



This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 11/18/02.

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)
)
ROSEMARY HIGBEE,)
)
)
)
Complainant,)
)
and)
)
INTRACORP, A DIVISION OF CIGNA)
CORPORATION, KIMBERLY GEORGE,)
and MARK FABIAN,)
Respondents.)

Charge No.: 2001CA2938
EEOC No.: N/A
ALS No.: 11831

RECOMMENDED ORDER AND DECISION

On July 17, 2002, Complainant, Rosemary Higbee, filed a complaint on her own behalf against Respondents, Intracorp, a division of Cigna Corporation, Kimberly George, and Mark Fabian. The complaint alleged that Respondents discriminated against Complainant on the basis of her age and a physical handicap when they placed her on probation and discharged her. The complaint further alleged that Respondents unlawfully retaliated against Complainant by discharging her when she complained of discrimination.

This matter now comes on to be heard on Complainant's Motion to Remand Case to Illinois Department of Human Rights. Respondent does not oppose the motion. The matter is ready for decision.

FINDINGS OF FACT

1. Complainant filed her own complaint before the Human Rights Commission.

2. At the time the complaint was filed, her counsel believed that the filing was timely.

3. Complainant's current attorney is not the attorney who represented her before the Illinois Department of Human Rights (IDHR).

4. Unknown to Complainant's current attorney, Complainant's prior attorney had agreed in writing to give the IDHR 240 additional days to investigate her charge of discrimination.

5. The 240-day extension period for investigation has not yet expired.

CONCLUSIONS OF LAW

1. The complaint in this matter was not timely filed, and the Human Rights Commission does not have authority to consider it at this time.

2. The complaint in this matter should be dismissed without prejudice.

3. This matter should be remanded to the Illinois Department of Human Rights to allow the IDHR to continue its investigation.

DISCUSSION

Section 7A-102(G)(2) of the Illinois Human Rights Act, 775

ILCS 5/1-101 *et seq.*, governs the conditions under which a complainant may file a complaint with the Human Rights Commission. According to that section, a complainant may file his or her own complaint once the Illinois Department of Human Rights (IDHR) has used up its statutory investigation period without making a determination on the merits of the complainant's claim. The section also provides that the parties can extend the investigation period by agreement if they do so in writing.

In the instant case, the parties agreed to extend the investigation period by 240 days. After that agreement was reached, but before the instant complaint was filed, Complainant changed attorneys. Her current attorney was unaware of the earlier agreement when he filed the complaint in this matter. The extended investigation period has not yet expired.

Clearly, the complaint in the instant case is untimely. As a result, the Human Rights Commission does not have authority to consider Complainant's claim at this time. Accordingly, the complaint should be dismissed without prejudice and the matter remanded to the IDHR to allow the IDHR to complete its investigation.

RECOMMENDATION

Based upon the foregoing, the complaint in the instant matter is untimely and the Human Rights Commission does not yet have authority to consider the merits of Complainant's claim. Accordingly, it is recommended that the complaint in this matter

be dismissed without prejudice and that the matter be remanded to the Illinois Department of Human Rights.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: October 10, 2002