



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

ALISON HOLMAN,
Complainant,

and

ILLINOIS DEPT. OF CHILDREN AND
FAMILY SERVICES,
Respondent.

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)**Charge No: 1997 CF 2989**
)**EEOC No: 21 B 972642**
)**ALS No: 10649**
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RECOMMENDED LIABILITY DETERMINATION

On October 30, 1998, Complainant filed the instant Complaint alleging Respondent, Illinois Department of Children and Family Services, discriminated against her on the basis of race and disability. A public hearing was held on March 27 and 28, 2001. Post-hearing briefs have been submitted. This matter is ready for decision.

CONTENTIONS OF THE PARTIES

Complainant contends Respondent unlawfully discriminated against her on the basis of disability and race when it denied her request be placed in an interim sedentary assignment as a reasonable accommodation to her disability. Respondent denies it unlawfully discriminated against Complainant contending that Complainant was not handicapped within the meaning of the Illinois Human Rights Act and further contending that Complainant's request for an accommodation was delayed because Complainant failed to submit sufficient medical information for Respondent to review the request.

FINDINGS OF FACT

Those facts marked with an asterisk are facts to which the parties stipulated or facts that were admitted in the pleadings. The remaining facts were determined to have been proven by a preponderance of the evidence. Assertions made at the public hearing which are not addressed herein were determined to be unproven or immaterial to this decision.

1. Complainant's race is black. *
2. Complainant began working for Respondent in January 1989 as a Child Welfare Specialist II. *
3. Complainant's father died accidentally on March 7, 1996.
4. Complainant began to gain weight following the death of her father.
5. Complainant gained approximately one hundred pounds in four months.

6. The additional weight caused Complainant to wheeze, to huff and puff, to have trouble breathing, to experience trouble walking up stairs.
7. Complainant visited her doctor on January 2, April 2, and April 26, 1997 about her symptoms.
8. Complainant's physician diagnosed her with morbid obesity, arthritis, and asthma, with symptoms of wheezing, and difficulty walking, and referred her for psychiatric counseling regarding her eating behavior.
9. The classification of Child Welfare Worker II includes several different subsets of positions, including placement worker, resources, licensing, adoptions, COS monitoring, and ERC.
10. Placement workers carry caseloads; however, resources, adoptions, COS monitoring and ERC positions do not carry caseloads.
11. The duties of a Child Welfare Worker II include having a case load, visiting clients, going to homes, attending court, participating in staffings, going to schools, interacting with the public, doing a lot of walking, climbing stairs.
12. Complainant sought information from a co-worker, Rhoda Prince, as to the process of applying for an accommodation since Complainant had knowledge that Rhoda Prince had previously been given an accommodation.
13. Complainant completed and submitted a "Request for Reasonable Accommodation" form dated April 3, 1997 and attached a Physician's Statement dated April 2, 1997.
14. The Physician's Statement indicated limitations in standing, lifting, climbing, bending, sitting, walking and stooping; with physical impairment of moderate limitation of functional capacity; capable of clerical/administrative (sedentary) activity (60-70%).
15. Complainant sent the accommodation application to her supervisor, Patricia Massey on April 3, 1997.
16. On April 30, 1997, Complainant wrote a letter to Rick Navarro, personnel assistant, inquiring about her accommodation request and expressing that she had been treated unfairly by being forced to go on medical leave.
17. Rick Navarro was a human resources representative in the labor unit who worked for the Office of Employee Services.
18. The Request form requested "A lateral job change which will accommodate my CLASS 4- PHYSICAL IMPAIRMENT (See attached Physician Statement dated 4-2-97), e.g. Conducting computer and file searches for Placement and Resource requests." Under "Acceptable Alternatives for Accommodation," Complainant requested "A Sedentary Administrative job developing Wrap Around Service Plans."
19. On May 8, 1997, Complainant received a transfer form to a new assignment at the ERC unit to become effective May 11, 1997.
20. Complainant signed the transfer form to indicate her acceptance of the new position.
21. Sometime between May 8 and May 11, 1997, Geny Chiaradonna, Manager, Office of Employee Services, a personnel administrator for Respondent, told Complainant not report to her new assignment.
22. Complainant did not report to her new assignment pursuant to Chiaradonna's directive.

23. Around May 29, 1997, a subordinate from Chiaradonna's office, at the directive of Chiaradonna, altered the transfer form to instead reflect a request for medical leave by Complainant.
24. Complainant was reassigned to ERC in October 19, 1997, and did report at that time.
25. Complainant never requested nor desired that she be put on medical leave.
26. Complainant was forced to go on medical leave.
27. Complainant's medical leave began April 10, 1997 until October 19, 1997.
28. Complainant was paid 50% of her regular salary during her medical leave, at least some of which was deducted from her retirement account..
29. On June 19, 1997, Complainant filed a contract grievance stating that management "botched" her request for reasonable accommodation and placed her on "forced medical leave"
30. Thomas Putting, Chief of Office of Employee Services, sent Complainant a letter dated June 18, 1997 requesting her to sign a medical release to obtain medical records from her physician.
31. Complainant wrote a letter to Putting responding to that letter on July 14, 1997 objecting to signing the medical release and further stating that Respondent already had the information.
32. Complainant was examined by Respondent's physician on September 30, 1997.
33. Complainant's request for accommodation was granted on October 16, 1997 to begin October 19, 1997 at the ERC center.
34. Rhonda Prince's race is Caucasian.
35. Rhonda Prince has been a Child Welfare Specialist II for 11 years.
36. Prior to requesting an accommodation in March, 1995, while a Child Welfare Specialist II, Rhoda visited homes, went to court, visited parents, prepared and attended administrative case reviews and performed other duties.
37. In March 1995, Rhoda had a failed orthoscopy and could no longer climb stairs.
38. In March 1995, Rhoda requested an accommodation.
39. While Rhonda waited for a response to her accommodation request, Larry Winterburn, Rhoda's supervisor, arranged for the other unit members to visit Rhoda's cases while Rhoda would perform their paperwork and perform other administrative duties.
40. The interim duties resembled those of an "administrative assistant."
41. The "administrative assistant" position did not require Rhoda to have a caseload, to visit clients, to go to court, or to go to schools.
42. During the interim waiting period, Rhoda retained the title of Child Welfare Specialist II, with the same pay and the same hours.
43. Rhoda performed the "administrative assistant" duties for two and ½ years.
44. Rhoda was given a new position in response to her request for an accommodation approximately 2 ½ years following her request.
45. Rhoda was not forced to go on medical leave.
46. Complainant suffered damages as a result of the undue delay in the granting of her accommodation request and as a result of being forced to go on medical leave for over 5 months.

CONCLUSIONS OF LAW

1. The Illinois Human Rights Commission has jurisdiction over the parties to and the subject matter of the Complaint.
2. At the time of her request for an accommodation, Complainant was handicapped as defined by the Illinois Human Rights Act, 775 ILCS 5/1-101 et. seq., (Act) at section 5/1-103(I).
3. The employer has a duty to reasonably accommodate an employee's handicap.
4. The employee has a duty to cooperate with her employer in determining an appropriate accommodation.
5. Complainant followed the employer's written procedures for applying for a reasonable accommodation.
6. Complainant fulfilled her duty to cooperate with employer in determining a reasonable accommodation for her handicap.
7. Respondent did not fulfill its duty to reasonably accommodate the employee's handicap.
8. Complainant is an individual aggrieved by practices of discrimination prohibited by the Illinois Human Rights Act, 775 ILCS 5/1-101 et. seq.
9. Complainant has proven, by a preponderance of the evidence, a prima facie case of unlawful discrimination based upon disability and race.
10. Respondent articulated a legitimate, non-discriminatory reason for its actions.
11. Complainant has established, by a preponderance of the evidence, that Respondent's proffered reason was a pretext for unlawful discrimination.

DETERMINATION

Complainant has established, by a preponderance of the evidence, that she was unlawfully discriminated against when Respondent delayed the approval of her reasonable accommodation request and forced her to go on medical leave at reduced pay.

DISCUSSION

A Complainant bears the burden of proving discrimination by a preponderance of the evidence, in accordance with the Act at 775 ILCS 8A-102(I). Typically, the Complainant may prove discrimination through indirect means by establishing a prima facie case of unlawful discrimination pursuant to the three part analysis set out in **McDonnell Douglas Corp. v. Green**, 411 U.S. 793, 93 S.Ct. 1817 (1973) and **Texas Dept. of Community Affairs v. Burdine**, 450 U.S. 248, 101 S. Ct. 1089 (1981), adopted by the Illinois Supreme Court in **Zaderaka v. Illinois Human Rights Commission**, 131 Ill.2d 172, 545 N.E.2d 674 (1989).

