

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CF2822
)	EEOC NO.: 21BA81671
TERRA A. SINKEVICIUS)	ALS NO.: 09-0480
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman and Yonnie Stroger presiding, upon Terra A. Sinkevicius's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2008CF2822; 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 the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

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

1. On February 14, 2008, the Petitioner filed a charge of discrimination with the Respondent in which she alleged DePaul University (the "Employer") demoted her because of her race, Black (Count A), and in retaliation for having filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") (Count B), and that the Employer had failed to accommodate her religion, Jehovah Witness (Count C), in violation of Section 2-102(A) and 6-101(A) of the Illinois Human Rights Act (the "Act"). On July 24, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On August 27, 2009, the Petitioner timely filed her Request.
2. The Employer initially hired the Petitioner on June 19, 1999, as a Student Assistant.
3. On May 3, 2004, the Petitioner was promoted to Librarian Assistant III. As a Librarian Assistant III, the Petitioner performed dual roles as Desk Supervisor and Reserves Supervisor. The Petitioner was also required to report to two department heads, Mireille Kotoklo and Paula Dempsey.
4. On August 31, 2006, September 11, 2006, and October 18, 2006, the Employer verbally counseled the Petitioner regarding her inability to meet the Employer's expectations.
5. On February 26, 2007, the Employer issued the Petitioner a written counseling for failing to meet the Employer's expectations for customer service.
6. On June 7, 2007, the Petitioner filed a charge of discrimination with the EEOC against the Employer.

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."

7. On October 1, 2007, the Employer eliminated the Petitioner's Reserves Supervisor duties because it determined the Petitioner was unable to successfully perform as both Reserves Supervisor and Desk Supervisor. The Petitioner was left with fewer work responsibilities, but her salary and benefits remained the same.
8. When the Petitioner began working for the Employer, the Employer had allowed the Petitioner to work on a flexible schedule in order to accommodate her religious obligations.
9. On December, 4, 2007, while working on her flexible schedule, the Petitioner and a co-worker, who was the Evening Desk Supervisor, were involved in an altercation. The Employer's public safety officer had to physically separate the Petitioner and the Evening Desk Supervisor.
10. The Employer determined the relationship between the Petitioner and the Evening Desk Supervisor could not be mended. Rather than terminate both employees, the Employer required the Petitioner to work a regular fixed schedule in order to minimize contact between the Petitioner and the Evening Desk Supervisor.
11. The Employer notified the Petitioner that as of February 6, 2008, she would be required to work a regular schedule. However, the Employer still accommodated the Petitioner's religious practices by allowing her to leave work when necessary to meet her religious obligations. The Petitioner was required to make up any lost time using vacation time and floating holidays.
12. In her charge and in her Request, the Petitioner argues the Employer demoted her on October 1, 2007, because of her race and in retaliation for having engaged in protected activity. The Petitioner further argues the Employer failed to accommodate her religion on February 6, 2008, when it required her to begin working on a fixed rather than flexible schedule.

CONCLUSION

The Commission's review of the Respondent's investigation file leads it to conclude the Respondent properly dismissed all counts of the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D).

As to Counts A and B, the Commission found no substantial evidence that the Petitioner was demoted because she was Black or because she had engaged in protected activity. Assuming *arguendo* the Petitioner suffered an adverse action on October 1, 2007, there is no evidence of a similarly situated employee outside of the Petitioner's protected classes who was treated more favorably than the Petitioner under similar circumstances.

There is also no substantial evidence the Employer's stated reason for eliminating the Petitioner's Reserves Supervisor's duties was a pretext for either race discrimination or retaliation. The Employer began documenting the Petitioner's poor performance in her dual roles in August 2006. The Petitioner had received counseling for her poor performance on at least four separate occasions before the Employer decided to relieve the Petitioner of half of her duties. In the absence of any evidence of pretext, the Commission cannot substitute its judgment for the Employer's. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, Charge No. 1994SA0240 (December 10, 1997).

As to Count C, there is no substantial evidence the Employer failed to accommodate the Petitioner's religion on February 6, 2008. The evidence shows that prior to February 6, 2008, the Employer had accommodated the Petitioner in the practice of her religion by allowing her to work a flexible schedule. The

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evidence shows the Employer discontinued the flexible schedule as of February 6, 2008, in order to minimize the Petitioner's contact with the Evening Desk Supervisor because these two employees clearly did not work well together. Thereafter, the Employer accommodated the Petitioner's religion by permitting the Petitioner to leave work whenever the Petitioner had to fulfill a religious obligation. Based on these facts, the Commission finds no substantial evidence the Employer failed to accommodate the Petitioner's religion.

The documents submitted by the Petitioner with her Request contain no relevant information that would warrant reversal of the Respondent's original determination.

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

THEREFORE, 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 DePaul University, as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

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)
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Entered this 10th day of March 2010.

Commissioner David Chang

Commissioner Marylee Freeman

Commissioner Yonnie Stroger