

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2010CA1274
)	EEOC NO.: 21BA00259
MELVIN COLLINS)	ALS NO.: 10-0192
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Gregory Simoncini presiding, upon Melvin Collins's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")^[1] of Charge No. 2010CA1274; 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:

FAILURE TO PROCEED

In support of which determination the Commission states the following:

1. On October 27, 2009, the Petitioner filed a charge of discrimination with the Respondent in which he alleged his former employer, the Chicago Transit Authority ("CTA"), discharged him because of his race, Black (Count A), age, 50 (Count B), sex, male (Count C), physical disabilities (Counts D and E), and in retaliation for having opposed unlawful discrimination (Count F), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act ("Act").
2. After the Petitioner filed his charge, the Respondent scheduled a fact finding conference for January 15, 2010, at 11:00 a.m.

^[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 December 7, 2009, the Respondent sent the Petitioner a notice of fact finding conference ("Notice"). The Notice advised the Petitioner that a fact finding conference had been scheduled for January 15, 2010 at 11:00 a.m.
4. On January 15, 2010, the Petitioner did not attend the fact finding conference.
5. On February 1, 2010, the Respondent mailed a letter to the Petitioner stating that he must show good cause for his failure to attend the conference and provide documentation in support of his reason. The letter notified the Petitioner that failure to show good cause could result in the dismissal of his charge.
6. The Petitioner did not submit to the Respondent a documented explanation for his failure to attend the fact finding conference.
7. On March 15, 2010, the Respondent dismissed the Petitioner's charge for failure to proceed
8. On March 19, 2010, the Petitioner filed this Request. In his Request, the Petitioner argues that he did not attend the fact finding conference on January 15, 2010, because he had previously scheduled medical appointments for that day. The Petitioner contends the Respondent was aware of these medical appointment before it scheduled the fact finding conference. In support of his Request, the Petitioner submits a note from his physician and a medical record. The note, dated March 18, 2010, indicates the Petitioner saw a physician on a non-scheduled basis on January 15, 2010. The medical record, which was printed March 18, 2010, indicates the Petitioner visited an audiologist on January 15, 2010. The medical record does not reflect when the Petitioner scheduled the January 15, 2010, audiology visit.
9. In its Response, the Respondent asks the Commission to sustain its dismissal of the Petitioner's charge. The Respondent argues the Petitioner failed to provide any documented reason for his failure to attend the fact finding conference prior to the dismissal of the charge.

Conclusion

The Commission concludes the Respondent properly dismissed the Petitioner's charge for failure to proceed.

Pursuant to Section 7A-102(c)(4) of the Act, ... "[a]ny party's failure to attend the conference without good cause shall result in dismissal of default" 775 ILCS § 5/ 7A-102(c)(4). Section 2520.440(d)(3)(A) of the Respondent's Rules and Regulations state "good cause" includes but shall not be limited to:... **i)** death or sudden, serious illness of a party scheduled to attend the fact finding conference;... **ii)** death or sudden, serious illness of an immediate family member of a party scheduled to attend the fact finding conference;... **iii)** the party acted with due diligence and was not deliberate or contumacious and did not unwarrantedly disregard the fact-finding conference process, as supported by affidavit or other evidence;... **iv)** circumstances beyond the non-attending party's control, as supported by affidavit or other evidence" 56 Ill. Adm. Code §2520.440(d)(3)(A). Finally, pursuant to 56 Ill. Adm. Code §2520.440(d)(4)... "[i]n assessing good cause, the factors which the Department may consider shall include, but shall not be limited to, whether the party has provided timely notice of its inability to attend the fact-finding conference and whether the party has complied with the Department's request for documentation of the reason for not attending the conference."

The Commission sustains the Respondent's determination that the Petitioner failed to demonstrate good cause for his failure to attend the fact finding conference on January 15, 2010. First, the Petitioner's evidence in support of his Request does not bolster his contention that in December 2009, he advised the Respondent that he had already scheduled medical appointments for January 15, 2010. The doctor's note indicates an appointment that was not prescheduled. The medical record does not reflect when the Petitioner scheduled his appointment with the audiologist.

Second, even if in December 2009 the Petitioner had previously scheduled medical appointments for January 15, 2010, the Respondent sent the Petitioner the Notice on December 7, 2009, which informed the Petitioner of the date of the fact finding conference. The Petitioner would have had ample opportunity to contact the Respondent and reschedule the fact finding conference, but he failed to do so.

Finally, the Petitioner offers no explanation for why he failed to respond to the Respondent's letter of February 1, 2010, prior to the dismissal of his charge on March 15, 2010. The Petitioner had an opportunity to save his charge from dismissal by providing the Respondent with a documented explanation for his failure to attend the fact finding conference. However, the Petitioner inexplicably did not submit the documentation until three days after the charge had already been dismissed.

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 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 the Chicago Transit Authority, 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 18th day of November 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini