STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF THE REQUEST FOR REVIEW BY:	)	CHARGE NO.: 2008CF3489
	)	EEOC NO.: 21BA82190
ANGELA PACE-MOODY,	)	ALS NO.: 09-0355
Petitioner.	)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr. and Rozanne Ronen, presiding, upon Angela Pace-Moody's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")[1] of Charge No. 2008CF3489; and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request and supporting materials, 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 June 5, 2008, the Petitioner filed a charge of discrimination with the Respondent in which she alleged her former employer, Steans Family Foundation ("Employer") discharged her because of her physical disability, degenerative disc disease, in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). On June 5, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On July 8, 2009, the Petitioner filed a timely Request.

2. The undisputed evidence in the investigation file shows the Employer is a non-profit grant making institution operating in Chicago's North Lawndale neighborhood. The Employer's organization consisted of six units: Education and Youth Development, Employment and Training, Family and Community Assets, Health and Human Services, Housing and Economic Development, and Leadership and Capacity Building.

[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."

3. On August 24, 2006 the Employer hired the Petitioner as a Program Officer for its Housing and Economic Development unit. At the time the Employer hired the Petitioner, it was aware of her physical disability. The Employer provided a reasonable accommodation for the Petitioner's disability by providing her with specialized office equipment.

4. On October 18, 2007, the Petitioner went on a short term disability leave from work. Before going on short term disability leave, the Petitioner provided the Employer with medical documentation. The Petitioner states at the time she went on disability leave, she had a substantial workload. On November 1, 2007, the Employer's insurance provider approved the Petitioner's short term disability leave. Petitioner's short term medical leave was approved by the Employer's medical provider, Unum Life Insurance.

5. On or about November or December 2007, the Employer determined that it would eliminate five of its seven units: Employment and Training; Health and Human Services; Youth Development; Housing and Economic Development, and Leadership and Capacity Building. The eliminated units were not budgeted to receive funds for fiscal years 2009 and 2010, and they received minimal funds for 2008.

6. The Respondent reformulated Family and Community Assets, into a single unit, renamed Family Strengthening.

7. On December 26, 2007, Reginald Jones ("Jones"), executive director for the Employer, called the Petitioner and informed her that it was eliminating the Housing & Economic Development unit due to lack of funding. Shortly thereafter, she was notified her employment with the Employer would be terminated effective December 31, 2007.

8. The Petitioner alleged in her charge and in her Request that she was discharged because of her disability, and claims the positions of similarly situated non-disabled employees were not affected by the Employer's elimination of the four units. Regarding the alleged similarly situated employees, the Petitioner specifically identifies two former co-workers: a non-disabled Community Development Project Manager, and a non-disabled former Program Officer for the Employment and Training and Health and Human Services units.

9. The evidence in the file demonstrates that, following the elimination of the four units, the Project Manager was kept on by the Employer in order to complete a project. However, his hours were reduced by 40 percent. By December 31, 2008, the Project Manager's position had been eliminated.

10. The Program Officer's Employment and Training, and Health and Human Services units were eliminated. However, the Employer stated it retained this Program Officer because of her prior experience in health and human services, which it felt would be beneficial to its new Family Strengthening Unit.

11. The Petitioner does not provide, nor does the file reveal, evidence of any other non-disabled comparables.

Conclusion

The Commission's review of the Respondent's investigation file leads it to conclude that the Respondent properly dismissed 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).

Substantial evidence of a *prima facie* case of disability discrimination requires evidence of the following: (1) the Petitioner is disabled within the meaning of the Act; (2) the Employer took an adverse action against her related to her disability, and (3) her disability is unrelated to her ability to perform her job. Habinka v. Human Rights Commission, 192 Ill.App.3d 343, 548 N.E.2d 702 (1st Dist. 1989); Kenall Mfg. Co v. Illinois Human Rights Commission, 152 Ill.App.3d 695, 504 N.E.2d 805 (1st Dist. 1987).

Here, there is no substantial evidence in support of the second element of the *prima facie* case, because there is no substantial evidence the Employer eliminated the Petitioner's position because of her physical disability. The Petitioner's mere speculation that the Employer was motivated by her disability because she was notified of her termination while on short-term disability leave does not establish substantial evidence of disability discrimination. *See* Willis v. Illinois Dep't of Human Rights, 307 Ill.App.3d 317, 326 N.E.2d 240 (4th Dist. 1999).

Furthermore, the Employer's treatment of the two former co-workers identified by the Petitioner does not support her claim. The evidence shows that one, the Project Manager, was eventually terminated as a result of the Employer's downsizing and lack of funding.

The second alleged comparable, the Program Officer, was retained only because her skill set matched the needs of the Employer in its newly created Family Strengthening unit. The Petitioner provided no evidence that she also possessed skills that could have been utilized in the Family Strengthening Unit. Hence, there is no evidence the Petitioner was similarly situated to this Program Officer at the time she was discharged.

Generally, an Employer is entitled to make employment decisions based on its reasonable belief of the facts surrounding the situation. The correctness is not important as long as there was a good faith belief by the Employer in its decision. *See* Carlin v. Edsal Manufacturing Company, Charge No. 1992CN3428, ALS No. 7321 (May6 1996), *citing* Homes and Board of County Commissioner, Morgan County, 26 Ill HRC Rep. 63 (1986). In the absence of any evidence that the business consideration relied upon by an Employer is a pretext for discrimination, it is improper for the Commission to substitute its judgment for the Employer's business judgment. *See* Berry and State of

Illinois, department of Mental Health and Development Disabilities, Charge No. 1994SA0240 (December 10, 1997).

In this case the Employer made a legitimate business determination as to which units were to be funded and which units were to be eliminated. As a result of this decision, the Petitioner's unit and her position were eliminated. There is no evidence in the file that the Employer's stated legitimate business reason for discharging the Petitioner was a pretext for unlawful discrimination. Therefore, in the absence of any evidence demonstrating the Employer was motivated by unlawful discrimination, there is no basis upon which to disturb 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 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 the Steans Family Foundation as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS)
)
HUMAN RIGHTS COMMISSION) **Entered this 27th day of January 2010.**

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen