STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF: **Gayle McDaniel**, Complainant, and **Little Company of Mary and Health Care Centers**, Respondent.	)	CHARGE NO(S): **2019CA1557** EEOC NO(S): **21BA90821** ALS NO(S): **20-0233**

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above-named case. Accordingly, pursuant to Section 8A-103(A) and/or 8B-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

Entered this November 22, 2023

Tracey Fleming
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF: **GAYLE MCDANIEL**, Complainant, v. **LITTLE COMPANY OF MARY AND HEALTH CARE CENTERS**, Respondent.	Charge No.: 2019-CA-1557 EEOC No.: 21-BA-90821 **ALS No.: 20-0233** **Administrative Law Judge Azeema N. Akram**

RECOMMENDED ORDER AND DECISION

Before this administrative court is a motion for summary decision filed by Respondent Little Company of Mary Hospital and Healthcare Centers ("Respondent"), along with attached exhibits including the affidavit of its Human Resources Business Partner, Cathleen Cronin. *See* Respondent's Memo. of Law in Support of its Mot. for Summ. Decision ("Mot.") (filed April 7, 2023). Complainant Gayle McDaniel ("Complainant") filed a response along with attached exhibits, but without a counter-affidavit. *See* Response to Mot. for Summ. Decision ("Response") (filed June 20, 2023). Respondent subsequently filed a reply in support of its motion. *See* Respondent's Reply Br. in Support of its Mot. for Summ. Decision ("Reply") (filed Aug. 11, 2023). The motion is thus fully briefed and ready for decision.

For the reasons discussed below, Respondent's motion for summary decision is GRANTED, and judgment as a matter of law is entered in Respondent's favor.

RESPECTIVE CONTENTIONS OF THE PARTIES

Respondent is a hospital and healthcare center located in Evergreen Park, Illinois with facilities throughout the southwest Chicagoland area. Complainant began working for Respondent

in August of 2007 as a Surgical Scheduling Assistant. While neither party provides a precise description of the duties and responsibilities of a "Surgical Scheduling Assistant," the pleadings and exhibits suggest that Complainant was responsible for scheduling a high volume of surgical procedures in Respondent's surgery department, which involved scheduling and coordinating requests for surgery and maintaining the surgery schedule.[1]

On September 5, 2018, Complainant's employment with Respondent ended, the circumstances of which are in dispute. Over six months later, Complainant filed a Charge of Discrimination ("Charge") with the Illinois Human Rights Department (the "Department") alleging that she was unlawfully discharged after eleven (11) years of harassment based on her age (56), race (black), and disabilities (stroke disorder and liver disorder). *See* Ex. 1 (Charge of Discrimination No. 2019-CA-1557) (signed March 18, 2019). She further claims that she was "scapegoated, treated differently than other employees" with respect to the attendance policy, which "was initially not enforced and then selectively enforced" when Respondent hired a new Manager of Patient Care Services, Melissa Latus. Response at 11.

Respondent moves for summary decision, arguing that there are no genuine issues of material fact and that it is entitled to a judgment as a matter of law on several grounds. First, the Commission lacks jurisdiction over Complainant's harassment claims, which are untimely and based on alleged incidents occurring at least four years preceding the filing of her Charge. Motion at 12–14. Additionally, Complainant cannot establish a *prima facie* case of unlawful discrimination based on age, race, and disability because she did not suffer an adverse action when

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[1] Unless otherwise indicated, the facts summarized in this section are either uncontested or admitted by the parties in their respective submissions. Where facts are disputed, citations to pleadings and other exhibits appearing in the record are provided.

As discussed later in this opinion, Complainant's exhibits are all disregarded and thus, all citations to exhibits are to Respondent's exhibits only.

she resigned from her employment. *Id*. at 21–23. Even if she had suffered an adverse action, Complainant is unable to show that similarly-situated employees outside her protected classes were treated more favorably than she was for similar violations of Respondent's attendance policy. *Id*. at 14–17. Finally, Complainant cannot establish a *prima facie* case of unlawful discrimination based on disability because she fails to demonstrate that she was disabled within the meaning of the Illinois Human Rights Act. *Id*. at 17–18.

I. Respondent's Attendance Policy

"In order to maintain quality levels of service and patient care," Respondent's employees are "required to be on duty as scheduled, to perform assignments effectively" and "comply with the rules and regulations of the department." Ex. 12 (Employee Handbook), RESP 0019-0020. "Failure to report for work as scheduled disrupts the smooth functioning of the Hospital, affects the quality of care given, and puts undue burden on others." *Id*.

During the period of time relevant to the allegations described in the Complaint (the "relevant time period"), Respondent had in effect a Timekeeping/Work Recording Policy that states the following, in relevant part:

> A non-exempt employee is required to record hours worked through the use of the time and attendance system. An employee is required to "phone in" at the designated phone in the department they are assigned to work. An employee is also required to enter approved benefit time into the time and attendance phone system.
>
> An employee is responsible to be at the work area on time, and is responsible for recording their time worked. An employee is required to phone in no earlier than seven (7) minutes before the scheduled starting time, and phone out no later than seven (7) minutes after ending time, unless authorized by the Supervisor. . . .
>
> An employee that fails to phone in/out, or fails to enter approved benefit time, is required to notify the Supervisor as soon as possible, or before the end of the pay period. . . .

Id. at RESP 0007). Additionally, Respondent's Attendance and Tardiness Policy allowed employees to accrue up to seven (7) occurrences before termination of employment under a progressive corrective action based on the number of absences within a 12-calendar-month period of time. *Id*. at RESP 0019-0021; Ex. 30 (Cronin Affidavit), ¶ 8. Under this policy, employees would accrue the following occurrence amounts for certain tardies or absences, in pertinent part:

[Infraction]	**Occurrence Amount**
Tardiness: Reporting to work one minute to less than an hour after the start of the assigned shift. . . .	0.25
Tardy greater than 1 hour. Reporting to work more than an hour after the start of the assigned shift	0.5
On Call Tardiness: Fails to report for a[n] [on call] shift within the required timeframe	0.25
Failure to Clock In/Out: Missed clocking in or out for a shift	0.25
Clocking in Early at Start of Shift/Clock out after shift ends: Unapproved early clocking (more than 7 minutes) before the start of the shift. Unapproved late clocked out (after 7 minutes). . . .	0.5
Leaving Shift Early: Leaving shift less than 1 hour before the end of shift	0.5
Called off in less than required notice for both scheduled and on-call shifts (must call in 2 hours prior to start of shift). When on-call, call off must be 4 hours prior to the start of shift	2.0
Unscheduled Absence . . .	1.0

Ex. 12, RESP 0020. However, absences associated with the Family and Medical Leave Act ("FMLA") are excluded from the occurrence accrual for corrective action purposes. *See id*.; *see also* Ex. 30, ¶ 8). Throughout this opinion, the Timekeeping/Work Recording Policy and Attendance and Tardiness Policy will be referred to together as simply "the policy."

II. Allegations Relevant to Complainant's Claims

A. Alleged Harassment

Complainant elected to file her Complaint by incorporating by reference the Charge she filed with the Department (the "Department") on March 18, 2019. There, she pled that from August 2007 through September 5, 2018, she was harassed by Respondent's Director of Surgery Mary Ryan (white, 60s) and Assistant Supervisor Michael Baker (white, 60s), who "constantly

criticized [her] work performance," "told [her] that [she] could not speak good grammatically, and "told [her] that [she] had a bad memory or suffered from memory loss." Complainant further pled that she was harassed by Supervisor Diana Douglas (white, 60s) and Manager Melissa Latus (white, 50s), who "constantly blamed [her] for anything that went wrong in the department although [she] had nothing to do with the problem, "assigned [her] a heavy case load" which resulted in time where she worked "alone without any help," and "forced [her] to train other schedulers without compensation." Additionally, Complainant alleges that Respondent was aware of her disabilities, and that similarly-situated non-black, younger, employees with no known disability were treated more favorably than she was.

B. Complainant's Use of FMLA Leave

Complainant utilized FMLA leave intermittently based on certain health conditions. Respondent approved her request for intermittent FMLA leave from January 19, 2017, through July 19, 2017. *See* Ex. 24 (2017 FMLA Forms), RESP 0184-0188. She also took a medical leave of absence on June 13, 2017, and June 14, 2017; and July 14, 2017, through July 16, 2017. *See* Ex. 25 (Return to Work Form dated June 15, 2017) and Ex. 26 (Return to Work Form dated July 17, 2017). Though Complainant was notified that her FMLA leave was set to end on July 19, 2017, she did not submit additional FMLA intermittent leave paperwork until May 9, 2018. *See* Ex. 24, RESP 0188; *see also* Ex. 27 (2018 FMLA Forms), RESP 0220 and 0210. Respondent approved Complainant's intermittent FMLA leave again from March 24, 2018, through September 24, 2018. *See id*. Further, Complainant took medical leaves of absence from April 26, 2018 through May 1, 2018, on June 19, 2018, June 21, 2018, and June 22, 2018. *See* Group Ex. 28 (Various Return to Work Forms), RESP 0223, 0225-0227.

Complainant argues that various occurrences included in the August 31, 2018 Corrective Action Report should not have been counted under the attendance policy because these dates should have been classified as intermittent FMLA leave. *See* Ex. 11, pp. 6–8. In opposition, Respondent proclaims that Complainant's contentions about these dates neither address nor excuse all the dates listed in the Corrective Action Report. *See* Ex. 22. Specifically, on August 21, 2018 Complainant was marked as tardy and Complainant provides no explanation for that date; on August 14, 2018 Complainant was marked as tardy and provides no explanation for that date; on July 23, 2018, though Complainant provided notice she was caught by a train, that does not excuse her from being tardy to her shift; on July 11, 2018, the same train excuse does not excuse her tardiness; on June 18, 2018, a review of the timekeeping report from 2018 reveals that Complainant was given a tardy for being late to her shift, not for leaving early for a Doctor's appointment. *See* Ex. 29 (Complainant's Time Detail Report), McDaniel 0013. Respondent further asserts that with just these tardy occurrences, Complainant reaches over 8 occurrences under the attendance policy, "which justifies termination of employment under" same. *See* Ex. 30, ¶ 13.

C. Complainant's Alleged Attendance Violations

Respondent contends that although Complainant was generally satisfactory at performing her job responsibilities as a Surgical Scheduling Assistant, such contention is immaterial because she had a history of attendance and tardiness issues that led to disciplinary action. Complainant's attendance and tardiness issues were first documented in her 2011–2012 annual evaluation. *See* Ex. 13 (2011-2012 Annual Performance Review), RESP 0069-0071. Specifically, it noted that Complainant "needs reminding that time frames exist for attendance and punctuality" and that she needs to "take care of personal business…before [her] scheduled start time and remember to clock in." *Id*.

The next year, Complainant's 2012–2013 annual evaluation noted that she was in violation of the attendance and tardiness policy but did meet the minimum attendance requirement for department staff meetings. *See* Ex. 14 (2012–2013 Annual Performance Review), RESP 0073-0075. Complainant's next evaluation for 2013–2014 noted that Complainant was in violation of the Attendance and Tardiness Policy and had not met the minimum attendance requirements for department staff meetings. *See* Ex. 15 (2013–2014 Annual Performance Review), RESP 0076-0078. Complainant was subsequently advised in her 2013–2014 evaluation that her habitual tardiness had a negative effect on scheduling and that she was expected to be at work at her scheduled time. *Id*.

In her 2014–2015 annual evaluation, Complainant had demonstrated improvement in her attendance and timeliness and, though she was disciplined for failing to request a late arrival, she had sought approvals for late arrivals since an instance in August 2015. *See* Ex. 16 **(**2015 Annual Appraisal), RESP 0079-0081). In her 2015–2016 evaluation, however, Complainant was placed on a performance improvement plan for punctuality based on three sick call-ins in October 2015, and was coached on maintaining up-to-date FMLA documentation. *See* Ex. 17 (2016 Annual Appraisal), RESP 0082-0084. In Complainant's 2016–2017 evaluation, it was again noted that Complainant had not met Respondent's attendance and punctuality requirements and she was instructed that she needed to improve her punctuality "immediately." *See* Ex. 18 (2017 Annual Appraisal), RESP 0086-0088.

Complainant continued with her attendance and tardiness issues the following year. Her 2017–2018 evaluation noted that her attendance and punctuality needed improvement and that she had progressed in the disciplinary process during the year due to these issues. *See* Ex. 19 **(**2018 Annual Appraisal), RESP 0089-0091.

Complainant's attendance and timeliness issues are also documented in the Corrective Actions she was issued. Respondent argues that despite repeated opportunities to correct these issues over several years, Complainant's attendance and punctuality issues did not improve. On March 2, 2018, Complainant's infractions brought her to the 8-occurrence threshold for discharge under the tardiness and attendance policy. Respondent avers that its management decided to provide Complainant with another chance and, instead of terminating Complainant's employment, issued a Corrective Action involving a three-day suspension to Complainant with the hope that Complainant would realize the seriousness of punctuality and remediate her attendance and tardiness issues. *See* Ex. 20 (March 2, 2018, Corrective Action Report), RESP 0120. Complainant was notified that "any further infractions of tardiness, attendance or job performance [would] result in termination." *Id*.

After this discipline was issued, a new Manager of Patient Care Services, Melissa Latus ("Manager Latus"), was hired by Respondent on May 29, 2018. *See* Answer, 7. Over the next few months, Manager Latus purportedly reviewed the Surgical Department's disciplinary records and performed an audit of attendance and tardiness issues. *See id*. During her review, Complainant was one of eleven employees who were found to have violated the Attendance and Tardiness Policy, and the other ten employees were discharged based on similar violations of the Attendance and Tardiness Policy ("attendance policy"). *See id*.; *see also* Ex. 21 (Former Employee Termination Forms and Corrective Actions), RESP 0285-0305. When Manager Latus reviewed Complainant's attendance at the end of August 2018, she found that Complainant had accrued 11.25 occurrences in the prior 12-month period—well over the 8 occurrences directed by the Attendance and Tardiness Policy as cause for termination of employment. *See* Ex. 22, McDaniel

0021. Specifically, the Employee Corrective Action Report prepared by Manager Latus on August 31, 2018 included the following occurrences:

Dates	Occurrences
August 31, 2017 through March 3, 2018	7
April 16, 2018	1
May 3, 2018	1
June 18, 2018	.25
July 11, 2018	.25
July 23, 2018	.25

See id. The Report indicates that the corrective action being taken is "TERMINATION," and handwritten notes explaining that prior to receiving it, Complainant resigned "per letter of resignation." *Id*. Manager Latus signed the Report on September 5, 2018, with initials provided on the Director of Human Resources signature line dated September 13, 2018. *See id*.

