

**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST	)	
FOR REVIEW BY:	)	CHARGE NO.: 2008CF3530
	)	EEOC NO.: 21BA82227
<b>ROBEN B. HALL</b>	)	ALS NO.: 10-0087
	)	
Petitioner.	)	

**ORDER**

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Charles E. Box presiding, upon Roben B. Hall's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")<sup>1</sup> of Charge No. 2008CF3530; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that:

- (A) The Respondent's dismissal of Count A of the Petitioner's charge is **VACATED**, and the charge is **REINSTATED** and **REMANDED** to the Respondent for entry of a finding of **SUBSTANTIAL EVIDENCE** and for further proceedings consistent with this Order and Act.
- (B) The Respondent's dismissal of Counts C, D, E, F, G, H, I, J, K, L, M, N, II, JJ, KK, LL, MM, NN, OO, PP, UU, VV, WW, and XX of the Petitioner's charge is **VACATED**, and those Counts of the charge are **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION**.
- (C) The Respondent's dismissal of Counts B, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, QQ, RR, SS, TT, YY, ZZ, AAA, BBB, CCC, DDD, EEE, FFF, GGG, HHH, III, JJJ, KKK, LLL, MMM, NNN, OOO, PPP, QQQ, and RRR of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.

In support of which determination the Commission states the following findings of fact and reasons:

1. On May 18 2008, the Petitioner filed an unperfected charge of discrimination with the Respondent, perfected on June 10, 2008. The Petitioner alleged in her charge that Wal-Mart Stores, Inc., ("Employer") subjected her to sexual harassment (Count A); denied her overtime in retaliation for having opposed unlawful discrimination (Count B); failed to promote her because of her sexual orientation (homosexual), her physical disabilities (reflex sympathetic dystrophy and traumatic brain injury), and for having opposed unlawful discrimination (Counts C through RRR), in violation of Sections 2-102(A), 2-102(D) and 6-101(A) of the Illinois Human

<sup>1</sup> In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

Rights Act (“Act”). On December 31, 2009, the Respondent dismissed Counts C through J for Lack of Jurisdiction and dismissed all other Counts for Lack of Substantial Evidence. On February 2, 2010, the Petitioner filed a timely Request.

2. The Petitioner worked for the Employer as an Over Night Stocker. The Petitioner alleged in her charge that from November 2006 through May 19, 2008, she was sexually harassed by a co-worker. In December 2006 and in December 2007, the Petitioner engaged in protected activity when the Petitioner complained to an assistant manager that she had been sexually harassed by a co-worker.
3. The Petitioner also alleged in her charge that she was denied overtime in December 2007 for having engaged in a protected activity.
4. The Petitioner further alleged that she was denied promotions on numerous occasions by the Employer. Beginning on December 2, 2007, through May 2008, the Petitioner applied for numerous positions within the Employer’s network of stores. The Petitioner was denied a promotion on every occasion. The Petitioner alleged that she was denied promotions because of her sexual orientation, her disabilities, and in retaliation for having opposed unlawful discrimination.
5. In the Petitioner’s Request, she argues that the Respondent’s investigator did not perform a proper investigation. The Petitioner claims that the Respondent’s investigator incorrectly handled her paperwork; made misrepresentations, and did not complete her paperwork in a timely manner. Additionally, she argues in her Request that the Employer did not provide sufficient documentation to show that the other applicants for the various positions were more qualified than the Petitioner.
6. In its Response, the Respondent asks the Commission to vacate the dismissal of Count A of the Petitioner’s charge and remand Count A to the Respondent for a finding of Substantial Evidence. The Respondent further asks the Commission to vacate the dismissal of Counts C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, QQ, RR, SS, TT, YY, ZZ, AAA, BBB, CCC, DDD, EEE, FFF, GGG, HHH, III, JJJ, KKK, LLL, MMM, NNN, OOO, PPP, QQQ, and RRR of the Petitioner’s charge for Lack of Substantial Evidence. The Respondent argues that the Employer articulated a non-discriminatory reason for its actions and there was no substantial evidence of pretext.

## **CONCLUSION**

### **(A) Count A**

In its Response to the Petitioner’s Request, the Respondent recommends that the Commission vacate its dismissal of Count A of the charge and remand Count A to the Respondent for a finding of Substantial Evidence. The Respondent believes that the resolution of Count A requires credibility determinations. It is inappropriate for the Respondent to engage in credibility determinations at the investigative stage of the proceedings; for that reason, the

Respondent recommends a finding of substantial evidence as to Count A so that the allegations of Count A may be resolved by a trier of fact. Therefore, because the Commission finds that the Respondent does not oppose the Petitioner's Request as to Count A of the charge, see 56 Ill. Admin. Code 5300.430 (2010), the Respondent's dismissal of Count A of the charge is vacated and Count A of the charge is reinstated and remanded to the Respondent for entry of a finding of substantial evidence, and for further processing and other proceedings consistent with this Order and the Act.

**(B) Counts C, D, E, F, G, H, I, J, K, L, M, N, N, II, JJ, KK, LL, MM, NN, OO, PP, UU, VV, WW, and XX**

The Respondent also recommends that the Commission vacate the Respondent's dismissal of Counts C, D, E, F, G, H, I, J, K, L, M, N, II, JJ, KK, LL, MM, NN, OO, PP, UU, VV, WW, and XX of the charge. The Respondent has determined that further investigation is warranted for these Counts. Therefore, because the Commission has determined that the Respondent also does not oppose the Petitioner's Request as to these Counts of the charge, the dismissal of these Counts shall be vacated and these Counts shall be reinstated and remanded to the Respondent for further investigation.

**(C) Counts B, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, QQ, RR, SS, TT, YY, ZZ, AAA, BBB, CCC, DDD, EEE, FFF, GGG, HHH, III, JJJ, KKK, LLL, MMM, NNN, OOO, PPP, QQQ, and RRR**

The Respondent opposes the Petitioner's Request as to the remaining Counts of the charge. The Commission concludes that the Respondent properly dismissed Counts B, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, QQ, RR, SS, TT, YY, ZZ, AAA, BBB, CCC, DDD, EEE, FFF, GGG, HHH, III, JJJ, KKK, LLL, MMM, NNN, OOO, PPP, QQQ, and RRR of the Petitioner's charge for lack of substantial evidence.

If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D) (2010). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747 (March 7, 1995), 1995 WL 793258 (Ill.Hum.Rts.Com.)

The Commission finds there is no substantial evidence that the Employer denied the Petitioner either overtime or promotion because of her sexual orientation, disabilities, or as retaliation for having opposing unlawful discrimination. Specifically, in each instance, the Petitioner articulated non-discriminatory and non-retaliatory reasons for its actions, and there was no substantial evidence of pretext, nor any substantial evidence that the Employer's actions were in any way motivated by the Petitioner's sexual orientation, disabilities, or retaliation. In the absence of any substantial evidence that the Employer's articulated reasons for its actions were pretext for unlawful discrimination or retaliation, it is improper for the Commission to substitute its judgment for the business judgment of the Employer. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. S-9146 (December 10, 1997).

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of Counts B, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, QQ, RR, SS, TT, YY, ZZ, AAA, BBB, CCC, DDD, EEE, FFF, GGG, HHH, III, JJJ, KKK, LLL, MMM, NNN, OOO, PPP, QQQ, AND RRR was not in accordance with the Act. The Petitioner's Request is not persuasive as to those Counts.

**THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Respondent's dismissal of Count A of the Petitioner's charge is **VACATED**, and Count A of the charge is **REINSTATED** and **REMANDED** to the Respondent for entry of a finding of **SUBSTANTIAL EVIDENCE** and for further proceedings consistent with this Order and Act.
2. The Respondent's dismissal of Counts C, D, E, F, G, H, I, J, K, L, M, N, II, JJ, KK, LL, MM, NN, OO, PP, UU, VV, WW, and XX of the Petitioner's charge is **VACATED**, and those Counts of charge are **REINSTATED** and **REMANDED** to the Respondent for **FURTHER INVESTIGATION**.
3. The Respondent's dismissal of Counts B, O, P, Q, R, S, T, U, V, W, X, Y, Z, AA, BB, CC, DD, EE, FF, GG, HH, QQ, RR, SS, TT, YY, ZZ, AAA, BBB, CCC, DDD, EEE, FFF, GGG, HHH, III, JJJ, KKK, LLL, MMM, NNN, OOO, PPP, QQQ, and RRR of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.

*This Order is not yet final and appealable.*

STATE OF ILLINOIS ) Entered this 8<sup>th</sup> day of September 2010.  
 )  
HUMAN RIGHTS COMMISSION )

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box