STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
ANTHONY ANDERSON,	)	
	)	Charge No.: 2020SF1724
Complainant,	)	EEOC No.: 21BA00888
	)	ALS No.: 21-0345
and	)	
	)	
STATE OF ILLINOIS DEPARTMENT OF HUMAN SERVICES, CHESTER MENTAL HEALTH CENTER,	)	
	)	
Respondent.	)	

ORDER

This matter coming before the Commission pursuant to a Recommended Order and Decision and the Complainant's Exceptions filed thereto.

The Illinois Department of Human Rights is an additional statutory party that has conducted state action in this matter. They are named as an additional party of record. The Illinois Department of Human Rights did not participate in the Commission's consideration of this matter.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. Pursuant to 775 ILCS 5/8A-104(E)(1) & (3), the Commission has **DECLINED** further review in the above-captioned matter. The parties are hereby notified that the Administrative Law Judge's Recommended Order and Decision, entered on August 9, 2024, has become the Order of the Commission.[1]

STATE OF ILLINOIS	**)**	
	)	**Entered this 18th day of MARCH 2025.**
HUMAN RIGHTS COMMISSION	**)**	

Commissioner Demoya R. Gordon

Commissioner Howard A. Rosenblum

Commissioner Stephen A. Kouri II

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[1] This order is entered pursuant to a 3-0-0 vote by the Commissioners.

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	)	
	)	
	)	**Judge William J. Borah**
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter comes to be heard on Respondent's Motion for Summary Decision. To support its motion, Respondent attached the deposition of Complainant and ten (10) other exhibits. Complainant filed a response with supportive documents, which included his deposition and affidavit, as well as the depositions of Jessica Lawson ("Lawson"), the Respondent's Human Resource Specialist, and of Kevin Hayman ("Hayman"), Security Therapy Aide ("STA") II, an employee of Respondent, as well as four (4) other exhibits.

Respondent filed a reply. This matter is ready for decision.

DISCUSSION

Procedural Background

On June 17, 2020, Complainant Anthony Anderson ("Complainant") filed a charge with the Illinois Department of Human Rights ("Department"), Charge No. 2020SF1724. After the Department's investigation and determination, the Complainant requested the Department to file a complaint on his behalf with the Illinois Human Rights Commission ("Commission") pursuant to Section 7A-102 (F) of the Illinois Human Rights Act ("Act"). On September 29, 2021, the Department filed a two-count complaint: Count One – claiming that Respondent subjected

Complainant to unequal terms and conditions of employment due to his race (African American) when two STA-II employees of Chester Mental Health Center ("Chester" or "Respondent"), Hayman and Sean Plumlee ("Plumlee") failed to timely intervene on Complainant's behalf during a conflict with a patient ("patient"). Count Two – alleged that - Respondent discharged Complainant from his employment due to his race (African American). Each allegation of discrimination (if proved) violates Section 2-102 (A) of the Act.

Preliminary Matters

Count Two was Dismissed Pursuant to the April 8, 2024, Order

On March 27, 2024, Respondent filed a motion for summary decision. On April 8, 2024, Judge Micheal Robinson issued an order, *sua sponte,* dismissing Count Two (the – "Discharge" count, based on the following:

> [A] close reading of the Complaint indicates that Complainant's termination, which occurred on September 30, 2021, was never a part of the Charge of Discrimination that forms part of the instant Complaint. And indeed, Complainant filed a separate charge of discrimination that did allege a discriminatory discharge and formed a basis of an unsuccessful Request for Review. As such, he cannot allege a discriminatory discharge claim in this Complaint, where the Commission has already disposed of the Charge of Discrimination that contained Complainant's discharge. (See*, Anderson and SOI Department of Human Services*, IHRC, ALS No. 23-0031, 5/16/2023.) Hence, the only claim properly before the Commission in this Complaint is Complainant's unequal terms and conditions claim.

Therefore, Count Two – the "Discharge" count and any allegations supporting that claim were not considered in the discussion below. The April 8, 2024, Order is incorporated herein by reference.

Complainant's Improper Attempt to Amend Count One

Count One alleges that the unequal treatment suffered by Complainant occurred when STA-II Hayman and Plumlee delayed or failed to assist him during an altercation with a patient because he is an African American and they are non-Black. In Complainant's Response to Respondent's motion for summary decision, he unilaterally changed the focus of Count One to a different factual foundation that was not pled in the complaint when he inaccurately wrote: "This case is about whether Anderson was discriminated against because he was the only one referred to ISP (Illinois State Police) for criminal prosecution, which subsequently resulted in him being barred from future state employment." This was an error for the Complainant to attempt to advance a legal theory that is not articulated in either his complaint or his underlying charge of discrimination. Notwithstanding the lapse, the Complainant failed to file an appropriate motion to amend his complaint under Section 5300.650 of the Commission's Rules and Regulations. As such, Complainant's attempt to insert a new basis for liability at this late date cannot stand, as allowing it would circumvent the mandatory investigative process that must be conducted by the Department of Human Rights and would relinquish Respondent's benefit of the discovery procedure pursuant to the Commission's Rules & Regulations. Section 7A-102 of the Act; Sections 5300.720 & 745 of the Commission's Rules and The Standing Order of August 1, 2023. Simply put, this case is about whether Respondent directed two employees to delay in assisting Complainant in his altercation with a patient because of Complainant's race.

This finding is consistent with previous Commission matters that have addressed the issue of unpled theories of liability. In Atkins and Kenco Logistics Services, LLC, IHRC, ALS No. 20-0431, February 27, 2024, a discrimination claim arose that was not pled. "A summary judgment motion is confined to the issues raised in the complaint, and a Complainant may not raise new issues not previously pled in her complaint to support or defeat a motion for summary judgment. *See* 800 S. Wells Commer. LLC v. Cadden, 2018 IL App (1st) 162882, P 43, 422 Ill. Dec. 511, 103 N.E. 3rd 875; Filliung v. Adams, 387 Ill. App. 3d 40, 51-52, 899 N.E. 2d 485, 326 Ill. Dec. 268 (2008) (the purpose of a complaint is to define the claims in controversy, and if a party does not seek to amend her complaint, she cannot raise new claims in a summary judgment motion)."

In sum, I decline to consider Complainant's alternative theory of liability under Count One, in which he claims racial discrimination under the theory that Respondent referred his role in an altercation with a patient to the Illinois State Police. As further discussed below, this incident occurred on January 21, 2019, although the consequences of that incident – at least as they pertain to Complainant's race – are not considered here, as they have not been pled as argued in Complainant's opposition to Respondent's motion for summary decision.

Complainant Fails to Support the Actual Basis for Count One

In association with the above discussion, Complainant's Response effectively abandons the original basis pled in the complaint and concentrates on the new theory of liability for Count One. In so doing, there is nothing for this administrative court to analyze. As such, "This administrative court will not search the record to find reasons to deny a motion where no opposition brief has been filed." Gardner and Soi, Financial and Professional Regulation, IHRC, ALS No. 23-0103, January 17, 2024. Further, "If a motion appears valid on its face, and if the other side cannot tell us why the motion should not be granted, we will grant it." Daraban v. TLC Management Co. et al., IHRC, ALS No. 07-0349, May 12, 2008. Regrettably, Complainant decided not to show supportive evidence that discriminatory behavior existed when two STA-IIs failed to intervene between the Complainant and a patient during a physical confrontation. Thus, Respondent is exculpated from any associated liability as pled in Count One, as there is no evidence of any material fact requiring a trial. Nevertheless, despite the lack of supportive argument from the Complainant, I will continue my analysis, if only to demonstrate that this case could not proceed even where Complainant had offered evidence on his claims as pled

Complainant Fails to Show that Haywood and Plumlee Were Supervisors

The Complainant, in his Response, describes Hayman and Plumlee (the two employees who supposed failed to expeditiously assist him) as "supervisors" without further elaboration of fact or authority. Undermining this claim is that no supervisory status for these employees was alleged in the complaint. Like the Complainant's unilateral change of the basis for Count One, this new allegation must also fail for similar reasons. "The purpose of a complaint is to define the claims in controversy, and if a party does not seek to amend her complaint, she cannot raise new claims in a summary judgment motion)." Atkins, supra.

Nevertheless, some explanation is beneficial. Complainant uses the generic term "supervisor" interchangeably with a legal term of art. In his deposition, Hayman was asked, "Q. Did you supervise Anthony Anderson (Complainant) when you were working the same shift? A. Yes." However, Hayman later explained that an STA-II's role was an "arranger" or, as Lawson (Respondent's HR Specialist) described, "charge aids." Hayman continued, "STA-IIs are over the STA-Is to ensure that we keep the modules and the units secure, keep a good count, and log all the patients out of, in, and out of the modules." Hayman admits that he has no role in hiring or firing but "could have" a role in disciplining through "performance reviews and such" if asked for input. But when specifically asked, "Do you issue discipline to STA I's, Hayman's answer was "No."

Lawson explained, much like Hayman, "The STA-IIs are *charge aides*, … responsible for directing where the staff and patients are going. They're responsible for all the counts, telling the STA-I's which module to go to do, etc. The STA-IVs are the supervisors for the shift, so they're responsible for all the STAs in the building. They're also administrators on duty when no administrators are in the building." Koon and West were STA-IVs and served as Complainant's immediate supervisor. In fact, in responding to the incident that occurred between Complainant and a patient on January 21, 2019, the STA-IIs called the STA-IVs to seek guidance on how to proceed.

Indeed, the court in Schmitt and Adams County Highway Dept., IHRC, ALS No. S-8879, November 7, 1997, citing Hunter v. Allis-Chalmers Corp. Eng. Div. et al., 797 F.2d 1417 (7th Cir. 1986), suggested that the term "supervisor," at least for purposes of imposing liability on a corporation under Title VII, contemplated "someone at the decision-making level in the corporate hierarchy [who] has committed the wrong". Hayman and Plumlee do not fit this description since Hayman and other STA-IIs, like Plumlee, admittedly had none of the decision-making duties concerning the terms and conditions of Complainant's employment. (*i.e*. they could not hire, fire, or otherwise directly discipline Complainant.) Hence, without any contrary facts or authority from Complainant, Hayman and Plumlee are not supervisors as defined by the Act.

SUMMARY DECISION STANDARD

Under Section 8-106.1 of the Act, either party to a complaint may move for summary decision. A summary decision is analogous to a summary judgment in the circuit courts. Cano v. Village of Dolton, 250 Ill.App.3d 130, 620 N.E.2d 1200 (1st Dist. 1993).

A motion for summary decision should be granted when there is no genuine issue of material fact, and the moving party is entitled to a recommended order in its favor as a matter of law. Fitzpatrick v. Human Rights Comm'n, 267 Ill.App.3d 386, 391, 642 N.E.2d 486, 490 (4th Dist. 1994). All pleadings, affidavits, interrogatories, and admissions must be strictly construed against the movant and liberally construed in favor of the non-moving party. Kolakowski v. Voris, 76 Ill.App.3d 453, 395 N.E.2d 6 (1st Dist.1979).

Specific Facts Required

A complainant's response to a summary decision motion is not required to prove their case as if at a trial to refute the motion. However, they must provide *some specific factual* basis to support their claim and "may not resist the motion by merely arguing. (Emphasis added)" Evans and Coming Revere, Inc., IHRC, ALS No. S-10699, July 31, 2000, quoting West v. Deere & Co.,145 Ill.2d 177, 608 N.E.2d 920 (1991).

Further, a party responding to a motion for summary decision must not hide behind "equivocations" and chameleonic concepts. There must be present "*bona fide* specific evidence, that is, specific with relevant facts, and admissible at trial to defeat the motion." Koukoulomatis v. Disco Wheels, Inc., 127 Ill.App.3d 95, 468 N.E. 2d 477 (1st Dist. 1984).

Affidavits [and deponents' statements used] "shall set forth with particularity the facts upon which the claim, counterclaim, or defense is based; . . . [and] shall not consist of conclusions but facts admissible in evidence . . .. [Such affidavit or deposition or statement referenced] shall affirmatively show that the affiant/deponent, if sworn as a witness, can testify competently thereto." S. Ct. Rule 191. (e.g., objections to hearsay and lack of foundational facts)

Merely alleging the existence of a genuine issue of material fact without presenting any sworn foundational facts to contradict the sworn evidence that one's opponent has submitted does not create a genuine issue of material fact. Carruthers v. Christopher & Co., 57 Ill.2d 376, 313 N.E.2d 457 (1974); Peltz v. Chicago Transit Authority, 31 Ill.App. 3d 948, 335 N.E.2d 74 (1st Dist. 1975).

Jurisdiction/Suable Entity

Respondent reargues, as it has in other cases, that a health center, in this case, Chester, is a "State-operated Mental Health Center run by Illinois Department of Human Services ("IDHS") and has no separate legal existence, and cannot, therefore, be sued." IDHS supports its argument by citing federal cases. In Richardson v. County of Cook, 250 Ill. App. 3d 544, 621 N.E. 2d 114 (1st Dist. 1993), the Illinois court ruled that a hospital run by Cook County, Oak Forest Hospital, could not be "subject to suit because it is owned and operated by the county and is not a legal entity." The Illinois Human Rights Commission also discussed the "sueable legal entity" concept in the Illinois Department of Human Rights, Al-Hallaq, and the County of Dupage, Department of Community Services, IHRC, ALS No. 21-0023, November 10, 2021, stating that "[R]espondent has no legal existence separate from the County of DuPage. Rather, it is an organizational division of the County of DuPage, a unit of local government." However, Al-Hallaq's decision also implied a cure. Although the complainant did not, he could have "filed a (motion for) Amended Complaint." Even without such an implied procedural suggestion, this administrative court unequivocally and independently believes that the instant issue raised by IDHS can be resolved because of the involvement of IDHS in this case, as it is already cited as a Respondent. If Chester is a non-suable entity, then the naming of it as a party was a pleading defect or (even less consequentially) misnomer, and the Complainant could have requested leave to resolve the misnaming error by amending the complaint to add, strike, or substitute IDHS as the appropriately named respondent. Although it should have been addressed earlier than during the consideration of a dispositive motion, I find no basis on which the case should end with IDHS already involved.

"The Illinois Human Rights Act (Act) is remedial legislation that must be construed liberally to effectuate its purpose." Nuraoka v. Illinois Human Rights Commission, 252 Ill.App.3d 1039, 625 N.E.2d 251 (1st Dist. 1993) citing Nielsen Co. v. Public Building Commission of Chicago, 81 Ill.2d 290, 410 N.E.2d 40 (1980). The Act permits amending a complaint to include additional parties. Further, Section 2520.360(C) of the Department's Procedural Rules provides that:

> A charge may be amended to substitute or name additional respondents. Such an amendment will relate back to the original filing date if, at the time of the amendment, a separate charge could have been timely filed against such additional respondent or such additional respondent had timely notice of the original charge and the fact it might be involved therein. The mere misnomer of a party may be cured at any time.

Additionally, Section 5300.660(a) of the Commission's Rules, in relevant part, provides as follows:

> The mere misnomer of a Party, however, shall not be grounds for dismissal and may be cured at any time by amendment of the pleadings. A Person may be added as Party Respondent, even if that Person is not a successor or an assign of the named Respondent if the following terms and conditions are met:
>
> 1) The Charge in the case was filed within 300 days after the date of the civil rights violation allegedly committed by the Person sought to be added as a Party Respondent;
>
> 2) The failure to join the Person as a Party Respondent was inadvertent;
>
> 3) The Person sought to be added as a Party Respondent was given notice of the filing of the Charge at the time the original Charge was filed;
>
> 4) The nature of the original Charge was such that the person sought to be added knew, within the 300-day period, that the Charge grew out of a transaction or occurrence involving or concerning him or her;
>
> 5) The addition of the Person sought to be named as a Party Respondent does not raise new factual questions which were not considered by the Department of Human Rights in its investigation; and
>
> 6) The cause of action alleged against the Person sought to be made a Party Respondent in the case arises out of the same transaction or occurrence set out in the original Complaint.

In this case, each of these conditions is met. Further, the record shows that notice was provided to IDHS (who represented Chester and itself), and that ISHS's agents freely engaged in both the lengthy investigative process with the Department and the litigation process before the Commission. Accordingly, because the IDHS was aware of the charge, named in the complaint, and active within this litigation, permitting an amendment to include or substitute it as the respondent would have caused no harm or prejudice to any party and will be presumed *sua sponte* for this motion.

Respondent as Employer

Based on the above, IDHS's argus that Chester was not Complainant's employer. If IDHS is the real party in interest, then as discussed above, it is Complainant's employer. Section 2-101(B)(1)(c) of the Act defines "Employer" as "The State and any political subdivision, municipal corporation or other governmental unit or agency, without regard to the number of employees." Section 2-101(A)(1)(a) of the Act also defines "Employee" as "Any individual performing services for remuneration within this State for an employer." Thus, the Complainant was an employee of the Respondents as defined by the Act.

FINDINGS OF FACT AND ANALYSIS [1]

On June 15, 2015, Respondent hired Complainant, an African American, as an "STA-I Trainee." On January 1, 2016, Complainant became certified after six months of training on patient interaction and Respondent's rules and policies. [2] Complainant avers he was assigned to Baker-Unit of Chester Mental Health Center, where he "looked after" inpatients with what he described as those who had "dangerous or violent tendencies." He further explained his duties

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[1] The following findings are based on the record file in this matter. No credibility determinations were made.

[2] The Complainant's affidavit states that he became certified STA-I on January 1, 2106 (an obvious typo), while the Respondent's represents May 1, 2016. In any respect, Complainant was certified by January 21, 2019, the date of the incident between him and the patient.

were: “[T]aking care of the mentally ill…assisting and… serving those guys….making sure they got everything they needed and trying to keep everything safe and everyone safe.”

Respondent’s Code of Conduct dictates that “All patients, employees, and visitors shall be treated with dignity, respect, and courtesy … [The Center] has zero tolerance for workplace violence and intimidating and disruptive behaviors…” and “physical aggression” is not permitted. The “Rule of Fifty” (Title 59: Mental Health, Chapter 1: IDHS, Part 50: Office of Inspector General Investigations of Alleged Abuse, Neglect, or Financial Exploitation in State Operated Facilities and Community Agencies.) guided STAs conduct and reporting protocols of patient abuse, as enforced by Respondent and investigated by IDHS-Office of Inspector General (“OIG”).

On January 21, 2019, an altercation took place between the Complainant and one of Chester’s inpatients known to be mentally disabled. In summary, [3] Complainant was alleged to have allegedly physically “abused” the patient by pushing him with both hands and slapping him in the face while on duty. [4] The force of the strike was reported to have been so firm that it caused the patient’s head to rotate towards his shoulder. There were no apparent physical injuries. Unit staff members reported the incident by completing a Form 207 pursuant to Rule of Fifty.

STA-I Erin Stauffer (“Stauffer”), who was with Complainant during the entire incident, first reported Complainant’s inpatient “abuse” to STA-II Keven Hayman, [5] who also witnessed the Complainant push the patient and found it of “such significance” that he reported it to STA-II

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[3] The summary is from the IDHS-OIG’s investigative report, Case No. 6619-0082, submitted on September 13, 2021. R- Exhibit 4) . It was one of several investigative bodies that investigated the incident and whose reports Respondent relied on for disciplinary matters. (To be discussed below.)

[4] Complainant describes his action in his deposition as “throwing my hand out…it touched him … on the face on the side, but it was an open hand.”

[5] Complainant was a “charge aide.”

Plumlee, who also witnessed it and who then communicated the abuse to the supervisor STA-IV Dennis West (Scott Koon was also a supervisor). “He (Complainant) hit that guy, that patient. Then I (Plumlee) said, ‘Yes, I saw him push him. And then West said, ‘Write a report on it. Write it up.’” The report described the patient as the “victim” and the Complainant as the “Abuser.” The Chief of Security, Barry Smoot, immediately contacted the Illinois State Police. On March 14, 2019, Complainant was arrested with a Class A Misdemeanor Battery of Chester’s inpatient by the Randolph County State’s Attorney’s Office. On May 14, 2019, the Complainant was placed on “suspension pending judicial verdict” by the Respondent’s Human Resources Specialist, Lawson. On March 17, 2021, Complainant was convicted by Circuit Court bench trial of a Class A Misdemeanor Battery,

After the conviction, the IDHS-OIG completed its investigation and declared that it had substantiated the allegations against Complainant of physical abuse of a patient on September 13, 2021.

> “Therefore, the allegations against STA Anderson of physical abuse, as defined by Title 59, Illinois Administrative Code, Chapter I, Part 50, Section 50.10, is substantiated. OIG identified aggravating circumstances, specifically, that STA Anderson responded to (patient) in an aggressive and confrontational manner which resulted in escalation of the matter.”
>
> The results of the investigation also “Recommended” [T]hat the facility address the inaction of STAs Hayman and Plumlee, who, by their own accounts, witnessed STA Anderson assault (patient) through the stem door windows and did not assist (patient). By failing to act, STAs Hayman and Plumlee failed to provide (patient) adequate personal care and failed to maintain (patient) safety.

Due to the criminal conviction and the IDSH-OIG’s finding of physical abuse of a patient, Lawson recommended the discharge of Complainant to Edward Jackson, Respondent’s Director of Labor Relations. On September 16, 2021, Jackson recommended the discharge to Central Management Services (CMS), which discharged the Complainant on September 30, 2021.

Contentions of Parties

Complainant

Complainant alleges that STA-II Kevin Hayman ("Hayman") and STA-II Shawn Plumlee ("Plumlee") were present in the unit during the Complaint/patient incident of January 21, 2019, and failed to promptly intervene to assist him because of his race, African American.

