



STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)		
	)		
<b>JOHN FREESE,</b>	)		
	)		
Complainant,	)		
	)		
and	)	CHARGE NO:	1996SF0773
	)	EEOC NO:	21B962542
<b>STATE OF ILLINOIS, DEPARTMENT OF CORRECTIONS,</b>	)	ALS NO:	S-10033
	)		
Respondent.	)		

**RECOMMENDED ORDER AND DECISION**

This matter comes before me on a motion by Respondent, State of Illinois, Department of Corrections, for issuance of a summary decision. Complainant has not filed a response to this motion, although the time for filing a response to the motion has expired. Accordingly, this matter is ripe for a decision.

**Contentions of the Parties**

Respondent asserts that dismissal of Complainant's Complaint is warranted because the Commission lacks jurisdiction over this matter due to Complainant's failure to file a timely Charge of Discrimination.

**Findings of Fact**

Based upon the record in this matter and upon the applicable standards that require that I treat all contested facts in favor of the non-moving party, I make the following findings of fact:

1. On November 28, 1983, Complainant began his employment with Respondent as a correctional officer trainee.

2. At the time of Complainant's hire, and for all times pertinent to this Complaint, transporting inmates from one institution to another and transporting inmates to various courts were job duties of a correctional officer.

3. At all times pertinent to this Complaint some of the posts to which correctional officers were assigned required that the correctional officer perform driving duties.

4. At some point in 1991 Complainant was diagnosed with depression and was off on medical leave from January 12, 1991 to March 31, 1992.

5. On March 31, 1992, Complainant returned to work as a correctional officer and continued to work as a correctional officer until June of 1994.

6. In June of 1994, Complainant verbally requested that he be permanently assigned to correctional officer work that did not require driving. Respondent denied Complainant's request at that time.

7. After Complainant had been notified of Respondent's denial of his request to be placed on posts that did not require driving duties, Complainant requested and was granted a medical leave of absence for June 15, 1994 through July 15, 1994.

8. On July 15, 1994, Complainant returned to work as a correctional officer.

9. On August 14, 1994, Complainant requested and was granted another medical leave of absence beginning on August 14, 1994. Complainant remained on medical disability leave from August 14, 1994 to May 28, 1998, when he resigned from his position as a correctional officer.

10. On August 17, 1994, Complainant's physician sent a letter to Respondent confirming that Complainant had a driving phobia and urging Respondent "to reconsider and offer Complainant a different placement."

11. On June 18, 1996 Complainant filed a Charge of Discrimination alleging that he was the victim of handicap discrimination when Respondent failed to accommodate his condition by assigning him to posts that did not require driving duties.

### **Conclusions of Law**

1. A complainant must file a charge of discrimination with the Department of Human Rights within 180 days of an alleged violation of the Human Rights Act.

2. The failure of an employer to reconsider a final decision it has made will not be considered a separate, independent act of discrimination.

3. Complainant did not file his Charge of Discrimination within 180 days of the alleged discrimination that occurred in June of 1994, when it denied Complainant's request for an accommodation of his driving phobia.

4. The failure of Complainant to file a timely charge of discrimination deprives the Commission of jurisdiction over this Complaint.

### **Determination**

Complainant's case is time-barred and should be dismissed.

### **Discussion**

As with all motions for summary decision pending before the Commission, a motion for summary decision shall be granted if the record indicates that there is no genuine issue as to any material fact, and the moving party is entitled to a recommended order as a matter of law. (See, section 8-106.1 of the Human Rights Act (775 ILCS 5/8-106.1), and **Bolias and Millard Maintenance Service Company**, 41 Ill. HRC Rep. 3 (1988).) Moreover, in determining whether there is any genuine issue of material fact, the record is construed most strictly against the moving party and most liberally in favor of the opponent. (See, for example, **Armagast v. Medici Gallery and Coffee House**, 47 Ill.App.3d 892, 365 N.E.2d 446, 8 Ill.Dec. 208 (1<sup>st</sup> Div., 5<sup>th</sup> Dist. 1977).) Inasmuch as a summary order is a drastic method of disposing of cases, it should only be allowed

when the right of the moving party is clear and free from doubt. (See, **Susmano v. Associated Internists of Chicago**, 97 Ill.App.3d 215, 422 N.E.2d 879, 52 Ill.Dec. 670 (1<sup>st</sup> Dist. 1981).) Furthermore, although there is no requirement that Complainant prove his case to overcome the motion, Complainant is required to present some factual basis that would arguably entitle him to a judgment under the applicable law. See, **Schoondyke v. Heil, Heil, Smart & Golee, Inc.**, 89 Ill.App.3d 640, 411 N.E.2d 1168, 44 Ill.Dec. 802 (1<sup>st</sup> Dist., 2<sup>nd</sup> Div. 1980).

Here, the gist of Respondent's motion is its contention that Complainant's Complaint is time-barred because it was filed on June 18, 1996, approximately two years after the date that Respondent rejected his request for an accommodation for his driving phobia. Indeed, as Respondent notes, in order for the Commission to acquire subject matter jurisdiction over a case, a charge of employment discrimination under the Human Rights Act must be filed within 180 days of the alleged discriminatory act. (See **Lee v. Human Rights Commission**, 126 Ill.App.3d 666, 467 N.E.2d 943, 81 Ill.Dec. 821 (1<sup>st</sup> Dist. 2<sup>nd</sup> Div. 1984), and **Lewis and Peoria Housing Authority**, \_\_\_ Ill. HRC Rep. (1998SF0834, December 2, 1999).) Here, Complainant's June 18, 1996 Charge of Discrimination that essentially alleged that Respondent discriminated against him in June of 1994 due to its unwillingness to accommodate his driving phobia is untimely under the authority of **Lee**. Indeed, Complainant has not filed anything to take this case outside the contours of the holding by the **Lee** court.

Additionally, while some courts have relaxed this timeliness rule under limited circumstances, they have generally done so if an employer's adverse decision did not preclude later reconsideration of an employee's request. In such a case, the subsequent adverse act would constitute an independent discriminatory act. (See, for example, **Poindexter v. Northrup Corp.**, 728 F.Supp. 1362 (N.D. Ill. 1990).) However, this Complaint does not allege that Complainant made any subsequent request for an

accommodation or that Respondent refused any subsequent request for an accommodation within the applicable 180 day limitations period so as to render this Complaint timely. Moreover, while a physician wrote to Respondent on August 17, 1994 (after Complainant had been placed on a medical leave of absence) requesting that Respondent "reconsider and offer a different placement" for Complainant, case law makes it clear that employers are not required under the Human Rights Act to reassign or transfer to a different job an employee whose handicap precludes him from doing his original job. See, for example, **Caterpillar v. Human Rights Commission**, 154 Ill.App. 3d 424, 506 N.E.2d 1029, 107 Ill.Dec. 138 (3<sup>rd</sup> Dist. 1987).

**Recommendation**

For all of the above reasons, it is recommended that Respondent's motion for a summary decision be granted, and that the Complaint and the underlying Charge of Discrimination of John Freese be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
MICHAEL R. ROBINSON  
Administrative Law Judge  
Administrative Law Section

ENTERED THE 19TH DAY OF DECEMBER, 2001