

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009SF1763
)	EEOC NO.: 21BA90653
DAVID W. SMITH)	ALS NO.: 09-0722
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon David W. Smith’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)^[1] of Charge No. 2009SF1763; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, WHEREFORE, it is hereby **ORDERED** that the Respondent’s dismissal of the Petitioner’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. On December 2, 2008, the Petitioner filed a charge of discrimination with the Respondent. The Petitioner alleged that Illinois-American Water Company (“Employer”) failed to accommodate his physical disability, left and right shoulder disorder, in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On November 25, 2009, the Respondent dismissed the Complainant’s charge for Lack of Jurisdiction. On December 14, 2009, the Petitioner filed this timely Request.
2. The Petitioner worked for the Employer as a Laborer Sub-Foreman in its Distribution Department.
3. The Petitioner’s position required heavy lifting, pushing and pulling motions. The Petitioner was also required to carry a dewater pump weighing 75 to 90 pounds and to use a jackhammer weighing 60 to 90 pounds.

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

4. In February 2007, the Petitioner injured his shoulder and was unable to work until June 11, 2007. The Petitioner returned to work in June 2007 and was assigned light duty work. Between April 17, 2008, and August 22, 2008, the Petitioner was unable to work at all. On September 22, 2008, the Petitioner returned to work with restrictions.
5. On October 16, 2008, the Petitioner's doctor had determined that the Petitioner could not perform heavy lifting. The Petitioner's doctor determined the Petitioner must work under certain permanent medical restrictions. These permanent medical restrictions prevented the Petitioner from: (1) lifting more than 40 pounds above the shoulder level; (2) carrying, lifting, pushing, and pulling more than 60 pounds below the shoulder level; and (3) lifting objects above his shoulders for extended periods of time.
6. On October 17, 2008, the Employer removed the Petitioner from his position as Laborer Sub-Foreman because, due to the medical restrictions, the Petitioner could no longer perform the essential functions of that position. The Employer reassigned the Petitioner to a position as a Meter Reader.
7. In his charge, the Petitioner alleged the Employer failed to accommodate him when, on October 17, 2008, the Employer did not permit him to continue working as a Laborer Sub-Foreman with the medical restrictions.
8. In his Request, the Petitioner argues that his charge was dismissed based on inaccurate and incomplete information. The Petitioner further argues that the Respondent's determination that he could not perform the essential functions of the position of Laborer Sub-Foreman was simply erroneous, because the Employer could have accommodated his medical restrictions.
9. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for Lack of Jurisdiction because the Petitioner is not disabled within the meaning of the Act. Specifically, the Respondent argues the Petitioner could not perform the essential functions of his job with or without a reasonable accommodation.

Conclusion

The Commission concludes that the Respondent properly dismissed the Petitioner's charge for lack of jurisdiction. If the Petitioner's condition does not meet the definition of disability under the Act, there must be a finding of lack of jurisdiction. See 775 ILCS 5/1-103(I).

Section 1-103(I)(1) of the Act defines a "disability" as a "determinable physical or mental characteristic of a person..." which is "unrelated to a person's ability to perform the duties of a particular job...." See 775 ILCS 5/1-103(I)(1). The Petitioner's job requires heavy lifting and pushing. The Petitioner's job further requires him to carry weights of 75 to 90 pounds and using a jack hammer