D. Alleged Discharge on September 5, 2018

Complainant also pled in her Charge that Manager Latus (white, 50s) terminated her employment for violating Respondent's attendance policy on September 5, 2018. Complainant alleges that similarly-situated non-black, younger, employees with no known disability were not discharged under similar circumstances. Respondent disputes this, averring that Complainant resigned in lieu of being fired. In support of this contention, Respondent provides its internal paperwork for unemployment claims reflecting that Complainant "resigned prior to [corrective action] being given," and a letter purportedly handwritten by Complainant stating that "as of this date September 5th, 2018 I wish to resign as your Assistant Surgery Scheduler." Ex. 23 at RESP 0123, 0125.

In her response to Respondent's Motion, Complainant argues for the first time that she was forced to resign (*i.e*., constructively discharged) due to the intolerable working conditions once Manager Latus became her supervisor. Specifically, she claims that once Manager Latus was hired, "instantaneously the attendance regulations were selectively enforced" against

Complainant. For example, "despite exchanging shifts with a co-worker and having authorization from a counterpart," Complainant was marked as "tardy" on August 29, 2018. Furthermore, Elizabeth Stroder (white) and Sharon Lisula (white) "received special accommodations such as not being written up for attendance despite having similar attendance records as" Complainant. Then, during the months of April, May, June, and July of 2018, McDaniel was marked tardy when she was attending a doctor's appointment. In August 2018, Complainant "informed her employer that she will be attending a parent teacher conference" and worked a 7-hour shift, yet was marked tardy. Lastly, also in August of 2018, Complainant was given permission by Supervisor Diana Douglas ("Supervisor Douglas") to switch shifts and was still marked as tardy that day.

III. The Identification of Comparators

In her supplemental interrogatory answers, Complainant has identified certain employees outside her protected classes who she alleges were treated more favorably than she was. Respondent also identified several employees that it terminated for similar violations to those committed by Complainant. Information on each party's proposed comparators is set forth below.

A. Elizabeth Stroder

According to Complainant, Elizabeth Stroder ("Stroder") is a white woman (age unknown) who was Complainant's peer as "surgical staff," and who was treated "with accommodations and understanding regarding unscheduled time-off for personal matters and late arrivals to work." Response at 3; Ex. 11 (Complainant's Supp. Response to Respondent's First Set of Interrogs. To Complainant), p. 9. Additionally, Stroder "often made many mistakes on the job and never received corrective action." *Id*. "Stroder was allowed to care for her ailing husband by leaving work to check on him during the workday and return to work without incident," whereas Complainant "was required to punch out and leave for the remainder of the day" when her

"children were sick at school." Ex. 11, p. 8. Further, Complainant was written up by upper management for unspecified "errors" and "mishap[s]," while Stroder avoided discipline for those same errors and mishaps. *Id*. at 9. This was because upper management had "differing attitudes" towards Complainant as opposed to others. *Id*. An example is that Complainant would be "blamed for inefficiencies occurring such as equipment issues or missing patient information was the fault of the nurse." *Id*.

B. Sharon Lisula

Complainant alleges that Sharon Lisula ("Lisula") is a white woman (age unknown) who was also Complainant's peer as "surgical staff," and was treated more favorably than Complainant in the same way Stroder was (except for caring for her husband). She further alleges that "Lisula was involved in a sexual relationship with the Head Anesthesiologist, which allowed her favorable treatment." Response at 3. Also, "Lisula would come to work under the influence and was allowed to stay." Ex. 11, p. 6. "Lisula was allowed to take off work to attend her son's first day of school and another school program." *Id*. at 8.

Complainant described a specific incident where she was blamed for Lisula's mistake or omission. On this unknown date, Complainant "had left for the day because [she] requested a half day off." *Id*. at 8–9. While she was out, "a request came in via fax," with the "fax time [] incorrect and appeared as the fax arrived when [Complainant] was there." *Id*. Since it came in after Complainant left, she "didn't complete the schedule for the day," which became Lisula's responsibility. *See id*. Apparently, the "fax machine is to be checked constantly and anything to be processed for the schedule of the following day should be put on the schedule." *Id*. Since neither Lisula nor anyone else checked the fax, Complainant "was written up for this." *Id*.

C. Sonya Felores

Complainant names Sonya Felores ("Felores") as a third proposed comparator. However, no other information is provided other than that, along with Stroder and Lisula, Felores was "similarly employed and were treated more favorably than [Complainant] based on [her] age and race," neither of which are specified. Ex. 11, p. 20. Also, like Stroder and Lisula, Felores was "allowed to request time off without any hesitation or second thought by management including on the same day." *Id*.

D. Respondent's Comparators

Respondent provided termination forms and corresponding corrective action forms for ten employees it terminated for the same attendance/tardiness violations as Complainant, for the period of time between September 1, 2018 and June 10, 2019. They are as follows:

- **Nareman Abed** (white, 36-years-old), a Registered Nurse in Respondent's Intensive Care Unit, was terminated on January 10, 2019 for nine (9) occurrences. *See* Ex. 21 at RESP 0289–0288.
- **Latrese Anderson** (black, 25-years-old), a Care Companion in Respondent's department of the same name, was terminated on September 17, 2018. *See id*. at RESP 0287–0290. It is not specified how many occurrences she incurred, but she committed all attendance violations on July 9, 2018, and August 14, 27, 30, and 31, 2018. *See id*.
- **Yvette Baylor** (black, 50-years-old), an Environmental Technician in the Environmental Services department, was terminated on March 20, 2019 for exceeding eight (8) occurrences. *See id*. at RESP 0291–0292. Prior to termination, she received a 1-day suspension for "No Call-No Show" on August 30, 2018 and a 3-day suspension on December 20, 2018 for "Attendance." *See id*.
- **Adam Bean** (white, 19-years-old), a Transportation Aide in the Transportation department, was terminated on May 17, 2019 for exceeding eight (8) occurrences. *See id*. at RESP 0293–0294.
- **Xyavia Geigel** (multi-racial, 29-years-old), a Care Partner at facility, was terminated on May 2, 2019 for fifteen ¼ (15.25) occurrences. *See id*. at RESP 0291–0292.
- **Alicia Gipson** (black, 29-years-old), a Medical Assistant in the Practice Support department, was terminated on March 18, 2019 for fourteen ½ (14.5) occurrences. *See id*. at RESP 0297–0298.

- **Victor Hill** (black, 34-years-old), an Environmental Technician in the Environmental Services department, was terminated on June 4, 2019 for thirteen ¾ (13.75) occurrences. *See id*. at RESP 0299–0300.
- **Raven Johnson** (black, 25-years-old), a Physical Therapy Tech in Respondent's department of the same name, was terminated on March 15, 2019. *See id*. at RESP 0301–0302. Prior to termination, she received two verbal warnings, a written warning, and suspension, all for tardies and missed punches within a four-month period. *See id*.
- **Dana Rhodes** (white, 32-years-old), a Registered Nurse in Respondent's Emergency department, was terminated on April 15, 2019 for possibly less than eight (8) occurrences. *See id*. at RESP 0303–0304. She was going to be suspended on April 5, 2019, but when her supervisor "went to the unit to look for" her to inform her of the discipline, "she was gone," supposedly because "she left since her child was sick." *Id*. However, she had not received authorization from management to leave early, and was thus terminated. *See id*.
- **Sheryl Urzedowski** (white, 46-years-old), a Medical Lab Tech at one of Respondent's laboratories, was terminated on January 23, 2019 for attendance violations. *See id*. at RESP 0305. No further specific information is provided.

CONCLUSIONS OF LAW

Based on the evidence submitted in this case and the pleadings before me, I make the following conclusions of law:

1. This Commission has jurisdiction over this matter and over the parties who have appeared in this case.

2. During the time period relevant to the allegations described in the Complaint, Complainant was an "Employee" of Respondent as defined by the Illinois Human Rights Act. *See* 775 ILCS 5/2-101(A)(1)(a). As such, Complainant is authorized to invoke the protections of the Act.

3. During the time period relevant to the allegations described in the Complaint, Respondent was an "Employer" of Complainant as defined by the Illinois Human Rights Act. *See* 775 ILCS 5/2-101(B)(1)(a). As such, Respondent is subject to the provisions of the Act.

4. The Commission lacks jurisdiction over Complainant's claims of unlawful harassment for untimeliness under 775 ILCS 5/7A-102(A)(1).

5. Complainant cannot establish a *prima facie* case of unlawful discrimination based on her age, race, and/or disabilities because she has failed to present evidence demonstrating that she suffered an adverse action when she resigned. Further, Complainant failed to present evidence demonstrating that similarly-situated individuals outside her protected classes were treated more favorably than she was for similar violations of Respondent's attendance policy.

6. Respondent articulated a legitimate, nondiscriminatory reason for its actions, *i.e.*, that Complainant was unable to meet Respondent's legitimate business expectation to comply with its attendance policy.

7. There are no genuine issues of material fact precluding judgment on the pleadings, and Respondent is entitled to a judgment as a matter of law.

LEGAL STANDARD: SUMMARY DECISION

Section 8-106.1 of the Illinois Human Rights Act (the "Act") authorizes any party to move for summary decision "as to all or any part of the relief sought." 775 ILCS 5/8-106.1. Summary decision is the "procedural analogue" to a motion for summary judgment filed under the Illinois Code of Civil Procedure. *Cano v. Vill. of Dolton*, 250 Ill. App. 3d 130, 138, 620 N.E.2d 1200 (1st Dist. 1993). As such, summary decision (or summary judgment) is only granted where the pleadings, depositions, admissions, and affidavits on file—when viewed in the light most favorable to the non-moving party—demonstrate that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. *Adams v. N. Ill. Gas Co.*, 211 Ill. 2d 32, 43 809 N.E.2d 1248 (2004). "Material" facts are those that might affect the outcome of the case under the applicable substantive law. *GreenPoint Mortgage Funding, Inc. v. Hirt*, 2018 IL

App (1st) 170921, ¶ 17, 97 N.E.2d 66, citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505 (1986).

Although not required to prove their case as if at a hearing, the non-moving party must provide some factual basis for denying the motion. *Birck v. City of Quincy*, 241 Ill.App.3d 119, 121, 608 N.E.2d 920, 922 (4th Dist. 1993). Only facts supported by evidence, and not mere conclusions of law, should be considered. *Chevrie v. Gruesen*, 208 Ill.App.3d 881, 883-84, 567 N.E.2d 629, 630-31 (2d Dist. 1991). If a respondent supplies sworn facts that, if uncontroverted, warrant judgment in its favor as a matter of law, a complainant may not rest on her pleadings to create a genuine issue of material fact. *Fitzpatrick v. Ill. Human Rights Comm'n*, 267 Ill.App.3d 386, 392, 642 N.E.2d 486, 490 (4th Dist. 1994). Where the party's affidavits stand uncontroverted, the facts contained therein must be accepted as true and, therefore, a party's failure to file counter-affidavits in response is frequently fatal to their case. *Rotzoll v. Overhead Door Corp*., 289 Ill.App.3d 410, 418, 681 N.E.2d 156, 161 (4th Dist.1997).

Summary decision is not granted where material facts are in dispute, or where reasonable persons might draw different inferences from undisputed facts in the record. *Adams*, 211 Ill. 2d at 43. At the same time, a court may not weigh the evidence or assess the credibility of a witness when ruling on a motion for summary judgment. *See Hollenbeck v. City of Tuscola*, 2017 IL App (4th) 160266, ¶ 34, citing *Coole v. Central Area Recycling*, 384 Ill. App. 3d 390, 396, 893 N.E.2d 303 (2008). This is because the purpose of summary decision is not to try a question of fact, but rather to determine if one exists. *See Happel v. Wal-Mart Stores, Inc.*, 199 Ill. 2d 179, 186, 766 N.E.2d 1118 (2002). However, "[m]ere speculation, conjecture, or guess is insufficient to withstand summary judgment." *Bowles v. Owens-Illinois, Inc*., 2013 IL App (4th) 121072, ¶ 19,

996 N.E.2d 1267, 1272, citing *Sorce v. Naperville Jeep Eagle, Inc*., 309 Ill. App. 3d 313, 328, 722 N.E.2d 227, 237 (1999).

Because summary judgment is a "drastic" method of resolving litigation, it is generally granted only where the right of the moving party is "clear and free from doubt." *Gilbert v. Sycamore Mun. Hosp.*, 156 Ill. 2d 511, 518, 622 N.E.2d 788 (1993) (citations omitted).

DISCUSSION AND FINDINGS

Under the Illinois Human Rights Act, a complainant can prove discrimination (and any associated claims of retaliation) either by introducing direct and/or circumstantial evidence of an unlawful practice, or by utilizing the indirect, burden-shifting approach first announced by the United States Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973). Here, because Complainant has no "direct" evidence of discrimination on the part of Respondent, she must proceed by burden-shifting under the indirect theory of persuasion. Yet even with benefit of every reasonable inference drawn in her favor, Complainant cannot show a genuine dispute of material fact that might lead to the conclusion that Respondent treated her unlawfully (or even differently) based on her age, race, and disabilities. [2]

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[2] As Respondent correctly notes, Illinois law—not federal law—governs the summary decision standard to be applied in the instant matter. Yet Complainant's brief relies solely on Federal case law and statutes, thereby failing to identify any support for her arguments in Illinois case law or over 40 years of Commission precedent.

"[T]he Commission is not bound to follow the decisions of federal courts with respect to analogous federal law, the Commission will look to analogous federal court rulings as persuasive precedent when faced with difficult cases under the Human Rights Act." *In re Moore v. State of Ill.*, *Dep't of Public Aid*, Charge No. 1981SF0475, 1984 ILHUM LEXIS 72, *7 (Dec. 13, 1984) (citing *City of Cairo v. FEPC*, 21 Ill.App.3d 358, 315 N.E.2d 344 (1974)); *see also In re Ill. Dep't of Human Rights & King v. Anderson & Hasan*, ALS No. 19-0097, 2023 ILHUM LEXIS 111, fn. 9 (Jan. 23, 2023) (internal citations omitted) ("It is well established that federal cases which decide analogous questions under federal law are 'helpful, but not binding on the Commission in deciding a case under the Act.'").

Here, the legal issues are neither difficult nor out of the ordinary, and Complainant has failed to cite any Illinois or Commission precedent to support her arguments. Thus, Complainant's citations to federal law are only persuasive and not precedential in this matter.

I. Complainant Relies on Inadmissible Evidence

I first note that Complainant fails to submit a counter-affidavit in response to the sworn statements of Cathleen Cronin, Respondent's Human Resources Business Partner. (*See* Memo., Exhibit 30; *see generally* Response.). "Where the movant's affidavits stand uncontroverted, the facts contained therein must be accepted as true and, therefore, a complainant's failure to file counter-affidavits in response is frequently fatal to [their] case." *In re Leskovec v. Game Works, LLC*, ALS No. 06-049, 2010 ILHUM LEXIS 136, *9 (Aug. 23, 2010). Thus, I find that the sworn facts contained in Cronin's Affidavit are to be accepted as true, as a matter of law. *See* Ex. 30.

Next, Complainant's exhibits contain wholly unverified, unsworn statements about the alleged workplace conduct and motives of her supervisors (*e.g*., that Mary Ryan and Michael Baker called her "ghetto" and that Manager Latus targeted employees of color). *See* Response, 2. Moreover, Complainant's Response references unsworn statements by Complainant and reported hearsay statements made by other individuals. *See id*. at 2, 5–6. These unsworn statements, often excerpted from documents without proof of verification, cannot be considered as a matter of law. *See In re Adusumilli v. Wordspeed, In*c., ALS No. 09-0301, 2011 ILHUM LEXIS 134 (Feb. 15, 2011) ("Unsworn statements are not competent, admissible evidence required to support a party's position on summary decision.").

Thus, Complainant's unsworn and unsupported conjecture about statements made, motives of supervisors, and allegations regarding coworkers are disregarded. *See In re Schaefer v. Wilson Pet Supply, Inc*., ALS No. 10769, 2001 ILHUM LEXIS 148 (Dec. 3, 2001); *In re Adusumilli*, *supra*. However, where Respondent provided complete copies of the same documents (containing some of these statements) showing that the statements were verified through Complainant's counsel, they will be considered with reference made to Respondent's corresponding exhibits.

II. The Commission Lacks Jurisdiction to Consider Complainant's Claims of Unlawful Harassment Based on Race, Age, and/or Disability

Complainant filed her Charge with the Department on March 18, 2019. *See* Ex. 1 (Compl. & Charge), 7–13. Respondent argues that Complainant's claims of race and age discrimination and harassment are time-barred and should be dismissed for lack of jurisdiction. Respondent points to Complainant's discovery responses, which allege numerous incidents of discriminatory conduct occurring prior to May 22, 2018, or for which Complainant fails to delineate a date at all. Complainant, however, argues that under the "continuing violation" doctrine, these claims are not untimely and should be considered.

Under the Act, a complainant is required to file a charge "within 300 calendar days after the date that a civil rights violation allegedly has been committed." 775 ILCS 5/7A-102(A)(1). This is a jurisdictional prerequisite for any complaint filed in accordance with the Act before the Commission or the circuit courts. *See Vulpitta v. Walsh Constr. Co*., 2016 IL App (1st) 152203, ¶ 26 (citing *Weatherly v. Ill. Human Rights Comm'n*, 338 Ill. App. 3d 433, 437, 788 N.E.2d 1175 (2003)). Accordingly, the Commission has jurisdiction over only those claims involving incidents that occurred within the 300-day statute of limitations—*i.e*., from May 22, 2018 through March 18, 2019 in this case.

Pursuant to the continuing violation doctrine, acts outside the 300-day jurisdictional period along with acts within the period may form a single "'continuing violation' if the earlier and later acts are 'sufficiently closely related.'" *Gusciara v. Lustig*, 346 Ill. App. 3d 1012, 1018, 806 N.E.2d 746, 750 (2d Dist. 2004). The continuing string of violations is broken, however, if the linking of an alleged violation is severed for at least 300 days, if the later act "had no relation to the earlier acts," or if the more recent act was "no longer part of the same hostile environment claim." *Id*. at 1020, citing *AMTRAK v. Morgan*, 536 U.S. 101, 118, 122 S. Ct. 2061, 2075 (2002) (internal

brackets omitted). In *Morgan*, the Supreme Court of the United States held that the continuing violation theory does not apply to discrete acts, which are singular in occurrence and time. *See* 536 U.S. at 110, 114.

I agree with Respondent that the alleged violations concerning Complainant's age, race and disabilities that occurred prior to May 22, 2018 are untimely. Complainant alleges that in August of 2007, Michael Baker and Mary Ryan "ridiculed the way [she] spoke," referencing comments like "' huh' and 'umhuh' that [she] would say when speaking on a call, which they both told her "was ghetto and unacceptable." Ex. 11, p. 12. She further alleges that on June 30, 2009, the Director of Security at the parking lot "displayed unprofessional conduct and was very disrespectful and confrontational" towards her despite knowing the department in which she worked and her supervisor, resulting in a 3-day suspension (of Complainant). *Id*. at 12–13. Complainant also alleges that she was written up on August 24, 2014 for telling—but not asking—her supervisor the day before that she "need[ed] time in the morning to attend the beginning of the school year at [her] daughter's school" and then arriving late to work that day. *Id*. at 13. These incidents are disregarded as untimely, as well as for Complainant's reliance on hearsay statements and unsupported conjecture about being written up.

Complainant, who states that she was the only black employee in her department until 2016, describes numerous other alleged violations without providing precise dates, instead alleging general time periods during which they occurred. *See* Ex. 1 (Compl. with attached letter dated June 15, 2020). For example, "[o]ne morning," she was directed to go to Human Resources because Judy Trufant and Michael Baker said she had "a bad memory and want documentation from [her] doctor verifying the condition of [her] memory." *Id*. Additionally, "when patients would call into the office with incorrect information," Complainant "would overhear Marilyn

Cronin saying that [Complainant] was the reason for the incorrect information and would proceed to write [Complainant] up." *Id*. "Mary Ryan would give discriminating reports to the onboarding managers" about Complainant so "the new hires would discriminate against me in order to please their directors." *Id*. at 14. Complainant "was constantly blamed whenever anything in the department did not go smoothly. Managers would assign [Complainant] a heavy caseload knowing that [she] had no help and would not do the same to other employees" who were white. *Id*. On "several occasions when [Complainant] would call in sick," she "would be told that if it is within the hour of [her] shift starting it would be an occurrence, so some days [she] would come into work and would be admitted to the facility shortly after. *Id*. at 18. And, Complainant alleges that Supervisor Douglas misrepresented many of her tardies, marking her as tardy even though she had "switched [her] schedule with a coworker, or when [she] would be excused from work due to doctors' appointments, even "several occasions when [she] punched in to work and would get admitted into the hospital shortly afterward due to [her] disabilities." *Id*.

