

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CF3482
)	EEOC NO.: 21BA82186
ELLA J. WADE,)	HUD NO.: N/A
)	ALS NO.: 09-432
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Munir Muhammad, Gregory Simoncini and Diane Viverito presiding, upon Ella J. Wade’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)¹ of Charge No. 2008CF3482; and the Commission having reviewed *de novo* the Respondent’s investigation file, including the Investigation Report and the Petitioner’s Request, and the Respondent’s response to the Petitioner’s Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that:

The Respondent’s dismissal of all counts (Counts A-C) of the Petitioner’s charge is **VACATED**, and the Charge is **REINSTATED** and **REMANDED** to the Respondent for further investigation as herein instructed.

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

1. On June 5, 2008, the Petitioner filed a three-count (Counts A- C) charge of discrimination with the Respondent. She alleged her employer, the Cook County Bureau of Administration President’s Office of Employment Training (“Employer”) issued her a poor performance evaluation on February 28, 2008 (Count A), sent her home from work on May 21, 2008 (Count B), and subjected her to harassment on May 21, 2008 (Count C), in retaliation for having previously filed a charge of discrimination against the Employer in September of 2007. The

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the “Respondent.” The party to the underlying charge requesting review of the Department’s action shall be referred to as the “Petitioner.”

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Petitioner alleged these actions violated § 6-101(A) of the Illinois Human Rights Act ("Act").

2. On June 10, 2009, the Respondent dismissed all three counts of the charge for lack of substantial evidence. On July 14, 2009, the Petitioner filed a timely Request.
3. The undisputed evidence in the investigation file shows the Petitioner is employed as an administrative assistant. She began working for the Employer in January 1999. The Petitioner worked in the Employer's Cicero location in 2007.
4. In early February 2008, the Petitioner was evaluated by her supervisor in Cicero, Al Liskowski. Liskowski rated the Petitioner's performance as "satisfactory."
5. On February 19, 2008, the Petitioner was transferred to the Employer's Maywood location.
6. On or about February 25, 2008, the Petitioner's evaluation was changed to "unsatisfactory."
7. There is conflicting evidence in the file regarding who changed the Petitioner's evaluation. Liskowski denies changing the evaluation.
8. The Petitioner alleged that Benjamin Handy, the Employer's EEO Ombudsman, changed her evaluation to "unsatisfactory" in order to retaliate against her for having previously filed a charge of discrimination against the Employer in September 2007.
9. The Petitioner alleged in Counts B and C of the charge that Handy further retaliated against her on May 21, 2008, by harassing her while at work, when he yelled at her, pointed his finger in her face, and called her a third grader. He then sent her home, allegedly without cause.
10. In her Request, the Petitioner argues the dismissal of Count A of the charge was improper because there was conflicting evidence about who changed her performance evaluation, and the Respondent erred when it resolved the conflict in the Employer's favor. As to Counts B and C, the Petitioner argues the Respondent erred when it determined there was no nexus between the September 2007 charge of discrimination and the May 21, 2008 incidents. The Petitioner argues there was no evidence presented by the Employer as to when it actually became aware of the September 2007 charge of discrimination.
11. In its Response, the Respondent argues there is no substantial evidence to support Count B and Count C of the charge, and asks the Commission to sustain its dismissal of both Counts. The Respondent argues too much time had passed

between the September 2007 charge and the incidents of May 21, 2008, to give rise to an inference of a retaliatory motive.

12. However, the Respondent asks the Commission to vacate its dismissal of Count A and remand Count A of the charge for further investigation and additional analysis.

Count A: Retaliation via Poor Performance Evaluation

13. In its Response to the Petitioner's Request, the Respondent does not oppose the Petitioner's Request as to Count A. Rather, the Respondent asks that the Commission vacate the dismissal of Count A, and remand Count A to the Respondent for further investigation and analysis. Therefore, Count A of the charge is vacated and remanded to the Respondent.

Counts B and C: Retaliation on May 21, 2008

14. The Commission's review of the Respondent's investigation file leads it to conclude that the dismissal of Count B and Count C must also be vacated and remanded to the Respondent for further investigation and additional analysis. The Petitioner's Request is persuasive.
15. A *prima facie* case of retaliation is established by evidence the Petitioner engaged in a protected activity, the Employer committed an adverse act, and a causal connection existed between the protected activity and the adverse action. Welch v. Hoeh, 314 Ill.App.3d 1027 (3rd Dist. 2000).
16. Although seven months passed between the filing of the September 2007 charge and the May 21, 2008 incidents, the Petitioner correctly notes that there is no evidence in the file that establishes when the Employer, and specifically Handy, became aware of the September 2007 charge.
17. The Commission cannot agree that there is no substantial evidence of a causal connection between the September 2007 charge and Handy's alleged retaliatory conduct of May 21, 2008, when there is no evidence in the file from which it may determine when Handy actually became aware of the September 2007 charge.
18. Therefore, Counts B and C shall also be remanded to the Respondent with instructions to conduct further investigation in order to determine when Handy actually became aware of the September 2007 charge. The Respondent shall then further analyze whether or not there is substantial evidence that the May 21, 2008 incidents were retaliatory.

THEREFORE, IT IS HEREBY ORDERED THAT:

The Respondent's dismissal of the entire charge (Counts A-C) is **VACATED**, and the entire charge is **REINSTATED** and **REMANDED** to the Respondent for further investigation and additional analysis in accordance with this Order and the Act.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION) Entered this 17th day of February 2010.

Commissioner Munir Muhammad

Commissioner Gregory Simoncini

Commissioner Diane Viverito