This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 03/20/06

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

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| **IN THE MATTER OF:** | **)** |
| | **)** |
| **MARIA J. CARRIZALES,** | **)** |
| **Complainant,** | **)** |
| | **)** |
| **and** | **)Charge No: 2004CA1509** |
| | **)EEOC No: N/A** |
| **AMTEC PRECISION PRODUCTS, INC.,** | **)ALS No: 05-249** |
| **Respondent**. | **)** |
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| | **)** |

## RECOMMENDED ORDER AND DECISION

This matter is before me on the Respondent's Motion to Dismiss the Complaint filed December 1, 2005. The record indicates that the motion has been served upon all Parties and the Illinois Department of Human Rights (Department). This matter is ready for a decision.

## FINDINGS OF FACT

The following findings were made from the record:

1. On December 1, 2003, Complainant filed a Charge of Discrimination with the Department pursuant to the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq*.
2. On June 27, 2005, Complainant, on her own behalf, filed a Complaint with the Illinois Human Rights Commission (Commission) based on the underlying Charge.
3. On August 24, 2005, Complainant personally appeared. Respondent did not appear. Complainant represented that she did not speak English and was accompanied by a friend, Mr. Gomez, to assist her. Complainant orally represented that she desired to dismiss this matter. I inquired if she was represented by legal counsel and she indicated that Attorney David Eckberg was currently representing her before the Department. On this information, I issued an order continuing the matter to

September 28, 2005 to allow an opportunity for Complainant's counsel to appear. I further ordered Attorney Eckberg to file an appearance for the record.

4. On September 9, 2005, Respondent filed a pleading stating that this Complaint was not properly before the Commission because the Charge underlying this Complaint was currently pending with the Department. The pleading was not accompanied by a certificate of service stating that it had been served on all Parties.
5. On September 28, 2005, Complainant appeared through counsel and represented that the Charge underlying this Complaint was currently pending before the Department. On this information, I ordered the Complainant to file a motion to dismiss the matter by October 21, 2005 and set a status for October 26, 2005.
6. On October 26, 2005 Respondent appeared; Complainant did not appear. Complainant had not filed a motion to dismiss the Complaint. An Order was entered ordering Complainant to file a motion to dismiss no later than November 11, 2005.
7. On October 27, 2005, Complainant, through her attorney, filed a motion to vacate my Order of October 26, 2005, arguing that she no longer intended to file a motion to dismiss the matter because the Department had issued a notice of dismissal as to the pending Charge and that the matter before the Commission was claimant's only remaining relief.
8. The Parties appeared on the motion November 23, 2005. An Order was entered vacating the October 26, 2005 Order. Respondent was ordered to file a motion to dismiss the matter no later than December 2, 2005. Complainant was allowed until December 9, 2005 to respond and Respondent was allowed until January 25, 2006 to reply. A status on a decision was set for January 25, 2006.
9. On December 1, 2005, Respondent filed a motion to dismiss the matter. Complainant did not file a response.

10. On January 25, 2006, Respondent appeared. Complainant did not appear. I granted Respondent's motion.

## CONCLUSIONS OF LAW

1. The Department's dismissal of Complainant's Charge is a final order disposing of that Charge.

2. The Commission lacks jurisdiction and has no authority to consider the Complaint filed pursuant to that Charge.

## DETERMINATION

Respondent's motion to dismiss must be granted as the Commission lacks jurisdiction over this Complaint.

## DISCUSSION

Respondent's motion contends that, on September 16, 2005, the Department issued a *Notice of Dismissal for Lack of Substantial Evidence* regarding Complainant's underlying discrimination Charge. Despite the notice, Complainant failed to file a *Request for Review*.

Respondent's motion includes as its Exhibit A, a copy of the Department's *Notice of Dismissal for Lack of Substantial Evidence* dated September 16, 2005. The notice caption references Complainant and Respondent as Parties along with Charge number 2004CA1509, the same Charge number of this Complaint. The notice indicates that, if Complainant disagrees with the dismissal, she might seek review of the dismissal by filing a *Request for Review* with the Chief Legal Counsel of the Department within thirty days of receipt of the notice, which the Department calculated to be October 21, 2005. Complainant failed to respond to the motion and there is nothing in the record disputing Respondent's contention that Complainant failed to file a *Request for Review* of the Department's lack of substantial evidence finding.

Further, Complainant admitted in the record that the instant Complaint had been filed while the investigation of the underlying Charge was currently pending with the Department. At that time, the Commission had no jurisdiction over the Complaint, as it was not filed within statutory parameters. Although Complainant initially indicated that she would file a motion to dismiss the Complaint as prematurely filed, before Complainant filed the motion, the Department issued the *Notice of Dismissal for Lack of Substantial Evidence* on September 16, 2005. Once that determination was made, Complainant's only remedy was to file a timely *Request for Review* with the Department's Chief Legal Counsel. Since Complainant has not filed a timely *Request for Review*, she has lost any right to file a complaint on her own behalf before the Commission. **Wallace and Human Rights Commission**, 261Ill.App. 3d 564, 633 N.E.2d 851 (1st Dist. 1994).

Section 5/7A-102(G)(1), in relevant part, states:

> When a charge of a civil rights violation has been properly filed, the department, within 365 days thereof or within any extension of that period agreed to in writing by all parties, shall either issue and file a complaint in the manner and form set forth in this Section or shall order that no complaint be issued and dismiss the charge with prejudice without any further right to proceed except in cases in which the order was procured by fraud or duress…

Section 5/7A-102(D)(2)(a) of the Act states:

> If the Director determines there is no substantial evidence, the charge shall be dismissed by order of the Director and the complainant notified that he or she many seek review of the dismissal order before the Chief Legal Counsel of the Department. The complainant shall have 30 days from receipt of notice to file a request for review by the Chief Legal Counsel of the Department.

A review of the record supports that the Complaint is not properly filed in accordance with statutory parameters; therefore, there is no basis for jurisdiction before the Commission.

## RECOMMENDATION

Based on the foregoing, the Commission has no authority to consider the Complaint filed in this matter; accordingly, Respondent's motion to dismiss should be granted and the Complaint dismissed with prejudice.

**HUMAN RIGHTS COMMISSION**

**By:_____**
**SABRINA M. PATCH**
**Administrative Law Judge**
**Administrative law Section**

**ENTERED: January 30, 2006**