked for the Respondent as a Sales Service Representative. On January 21, 2008, the Complainant suffered a work related injury. He was diagnosed on February 19, 2008 with a herniated lumbar disk.

3. On April 11, 2008, the Respondent suspended the Complainant. On April 16, 2008, the Respondent discharged him. The Complainant contends that he was suspended because of his back disorder.

4. A prima facie case of disability discrimination is established by some proof that: 1) the Complainant is disabled under the Act; 2) his disability is unrelated to his ability to perform the essential functions of his job, and 3) that an adverse job action was taken against him because of his disability. *See* Ill. Dep't of Corrections v. Illinois Human Rights Commission, 298 Ill. App. 3d 536, 699 N.E.2d 143, 145-46 (3rd District. 1998), citing Truger v. Department of Human Rights, 293 Ill. App. 3d 851, 859, 688 N.E.2d 1209, 1213 (2nd District 1997).

5. Section 1-103(I) of the Act defines "disability" as… "a determinable physical or mental characteristic of a person . . . the history of such characteristics, or the perception of such characteristic by the person complained against, which may result from disease, injury, congenital condition of birth or functional disorder and which characteristic … is unrelated to the person's ability to perform the duties of a particular position." *See* 775 ILCS 5/1-103 (I) (1) (West 2009).

6. A determinable physical or mental characteristic… "is interpreted as excluding A) conditions which are transitory and insubstantial, and B) conditions which are not significantly debilitating or disfiguring." 56 Ill. Admin. Code, Ch. II, § 2500.20.

7. Francisco Espinosa ("Espinosa"), M.D., PhD, was the Complainant's treating physician. After the Complainant filed his charge, the Department provided Espinosa with a Medical Questionnaire to complete so that the Department could determine if the Complainant's back injury qualified as a disability within the meaning of the Act.

8. Espinosa completed the Medical Questionnaire on June 6, 2008. Espinosa indicated that the Complainant's condition was transitory, was not substantial, and was not significantly debilitating or disfiguring. Espinosa indicated that the Complainant had recovered as of June 6, 2008.

9. In support of his Request, the Complainant attaches numerous documents, including medical documentation; a letter from Espinosa dated May 18, 2009, and a letter from Dr. Samuel J. Chmell ("Chmell") dated April 27, 2009. Chmell indicated that the Complainant would not be able to return to the type of work he was performing in January of 2008. Espinosa stated that Complainant's condition requires further treatment.

10. The Commission's review of the investigation file leads it to conclude that the Department properly dismissed the Complainant's charge for Lack of Jurisdiction. The Commission finds that at the time that the Respondent terminated the Complainant, he was not disabled as defined by the Act. Therefore, the Complainant cannot establish a prima facie case of disability discrimination.

11. The Medical questionnaire that Espinosa completed on June 6, 2008, clearly states that the Complainant's condition is not transitory, is not insubstantial, and is not significantly debilitating or disfiguring.

12. Under the Act, the Complainant has the burden of establishing that his condition qualifies as a disability under the Act. *See* 56 Ill. Admin. Code, Ch. 11, § 2500.20 (c) (West 2009). Based on the information provided by the Complainant's treating physician

in the Medical Questionnaire, the Commission concludes that the Complainant has failed to meet this burden.

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 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 Cintas, 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 24th day of November 2009.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Greg Simoncini