

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)
FOR REVIEW BY:)

KATHERINE ANASTACIA HOLT,)
)
Petitioner.)

CHARGE NO.: **2021SF0743**
EEOC NO.: **21BA10253**
ALS NO.: **21-0300**

ORDER

This matter coming before the Commission on February 16, 2022, by a panel of three, Commissioners Robert A. Cantone, Barbara R. Barreno-Paschall, and Janice M. Glenn presiding, upon the Request for Review (“Request”) of Katherine Anastacia Holt (“Petitioner”), of the Notice of Dismissal issued by the Illinois Department of Human Rights (“Respondent”)¹ of Charge No. 2021SF0743, 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 the Respondent’s dismissal of Counts A and B of the Petitioner’s charge is **VACATED** and the counts **REMANDED** for a **FINDING OF SUBSTANTIAL EVIDENCE** and for further proceedings that are consistent with this Order and the Illinois Human Rights Act, and the dismissal of Count C is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.²

DISCUSSION

On November 20, 2020, the Petitioner filed a charge of discrimination with the Respondent alleging that City of Springfield (“Employer”) excluded her from insurance benefits due to her gender identity (Count A), her sex (Count B), and disability (Count C), in violation of Section 2-102(A) of the Illinois Human Rights Act. On June 2, 2021, the Respondent dismissed the Petitioner’s charge for Lack of Substantial Evidence. The Petitioner filed a timely Request.

The Commission now vacates the dismissal of Counts A and B of the Petitioner’s charge upon the request of the Respondent and remands the count for a finding of Substantial Evidence. The Commission further concludes that the Respondent properly dismissed Count C for Lack of Substantial Evidence. Under the Act, substantial evidence is “evidence which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance.” 775 ILCS 5/7A-102(D)(2).

¹ 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 Illinois Department of Human Rights’s action shall be referred to as the “Petitioner.”

² This order is entered pursuant to a 3-0-0 vote by the Commissioners.

The Petitioner was a Manager of Access Services for the Employer from February 17, 2020, to November 5, 2020. During her employment, the Petitioner received health insurance coverage through a self-funded employee plan sponsored and designed by the Employer. In February or March 2020, the Employer was made aware of the Petitioner's gender identity and sex, transgender female, and cited condition, gender dysphoria. The Employer's health benefit plan explicitly excluded coverage for sex transformation and hormones related to such treatment, except where required by law.

In February 2020, the Petitioner contacted Trustmark, the Employer's healthcare administrator, who confirmed that the Employer's benefits plan excluded coverage for transition-related care. On March 9, 2020, Sara Taylor from the Employer's human resources department told her that the Employer would not be able to change their plan. On March 11, 2020, the Petitioner emailed Benefits Manager Brook Jones to appeal the plan's exclusion of coverage for transition-related hormone treatment, arguing that the current plan discriminated based on gender identity. On April 14, 2020, Jones told the Petitioner that the Joint Labor Health Care Management Committee, comprised of management, union administration and support staff, discussed her appeal and opted not to make any changes to the plan. On June 18, 2020, Human Resources Director James Kuizin notified the Petitioner that the reason why her plea was rejected was because the law did not require coverage for transition-related care.

Jones stated that she was made aware of the Petitioner's gender identity on March 11, 2020, when the Petitioner emailed her. Jones became aware of the Petitioner's cited condition, gender dysphoria, after the Petitioner had spoken to Taylor. Employer Attorney Steven Rahn stated that hormones such as spironolactone, progesterone, and estradiol – the same hormone treatments for which the Petitioner requested coverage – were covered elsewhere in the health plan for uses outside of transition-related care.

Counts A and B

The Petitioner argues that the Employer unlawfully excluded her from health insurance benefits because of her gender identity, transgender (Count A), and sex, transgender (Count B). In order to establish a *prima facie* case of discrimination, the Petitioner must show that 1) she is a member of a protected class, 2) she was performing her job satisfactorily, 3) she was subjected to an adverse action, and 4) the Employer treated a similarly situated employee outside her protected class more favorably under similar circumstances. *Marinelli v. Ill. Human Rights Comm'n*, 262 Ill. App. 3d 247, 253 (2d Dist. 1994).

The Petitioner has established a *prima facie* case of discrimination: the Employer's health plan granted coverage to employees outside her protected class for the same hormones that were denied to the Petitioner. We agree with the Respondent that Counts A and B should not have been dismissed at this stage of the proceedings. We vacate the dismissal of Counts A and B and remand for a finding of Substantial Evidence.

Count C

The Petitioner also argues that the Employer unlawfully excluded her from health insurance benefits because of her disability, gender dysphoria. To establish a *prima facie* case of disability discrimination, the Petitioner must prove that 1) she is disabled within the definition of the Act; 2) her disability is unrelated to her ability to perform the functions of the job she was hired to perform; and 3) an adverse job action was taken against her related to her disability. *Ill. Dep't of Corrections v. Ill. Human Rights Comm'n*, 298 Ill. App. 3d 536, 540 (3d Dist. 1998).

In this case, the Petitioner has failed to establish a *prima facie* case because she did not establish that she had a disability as defined by the Act. The Act defines "disability" as a determinable mental or physical characteristic that is not transitory, must be significantly debilitating or disfiguring, and is unrelated to the person's ability to perform the duties of his job. 775 ILCS 5/1-103(I); 56 Ill. Admin. Code, Ch. II, § 2500.20(b). Here, the Petitioner has not offered evidence by way of medical documentation or personal attestation that her condition was permanent, significantly debilitating, and unrelated to her ability to perform the duties of her job. Because the Petitioner bears the burden of establishing a *prima facie* case of discrimination and has not done so, her claim fails.

In her Request, the Petitioner argues that she did not have to establish that she had a disability as defined by the Act because the Employer conceded that it knew that she had gender dysphoria. Gender dysphoria, however, is not per definition a disability. Gender dysphoria is understood to be discomfort or distress related to an incongruence between an individual's gender identity and the gender assigned at birth. *See Bostock v. Clayton Cty*, 140 S.Ct. 1731, 1773 (2020) (citing the American Psychological Association). The Petitioner has not pointed to anything in the investigation report that establishes that the Employer believed that the Petitioner's gender dysphoria was a disability or that her condition was not transitory and was significantly debilitating or disfiguring.

The Petitioner also argues that this Commission has determined that the absence of a Verification of Disability form need not be fatal to his claim. It is certainly true that there is no requirement in the Act for the Petitioner to produce a Verification of Disability form. The form, however, is one way in which the Petitioner can establish that she has a disability. In both of the Commission cases cited by the Petitioner for the proposition that a Verification of Disability form is not mandatory, disability was established by way of the defendant's acknowledgement that the aggrieved party was disabled. *In re Request for Review by: Darryl Jones*, IHRC, ALS No. 19-0024, 2019 ILHUM LEXIS 1123, *3 (August 13, 2019) (employer stated that the petitioner had been hired because of his disability); *In re Request for Review by: Michael Fortner*, IHRC, ALS No. 18-0376, 2019 ILHUM LEXIS 1154, *3 (August 13, 2019) (landlord stated that the petitioner was disabled). Here, there is no such acknowledgement; the Employer only stated that it was aware of the Petitioner's *condition* of gender dysphoria.

The Commission sustains the dismissal of Count C.

STATE OF ILLINOIS
COUNTY OF COOK

ALS NO(S): 21-0300
CHARGE NO(S): 2021SF0743
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CASE NAME(S): Katherine Anastacia Holt
vs. City of Springfield

AFFIDAVIT OF SERVICE

Shantelle Baker, being first duly sworn, on oath states that on **February 22, 2022**, she served a copy of the attached **Order** on each person named below by depositing the same in the **U.S. Mail Box at 100 W. Randolph Street, Chicago, Illinois 60601**, properly posted for **First Class Mail**, addressed as follows:

Joshua D Blecher-Cohen
Roger Baldwin Foundation of ACLU Inc
150 North Michigan Avenue, Suite 600
Chicago, IL 60601

Via e-mail to:

Illinois Department of Human Rights
IDHR/CDU@illinois.gov

Steven C Rahn
City of Springfield
Municipal Center East, Room 313
800 East Monroe St.
Springfield, IL 62701

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters, the undersigned certifies as aforesaid that she verily believes the same to be true.

Shantelle Baker