



This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 2/03/04.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)		
)		
LARRY TAFF,)		
)		
Complainant,)		
)		
and)	CHARGE NO:	2000SA0478
)	EEOC NO:	21BA01298
CATERPILLAR INC.,)	ALS NO:	S-11626
)		
Respondent.)		

RECOMMENDED ORDER AND DECISION

This matter comes to me on a motion by Respondent, Caterpillar Inc., for issuance of a summary decision. Complainant has filed a response, and the Respondent has filed a reply.

Contentions of the Parties

Respondent submits that the Commission lacks jurisdiction over this Complainant-filed Complaint because the Department had issued a report finding a lack of substantial evidence regarding Complainant's handicap claim within 365 days of the filing of Complainant's Charge. As to the merits of Complainant's discrimination claim, Respondent submits that Complainant cannot establish a claim of handicap discrimination since Complainant was demoted for reasons unrelated to his handicap. However, Complainant maintains that the Commission has jurisdiction over this Complaint and asserts that there is a genuine issue of material fact as to whether Respondent demoted him due to a perceived physical handicap.

Findings of Fact

Based upon the record in this matter, I make the following findings of fact:

1. On February 29, 2000, Complainant filed a Charge of Discrimination, alleging that he was given a five-day suspension and a demotion from his position as a tooling specialist due to his handicap.

2. On January 5, 2001 (or the 310th day after the Charge had been filed), the Department of Human Rights filed a notice dismissing Complainant's Charge for lack of substantial evidence.

3. On February 8, 2001, Complainant filed a timely Request for Review to the Department's Chief Legal Counsel.

4. On July 9, 2001, the Chief Legal Counsel vacated the dismissal of Complainant's Charge and remanded the matter for further investigation by the Department, thereby commencing the remaining 55-day period left from the original 365-day statutory period in which to conduct its investigation.

5. On August 1, 2001, both parties agreed to extend the 365-day jurisdictional time limit by 120 days.

6. On October 1, 2001 (and within the 120-day extension agreed to by the parties) Complainant filed his own Complaint with the Commission.

7. In the meantime, the Department continued its investigation of Complainant's Charge even though Complainant had filed his own Complaint with the Commission.

8. On November 28, 2001, the parties agreed to a second extension of time of 30 days for the Department to conclude its investigation of Complainant's Charge.

9. On January 3, 2002, the Department again dismissed Complainant's Charge for lack of substantial evidence. Complainant thereafter filed a timely Request for Review of the portion of the Department's dismissal of Complainant's Charge alleging perceived handicap discrimination.

10. On July 8, 2002, the Department's Chief Legal Counsel vacated the dismissal of the perceived handicap claim and remanded the matter for further investigation.

11. On August 12, 2002, the Department again dismissed for lack of substantial evidence the portion of the Charge alleging perceived handicap discrimination. Complainant thereafter filed a timely Request for Review of the Department's dismissal.

12. On August 30, 2002, Respondent filed a motion for summary decision alleging that the Commission does not have jurisdiction over Complainant's Complaint, and alternatively that Complainant could not otherwise establish a claim of handicap discrimination.

13. On February 10, 2003, the Department's Chief Legal Counsel vacated the dismissal of the portion of Complainant's charge alleging perceived handicap discrimination and entered a finding of substantial evidence.

14. On March 13, 2003, the Department filed a Complaint of Discrimination on behalf of Complainant in S-12027, alleging that Respondent constructively discharged Complainant from his position as tooling specialist due to an erroneous perception of Complainants' physical handicap. The Charge number for S-11626 is the same as the Charge number in this case.

Conclusions of Law

1. While a complainant may only file his or her own complaint with the Commission between the 366th and 395th day after a verified charge was filed with the Department of Human Rights, extensions of time for the Department to complete its investigation extend both the time period in which the Department has exclusive jurisdiction to conduct its investigation, as well as the time period for a complainant to file his or her own complaint with the Commission.

2. A complaint filed outside the permissible 30-day period does not invest the Commission with jurisdiction, and the matter remains with the Department to conduct its investigation within the remaining period of time to which the parties have agreed to have the Department conduct its investigation.

Determination

The Complaint filed by the Complainant was not timely in that it was filed during a time period in which Complainant had agreed to have the Department conduct its investigation. Because the Department has now completed its investigation in the Charge of Discrimination that was at issue in this case and has filed a Complaint on behalf of Complainant in S-12027, this matter should be dismissed without prejudice to the parties proceeding in S-12027.

Discussion

Section 7A-102(G)(1) of the Human Rights Act (775 ILCS 5/7A-102(G)) provides that when a Charge of Discrimination has been properly filed, the Department, within 365 days thereof or within any extension of time of that period agreed to in writing by all parties, shall either issue and file a complaint or shall order that no complaint be issued and dismiss the charge with prejudice. Section 7A-102(G)(2) of the Human Rights Act (775 ILCS 5/7A-102(G)), however, provides that 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 of the Department of Human Rights has not sooner issued a report and determination pursuant to paragraphs (D)(1) and (D)(2) (pertaining to findings of substantial evidence). In its motion for summary decision, Respondent argues that Complainant cannot file his own Complaint because the record showed that the Department initially issued its finding of lack of substantial evidence finding within the original 365-day period, and because, according to Respondent, there is nothing in the Human Rights Act that permits a complainant to

file his or her own Complaint with the Commission once the Request for Review has been granted and the matter is remanded back for further investigation.

The case cited by Respondent for its proposition, i.e., **Wallace v. Human Rights Commission**, (261 Ill.App.3d 564, 633 N.E. 2d 851, 199 Ill.Dec. 55 (1st Dist. 4th Div. 1994)) does not support its stance since the case concerned a charge filed prior to the 1996 Amendments to the Human Rights Act that are at issue in this case. Specifically, the court in **Wallace** held that a complainant could not file her own complaint where the Department had issued its own report indicating a lack of substantial evidence within the permissible thirty-day window, but six days prior to the complainant having filed her own complaint. Importantly, the **Wallace** court noted that the Department did not lose jurisdiction to conduct its investigation during the 30-day window period for filing complainant-filed complaints, while sections 7A-102(G)(1) and (2), as now composed, preclude the Department from conducting its investigation whenever its 365-day period for conducting investigations, or any agreed to extension thereto, has expired.

Moreover, under Respondent's interpretation of the Act, the Department would be under no time constraint to complete its investigation once the matter was remanded back to the Department after a successful Request for Review, and a complainant would have no ability to bring the matter to the Commission where, as here, the 30-day window expired while the matter was stayed pending disposition of the Request for Review. Such a result, however, was clearly not in the contemplation of the legislature when it amended sections 7A-102(G)(1) and (2) to provide for time constraints for the Department's investigation as well as a mechanism for Complainant to bring matters directly to the Commission. Indeed, the procedural history in this case demonstrates that both the Department and the parties were attempting to comply with the time constraints set forth in section 7A-102(G)(1) when the Department obtained agreements to extend the time to complete its investigation.

Complainant on the other hand contends that his Complaint is timely because: (1) the original notice of dismissal came down on the 310th day following the filing of his Charge of Discrimination; (2) the 365-day jurisdictional period stopped while the Department resolved his Request for Review; (3) the remaining 55-day time period of the Department's jurisdictional period began to run again on July 9, 2001 when the matter was remanded for further investigation; and (4) his Complaint was filed within 30 days after the 55th day time period had expired from the original 365-day jurisdictional period. Complainant, though, ignores the fact that both parties signed a 120-day extension of time on August 1, 2001 for the Department to finish its investigation, and that he filed his Complaint with the Commission prior to the expiration of the 120-day extension period.

The Commission, in **Matthews and Heilig Meyers**, ___ Ill. HRC Rep. ___ (1997SA0830, November 24, 1998) addressed a similar jurisdictional question where a complainant attempted to file a complaint during an extension period beyond the initial 365-day period when the Department was still investigating the charge of discrimination. There, the Commission, in remanding the matter back to the Department for further processing of the charge of discrimination, found that it lacked jurisdiction over the complaint because: (1) the Department's exclusive investigation period can be extended only by an agreement by the parties; (2) the Department's investigation period within the 90-day extension period had not yet expired by the time complainant had filed the complaint; and (3) complaints filed prematurely do not invest the Commission with jurisdiction. See, for example, **Elder and Massac Memorial Hospital**, ___ Ill. HRC Rep. ___ (1995SF0599, April 1996).

A similar result should occur under the facts of this case where, as here, the parties had executed an agreed extension of time for the Department to complete its investigation, and where Complainant nonetheless filed his own Complaint during the

extension period. Indeed, unlike the prior statutory scheme for charges filed before 1996, the current statutory scheme does not provide for an ability for both the Department and a complainant to file a complaint during the 30-day window for complainant-filed complaints. Thus, because the Department still had jurisdiction over the Charge of Discrimination at the time Complainant filed her own Complaint with the Commission, this case must be remanded back to the Department for further investigation. (See, **Elder**.) However, because the Department correctly continued its investigation on the Charge of Discrimination during the time that this Complaint was pending with the Commission and has filed another Complaint on behalf of Complainant in S-12027, the only appropriate remedy is to dismiss this case without prejudice and proceed on the matter in S-12027. Accordingly, while I agree with Respondent that this Complaint is untimely, I do so for reasons different from those cited by Respondent.

Recommendation

For all of the above reasons, it is recommended that the Complaint be dismissed without prejudice to the parties pursuing the matter as alleged in S-12027.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL R. ROBINSON
Administrative Law Judge
Administrative Law Section

ENTERED THE 6th DAY OF MAY, 2003