Respondent

Respondent contends that it relied on several third parties' investigations to disclose the facts surrounding the January 21, 2019, incident of patient abuse at Chester by Complainant. Investigations were conducted by the Illinois State Police criminal investigative process, the State's Attorney's Office, the judicial process that resulted in Complainant's conviction by a judge of the Circuit Court of Randolph County in case 2019-CF-295, and the IDHS-OIG. If Hayman and Plumlee failed to intervene, it was to the detriment of the patient, not the Complainant, who was labeled consistently as the abuser. Complainant was not unaided or unaccompanied during the event, as Stauffer was present alongside him. Still, despite Stauffer's involvement, the Complainant rebuked her actions. Further, he neither asked for additional assistance nor called for Code Red (*i.e*., the radio cry for assistance). Finally, Complainant has not shown any admissible evidence to support a *prima facie* case of race discrimination, but for the fact that he is African American.

Standard - Race Discrimination

Two main methods exist to prove an employment discrimination case: direct and indirect. Either one or both may be used. <u>Sola v. Human Rights Commission</u>, 316 Ill.App.3d 528, 736 N.E.2d 1150 (1st Dist. 2000). Since there is no direct evidence of race animus in this case, the indirect analysis will be used. The method of proving a claim of discrimination through indirect means was described in the U.S. Supreme Court case of <u>McDonnell Douglas Corp. v. Green</u>, 411 U.S. 792, 935 S.Ct. 1817 (1973), and is well established.

The tripartite standard for establishing whether there exists disparate treatment based on race is as follows:

(1) Complainant must establish a *prima facie* case;

(2) Respondent must articulate some legitimate, nondiscriminatory reason for its adverse employment action;

(3) Complainant must prove that Respondent's articulated reason is a mere pretext for discrimination.

In general, the elements of a *prima facie case* of disparate treatment for race discrimination where unequal terms and conditions of employment are alleged are the following:

(1) Complainant is a member of a protected class;

(2) Complainant was subjected to adverse treatment by Respondent; and

(3) similarly situated persons who are not members of the Complainant's protected the class were treated better than Complainant. Isom and State of Illinois, Department of Mental Health and Developmental Disabilities, IHRC, ALS No. 6619, November 13, 1997; Konkol and People's Gas, Light and Coke Co., __ Ill. HRC Rep. __ (Charge no. 1988CF0122 April 26, 1993); Moore and Beatrice Food Co. 40 Ill. HRC Rep. 330, 354 (1988).

It is undisputed that Complainant's race is African American. As to the remaining two elements of his *prima facie* case, Complainant fails to show adequate admissible evidence to create a triable issue of material fact.

Investigations

"For purposes of her discrimination claim, an investigation that provides management with a reasonable opportunity of uncovering the truth is the only matter, regardless of the outcome of the investigation." Ford and Caterpillar, Inc, IHRC, ALS No. 7625 (S), October 28, 1996. Even if the investigation produced the wrong recommendation, but was "honestly believed, an employer may testify about a hearsay conversation to establish what information was relied upon in reaching a termination decision. Regan v. Acme Steel Company, IHRC, ALS

No. 5609, July 24, 1998, citing Estate of Parks v. O'Young, 289 Ill.App.3d 976, 682 N.E.2d 466 (1st Dist.1997). "[A]n employer is not a court, and it is free to conduct its business based upon hearsay sources of information." Id.

The Commission has consistently found that the Act does not guarantee that an employee receives a flawless internal investigation. See, e.g., Boren and State of Illinois, Department of Public Aid, IHRC, ALS No. S11728, December 2, 2004. Indeed, all that the Act demands is that the investigation provides management with a reasonable opportunity to uncover the actions of its employees, regardless of the ultimate outcome. (See Schmitt and Adams County Highway Dept., IHRC, ALS No. S8879, January 13, 1998.)

In Jones v. Civil Service Commission of Alton, et al., 80 Ill.App.3d 74, 399 N.E.2d 256 (5th Dist. 1980), "… the only issues that were properly before the court were whether the evidence supported a finding that the person charged with the offense did, in fact, commit the offense, and whether the commission of the offense constituted sufficient cause' for the discharge."

In Santana and Kempersports Management, Inc., d/b/a the Glen Club, IHRC, ALS No. 10-0105, February 16, 2011, citing Bartels v. Chicago Park District, No. 09-3286 & 09-3468 (7th Cir. filed February 11, 2011), this administrative court noted that even in a "cats paw" situation, where a person poison's the decision maker's opinion of another or induces a decision based on their biased motivation, "[T]he chain of [discriminatory] causation can be broken if the unbiased decision maker conducts a meaningful and independent investigation of the information being supplied by the biased employee."

Here, several third-party investigations were conducted on the same employment occurrence of January 21, 2019. Respondent's reliance on these investigations provided sufficient information to determine the essential facts of the incident and whether any policy violations occurred by the Complainant or any other employee, including Hayman and Plumlee.

In the instant case, the issue is whether these two employees' alleged pause/delay in intervening in the incident somehow constituted disparate treatment to support a race discrimination claim. The Complainant, in essence, wants a *de novo* review of the materials that Respondent relied on. Although the IHDS-OIG investigative report acknowledged a delay by STA-IIs Hayman and Plumlee, “the (IDHS–OIG) was concerned that (they) [Hayman and Plumlee] failed to provide (the patient) with adequate personal care and failed to maintain (patient’s) safety.” Lawson averred, “The facility addresses the incidents of STA Hayman and Plumlee, who, by their accounts, witnessed through the stem door windows and did not assist (patient), so they’re saying that they failed the patient.” (*i.e*., not the Complainant) The facts also revealed that the Complainant was not alone with the patient, as implied. STA-I Stauffer was with Complainant throughout the interaction with the patient, “standing next to him (Complainant) in the hallway going down to the patient’s room area.” Stauffer also represented that the Complainant rebuffed her presence and did not call for assistance or declare a Code Red emergency. Stauffer was the first employee to report Complainant’s abusive behavior toward the patient to Hayman.

The Commission observed in Aguirre and Caterpillar, Inc., IHRC, ALS No. 10-0408, (1) that it does not act as a super-personnel department/agency to second-guess credibility determinations made by an employer; and (2) as a result, the employer, as opposed to the Commission or the complainant, is the one who generally gets to make the call as to whether a complainant has committed a workplace infraction upon receipt of conflicting versions of the facts. (See also, Roher and C & S Direct Advertising, IHRC, ALS No. S06-249, February 9, 2010.) The fact that the Commission does not act as a super-personnel agency/department cannot be overemphasized. Ballard and Illinois Department of Transportation, IHRC, ALS No. 20-0244 ,November 14, 2023.

The issue before the investigative bodies was whether cause existed to support discipline against the employees; here, the issue is whether the investigations were discriminatory and whether the provisions in the Act have been violated.

Therefore, I find that there is no evidence that creates a dispute over whether the Respondent honestly believed the results and content of the third-party investigations, or the subsequent conviction of Complainant. Thus, Complainant failed to show evidence that any of the inquiry was racially discriminatory or that he ever claimed the investigations were racially skewed.

Adverse Act

Respondent concluded that it was the patient who suffered the adverse consequences of assault and delay, not the Complainant. Complainant attempts to create a case "out of whole (synthetic) cloth" that runs contrary to the investigative bodies relied on by Respondent: Illinois State Police, the Randolph County State's Attorney's Office, as adjudicated by Circuit Court of Randolph County in case 2019-CF-295, People v. Anderson, 2022 IL App (5th) 220058-U, and pursuant to the Report of the IDHS-Office of Inspector General that there was a violation of Respondent's policies by Complainant. The investigators reviewed a video of the event, which showed the "inconsistencies" of Complainant's version of the facts.

To show that he suffered an adverse employment action, an employee must establish that the employment action was 'materially adverse' and not a 'mere inconvenience or an alteration of job responsibilities.'" Hoffelte v. Dept. of Human Rights., 367 Ill. App. 3d 628, 867 N.E.2d 14 (1st Dist. 2006), quoting Traylor v. Brown, 295 F.3d 783(7th Cir. 2002), Rabinovitz v. Pena, 89 F.3d 482 (7th Cir. 1996). A materially adverse employment action "significantly alters the terms and conditions of the employee's job." Id., quoting Griffin v. Potter, 356 F. 3d 824 (7th Cir. 2004): See also Rhodes v. Ill. Dept. of Transp, 359 F.3d 498 (7th Cir. 2004)(adverse employment action is a significant change in the claimant's employment status); Johnson v. Cambridge Indus., 325 F. 3d 892 (7th Cir. 2003) (establishing an adverse employment action requires an employee to "show some quantitative or qualitative change in the terms or conditions of his employment" or some "real harm"). "Adverse employment actions include things such as hiring, denial of promotion, reassignment to a position with significantly different job responsibilities, or an action that causes a substantial change in benefits." Id, see Rhodes, 359 F. 3d at 504; see also Hoffelte, 367 Ill. App.3d at 633, quoting,, Taylor, 295 F.3d at 788 (termination of employment might indicate [a] materially adverse change, a demotion evidenced by a decrease in wage or salary, a less distinguished title, a material loss of benefits, significantly diminished material responsibilities, or other indices that might be unique to a particular situation"). "However, 'not everything that makes an employee unhappy is an actionable adverse action. Otherwise, minor and even trivial employment actions that 'an ... employee did not like would form the basis of a discrimination suit," Id. at 929, quoting Smart v. Ball State University, 89 F. 3d 437 (7th Cir. 1996), quoting Williams v. Bristol-Myrs Squibb Co., 85 F.3d 270 (7th Cir. 1993); Owens v. Department of Human Rights, 403 Ill.App.3d 899, 936 N.E. 2d 623 (1st Dist. 2010).

Complainant cannot create a genuine issue of triable fact, since his only argument is his unsupported conclusions about his behavior and others without any supportive evidence of race discrimination. Complainant offered no evidence to show that any delay by Haywood and Plumlee caused material harm to him, or that such delays rose to the level of an adverse or race-based action. Thus, the second element of a *prima facie* case has not been established.

Similarly Situated Employees

Complainant flagged a situation in which a different patient became violent and physically struggled with STA-I Tracy Apple ("Apple"), who is not Black, which resulted in Hayman and Plumlee assisting Apple. In his deposition, Complainant said he heard "someone open the door and say, 'Hey, we need some help,'" and described the Apple event.

> I go over there … I run over there, and they are wrestling with a patient. …. So, they were trying to get his arm behind his back, and they couldn't do it. …I tried to help out…. I guess he had bit a co-worker in the stomach, and he still had a hold of him. And

> so, when I got there, I was able to set his arm, … So they were able to handcuff him. And so that was over with, and they picked him up. My co-worker went to the hospital..."

The "Apple" incident was not "similarly situated" to the Complainant's January 21, 2019, event for the purposes of a race discrimination analysis.

> To draw a proper comparison, "There must be enough common factors…to allow for a meaningful comparison to divine whether intentional discrimination was at play. [Citation.] *** In the usual case, a plaintiff 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. [Citation]" Lau v. Abbott Laboratories, 2019 IL App (2d) 180456,46, 127 N.E.3d 1056.

Here, Complainant offers no evidence that would enable this administrative court to conclude that timing, logistics, and sequence of the conflict between the patient and Appl were sufficiently the same as the conditions prevailing at the time he assaulted a patient on January 21, 2019. Such deficiencies and differences between Complainant's and Apple's situations have long been recognized as a means of disrupting the potential comparison between two (or more) similarly situated employees. To advance his prima facie or support any pretext argument, Complainant fails to show that he was similarly situated to anyone or to the circumstance of Apple.

Conclusion

Complainant did not show that the Respondent harbored any race-biased animus, as evidenced by direct or indirect evidence against him. As a result, the Complainant failed to adequately sustain a *prima facie* case. In addition, failing to identify viable similarly-situated employees, the Complainant also fails to show a pretext for any unequal terms and conditions of employment based on race.

Therefore, based upon the foregoing, there are no genuine issues of material fact that Respondent discriminated against Complainant based on his race, African American, and Respondent is entitled to a recommended order in its favor as a matter of law. Accordingly, it is recommended that the claim in this matter for discrimination based on Complainant's race be dismissed in its entirely, and with prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this matter.

2. Complainant failed to show evidence of a *prima facie* race discrimination case.

3. Complainant has failed to present evidence that Haywood and Plumlee were supervisors, as defined by the Act.

4. Based on the record in this matter, there is no issue of material fact.

5. A summary decision in the Respondent's favor is appropriate in this case.

6. Respondent is entitled to a summary decision in its favor as a matter of law.

RECOMMENDATION

Based on the preceding, there are no genuine issues of material fact, and the Respondent is entitled to a recommended order in its favor as a matter of law. Accordingly, it is recommended that the complaint and underlying charge in this matter be dismissed in their entirely, and with prejudice.

ENTERED: August 9, 2024

HUMAN RIGHTS COMMISSION

BY:

WILLIAM J. BORAH
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION