

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CA4033
	EEOC NO.: 21BA90408
OCTAVIO MENDOZA)	ALS NO.: 09-0707
)	
)	
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 Octavio Mendoza’s (“Petitioner”) Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)^[1] of Charge No. 2008CA4033; 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 SUBSTANTIAL EVIDENCE

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

1. The Petitioner filed a charge of discrimination with the Respondent on May 20, 2008, perfected on December 5, 2008. The Petitioner alleged in his charge that Cellusuede Products, Inc., (“Employer”) laid him off because of his age, 45 (Count A) and physical disability, back disorder (Count B), in violation of Section 2-102(A) of the Illinois Human Rights Act (“Act”). On October 30, 2009, the Respondent dismissed the Petitioner’s charge for Lack of Substantial Evidence. On November 30, 2009, the Petitioner filed this timely Request.
2. The Petitioner worked as a Machine Operator for the Employer. On January 25, 2008, the Employer laid off the Petitioner.
3. The Employer stated that due to financial difficulties the Employer had to reduce its workforce. The Employer admitted that it did not have a written policy as to how to lay off employees and that it did not take seniority into consideration. The Employer stated it took into account each employee’s disciplinary history when making its decision about whom to layoff.

^[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. The Employer stated it chose to lay off the Petitioner based on the fact the Petitioner had been disciplined in 2004.
5. In his Request, the Petitioner argues that that the Employer was fully aware of the Petitioner's disability and work restrictions because the Petitioner had supplied the Employer with information from his doctor regarding medical treatment and medical restrictions. The Petitioner describes the work injury he sustained on July 31, 2007.
6. In its Response, the Respondent requests that the Commission sustain the dismissal of the Petitioner's charge for Lack of Substantial Evidence because the Employer articulated a non-discriminatory reason for laying off the Petitioner and there was no substantial evidence that the articulated non-discriminatory reason was pretext for unlawful age or disability discrimination. Further, as to Count B, the Respondent argues the Petitioner failed to establish that his condition constituted a disability within the meaning of the Act because there was no evidence that the Petitioner's back disorder was unrelated to his ability to perform the duties of his job.

Conclusion

The Commission concludes 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)(3) (West 2010). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995).

First as to Count A, the Commission finds no substantial evidence that the Employer's articulated non-discriminatory reason for laying off the Petitioner was pretext for unlawful age discrimination. The Respondent determined that at the time of the lay-offs, the Employer was experiencing financial difficulties. The Respondent also determined that Employer had laid off employees who were younger than the Petitioner, and who also had prior disciplinary histories. Based on the fact that the Employer subjected similarly situated younger employees to the same adverse action as the Petitioner, the Commission finds no substantial evidence the Respondent subjected the Petitioner to discriminatory treatment. In the absence of any evidence that the business consideration relied upon by the Employer is a pretext for discrimination, the Commission may not substitute its judgment for the Employer's business judgment. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997).

Next, as to Count B, the Petitioner has not provided sufficient evidence that his condition constitutes a disability within the meaning of the Act. Section 1-103(l)(1) of the Act defines a

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“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....” 775 ILCS 5/1-103(I)(1) (West 2010).

When the Petitioner alleged disability discrimination in violation of the Act, he had the burden to show in the first instance that he was disabled within the meaning of the Act at the time of the alleged adverse action. The Petitioner failed to provide the Respondent with any medical documentation from which the Respondent could determine that the Petitioner’s back disorder met the definition of a disability under the Act. Therefore, the Petitioner failed to prove that he was a disabled person within the meaning of the Act at the time of the alleged adverse action.

Further, assuming *arguendo* the Petitioner’s back disorder was a disability within the meaning of the Act, the Commission finds no substantial evidence the Respondent’s articulated non-discriminatory reason for firing the Petitioner was a pretext for disability discrimination. The Respondent determined that the Employer had laid off similarly situated non-disabled employees during the same time period it laid off the Petitioner. There was no substantial evidence that the Petitioner’s alleged disability was the true motivation for the Employer’s decision to lay him off.

Accordingly, it is the Commission’s decision that the Petitioner has not presented any evidence to show the Respondent’s dismissal of his 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 Cellusuede Products, 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

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Entered this 23rd day of June 2010

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen