

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

William J. FRITTS, Complainant)	
)	
)	Case No. 2013E012
v.)	
)	
LO VOLTAGE, INC., Respondent)	Entered: July 9, 2015
)	
)	

ORDER DENYING RECONSIDERATION

On May 6, 2013, Complainant William J. Fritts (“Fritts”) filed the above-captioned complaint with the Cook County Commission on Human Rights (“Commission”) against his former employer, Respondent Lo Voltage, Inc. (“Lo Voltage”). After a preliminary investigation, the Commission found that Fritts had enough evidence to merit a hearing on his charge of sexual orientation discrimination but reached the opposite conclusion with respect to his additional allegations of race- and sex-discrimination, leading to the dismissal of those charges. *Fritts v. Lo Voltage, Inc.*, 2013E012 (CCHRC Apr. 21, 2015) (evidentiary determination order).

Fritts did not seek reconsideration of these dismissals. But Lo Voltage, on May 21, 2015, filed a timely request for the Commission to reconsider its decision not to also dismiss Fritts’s claim of unlawful sexual orientation discrimination. Fritts’s response to this request raises the novel question of whether a respondent can request reconsideration of a finding of substantial evidence that does not result in the dismissal of the complainant’s entire complaint.

DISCUSSION

The Commission’s current procedural rules provide a different process for reconsideration of a prehearing evidentiary determination depending on whether that decision is a finding of substantial evidence or a finding of a lack of substantial evidence. Rule 480.100(A) states, in relevant part, that:

After the Commission has issued an order dismissing a Complaint other than after an Administrative Hearing, including a dismissal because of a finding of lack of substantial evidence . . . either party may obtain review of the order by filing a Request for Reconsideration with the Commission and serving copies on all other parties within 30 days from the date of the Commission’s order.

CCHR Pro. R. 480.100(A). This rule, by its explicit terms, contemplates that a complainant whose claim was found lacking after a preliminary investigation could immediately request

review of a Commission order dismissing for lack of substantial evidence (an “LSE,” in Commission parlance). The logic behind such a rule is that an LSE ends the Commission process for the complainant with respect to a particular claim. The Commission’s boilerplate notice of rights that appears at the end of every evidentiary determination order (including the one in this matter) parrots the language of Rule 480.100(A) that “either party may obtain” such review; however, one can scarcely imagine why respondents would seek review of LSE dismissals, which are functionally summary judgments in their favor.

The temptation is to assume that this “either party” language implicitly allows respondents to also seek immediate reconsideration of what they might consider to be an adverse evidentiary determination, *i.e.* a finding of substantial evidence (an “SE”). But, of course, an SE order does not result in the dismissal of a complaint and removal of the matter from the Commission’s docket. It does the opposite, allowing the complaint to continue to an administrative hearing on the merits where the respondent automatically has another opportunity to demonstrate that the complainant’s claims are without legal or factual merit.¹

The reconsideration of an SE determination is governed by a separate provision of the Commission’s procedural rules that deals with interlocutory orders generally. Rule 480.100(B) provides for review of such orders, but, in most cases, only after a hearing on the merits:

After the Commission or a Hearing Officer has issued an interlocutory order . . . any party may obtain review of the interlocutory order only after the Commission has issued an order dismissing the Complaint, or as part of its objections to the Hearing Officer’s initial proposed decision and order following an Administrative Hearing. The requesting party must file its objections, if any, to the interlocutory order, within 21 days from the date of the initial proposed decision and order.

CCHR Pro. R. 480.100(B).²

This case presents an atypical scenario because the Commission’s evidentiary determination in this matter was mixed: an LSE with respect to two of Fritts’s claims and an SE

¹ If anything, the “either party” language actually refers back to the other instance in which Rule 480.100(A) makes immediate reconsideration explicitly available, an adverse default judgment that ends the Commission process for a respondent with a finding of liability. *See* CCHR Pro. R. 480.100(A) (“[A]fter the Commission has issued a default order and judgment . . . either party may obtain review of the order by filing a Request for Reconsideration with the Commission and serving copies on all other parties within 30 days from the date of the Commission’s order”). In any case, what Lo Voltage’s request for reconsideration and Fritts’s response make clear is that the Commission must revise the notice of rights that typically appears at the end of its evidentiary determination orders in mixed outcome cases such as this to make clearer that only the lack of substantial evidence determination is immediately reviewable.

² If, as appears to be the case here, a respondent is seeking reconsideration of an SE order specifically to avoid the time and expense of an administrative hearing, only being able to seek review of such an order after an administrative hearing may be unsatisfactory. This practical burden, however, is not distinguishable from the impact on a respondent in the one specific example of an interlocutory order that parties must wait to seek reconsideration of pursuant to Rule 480.100(B): “a ruling on a motion challenging jurisdiction.” *See* CCHR Pro. R. 480.100(B).

with respect to one. But although this mixed ruling resulted in the dismissal of certain claims in Fritts's complaint, it did not result in the dismissal of the complaint as a whole so as to fit comfortably within the contours of Rule 480.100(A). Similarly, if SE decisions are generally only reviewable after an administrative hearing, in part, because the hearing itself provides respondents with a built-in opportunity to re-challenge the legal and factual merit of a complainant's case, there is no compelling reason to treat the SE portion of an LSE/SE decision differently for the purpose of interlocutory review.

When Mr. Jones testifies at the administrative hearing in this matter, he will have ample opportunity to provide additional context for his statement that he hired Fritts, in part, because he thought that Fritts's sexual orientation would help Fritts get along with women in the Lo Voltage workplace. Lo Voltage will also get a second bite at the apple in arguing to the administrative law judge in this matter that, based on the facts as they are developed and presented at the administrative hearing, Mr. Jones should be entitled to the same actor inference; that Fritts's testimony in support of his claim is not credible; and/or that Fritts has insufficient other evidence to raise a *prima facie* case of sexual orientation discrimination.

For the foregoing reasons, the Commission DENIES Lo Voltage's REQUEST FOR RECONSIDERATION as PREMATURE. The Commission orders that this matter continue to proceed towards a November 3, 2015 administrative hearing on the merits of the claim of unlawful sexual orientation discrimination in Complaint No. 2013012.

July 9, 2015

By delegation:



Ranjit Hakim
Executive Director of the Cook County
Commission on Human Rights