

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF THE REQUEST |) | |
| FOR REVIEW BY: |) | CHARGE NO.: 2009CF1226 |
| |) | EEOC NO.: 21BA90224 |
| YOLANDA S. INGRAM, |) | ALS NO.: 09-0522 |
| |) | |
| Petitioner. |) | |

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Yolanda S. Ingram’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)¹ of Charge No. 2009CF1226; 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:

- (1) The Respondent’s dismissal of Counts A-D of the Petitioner’s charge is **SUSTAINED** for **LACK OF JURISDICTION**; however,
- (2) This matter is not yet dismissed, and shall remain open and be **REMANDED** to the Respondent for **FURTHER INVESTIGATION** regarding the Petitioner’s sexual harassment claim.

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

1. On October 23, 2008, the Petitioner filed a charge of discrimination with the Respondent, in which she alleged her former employer, Devry University Online (“Employer”), failed to promote her on October 22, 2008, because of her race, Black (Count A), marital status, divorced (Count B), sex, female (Count C), and in retaliation for having opposed unlawful discrimination in March 2008 (Count D), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (the “Act”). On August 18, 2009, the Respondent dismissed the charge for Lack of Jurisdiction. On September 21, 2009, the Petitioner filed a timely Request.
2. The undisputed evidence in the investigation file shows the Employer hired the Petitioner on August 14, 2006. In March of 2008, the Petitioner’s title was Level I Admission Advisor.

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.”

3. In March 2008, the Petitioner told her supervisor, Terry Iggnoff, that she was interested in a promotion to a Level II Admission Advisor position. Iggnoff informed the Petitioner the Employer was not currently hiring anyone for that position. Further, the Petitioner never submitted an application to be promoted to the position of Level II Admission Advisor.
4. Also in March 2008, the Petitioner complained to the Employer's Human Resources Representative, Mary Leafblan, that she was being sexual harassed by the Employer's Assistant Director of Admissions. The Petitioner filed an internal sexual harassment complaint with the Employer via telephone. The Employer conducted an investigation and on October 22, 2008, the Petitioner was informed by the Employer that the alleged conduct, while inappropriate, did not rise to the level of sexual harassment.
5. On October 22, 2008, the Petitioner again informed Iggnoff that she was interested in a promotion to the position of Level II Admission Advisor. Iggnoff again informed the Petitioner the Employer was not presently hiring for that position.
6. The Petitioner names a comparable employee whom she alleged was less-qualified, non-Black, non-divorced, and male, but who was promoted over her, Eli Campbell. However, the undisputed evidence in the file demonstrates that Campbell was moved into the position of Level II Admission Advisor on December 31, 2007, three months *prior* to the Petitioner's first inquiry regarding a promotion to that position. Campbell's promotion was formally announced in March 2008.
7. In her Request, the Petitioner argues the Respondent's determination was incorrect, and cites federal cases deciding hostile work environment claims in support of her argument that the Respondent had jurisdiction over her charge. She argues the Employer engaged in a continuing violation.
8. In support of its determination that it lacked jurisdiction over the Petitioner's race, marital status, sex, and retaliation claims, the Respondent argues the alleged civil rights violation occurred in March 2008. Pursuant to 775 ILCS 5/7A-102(A) of the Act, charges of discrimination, except in housing discrimination matters, must be filed within 180 days of the alleged violation. The Respondent argues that because the alleged harm occurred in March 2008, her charge was required to be filed in September 2008. Therefore, the Respondent argues it lacks jurisdiction to investigate the charge because it was untimely filed on October 23, 2008.
9. However, the Respondent does ask the Commission to remand the matter so that it may make some determination as to the Petitioner's sexual harassment claims. Apparently, during the intake process, the Respondent documented on its Employment Complainant Information Sheet that the Petitioner also wished to allege that she had been subjected to sexual harassment while employed. When drafting the Petitioner's charge, the Respondent did not include sexual harassment as one of the counts. As a result it made no findings or determination as to the Petitioner's sexual harassment claim, including whether or not it was timely filed.

Conclusion

The Commission's review of the Respondent's investigation file leads it to conclude the Respondent properly dismissed Counts A-D of the Petitioner's charge for lack of jurisdiction. As the Respondent correctly noted, if a charge is untimely filed, then it is deprived of any authority to investigate the allegations of the charge. See Trembczynski v. Human Rights Commission, 252 Ill.App.3d 966, 625 N.E.2d 215, 218 (1st Dist. 1993).

In this case, the Petitioner's continuing violation argument is inapplicable. The charge does not contain allegations of a hostile work environment or of a continuing pattern of conduct. Rather, the charge alleges a single discrete discriminatory act. As such, there must be a showing in the first instance that the Petitioner's charge was timely filed within 180 days after the alleged discrete violation, in this case the Employer's alleged failure to promote the Petitioner on October 22, 2008.

The Petitioner fails in this regard because the Petitioner admits she never actually applied for a promotion; hence she could not have been turned down for a promotion on October 22, 2008. At best, the Petitioner first expressed an interest in a promotion in March 2008. It was in March 2008 that she was initially told by the Employer it was not promoting anyone to the Level II Admission Advisor position at that time. Also, on March 2008 the promotion of the alleged comparable was officially announced, which is when the Petitioner became aware that someone had been promoted to the position she desired. Therefore, the Commission finds the Respondent correctly determined that March 2008 was the date of the alleged harm because that is when the Petitioner first became aware of any alleged civil rights violation.

Based on this determination, as earlier discussed, the Petitioner's charge relative to her failure to promote and retaliation claims had to be filed by September 2008 in order to be deemed timely. The Petitioner did not file her charge relative to these claims until October 23, 2008; hence, it was untimely.

However, based on the evidence in the file, the Petitioner had put the Respondent on notice of her desire to also allege a claim of sexual harassment. This sexual harassment claim was inadvertently omitted from the charge by the Respondent when it drafted the charge. Therefore, this matter will be remanded to the Respondent so that it can conduct further investigation into the omitted sexual harassment claim, and make findings and determinations as to that claim, including whether or not it was timely filed.

THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) The Respondent's dismissal of Count A-D of the Petitioner's charge is **SUSTAINED** for **LACK OF JURISDICTION**; however,

- (2) This matter is not yet dismissed, and shall remain open and be **REMANDED** to the Respondent for **FURTHER INVESTIGATION** regarding the Petitioner's sexual harassment claim.

This is not a final and appealable Order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION)

Entered this 24th day of March 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini