



This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 4/23/01.

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF: |) | | |
| |) | | |
| DEIRDRE WEBB, |) | | |
| |) | | |
| Complainant, |) | | |
| |) | Charge No.: | 1990CN1891 |
| and |) | EEOC No.: | N/A |
| |) | ALS No.: | 10259 |
| AMERITECH, |) | | |
| |) | | |
| |) | | |
| Respondent. |) | | |

RECOMMENDED ORDER AND DECISION

On December 5, 1997, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Deirdre Webb. That complaint alleged that Respondent, Ameritech, discriminated against Complainant on the basis of a physical handicap when it refused to give her an accommodation within her job classification.

This matter now comes on to be heard on Respondent's Motion for Summary Decision. Complainant has filed a written response to the motion, and Respondent has filed a written reply to that response. The matter is ready for decision.

FINDINGS OF FACT

The following facts were derived from uncontested sections of the pleadings or from the affidavits and other documentation submitted by the parties. The findings did not require, and are

not the result of, credibility determinations. All evidence was viewed in the light most favorable to Complainant.

1. Respondent, Ameritech, hired Complainant, Deirdre Webb, on October 24, 1972.

2. On August 14, 1989, Complainant went on disability leave. She returned to work in early November, 1989, and was placed on limited duty.

3. In November of 1989, Complainant notified Respondent's medical department that she suffered from epilepsy. That same month, she gave to Respondent a note from her doctor. That note stated that Complainant needed "less stressful work."

4. Complainant returned to regular duty on December 28, 1989.

5. In 1989, Complainant was working as a Customer Service Representative.

6. Customer Service Representatives spent the vast majority of their work time interacting with customers, primarily by telephone. The purpose of the position is to directly assist customers.

7. Complainant suffers from headaches under stressful conditions. She believes that working with customers is stressful.

8. Complainant wanted Respondent to give her a job in which she would not have to work directly with customers.

9. The position of Customer Service Representative could

not be restructured to delete customer contact from the list of job duties.

10. In March of 1990, Respondent offered Complainant a position as a Service Order Writer. Complainant agreed to accept that position. Complainant began work in her new position on or about May 1, 1990.

CONCLUSIONS OF LAW

1. There is no genuine issue of material fact regarding the issue of accommodation.

2. Respondent is entitled to a recommended order in its favor as a matter of law.

3. A summary decision in Respondent's favor is appropriate in this case.

DISCUSSION

Respondent, Ameritech, hired Complainant, Deirdre Webb, on October 24, 1972. In 1989, Complainant was working as a Customer Service Representative.

On August 14, 1989, Complainant went on disability leave. She returned to work in early November, 1989, and was placed on limited duty. In November of 1989, Complainant notified Respondent's medical department that she suffered from epilepsy. That same month, she gave to Respondent a note from her doctor. That note stated that Complainant needed "less stressful work." Despite that note and Complainant's insistence on less stressful duties, she returned to her regular duties on December 28, 1989.

Subsequently, Complainant filed a charge of discrimination against Respondent. That charge alleged that Respondent discriminated against Complainant on the basis of a physical handicap.

This matter is being considered pursuant to Respondent's Motion for Summary Decision. A summary decision is analogous to a summary judgment in the Circuit Court. **Cano v. Village of Dolton**, 250 Ill. App. 3d 130, 620 N.E.2d 1200 (1st Dist. 1993). Such a motion should be granted when there is no genuine issue of material fact and the moving party is entitled to a recommended order in its favor as a matter of law. **Strunin and Marshall Field & Co.**, 8 Ill. HRC Rep. 199 (1983). The movant's affidavits should be strictly construed, while those of the opponent should be liberally construed. **Kolakowski v. Voris**, 76 Ill. App. 3d 453, 395 N.E.2d 6 (1st Dist. 1979). The movant's right to a summary decision must be clear and free from doubt. **Bennett v. Raag**, 103 Ill. App. 3d 321, 431 N.E.2d 48 (2d Dist. 1982).

To establish a *prima facie* case of handicap discrimination, Complainant would have to prove three elements. She would have to prove 1) that she is handicapped within the meaning of the Human Rights Act, 775 ILCS 5/1-101 et seq., 2) that Respondent took an adverse action against her related to that handicap, and 3) that her handicap is unrelated to the performance of her job. **Habinka v. Human Rights Commission**, 192 Ill. App. 3d 343, 548 N.E.2d 702 (1st Dist. 1989); **Kenall Mfg. Co. v. Illinois Human**

Rights Commission, 152 Ill. App. 3d 695, 504 N.E.2d 805 (1st Dist. 1987). In the briefs in support of its motion, Respondent addresses that entire *prima facie* case formulation. However, on the facts of this particular case, such an analysis is unnecessary.

When it first evaluated Complainant's charge of discrimination, the Illinois Department of Human Rights (IDHR) dismissed that charge for lack of substantial evidence. Complainant filed a Request for Review with a panel of the Human Rights Commission. The Commission panel vacated the IDHR's dismissal, finding that there was a question as to whether Complainant's job could have been restructured to reduce her stress.

Following the Commission's lead, the IDHR filed a complaint which alleged only a failure to accommodate. In effect, then, if there was no reasonable accommodation for Complainant's condition, there is no need to go further.

The Commission's interpretive rules require that an employer provide reasonable accommodations if those accommodations will allow handicapped employees to do their jobs. Such accommodations can include such modifications of work sites, acquisition of equipment, and job restructuring. 56 Ill. Adm. Code, Section 2500.40(a). Once an employee requests an accommodation, it becomes the burden of the employer to show that there is no possible accommodation or that the employee would be

unable to perform the job even with accommodation. Alternatively, the employer can show that an accommodation would be prohibitively expensive or would disrupt the conduct of the employer's business. 56 Ill. Adm. Code, Section 2500.40(d).

According to Complainant, the stress in her job was coming from contact with the public. She claims that the stress caused headaches. To avoid the job stress and the resulting headaches, she suggested restructuring her job to eliminate the public contact.

The problem with Complainant's suggestion is that it effectively eliminates her position. In late 1989, Complainant was working as a Customer Service Representative. Customer Service Representatives spent the vast majority of their work time interacting with customers, primarily by telephone. The purpose of the position is to directly assist customers. If public contact is removed from that equation, there is no real job.

In her response to the instant motion, Complainant asserts that each of Respondent's offices sent out its own disconnection notices and that some Customer Service Representatives "performed this task each month." There are two problems with that assertion. First, it is not sworn. Complainant did not submit any affidavits in support of her position. When statements made in an affidavit in support of a motion for summary decision are not contradicted by a counteraffidavit, those statements are

admitted and must be accepted as true. **Koukoulomatis v. Disco Wheels**, 127 Ill. App. 3d 95, 468 N.E.2d 477 (1st Dist. 1984). Respondent's affidavits assert that a Customer Service Representative must spend the majority of the work day dealing directly with customers. Second, Complainant offers no explanation of how much time it takes each month to send out disconnection notices. In the absence of such information, it is impossible to conclude that sending out disconnection notices can substitute for customer contact as the essential duty of a Customer Service Representative.

On the basis of the existing record, there is no genuine issue of material fact that the essential duty of a Customer Service Representative is to deal with customers. Elimination of that customer contact, though, is the accommodation that Complainant sought. It is clear that the conditions Complainant sought were outside the bounds of reasonable accommodation.

Alternatively, Complainant sought to be transferred to a different position. However, transfer to a different position is not a proper accommodation as that term is used in the Act and the interpretive rules. **Fitzpatrick v. Illinois Human Rights Commission**, 267 Ill. App. 3d 386, 642 N.E.2d 486 (4th Dist. 1994). Thus, the parties' disputes over jobs that may have been offered to Complainant are not material.

In sum, there is no genuine issue of material fact on the issue of accommodation. There was no possible modification of

job duties or working conditions which would not have eliminated the essential duties of Complainant's position. As a result, it is clear that Respondent could not have provided a proper accommodation. Since the issue of accommodation is the only issue raised in the complaint in this matter, Respondent's motion should be granted.

RECOMMENDATION

Based upon the foregoing, there are no genuine issues of material fact and Respondent is entitled to a recommended order in its favor as a matter of law. Accordingly, it is recommended that Respondent's Motion for Summary Decision be granted and that the complaint in this matter be dismissed with prejudice.

HUMAN RIGHTS COMMISSION

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

ENTERED: February 27, 2001