

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)		
FOR REVIEW BY:	)	CHARGE NO.:	2009CF1983
	)	EEOC NO.:	21BA90771
<b>ROBEN B. HALL</b>	)	ALS NO.:	10-0245
	)		
Petitioner.	)		

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Charles E. Box presiding, upon Roben B. Hall's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2009CF1983; 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:

1. On November 17, 2008, the Petitioner filed an unperfected charge of discrimination with the Respondent, which she subsequently perfected on January 9, 2009. The Petitioner alleged that Wal-Mart Stores, Inc. ("Employer") failed to promote her because of her physical disabilities, Traumatic Head Injury and Reflex Symptothetic Dystrophy (Counts A and B), and her sexual orientation, homosexual (Count C) in violation of Section 2-102(A) of the Illinois Human Rights Act ("Act"). On March 12, 2010, the Respondent dismissed the Petitioner's charge for lack of jurisdiction. On April 5, 2010, the Petitioner filed this timely Request.
2. The Employer's employees may apply for open positions within the Employer by using an on-line computerized Career Preference System ("System"). The System is accessible to all of the Employer's employees. When a job position becomes available, it is entered in the System as "open." When the position is filled it is entered into the System as "closed."
3. On March 18, 2008, the Employer entered into the System an opening for a Management Trainee at Respondent's store in Belvidere, Illinois.
4. According to the Petitioner's Career Preferences Printout, generated by System, on March 18, 2008, the Petitioner indicated her interest in the Management Trainee position in the Employer's Belvidere store.

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<sup>1</sup> 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."

5. The Employer decided not to hire anyone for the position. On May 8, 2008, the Employer updated the System to give notice to all employees that the Management Trainee position in Belvidere was closed.
6. In her charge, which she filed on November 17, 2008, the Petitioner alleged that on or about May 20, 2008, she was denied a promotional opportunity to the position of Management Trainee. However, during the Respondent's investigation, the Petitioner conceded she may have learned on May 8, 2008, that the position had been closed.
7. In her Request, the Petitioner argues the Employer reopened the position of Management Trainee on June 10, 2008, and closed it on September 12, 2008. Therefore, the Petitioner contends that the proper date of the alleged civil rights violation was September 12, 2008, and that her charge was timely filed within 180 days of September 12<sup>th</sup>.
8. In its Response, the Respondent asks the Commission to sustain the dismissal of the Petitioner's charge for lack of jurisdiction pursuant to Section 7A-102(A)(1) of the Act because the Petitioner failed to file her charge within 180 days of the alleged civil rights violation. The Respondent argues that as of May 8, 2008, the Petitioner knew or should have known that she had not been selected for the position, and thus had notice of the alleged civil rights violation on May 8, 2008.

## **CONCLUSION**

The Commission sustains the dismissal of the Petitioner's charge for lack of jurisdiction.

Section 7A-102(A)(1) of the Act provides that in all cases (except housing discrimination cases), a complainant must file a charge of discrimination with the Respondent within 180 days after the date of the alleged civil rights violation. This 180-day filing requirement is jurisdictional. Failure to file a charge within the prescribed time deprives the Respondent and the Commission of jurisdiction to proceed further. See Trembczynski v. Human Rights Commission, 252 Ill.App.3d 966, 625 N.E.2d, 215, 218 (1<sup>st</sup> Dist 1993).

First, the Commission rejects the Petitioner's assertion raised for the first time in her Request that the date of the alleged civil rights violation is actually September 12, 2008. In her original charge of discrimination, the Petitioner clearly alleged a civil rights violation occurred in May of 2008. The Petitioner made no reference to any acts of discrimination having occurred in September 2008. The Commission does not have jurisdiction to review new allegations or charges of discrimination raised for the first time in a request for review. See 775 ILCS 5/ 8-103. Therefore, in this Request the Commission shall focus only on the discrimination alleged by the Petitioner in her original charge, which refers solely to the Employer's alleged conduct in May of 2008.

Second, the Commission finds that the Respondent correctly determined that May 8, 2008, was the date of the alleged civil rights violation. The Commission has previously held that .... "the 180 day period begins to run from the time that the adverse action is communicated to the Complainant." See Fletcher Barnes and Chicago Transit Authority, 36 Ill. HRC Rep. 211, 2 (1987). In other words ... "the 180-day period begins when the employer gives notice of the discriminatory action, which is when the injury is deemed to have occurred." See Jesse Lofton and Brown & Williamson Tobacco

Corp., IHRC, ALS No. 4306, June 29, 1992, 1992 WL 721759, \* 5. Further, communication of the alleged discriminatory action does not have to be a formal communication. “If events transpire which in fairness and logic would alert an average layperson that discrimination is occurring, the Petitioner must file a charge with respect to that discrimination during the limitations period.” See Elliott v. Sperry-Rand Corp., 79 F.R.D. 580 (D. Mn. 1978), *Cited at Barnes at \*3.*

In the Petitioner’s case, the Employer decided to not to hire anyone for the position on May 8, 2008. Thus, on May 8, 2008, when the Employer’s System was changed to reflect that the position of Management Trainee was closed, the Petitioner was put on notice that the position was no longer available and further placed on notice of an alleged civil rights violation. The Petitioner did not file her charge until November 17, 2008, which was 193 days after the alleged adverse civil rights violation had occurred. Therefore, the Petitioner did not timely file her charge within 180 days of the alleged civil rights violation, as is required by Section 7A-102(A)(1) of the Act.

Accordingly, it is the Commission’s decision that the Petitioner has not presented any evidence to show the Respondent’s dismissal of her charge was not in accordance with the Act. The Petitioner’s Request is not persuasive.

**WHEREFORE, IT IS HEREBY ORDERED THAT:**

The dismissal of the Petitioner’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 Wal-Mart Stores, Inc., as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this Order.

**STATE OF ILLINOIS** )  
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**HUMAN RIGHTS COMMISSION** )

**Entered this 12<sup>th</sup> day of January 2011.**

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box