In sum, Complainant's allegations of harassment either lack dates or are dated well outside the 300-day jurisdictional period. Therefore, without evidence of whether these incidents occurred during the jurisdictional timeframe, they are disregarded as untimely, based on inadmissible hearsay and speculation, and without support in the record. Accordingly, they are DISMISSED.

III. Complainant Cannot Establish a *Prima Facie* Case of Unlawful Discrimination Based on Race, Age, and/or Disability

To establish a *prima facie* case of unlawful discrimination, an employee must show that: (1) she is a member of a protected class; (2) she was meeting her employer's legitimate business expectations; (3) she suffered an adverse employment action; and (4) her employer treated similarly situated employees outside her protected class(es) more favorably. *Owens v. Dep't of Human Rights*, 403 Ill. App. 3d 899, 919, 936 N.E.2d 623, 640 (1st Dist. 2010). In the instant

case, Complainant easily meets the first element, in that she establishes her protected classes—age (56, at the time of the alleged termination), race (black), and disabilities (stroke disorder and liver disorder). The next question is whether she was subjected to an adverse action by Respondent.

A. Complainant Was Not Constructively Discharged

Although she initially pled that her employment was terminated by Respondent on September 5, 2023, Complainant now argues that she was constructively discharged. Constructive discharge occurs when an employer deliberately makes working conditions so intolerable as to force an involuntary resignation. *In re Davenport v. Hennessey Forrestal Ill. Inc*., ALS No. 3751(W), 1991 ILHUM LEXIS 75, *36 (Aug. 14, 1991)., citing *Bd. of Directors, Green Hills Country Club v. Ill. Human Rights Comm'n et al*., 162 Ill.App.3d 216, 514 N.E.2d 1227 (5th Dist. 1987).

Complainant asserts that almost daily, she "experienced verbal harassment from counterparts" who "favored Sharon Lisula and Elizabeth Stroder, who are not women of color; the counterparts were more lenient with attendance and allowed Lisula to stay working while under the influence." Response at 9. "Working conditions were so intolerable" that Complainant "sought to transfer to other departments on more than one occasion. The issues involving her health, her supervisor [Manager Latus] consistently wielding the attendance policy like a weapon while ignoring [her] legitimate health related requirements for time off and delayed start times, the racial epithets and animus, and favorable treatment for others in the department created an intolerable work environment fraught with peril and discrimination." *Id*. at 10. "Due to the harassment and discrimination faced by [Complainant] during her employment" with Respondent, "she was compelled to resign on September 5, 2018. Failure to do so would have subjected McDaniel to further emotional and verbal abuse. Given the unbearable work conditions endured

by [Complainant], her termination can be deemed fully justified and undertaken for her own well-being."

I am unpersuaded by Complainant's theory. First, the record shows that Complainant's requests to transfer to other departments occurred (on April 17, 2013 and March 27, 2014) more than four years prior to her alleged constructive discharge, and are disregarded as untimely, unsupported, and speculative. *See* Ex. 11, p. 24. Additionally, the timing of Complainant's resignation did not occur in the first few months after Manager Latus (white, 50s) was hired by Respondent. In fact, it occurred over four months after Manager Latus began her position, which, as Respondent highlights, neither provides any direct evidence, nor any circumstantial evidence, that the end of Complainant's employment was caused by any conduct of Manager Latus other than her administration of the Attendance Policy.

Second, Complainant provides zero admissible evidence of "racial epithets and animus" or how "favorable treatment for others in the department" was carried out deliberately so as to create an intolerable work environment, especially one based on her protected classes. Finally, Complainant's argument is not supported by any evidence in the record, but rather her perception that she was "targeted and treated differently" from her black coworkers during the eleven (11) years she worked for Respondent. Response at 9. This does not support a finding that Respondent was attempting to induce Complainant into resigning. Consequently, Complainant has not presented any evidence or argument on which this court can find that she was constructively discharged. [3]

[3] Complainant cannot rest on her pleadings. "[I]f, as Complainant argues, in any case in which there is any violation of the Human Rights Act an employee's resignation is a constructive discharge, there would be no need to consider whether an employer has deliberately made working conditions so intolerable as to force an involuntary resignation. The weight of both federal and state case law is overwhelmingly to the contrary." *Davenport*, *supra*, 1991 ILHUM LEXIS 75 at *64, citing *Brewington v. Dep't of Corrections*, 161 Ill.App.3d 54, 513 N.E.2d 1056 (1st Dist. 1987).

B. Complainant Suffered an Adverse Action Despite Her Resignation

As initially pled, Complainant alleges that she was unlawfully terminated based on her race, age, and disabilities. While termination is considered an adverse action, Respondent claims that Complainant voluntarily resigned before it could fire her, thus defeating her *prima facie* case of discrimination.

Respondent provides three documents in support of its position: (1) a letter purportedly handwritten by Complainant stating that "as of this date September 5th, 2018 I wish to resign as your Assistant Surgery Scheduler;" with no mention of harassment or discrimination; (2) the Employee Corrective Action Report prepared by Manager Latus on August 31, 2018, indicating that the corrective action being taken is "TERMINATION," with handwritten notes explaining that prior to receiving it, Complainant resigned "per letter of resignation;" and (3) Respondent's internal paperwork prepared in for unemployment claims reflecting that Complainant "resigned prior to [corrective action] being given." Ex. 22; Ex. 23, RESP 0123, 0125. While Complainant does not challenge the admissibility of these documents, I note that the Affidavit of Cathleen Cronin does not establish the authenticity of the handwritten letter. Although it bears the handwritten signature "Dr. Gayle McDaniel," Respondent's affiant fails to attest either that she saw Complainant sign the statement or that she (the affiant) is sufficiently familiar with Complainant's signature that she can testify to its authenticity. Thus, the handwritten letter is disregarded.

The Corrective Action Report, however, is properly authenticated and supports Respondent's contention that Complainant resigned. *See* Ex. 30, ¶¶ 10, 13. It indicates that it would have resulted in termination, but Complainant resigned prior to receiving it. Though Manager Latus prepared it on August 31, 2018, she signed it on September 5, 2018—the same day

Respondent avers Complainant resigned. It does not bear any signature in the "EMPLOYEE'S SIGNATURE" line, which Complainant did sign on the previous Corrective Action Report issued to her on March 2, 2018 (imposing a 3-day suspension). *See* Ex. 20. Respondent provided Corrective Action Reports for its proposed comparators, most of which include the terminated employee's signature. *See* Ex. 30, ¶ 14; *see also* Ex. 21, RESP 0288, 0294, 0296, 0299, 0302, and 0304. Without any evidence to the contrary, I find that record establishes that Complainant resigned.

However, an employee's resignation does not automatically circumvent an adverse action finding. In *Hinthorn v. Roland's of Bloomington, Inc.*, the Supreme Court of Illinois determined that the employee, who signed a "Voluntary Resignation" form at the direction of the employer's vice-president, was effectively discharged. 119 Ill. 2d 526, 531, 519 N.E.2d 909, 912 (1988). The Court reasoned that the employee was not "given an actual opportunity to continue her employment [with the employer]: had she refused to sign the form, she would have been fired in any event." *Id*. at 531. "There are no magic words required to discharge an employee: an employer cannot escape responsibility for an improper discharge simply because he never uttered the words 'you're fired.'" *Id*. "So long as the employer's message that the employee has been involuntarily terminated is clearly and unequivocally communicated to the employee, there has been an actual discharge, regardless of the form such discharge takes." *Id*.

Conversely, the employee in *Addis v. Exelon Generation Co.*, without ever being asked to do so, resigned after receiving negative comments about her job performance. 378 Ill. App. 3d 781, 785, 880 N.E.2d 685, (1st Dist. 2007). A few days after handing in her letter of resignation, the employee followed up with a letter rescinding her resignation. *Id*. Then, a few days later, a human resources representative informed her she was being fired for refusing to perform some of

her job duties. *Id*. at 786. The appellate found that, unlike the employee in *Hinthorn*, this employee "was the first to mention resigning when she told [her boss] after their meeting that she would hand in her resignation the next day." *Id*. at 788-89. Thus, there was sufficient evidence to support a determination that the letter of resignation was a voluntary resignation rather than a disguised discharge and that the subsequent, actual discharge was for inferior work (rather than for engaging in an earlier protected activity on which she sued the employer for retaliatory discharge). *See id*.

Here, there is no evidence that Complainant resigned at the direction of Respondent, who contends that it was voluntary. Nevertheless, Respondent concedes that had Complainant not resigned, it would have terminated her as soon as the same day of her resignation. Further, Complainant knew she would be discharged as the next step in the progressive discipline progress based on the actions Respondent had already taken against her in accordance with its attendance policy. Viewing these facts in the light most favorable to Complainant as the non-moving party, I find that she suffered an adverse action because had she not resigned, there was no opportunity to continue her employed as she would have inevitably been discharged by Respondent.

C. Complainant is Not Disabled Within the Meaning of the Act

Complainant's disability discrimination claim, which she identifies as her "Americans with Disabilities Act Claim," is brought entirely under federal law. In order to establish a *prima facie* case of disability discrimination under the Illinois Human Rights Act, a complainant must prove, by a preponderance of the evidence, that: (1) she is disabled as defined in the Human Rights Act; (2) an adverse action was taken against the employee due to her disability; and (3) the disability is unrelated to the complainant's ability to perform the essential functions of her job. *Wright v. Circle Found dba Bronzeville Academic Ctr.*, ALS No. 12-0609, 2018 ILHUM LEXIS 960, *11 (June

26, 2019); *Van Campen v. Int'l Bus. Machines Corp.*, 326 Ill. App. 3d 963, 971, 762 N.E.2d 545, 551 (1st Dist. 2001).

The threshold question is whether Complainant's medical conditions meet the definition of disability under the Act, which states, in relevant part:

> [A] determinable physical or mental characteristic of a person . . . the history of such characteristic, or the perception of such characteristic by the person complained against, which may result from disease, injury, congenital condition of birth or functional disorder and which characteristic . . . **is unrelated to the person's ability to perform the duties of a particular job or position**.

775 ILCS 5/1-103(I)(1) (emphasis added). While Respondent does not dispute that Complainant's stroke and liver disorders are disabilities, whether these conditions are physically determinable is only part of the analysis. The key inquiry is whether the characteristic "is unrelated to the person's ability to perform the duties of a particular job." Applicable guidance is set forth in the Joint Rules of the Department and Commission concerning "What Constitutes a 'Disability'":

> *Unrelated to the Person's Ability to Perform the Duties of a Particular Job or Position*
>
> 1) Under this language . . . **a condition is "unrelated to a person's ability to perform the duties of a particular job or position" if it merely affects the person's ability to perform tasks or engage in activities that are apart from or only incidental to the job in question.**
>
> 2) On the other hand, **a person's condition is related to his/her ability if it** would make employment of the person in the particular position demonstrably hazardous to the health or safety of the person or others, or if **it is manifested or results in behavior (e.g., absenteeism, poor quality or quantity of production or disruptiveness) that fails to meet acceptable standards.** . . .

56 Ill. Adm. Code § 2500.20(d) (emphasis added).[4] It is the employer, not a court, who determines what job functions are "essential." *Wilk v. Vill. of Buffalo Grove*, ALS No. 19-0358, 2022 ILHUM

[4] Complainant makes her arguments pursuant to the definition of disability from the federal Americans with Disabilities Act ("ADA") and wrongly claims that it is defined the same way under the Act. *See* Response, 9–10. However, federal and Illinois/Commission authority are not fungible, especially where they differ, as they do here. Accordingly, her corresponding arguments are disregarded.

LEXIS 78, *28 (Mar. 18, 2022). Yet here, neither party identifies the essential functions of Complainant's job and how it affects her ability to perform her duties. Further, Complainant neither presents evidence nor argues how her conditions manifested as an inability to comply with Respondent's attendance standards.

Instead, Complainant asserts only that over the duration of her employment, she "developed various health issues," was inappropriately required to provide medical documentation concerning her memory, was improperly denied time off for legitimate medical issues and marked "tardy" as a result of her disability and needing to attend medical appointments, and that others "received special accommodations such as not being written up for attendance despite having similar attendance records" as she did. *See* Response, 9, 11; *see also* Ex. 11, p. 12. However, none of these claims adequately demonstrate how Complainant's stroke and liver disorders affected her ability to perform the essential duties of her job and are thus not considered.

Moreover, there is no evidence that Complainant was denied time to attend necessary medical appointments using her approved FMLA leave. In contravention, Respondent produced evidence showing that Complainant was approved consistently for intermittent FMLA leave, when she provided the correct documentation to Respondent, and that absences or tardies were not counted against Complainant when she properly informed Respondent that the absences or tardies were related to her intermittent FMLA leave. *See* Motion, 9; *see also* Ex. 24–Ex. 28.

Therefore, Complainant fails to meet her burden of establishing a *prima facie* case of disability discrimination because she cannot show that she is disabled within the meaning of the Act.

D. Neither Party's Proposed Similarly Situated Individuals are Suitable Comparators

Although this administrative court need not continue analyzing Complainant's claims, I feel compelled to briefly address this element of her *prima facie* case. Both parties propose comparators while accurately emphasizing the deficiencies of the other side's proposals.

Whether a comparator is "similarly situated" is usually a question for the factfinder. *Champaign-Urbana Pub. Health Dist. v. Ill. Human Rights Comm'n*, 2022 IL App (4th) 200357, ¶ 191. The "similarly-situated analysis" calls for a flexible, common-sense examination of all relevant factors. *Id*., citing *Lau v. Abbott Laboratories*, 2019 IL App (2d) 180456, ¶ 46, 127 N.E.3d 1056, 1068. "There must be enough common factors...to allow for a meaningful comparison in order to divine whether intentional discrimination was at play." *Id*. (internal citations omitted). Complainant "must at least show that the comparators (1) dealt with the same supervisor, (2) were subject to the same standards, and (3) engaged in similar conduct without such differentiating or mitigating circumstances as would distinguish their conduct or the employer's treatment of them." *Id*. (internal citations omitted). "This is not a magic formula, however, and the similarly-situated inquiry should not devolve into a mechanical, one-to-one mapping between employees." *Id*. (internal citations omitted).

Complainant alleges that Stroder (white), Lisula (white), and Felores are similarly situated individuals because they were part of the "surgical staff" like Complainant who were not similarly terminated. However, she does not provide evidence of their ages, whether they had any disabilities, or the race of Felores. Even if she had, Complainant offers no evidence, other than speculation, that any of them had the number of attendance occurrences warranting termination under Respondent's policy. Accordingly, Stroder, Lisula, and Felores are not similarly situated

individuals because the record does not establish that they engaged in similar conduct for which Complainant was disciplined.

Respondent alleges that there are ten employees it terminated between September 1, 2018 and June 10, 2019 for the same attendance/tardiness violations as Complainant. In support thereof, Respondent provides termination forms and corresponding corrective action forms for all ten individuals. However, none of these ten terminated employees worked in Complainant's department and reported to the same supervisor. Therefore, none of Respondent's proposed comparators are similarly situated individuals because the record does not establish that that they were subjected to the same standards as Complainant was as a Surgical Scheduling Assistant.

Consequently, Complainant does not present sufficient evidence to demonstrate that similarly situated individuals outside her protected classes were treated more favorably than she was. In the absence of indirect evidence of discrimination, and with no direct evidence, Complainant cannot demonstrate a causal link between how she was treated and her protected classes. Therefore, Complainant is unable to meet her burden of proving a *prima facie* case of unlawful discrimination and Respondent is entitled to judgment as a matter of law.

IV. Complainant Fails to Demonstrate That Respondent's Actions Were Motivated by Discriminatory Animus

Though it is unnecessary to continue analyzing Complainant's unsuccessful claims, I nonetheless do so for completeness. If Complainant had established a *prima facie* case of unlawful discrimination, the burden of proof would shift to Respondent to articulate (not prove) a legitimate, nondiscriminatory reason for its actions. Here, Respondent's reason for disciplining Complainant is that she incurred more than eight occurrences, warranting termination under the attendance policy. Accordingly, I find that Respondent met its burden of production. Had she asserted a *prima facie case*, the burden would now shift back to Complainant to demonstrate the existence

of a genuine issue of material fact as to the question of "pretext" to survive Respondent's motion for summary decision.

Complainant argues that the Respondent's attendance policy was not enforced for many years and then selectively enforced, and thus, a pretextual reason for Respondent's decision to discharge Complainant (which was never effectuated). "The focus of a pretext inquiry is whether the employer's stated reason was honest, not whether it was accurate, wise, or well-considered." *In re Huff v. Indigo Real Estate Svcs*., ALS No. 21-0134 (Sept. 6, 2023), citing *Stewart v. Henderson*, 207 F.3d 374, 378, 2000 U.S. App. LEXIS 3721, *8 (7th Cir. 2000). "Even if Complainant can show that Respondent's articulation was a lie, this does not mean that Complainant has prevailed." *Id*. Complainant must establish that Respondent had a discriminatory motive. *Id*. An employer "may take its action for good reason, bad reason, reason based on erroneous facts, or for no reason at all, as long as its action is not for a discriminatory reason . . . The correctness of the reason is not important as long as there was a good faith belief by [the employer] in its decision." *Carlin v. Edsal Mfg. Co.,* ALS No. 7321 1996 Ill HUM LEXIS 350, * 18 (May 6, 1996); *see also Shah v. Ill. Human Rights Comm'n,* 192 Ill. App. 3d 263, 273- 74 ("A good faith belief for an employment decision is sufficient to rebut an intentional discrimination charge.").

Complainant has not presented any admissible evidence demonstrating the existence of a genuine issue of material fact as to whether Respondent's motivation for its actions were based on discriminatory animus. *See Barnwell v. Select Mgmt. Res., LLC, et al*., IHRC, ALS No. S-12080, 2006 ILHUM LEXIS 49, *15 (Jan. 4, 2006) ("Complainant failed to prove that this contention was unworthy of belief, had no basis in fact," was not Respondent's "actual motivation, or that it was an insufficient reason."). Thus, its motivation for disciplining Complainant—with which she may

disagree, find unfair, or even find fault—does not violate the Act. This Commission is not tasked with determining if Respondent correctly recorded Complainant's attendance occurrences leading to discipline because it has no authority to reexamine an employer's good faith business decisions. *See Fitzgerald v. State of Ill. Dept. of Public Aid*, ALS No. S-8189, 1997 ILHUM LEXIS 749, *23 (July 8, 1997) (the Commission does not sit as a super personnel agency that second-guesses whether employer decisions were correct); *In re: the Request for Review by Lemuel Washington*, IHRC, ALS No. 18-0233, 2019 ILHUM LEXIS 923, *4 (June 20, 2019) (the Commission refuses to interfere or second guess the employer's good-faith business decisions).

Further, while not dispositive, her claims are undercut by the fact that she was going to be terminated by Respondent after over a decade of employment and multiple opportunities to correct her tardiness issues. That newly hired Manager Latus finally began holding employees accountable for violating Respondent's attendance policy proves nothing with respect to pretext. At best, it shows that Complainant may have met Respondent's expectations for a decade, and those expectations changed with the arrival of a new manager, especially toward a long-term employee. *See In re Chapman v. Dolton-Riverdale School Dist. 148*, ALS No. 08-0409 (Jan. 31, 2023) ("[A]n employee's performance could evolve, devolve, or stagnate in time, just as a supervisor's expectations for an employee could increase with each passing year, especially if prior performance evaluations noted that the employee 'needs improvement,'" and "a change of supervisors may very well mean a change in management styles, standards, expectations, accountability, and goals."). If Respondent was motivated to harass or discriminate against Complainant on the basis of her protected classes since she was hired, as she claims, it is unlikely that Respondent would have continued to employ her for eleven years. Complainant's argument

that Respondent's action was a pretext for unlawful discrimination finds no support in the record and is rejected.

RECOMMENDATION

Based on the foregoing, Respondent's motion for summary decision is GRANTED, and judgment as a matter of law is entered in Respondent's favor. I further recommend that the Illinois Human Rights Commission affirm this Recommended Order and Decision pursuant to 56 Ill. Admin. Code § 5300.910.

HUMAN RIGHTS COMMISSION

BY:

AZEEMA N. AKRAM
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: September 20, 2023