Once the Complainant has demonstrated a prima facie case, the employer then has the burden of articulating a legitimate, non-discriminatory reason for the adverse employment action. If the employer carries its burden of production, the presumption of discrimination drops and the Complainant is required to meet her continuing burden of proving by a preponderance of the evidence that the employer's articulated reason was not its true reason, but rather, merely a pretext for discrimination. **St. Mary's Honor**

Center v. Hicks, 509 U.S. 502, 113 S. Ct. 2742 (1993). The burden of proving that the employer engaged in discrimination remains at all times with the Complainant. **Burdine**, *supra*.

Handicap Discrimination

To establish a prima facie case of handicap discrimination, Complainant must prove 1) the she is handicapped within the meaning of the Act 2) that her handicap is unrelated to her ability to perform the job and 3) that an adverse job action was taken against her.

Acorn Corrugated Box Co. v. Human Rights Comm'n, Ill. App. 3d 122 (1989), **May and Kenall Manuf. Co.** 1 Ill. HRC Rep. 144, aff'd 152 Ill, App. 3d 695, (1st Dist. 1987).

Respondent argues that Complainant presented no evidence proving she is disabled or handicapped. Therefore, the initial question here is whether the Complainant is handicapped or perceived to be handicapped. The Complainant bears the burden of proving the handicap or the perception of it by a preponderance of the evidence. **Board of Trustee of Univ. Of Illinois v. Human Rights Comm'n**, 138 Ill. App. 3d 71 (4th Dist. 1985). The Act at section 5/1-103(I) describes "handicap" as follows:

- (I) Handicap. "Handicap" means a determinable physical or mental characteristic of a person, including, but not limited to, a determinable physical characteristic which necessitates the person's use of a guide, hearing or support dog, the history of such characteristic, or the perception of such characteristic by the person complained against, which may result from disease, injury, congenital condition of birth or functional disorder and which characteristic:
 - (1) For purposes of Article 2 is unrelated to the person's ability to perform the duties of a particular job or position ...

Additionally, the Joint Rules of the Department of Human Rights and the Human Rights Commission: Handicap Discrimination in Employment, (Joint Rules) 56 Ill. Admin. Code, ch. II, Section 2500.20(c), provide that if a dispute arises as to whether a condition constitutes a handicap, it is the burden of the person claiming the handicap to establish that the condition results from disease, injury, congenital condition or birth or functional disorder. For example, the conditions of obesity and drug or alcohol abuse shall not be deemed "handicaps" unless the person can demonstrate that the condition arises from or constitutes the equivalent of a disease or functional disorder...

The question must be analyzed in the context of the consideration of a reasonable accommodation. Under the Joint Rules at Section 2500.40, an employer is required to make reasonable accommodation of the known physical or mental limitations of otherwise qualified handicapped employees, unless the employer can demonstrate that such accommodation would be prohibitively expensive or unduly disruptive to the ordinary conduct of business.

While the issue of whether Complainant is handicapped and whether there is a reasonable accommodation which would allow her to do her job are separate ones, they are

interrelated; therefore, the issue of reasonable accommodation is part of the threshold inquiry into the eligibility of the Complainant for protection under the Act. **Zimmerman and Illinois Central Gulf Railroad Co.**, __ Ill. HRC Rep. __ (1986CN3091, November 23, 1992).

Complainant presented evidence in the form of her physician statement, which diagnosed her with “morbid obesity,” “arthritis” and “asthma” with symptoms of wheezing and difficulty in walking; and physical limitations in standing, climbing, bending, sitting, walking, stooping, lifting; and with a psychological limitation. The statement indicated physical impairment defined as “moderate limitation of functional capacity, capable of clerical/administrative (sedentary) activity (60-70%), and further referred her for “intensive psychiatric counseling regarding her eating behavior.” Complainant submitted uncontroverted testimony that she became morbidly obese as a result of her father’s accidental death and gained 100 pounds in four months.

Complainant’s position was classified as Child Care Welfare Worker II. Within that classification are several different subsets of positions, including placement worker, resources, licensing, adoptions, COS monitoring, and ERC. While the duties of a Child Welfare Worker II placement worker include having a case load, visiting clients, going to homes, attending court, participating in staffings, going to schools, interacting with the public, doing a lot of walking, and climbing stairs; the duties of resources, adoptions, COS monitoring and ERC do not carry caseloads and do not require visiting clients, going to homes, attending court, participating in staffings, going to schools, interacting with the public, doing a lot of walking, and climbing stairs.

Complainant requested a job change within her current classification of Child Welfare Worker II that would allow her to perform her job duties. Complainant specifically requested a lateral job change in conducting computer and file searches for placement and resource requests, or a sedentary administrative job developing wrap around service plans. Complainant also requested a heavy duty, oversized chair, larger desk and office space accessible to an elevator or on the first floor.

Complainant presented no expert medical testimony that morbid obesity; arthritis and asthma are characterized as a disease or functional disorder. However, lack of expert medical testimony is not fatal to her claim. In **Coleman and Illinois Bell Telephone Co.**, 10 Ill. HRC Rep. 3 (1981), the Commission reversed the finding of the Administrative Law Judge that the complainant’s failure to present expert medical testimony doomed her claim that alcoholism was characterized as a disease or functional disorder. The Commission further stressed that whether a particular form of alcoholism amounted to a handicap is a factual question.

It is undisputed that Complainant had been performing her duties as a placement worker satisfactorily since 1989. When Complainant gained a substantial amount of weight, it became difficult for her to walk stairs, visit schools and attend court. Complainant made a written request on the employer’s “Request for Reasonable Accommodation” form on April 13, 1997 requesting a lateral job change in placement or resources, which would

accommodate her physical impairment. Alternatively, Complainant requested a sedentary administrative job developing “Wrap Around Service Plans.” Complainant put forth credible testimony that she could perform the job duties in these subsets of the Child Care Welfare Worker II position.

Complainant put forth credible evidence that she had developed an eating disorder, which resulted in a condition of morbid obesity, asthma and arthritis, and that the symptoms included difficulty in walking, climbing stairs, and wheezing. This condition created a moderate limitation of functional capacity, in accordance with the physician statement. Complainant’s condition supports that she was “handicapped” within the meaning of the Act and the evidence supports that she could perform her job duties with a reasonable accommodation, which would involve a position within the classification of her current position.

Adverse job action

Complainant applied for a reasonable accommodation on April 3, 1997, which was not granted until October 19, 1997. Complainant contends that, although the Respondent’s policy provides that a decision should be made within 40 working days, Respondent took over six months to render a decision on her request, and forced her to go on medical leave at reduced pay for over 5 months.

Complainant has demonstrated that she is handicapped within the meaning of the Act, that her handicap was unrelated to her ability to perform the job and that an adverse job action was taken against her. Therefore, Complainant has met her burden of proving a prima facie case of discrimination.

Once the Complainant has demonstrated a prima facie case, the employer then has the burden of articulating a legitimate, non-discriminatory reason for the adverse employment action. If the employer carries its burden of production, the presumption of discrimination drops and the Complainant is required to meet her continuing burden of proving by a preponderance of the evidence that the employer’s articulated reason was not its true reason, but rather, merely a pretext for discrimination. **St. Mary’s Honor Center v. Hicks**, 509 U.S. 502, 113 S. Ct. 2742 (1993). The burden of proving that the employer engaged in discrimination remains at all times with the Complainant. **Burdine**, *supra*.

Respondent’s articulated reason

The explanation the employer offers for the apparently extended period between the request and the granting of the accommodation is that Complainant did not submit sufficient medical information.

Complainant's showing of pretext

The procedures for processing requests for reasonable accommodation were indicated in the Respondent's document entitled INFORMATION TRANSMITTAL, dated July 27, 1992, which was admitted into evidence. The policy on its face states that supervisors must respond to requests for reasonable accommodation within 10 days or the request is automatically forwarded to the next level. The "Procedures for Processing Requests for Reasonable Accommodations" protocol is stated at page 3 of the document as follows:

Initiate process: The employee will transmit the completed request for reasonable accommodation form to the Immediate Supervisor. The Supervisor will immediately send a copy of the form to the regional Administrator/Division Manager and the ADA Coordinator.

Level 1 The Immediate Supervisor has 10 working days to make a recommendation to the Regional Administrator/Division Manager

Level 2 The appropriate Regional Administrator/Division manager has 10 working days to dispose of the request. If the Regional Administrator/Division Manager does not approve the request then the request goes to Level 3.

Level 3 The ADA Coordinator has 10 working days to make a recommendation to the Director. The ADA Coordinator may involve the RARC committee.

Level 4 The Director makes the final decision in 10 working days. A copy of the Director's decision will be returned by the ADA Coordinator to the Regional Administrator/Division Manager who will inform the Immediate Supervisor of the decision.

The record supports that Complainant completed the employer's "Request For Reasonable Accommodation" form and the employer's "Physician Statement – State of Illinois Authorization for Disability Leave and Return to Work Authorization" and sent these forms along with a cover letter to Complainant's supervisor, Patricia Massey, on April 3, 1997. Complainant also sent a copy of this packet to Chris McGrath, Regional Administrator; Al Lambert, ADA Coordinator; and Jackie Bright, Field Service Manager.

The "Reasonable Accommodation Approval Process Form," introduced into evidence, shows that Patricia Massey approved the request by signature on April 11, 1997 at the 1st level; Jackie Bright approved by signature on the 2nd level, but failed to include the date; Al Lambert approved by signature on May 6, 1997 on the 3rd level; and Jess McDonald approved by signature on October 16, 1997 at the 4th level.

On April 30, 1997, after not having received a response to her request, Complainant wrote a letter to Rick Navarro complaining that she had been forced to take Medical Leave until a decision on her accommodation was made.

Complainant was ostensibly granted her request for accommodation on May 8, 1997, when she received and signed a Personnel Action Request form indicating she was to

report to the ERC unit on May 11, 1997. However, subsequent to May 8th, Geny Chiaradonna (Chiaradonna) informed Complainant that she would not be allowed to take the ERC position and Complainant was not allowed to report to the assignment.

Evidence and testimony was entered which shows that the Personnel Action Request Form which purportedly transferred Complainant to the ERC position was later altered by an employee in the personnel department, at the direction of Chiaradonna, from an employee transfer form to an employee medical leave form.

Chiaradonna testified that the form was altered in order to benefit Complainant so that she would not lose medical benefits by being in unauthorized leave status; however, Complainant disputes that she authorized the alteration of the form. Chiaradonna testified that from the end of May, her office was attempting to get direction from the legal department on Complainant's accommodation request.

Tom Putting sent a letter to Complainant's physician requesting clarification of the diagnoses and a letter dated June 18, 1997 to Complainant asking her to sign and return a medical release to obtain more medical information. Chiaradonna testified that Respondent could not make a decision on Complainant's accommodation request because it never received additional medical information.

Complainant sent a response letter to Thomas Putting dated July 14, 1997, indicating that she had previously submitted the requested medical information. After Complainant filed a grievance about the delay in a decision on her reasonable accommodation request and engaged an attorney, Respondent scheduled an appointment for Complainant to be examined by its own physician. The examination occurred September 30, 1997 and Complainant was reassigned to the ERC division by letter dated October 16, 1997 to begin October 19, 1997. Complainant was allowed to begin that assignment.

Although Respondent contends it needed more medical information, Respondent did not require Complainant to be examined by its own physician until late September 1997, and did not issue a decision on her request until October 16, 1997. The record supports that the Complainant diligently complied with employer's procedure by completing the proper forms, having her physician complete the medical information in response to the questions on the employer's own form, and submitting them to the proper supervisor. After that, it was the employer's responsibility to process the request in accordance with its own policy.

Although the immediate supervisor signed an approval of the request within the requisite 10 working days, the process stalled and then a request for more medical information was issued in mid June. The record supports that this request was not genuine and was designed as a cover up for the delay. Additionally, employer's actions at altering the transfer form, which purported to grant Complainant the transfer she desired in May, 1997, to reflect a medical leave request -- which Complainant never requested and did not want -- further demonstrates Respondent's lack of sincerity in processing Complainant's request.

A Complainant may establish pretext either directly, by offering evidence that a discriminatory reason more likely motivated the employer's actions, or indirectly, by showing that the employer's explanations are not worthy of belief. **Burnham City Hospital v. Illinois Human Rights Commission**, 126 Ill. App.3d 999, (4th Dist. 1984). A Complainant may demonstrate that the proffered reason has no basis in fact; the proffered reason did not actually motivate the decision; or the proffered reason was insufficient to motivate the decision. **Grohs v. Gold Bond Products**, 859 f.2d 1283 (7th Cir. 1988).

The evidence strongly supports that Complainant followed Respondent's procedures to request an accommodation; however, Respondent did not take Complainant's request for accommodation seriously, did not sincerely pursue reasonable options to accommodate Complainant's handicap, stalled the process, failed to follow its own procedures, and -- instead of making an effort to find a reasonable accommodation -- forced her to take a medical leave at reduced pay. Therefore, Respondent's proffered reason -- that Complainant did not submit sufficient medical information -- is not worthy of belief and has no basis in fact. The evidence supports that Respondent's reason for the delay in processing the application is pretextual.

Race Discrimination

In general, in order to make a prima facie case of race discrimination, the Complainant must show that (1) she is a member of a protected class, (2) she suffered an adverse employment action, and (3) similarly situated employees outside of the protected class were treated more favorably. **Dixon and Borden Chemical**, 46 Ill. HRC Rep. 116 (1985), **Sheffield and Wilson Sporting Goods Co.**, ___ Ill. HRC Rep., (1990CF1450, May 7, 1993); **St. Mary of Nazareth Hospital Center v. Curtis**, 163 Ill. 3d 566 (1987); **Freeman United Coal Mining Co. V. Human Rights Comm'n** 173 Ill. App.3d 965 (1988), **ISS International Service System, Inc. v. Illinois Human Rights Commission**, 272 Ill.App3d 969, 651 N.E.2d 592, (1995).

It is undisputed that Complainant is a member of a protected class in that she belongs to a racial minority (black) and that Complainant suffered an adverse employment action when she was forced to go on medical leave at 50% of her regular salary while her accommodation request processing was delayed.

The facts related to the third prong-- that similarly situated employees outside of the protected class were treated more favorably—are mostly undisputed. Rhoda Prince (Rhoda), a Caucasian, had been a Child Welfare Specialist II for 11 years. As noted previously, that position entailed visiting homes, walking stairs and going to court. In March, 1995, Rhoda had a failed knee orthoscopy operation and could no longer climb stairs. Rhoda's condition required her to use crutches for a while and then a cane. Due to this condition, Rhoda requested an accommodation. While Rhoda waited for a response to her accommodation request, Larry Winterburn (Winterburn), her supervisor, arranged

for other unit members to visit her cases while she performed related paperwork duties and other duties similar to that of an administrative assistant. During that interim period, which lasted 2 ½ years, Rhoda retained the title of Child Welfare Specialist II, retained the same pay and hours and was not forced to go on medical leave.

Rhoda had the same title as Complainant, Child Welfare Specialist II, and Rhoda initially had the same job duties as Complainant. Rhoda's condition was similar to that of Complainant's in that Rhoda's major disability was that she could not negotiate stairs and had difficulty walking.

Complainant has proven by a preponderance of the evidence that a similarly-situated person not in the protected class was given more favorable treatment.

Respondent's articulation

Respondent's proffered reasons for allowing Rhoda to work as an administrative assistant while her accommodation request was being processed is that Rhoda submitted the necessary medical information while Complainant did not, and that Winterburn acted on his own, outside of the reasonable accommodation chain of command.

Complainant's showing of pretext

This argument obviously fails, in that the evidence demonstrates that Complainant submitted the necessary and required medical information in accordance with Respondent's own forms and procedures. After being requested to submit more information, Complainant informed Respondent that all of the medical information had been submitted. If there was a missing piece to the accommodation request, it appears that it depended on Respondent's own physician's report and Complainant was not directed to be examined by Respondent's physician until late September 1997.

The second argument -- that Winterburn acted outside of the chain of command -- also fails in that not only was Winterburn a first level supervisor *within the accommodation process*, but Winterburn testified that personnel management was aware that he had created the new administrative assistant duties for Rhoda. Further, Rhoda testified that management questioned her once about her new administrative duties and she warned them that she had an attorney and not to question her again and they complied. Also, it is noted that Rhoda was not allowed to perform the administrative assistant duties for just a fleeting moment; Rhoda performed the administrative assistant duties for 2 ½ years. These facts contradict that accommodation chain of command was unaware and did not acquiesce in the favorable treatment given to Rhoda.

The totality of the record presents major credibility issues for Respondent. It is difficult to believe that Respondent would choose to alter an official form -- from a job transfer form to a medical request form -- rather than prepare a new form. And, although Respondent contends that it acted to benefit Complainant, it is inexplicable why Respondent did not simply require Complainant to come to the office to complete another

form, especially since Complainant never maintained she could not travel to work. Indeed, the purpose of the accommodation process is so that Complainant could continue to come to work. Respondent would not have been thwarted in any attempt to benefit Complainant if it had just requested her to come to the office and complete and sign another form. After all, if her accommodation request had been granted, she would have had to travel to work everyday, anyhow.

Credibility also comes into question with Respondent's propensity to point fingers at its own management. Respondent blames its supervisor, Winterburn, for acting outside of the accommodation chain of command in allowing favorable treatment to a Caucasian employee, and blames Mr. Navarro, its human resources representative, for acting outside of his authority in approving a transfer for Complainant. Further, Respondent blames Complainant for its own failure to consider and sign off on her accommodation request in a timely manner in accordance with its own policy.

The record supports that Respondent allowed Rhoda, a Caucasian, to work in a position performing administrative duties for 2 ½ years while her accommodation request was being processed, did not force her to go on reduced pay medical leave while her request was being considered, and allowed her to remain in her same position title with the same pay while she performed administrative tasks.

When Complainant requested an accommodation, Respondent did not challenge her basis for an accommodation; however, it forced her to take a reduced pay medical leave, did not process the request in a timely manner in accordance with its own written policy, and instead, utilized stalling tactics by requesting additional medical information that was apparently not required.

Although Rhoda's accommodation request was, too, delayed and apparently not officially decided for 2 ½ years, Rhoda was allowed to perform accommodated job duties during the interim period, while retaining her same pay and title; therefore, her accommodation request -- although not officially granted until 2 ½ years later—was, in effect, immediately granted, while Complainant was given no such favorable consideration.

The evidence supports that the employer's explanations are not worthy of belief, have no basis in fact and that discriminatory reasons more likely motivated the employer's actions.

DAMAGES

The purpose of the damage award is to make the Complainant whole. When the Complainant has been a victim of unlawful discrimination under the Act, she should be placed in the position she would have been but for the discrimination. **Clark v. Human Rights Commission**, 141 Ill. App. 3d178, 490 N.E.2d 29 (1st Dist. 1986).

Backpay

A Complainant is presumptively entitled to full back pay from the date of the unlawful action. Complainant requests 5 months of backpay at \$3,398.00 per month for \$17,570.00, plus a \$500.00 bonus for 1997. I cannot reconcile Complainant's calculations for back pay, so I have calculated the damages to cover 6 months and 1 week, from April 10, 1997 until October 19, 1997, (using the medical coverage dates on the altered Personnel Action Request Form) for a total of \$21,237.00, plus the missed \$500.00 bonus.

As the damages request is unclear, if the parties choose, I will entertain additional argument on the **calculation of damages only** to be included with the attorney's fee brief and opposition brief and reconsider the damage award at that time, if warranted.

RECOMMENDATION

Accordingly, it is recommended that the Complaint in this matter be sustained on the disability and race claims and that Complainant be awarded the following relief:

- A. That Respondent pay to Complainant lost backpay in the amount of \$21,237.00
- B. That Respondent pay to Complainant lost bonus for 1997 of \$500.00.
- C. The Respondent pay to Complainant prejudgment interest on the amounts in A and B to be calculated as set forth at 56 Ill.Admin.Code, Section 5300.1145;
- D. That Respondent clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof;
- E. That Respondent cease and desist from discriminating on the bases of disability and race;
- F. That Respondent pay to Complainant the reasonable attorney's fees and costs incurred in the prosecution of this matter, that amount to be determined after review of a motion and detailed affidavit meeting the standards set forth in **Clark and Champaign National Bank**, 4 Ill. HRC Rep. 193 (1982), said motion and affidavit to be filed within 21 days after the service of the Recommended Liability Determination; failure to submit such a motion will be seen as a waiver of attorney's fees and costs;
- G. Parties may submit additional argument on the **calculation of damages only** to be included as part of the attorney's fee petition and opposition.
- H. If Respondent contests the amount of requested attorney's fees, it must file a written response to Complainant's motion within 21 days of the service of said motion; failure to do so will be taken as evidence that Respondent does not contest the amount of such fees;
- I. The recommended relief in paragraphs A through E is stayed pending resolution of the issue of attorney's fees and issuance of a final Commission order.

HUMAN RIGHTS COMMISSION

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

ENTERED: February 21, 2002