

**COOK COUNTY COMMISSION ON HUMAN RIGHTS**  
69 West Washington, Suite 3040  
Chicago, Illinois 60602

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Alicia ARROYO, Complainant	)	
	)	
v.	)	Case No. 2012E035
	)	
FOR EYES OPTICAL, Respondent	)	

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**ORDER**

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Complainant Alicia Arroyo (“Arroyo”) brought this action on November 26, 2012 against her former employer, Respondent For Eyes Optical (“Respondent” or “For Eyes”), for unlawful employment discrimination on the basis of a disability in violation of Section 42-35(b)(1) of the Cook County Code of Ordinances (“County Code”). Arroyo alleged that she took several days off of work after being diagnosed with shingles and then was denied the opportunity to return to work and was terminated. Compl., ¶ II. This Commission dismisses Arroyo’s complaint because a temporary illness, such as shingles, is not a disability for the purpose of the protections set out in Section 42-35(b)(1) of the County Code.

**Background**

Arroyo alleges that she began working for For Eyes on or around February 8, 2012 as an optometric assistant.<sup>1</sup> Compl., ¶ I. Although she had been employed for less than a year, documentation provided by Respondent shows that Arroyo requested and received leave from May 8, 2012 to June 25, 2012 in connection with the birth of a child.<sup>2</sup> See Resp. Pos. Stat., Exhs. 10, 12.

Approximately two months after returning to work, on August 27, 2012, Arroyo alleges that her direct supervisor observed a rash on Arroyo’s forearm and sent her to the hospital. Compl., ¶ II(A). An emergency room physician diagnosed this rash as shingles. *Id.* at ¶ II(B). According to the U.S. Center for Disease Control, shingles is a “painful rash . . . [that] forms blisters that typically scab over in 7-10 days and clears up within 2-4 weeks.”<sup>3</sup>

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<sup>1</sup> Respondent alleges that Arroyo’s employment began slightly earlier, on or about January 31, 2012, as an optical salesperson and specified that she worked at the For Eyes retail location at 7107 West Dempster Street, Niles, Illinois. Resp. Pos. Stat., p. 6.

<sup>2</sup> For Eyes has a policy that allows employees to obtain one 30-day period of leave per calendar year for medical leave with supporting documentation from a physician. See Resp. Pos. Stat., Exhs. 8, 11.

<sup>3</sup> Center for Disease Control and Prevention, “Shingles (Herpes Zoster,” online at <http://www.cdc.gov/shingles/about/symptoms.html> (visited Sept. 12, 2013).

There are several unresolved factual disputes at this stage of the Commission’s investigation, but both parties agree that Arroyo provided For Eyes with documentation from her physicians indicating that she needed several weeks off of work. Arroyo alleges that she provided For Eyes with medical documentation that had a return to work date of September 11, 2012. Compl., ¶ II(D). Documentation from Arroyo’s physicians (provided by Respondent) does not include a specific return to work date but For Eyes internal human resources paperwork lists Arroyo’s return to work date as September 17, 2012. *See* Resp. Pos. Stat., Exhs. 15-17.

The parties do not agree about what occurred after Arroyo’s initial first few weeks of Shingles-related leave (ending either September 11, 2012 or September 17, 2012). Arroyo alleges that she attempted to return to work, and her direct supervisor denied her the opportunity to do so. Compl., ¶ II(D). Respondent contends that rather than return to work, Arroyo once again attempted to provide it with medical documentation to extend her leave—now well beyond the company’s 30-day policy for non-FMLA eligible employees—and never returned after the expiration of this additional leave period.<sup>4</sup> *See* Resp. Pos. Stat., p. 7.

Either way, there is no dispute that Arroyo was terminated on September 29, 2012. Compl., ¶ II(E); Resp. Pos. Stat., Exh. 19.

