

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CF3909
	EEOC NO.: 21BA82745
MARSHON HUDSON)	ALS NO.: 09-0464
)	
)	
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr., and Rozanne Ronen, presiding, upon the Petitioner’s Request for Review (“Request”) of the Notice of Dismissal issued by the Department of Human Rights (“Respondent”)¹ of Charge No. 2008CF3909, Marshon Hudson (“Petitioner”), and Bentz of Kankakee, d/b/a Subway (“Employer”); and the Commission having reviewed *de novo* the Respondent’s investigation file, including the Investigation Report and the Petitioner’s Request and supporting materials, and the Respondent’s response to the Petitioner’s Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent’s dismissal of the Petitioner’s charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

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

1. The Petitioner filed a charge of discrimination with the Respondent on April 8, 2008. The charge was perfected on August 12, 2008. The Petitioner alleged her former employer, Bentz of Kankakee d/b/a Subway (“Employer”) discharged her because of her sex, female, related to her pregnancy, in violation of Section 2-102(A) of the Illinois Human Rights Act (the “Act”). On August 13, 2009, the Respondent dismissed the Petitioner’s charge for Lack of Substantial Evidence. On August 19, 2009, the Petitioner filed this timely Request.
2. On May 5, 1999, the Employer hired the Petitioner as an associate at its West Kankakee, Illinois location. In 2001, the Employer promoted the Petitioner to manager.
3. The Petitioner gave birth in September 2007. On October 4, 2007, the Petitioner submitted a written notice to the Employer indicating that she intended to resign from her Manager position

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the “Respondent.” The party to the underlying charge who is requesting review of the Department’s action shall be referred to as the “Petitioner.”

effective November 22, 2007. In the notice, she asked the Employer to retain her as an Associate. The Petitioner began her maternity leave on November 22, 2007.

4. On January 4, 2008, the Petitioner met with the Employer regarding her desire to return to work at the West Kankakee location as an Associate. The Employer advised her there were no Associate position available at the West Kankakee location. The Employer offered the Petitioner an Associate position at one of its other Illinois locations. The Petitioner declined the Employer's offer. Thereafter, the Employer discharged the Petitioner. The Employer stated it discharged the Petitioner due to staff changes and due to the Petitioner's refusal to accept the Employer's offer of an Associate position at an alternate location.
5. In her charge the Petitioner alleges the Employer discharged her because of her sex, female, related to her pregnancy. In her Request, the Petitioner argues: she was fired while on maternity leave, she was not aware she would be transferred to a new location when her maternity leave ended, and she was unfairly fired.
6. The Respondent asks the Commission to sustain the dismissal of the charge for lack of substantial evidence because there is no substantial evidence the Employer's stated reason for discharging the Petitioner was a pretext for unlawful discrimination.

Conclusion

The Commission's review of the Respondent's investigation file leads it to conclude that the Respondent properly dismissed 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).

The Commission agrees that there is no substantial evidence of pretext. Finding no substantial evidence of pretext, the Commission cannot substitute its judgment for the Employer's business judgment. See Berry and State of Illinois, Department of Mental Health and Developmental Disabilities, Charge No. 1994SA0240 (December 10, 1997).

The Commission finds no substantial evidence the Employer harbored a bias against the Petitioner because of her sex or her pregnancy. Rather, the undisputed evidence shows the Employer retained the Petitioner as an employee during the duration of her pregnancy, and offered her continued employment after she returned from maternity leave. The Petitioner admittedly declined the Employer's offer to place her at a different location because she believed the new location would be too far from her home.

The Employer also provided evidence that one of its other employees became pregnant shortly after hire, that the Employer continued to employ this employee after she had given birth, and the Employer subsequently promoted this other employee, first to manager and then to district manager.

In this case, the Petitioner merely speculates she was discharged because of her pregnancy. However, speculation does not constitute substantial evidence of discrimination. See Willis v. Illinois Dep't of Human Rights, 3007 Ill.App.3d 317, 326, 718 N.E.2d. 240 (4th Dist. 1999) Further, the undisputed facts do not support the Petitioner's contention that she was terminated while on maternity

leave. There is no evidence in the file which substantiates her speculation that she was discharged due her sex or pregnancy.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Bentz of Kankakee, d/b/a Subway as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 24th day of February 2010.

Commissioner Sakhawat Hussain

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen