

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009SF2832
	EEOC NO.: 21BA91439
AMY CONNORS,)	ALS NO.: 10-0174
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Diane M. Viverito, presiding, upon Amy Connors' ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009SF2835; 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, THEREFORE, it is hereby **ORDERED** that:

- (A) *The Respondent's dismissal of Count A the Petitioner's charge is **SUSTAINED** for **LACK OF JURISDICTION**; and*
- (B) *The Respondent's dismissal of Count B of the Petitioner's charge is **VACATED**, and Count B of the charge is **REINSTATED** and **REMANDED** to the Respondent for entry of a finding of **SUBSTANTIAL EVIDENCE** as to Count B and for further proceedings consistent with this Order and the Act.*

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 March 6, 2009. The Petitioner alleged her former employer, Wal-Mart Stores, Inc. ("Employer"), failed to accommodate her mental disability, a learning impairment, on September 1, 2008 (Count A), and then discharged her on September 22, 2008 because of her mental disability (Count B), in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). On February 4, 2010, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On March 9, 2010, the Petitioner filed this timely Request.
2. The Petitioner has been learning impaired since birth. The Petitioner's learning impairment renders her unable to drive.

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. The Petitioner was hired by the Employer in May 2000. The Petitioner worked primarily as a Cart Pusher.
4. In September 2008, the Petitioner worked for the Employer on a part-time basis.
5. The Petitioner lives and worked in Decatur, Illinois. In Decatur, public buses do not operate on national holidays.
6. The Petitioner's manager scheduled the Petitioner to work on September 1, 2008, which was Labor Day, a national holiday.
7. The Petitioner verbally asked the manager to remove her from the September 1, 2008, work schedule because the public buses would not be operating, and the Petitioner's friend was not available to drive the Petitioner to work.
8. However, the Petitioner's manager did not change her schedule, and the Petitioner remained scheduled to work on September 1, 2008. The Petitioner did not go to work on September 1, 2008, because she lacked transportation. The Employer marked the Petitioner as a no call/no show on September 1, 2008.
9. The Employer had in place an Attendance Policy which provided that employees with seven absences within a six month rolling period would be discharged.
10. On September 4, 2008, the Petitioner received a coaching because the Petitioner failed to report to work as scheduled on September 1, 2008, and failed to contact the Employer's management to report her absence from work on September 1, 2008.
11. On September 12, 2008, and September 20, 2008, the Petitioner failed to report to work. The September 20th absence was the Petitioner's seventh absence in a rolling six month period.
12. On September 22, 2008, the Employer discharged the Petitioner. The Employer stated it discharged the Petitioner because she had violated the Employer's Attendance Policy.
13. In her charge, as to Count A, the Petitioner alleged the Employer failed to accommodate her mental disability when it scheduled her to work on a holiday on September 1, 2008, knowing that public transportation would be unavailable to the Petitioner. As to Count B, the Petitioner alleged the Employer discharged her on September 22, 2008, because of her mental disability.
14. In her Request, the Petitioner argues the Employer had previously accommodated her disability by scheduling her to work on days when public transportation was available.

15. In its Response, the Respondent argues that Count A of the charge should be dismissed for Lack of Jurisdiction because the Petitioner filed her charge more than 180 days after the alleged harm. As to Count B, the Respondent argues dismissal for Lack of Substantial Evidence is proper because there was no substantial evidence the Employer discharged the Petitioner because of her disability.

Conclusion

Count A: Failure to Accommodate Mental Disability

The Commission concludes the Respondent's dismissal of Count A of the Petitioner's charge shall be sustained for Lack of Jurisdiction.

Pursuant to Section 7A-102(A) of the Act, charges of discrimination which allege violations of Articles 2, 4, 5, 5a, and 6 of the Act must be filed with the Respondent within 180 days of the alleged civil rights violation.² See 775 ILCS 5/7A-102(A). Section 7A-102(A) is a jurisdictional requirement, and unless a charge is filed within 180 days from the date of the alleged civil rights violation, then the Respondent lacks jurisdiction to investigate the charge.

In the instant case, the Petitioner alleged in Count A of the charge that the Employer failed to reasonably accommodate her on September 1, 2008. The Petitioner filed the charge on March 6, 2009, which was 186 days after the date of the alleged civil rights violation. Therefore, the Respondent lacks jurisdiction to investigate Count A of the charge because her charge is untimely as to Count A.

Count B: Unlawful Discharge from Employment Due to Mental Disability

As to Count B, the charge is timely, and therefore, the Respondent properly has jurisdiction over the Petitioner's unlawful discharge claim.

Further, the Commission finds that there is substantial evidence of discrimination as alleged in Count B of the charge. 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 (March 7, 1995), 1995 WL 793258 (Ill.Hum.Rts.Com.)

In this case, the Commission finds there is substantial evidence that the Employer's articulated reason for discharging the Petitioner was a pretext for unlawful employment discrimination on the basis of a mental disability. There is no evidence the Petitioner was a problematic employee prior to September 2008. It was not until the Petitioner's inability to travel to work on September 1, 2008, allegedly due to her disability, that she was then cited by the Employer, in rapid succession, for

² Pursuant to 775 ILCS 5/7B-102(A)(1), when a complainant alleges housing discrimination in violation of Article 3 of the Act, the complainant shall have one (1) year to file a charge of discrimination with the Illinois Department of Human Rights.

attendance violations, on September 12, 2008 and September 20, 2008. The Commission finds this sequence of events sufficient to support a conclusion that the Employer was motivated by the Petitioner's mental disability when it decided to discharge her on September 22, 2008.

Therefore, in light of the substantial evidence that the Employer's stated reason for discharging the Petitioner was a pretext for employment discrimination on the basis of mental disability, the Commission herein vacates the Respondent's dismissal of Count B of the Petitioner's charge and remands Count B of the charge to the Respondent for entry of a finding of substantial evidence and further action as herein stated.

WHEREFORE, IT IS HEREBY ORDERED THAT:

- (A) *The Respondent's dismissal of Count A of the Petitioner's charge is **SUSTAINED** for **LACK OF JURISDICTION**; and*
- (B) *The Respondent's dismissal of Count B of the Petitioner's charge is **VACATED**, and Count B of the charge is **REINSTATED** and **REMANDED** to the Respondent for entry of a finding of **SUBSTANTIAL EVIDENCE** as to Count B and for further proceedings consistent with this Order and the Act.*

This Order is not yet final and appealable.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

)
)
)

Entered this 27th day of October 2010.

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Diane M. Viverito