### Discussion

The Cook County Human Rights Ordinance (the “Human Rights Ordinance”) prohibits an employer, *inter alia*, from discriminating against any individual in discharge or discipline “on the basis of unlawful discrimination.” County Code, § 42-35(b)(1). The Human Rights Ordinance defines “unlawful discrimination” to include discrimination on the basis of actual or perceived “disability” and then defines “disability” as:

- (1) A physical or mental impairment that substantially limits one or more of the major life activities of an individual;
- (2) A record of such an impairment; or
- (3) Being regarded as having such an impairment. Excluded from this definition is an impairment relating to the illegal use, possession or distribution of “controlled substances” as defined in schedules I through V of the Controlled Substances Act (21 U.S.C. § 812).

County Code, § 42-31.<sup>5</sup> The Commission’s procedural rules state that the central term, “physical

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<sup>4</sup> Although Respondent purports to provide documentation supporting this allegation to the Commission, this documentation appears to have been inadvertently omitted from Respondent’s Position Statement. *See* Resp. Pos. Stat., Exh. 18.

<sup>5</sup> This definition is a nearly verbatim replication of the definition of “disability” under the federal Americans with Disabilities Act (“ADA”). *See* 42 U.S.C. § 12102(2). The Commission treats authority interpreting the ADA as persuasive, though not binding, in its interpretation of the Human Rights Ordinance. CCHR Pro. R. 620.100.

and mental impairment,” used in the above definition excludes, “[t]emporary, non-chronic impairments.” CCHR Pro. R. 620.110. In establishing this rule, the Commission reasoned that temporary and non-chronic illnesses “do not have a long term or permanent impact upon an individual,” *id.*, and as such do not require protection from discrimination “to achieve the goal[] of independent living and full integration into society of and by people with disabilities.” *Id.* at 620.100.

In adopting this position with respect to temporary illnesses, the Commission is joined by the overwhelming number of courts to consider this question under various federal and state disability discrimination laws. *See, e.g., Garrett v. Univ. of Ala. at Birmingham Bd. of Trs.*, 507 F.3d 1306, 1315 (11th Cir. 2007) (“A severe limitation that is short-term and temporary is not evidence of a disability.”); *Adams v. Citizens Advice Bureau*, 187 F.3d 315, 317 (2d Cir. 1999) (finding plaintiff’s temporary impairment “too short [in] duration . . . to be ‘substantially limiting.’”); *McDonald v. Com. of Pa., Dep’t of Public Welfare*, 62 F.3d 92, 97 (3d Cir. 1995) (rejecting the claim of plaintiff who suffered “severe abdominal pain” for two month period because the ADA definition of “disability” does not cover “transient, nonpermanent condition[s]”); *Moore v. Donahoe*, 2012 U.S. Dist. LEXIS 100532, \*13-15 (N.D. Cal. Jul. 19, 2012) (rejecting EEOC complaint that described complainant’s disability as simply “sick”); *McAuliffe v. Taft Furniture Warehouse & Showroom, Ltd.*, 116 A.D.2d 774, 497 N.Y.S.2d 170 (NY App. Ct. 1986) (employer’s dismissal of injured at-will employee after she was unable to work for nearly two months did not violate Human Rights Law).

Arroyo admitted to the Commission that her bout with shingles was temporary in nature. Interview Report of A. Arroyo (Sept. 10, 2013). That admission is fatal. Putting aside the remaining factual disputes, in order for Arroyo to have a viable claim for disability discrimination under Section 42-35(b)(1), the temporary condition of having shingles must rise to the level of a disability. Under the Human Rights Ordinance, it does not.

### Conclusion

For the foregoing reasons, the Commission orders that complaint 2012E035 be DISMISSED for LACK OF SUBSTANTIAL EVIDENCE of a violation of the Human Rights Ordinance. In accordance with CCHR Pro. R. 480.100(B), either party may file a request for reconsideration with the Commission within 30 days of receipt of this order.

September 13, 2013

By delegation:



Ranjit Hakim  
Executive Director of the Cook Commission on  
Human Rights