This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 8/22/05

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	**)**
	)
ANITA GIBSON,	**)**
Complainant,	**)**
	)
and	**)Charge No: 2004CF0646**
	)EEOC No: N/A
SHERRI NOON and	**)ALS No: 05-131**
BOULEVARD HEALTHCARE	**)**
	)
	)
Respondent.	**)**

RECOMMENDED ORDER AND DECISION

This matter is before me on the Respondent's Motion to Dismiss the Complaint filed May 9, 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 September 10, 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. The Charge was designated as Charge Number 2004CF0646 and indicated *Evergreen Healthcare Cent* as the Respondent.
3. On March 28, 2004, Complainant agreed to a 180-day extension of the 365-day time limit for the Department to complete its investigation pursuant to section 7A-102(G) of the Act.
4. In a July 31, 2004 letter, the Department notified Complainant that, pursuant to its calculation, Complainant had the time period between March 10, 2005 and April 8, 2005 to file a Complaint with the Illinois Human Rights Commission (Commission).

The letter warned that the Commission has ruled that it is the Complainant's responsibility to file the Complaint within the statutorily prescribed time period and that failure to do so may result in dismissal of the Complaint.

5. On April 9, 2005, Complainant received a letter dated April 7, 2005 from the Department informing her that the Department's investigative period had expired on March 9, 2005 and that Complainant had from March 10, 2005 through April 8, 2005 to file her Complaint with the Commission.
6. On April 11, 2005, Complainant, on her own behalf, filed the instant Complaint, designating the Charge Number as 2004CF0646, with the Commission alleging to have been aggrieved by practices of race discrimination in violation of the Act.
7. Although the Charge named *Evergreen Healthcare Cent* as the employer who allegedly discriminated against Complainant, the Complaint named *Sherri Noon* and *Boulevard Healthcare* as Respondents.
8. On May 9, 2005, Respondent filed a Motion to Dismiss to be heard on June 14, 2005; *pro se* Complainant filed a response to the motion on June 6, 2005.
9. On June 14, 2005, Complainant appeared *pro se*; Respondent appeared through counsel. Respondent was ordered to serve a copy of its motion pleading on the Department. The motion to dismiss was entered and continued until July 12, 2005.
10. The Parties appeared on July 12, 2005 and offered oral argument on the motion. I took the matter under advisement.

DETERMINATION

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

CONCLUSION OF LAW

The Commission lacks jurisdiction over this Complaint because it was not filed in accordance with sections 5/7A-102(G)(1) and 5/7A-102(G)(2) of the Act.

DISCUSSION

Respondent maintains that Complainant filed the underlying Charge with the Department on September 10, 2003 and agreed to a 180-day extension of the initial 365-day investigation period. Respondent argues that the Commission lacks jurisdiction over this matter because the Complaint, which was filed April 11, 2005, was filed outside of the operative time period, which was March 10, 2005 through April 8, 2005.

Complainant argues that she did not receive the Department's April 7, 2005 letter in a timely manner in that she did not receive it until April 9, 2005 -- after the April 8, 2005 deadline -- and that she filed her Complaint as soon as possible after the notification. However, Complainant does not dispute the calculation of the Department's filing time period nor does she deny that she agreed to a 180-day extension of the 365-day investigation period. Further, Complainant does not dispute that she received the earlier July 31, 2004 letter from the Department indicating that she was required to file a Complaint with the Commission during the time period from March 10, 2005 until April 8, 2005.

Respondent further argues that the named Respondents in the Complaint, "Sherri Noon and Boulevard Healthcare," were not the named Respondents in the Charge and that these two entities did not employ Complainant. Complainant does not dispute that she was employed by Evergreen Healthcare Center, but maintains that Boulevard Healthcare and Sherri Noon were subsidiaries or were somehow legal agents of Evergreen Healthcare Center. Complainant submits no support of this assertion and the facts of this case render this argument moot.

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 5/7A102 (G)(2), in relevant part, states:
> Between 365 and 395 days after the charge is filed, or such longer period agreed to in writing by all parties, the aggrieved party may file a complaint with the Commission, if the Director has not sooner issued a report and determination pursuant to paragraphs (D)(1) and (D)(2) of this Section…The aggrieved party shall notify the Department that a complaint has been filed and shall serve a copy of the complaint on the Department on the same date that the complaint is filed with the Commission.

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

I recommend that this Complaint and the underlying Charge be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

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

ENTERED: July 13, 2005