2021 IL App (1st) 170026

No. 1-17-0026

Third Division
September 30, 2021

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

| | | |
|---|---|---|
| ETHEL SPENCER,<br><br>Petitioner,<br><br>v.<br><br>THE ILLINOIS HUMAN RIGHTS COMMISSION, THE ILLINOIS DEPARTMENT OF HUMAN RIGHTS, and JOHN H. STROGER JR. HOSPITAL,<br><br>Respondents. | ) | Petition for Review of an Order of the Illinois Human Rights Commission.<br><br>Charge No. 2009 CA 3113 |

PRESIDING JUSTICE GORDON delivered the judgment of the court, with opinion.
Justices Ellis and Burke concurred in the judgment and opinion.

**OPINION**

¶ 1 The instant appeal arises on a petition for review of a decision of the Illinois Human Rights Commission (Commission), which found that there was no substantial evidence to support petitioner Ethel Spencer's claims of discrimination or retaliation by her employer, John H. Stroger Jr. Hospital (hospital). After an investigation, the Department of Human Rights (Department) found that there was no substantial evidence to support petitioner's claims, and dismissed petitioner's charge. The Commission sustained the dismissal, and petitioner filed a petition for direct administrative review before this court. Initially, we dismissed the appeal

because petitioner had not named the hospital as a necessary party. However, after the supreme court entered a supervisory order directing us to permit the appeal, we vacated the dismissal and permitted petitioner to add the hospital as a necessary party. We now consider the merits of petitioner's appeal and, for the reasons that follow, affirm the Commission's dismissal of petitioner's charge.

¶ 2 BACKGROUND

¶ 3 On March 31, 2009,[1] petitioner filed a *pro se* charge with the Department, alleging that the hospital subjected her to harassment based on her race and age, improperly placed her on probation due to her race and age, and retaliated against her for filing a discrimination charge, in violation of sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (775 ILCS 5/2-102(A); 6-101(A) (West 2008)).

¶ 4 Count A[2] of the charge alleges harassment between July 12, 2008, until February 18, 2009, based on petitioner's race (black). Count A alleges that petitioner has been employed at the hospital since July 1987, and that she satisfactorily performed her duties as a "charge nurse II." However, beginning on July 12, 2008, and through February 18, 2009, petitioner claimed to have been harassed by Christina Thiligam,[3] the hospital's pediatric emergency room coordinator, who (1) issued unfounded verbal reprimands, (2) claimed that petitioner's work performance was substandard even though Thiligam "improperly assign[ed] the required number of staff," and (3) told petitioner that she should "seek employee counseling for external

[1] The charge was amended on October 29, 2009, to correct the hospital's name, but there were no substantive changes.

[2] The Department's and the Commission's decisions refer to each basis raised by petitioner by assigning it a letter, so we will do the same for the sake of clarity.

[3] Petitioner alleges that Thiligam is also black. However, Thiligam's race is described in other areas of the record as white and as East Indian.

problems." Count A alleges that similarly situated non-black nurses were not being harassed in the same manner.

¶ 5 Count B of the charge alleges harassment between July 12, 2008, until February 18, 2009, based on petitioner's age (55). Count B raised almost-identical allegations as count A, alleging that Thiligam, who was in her 40s, harassed petitioner, and that similarly situated nurses who were younger than 40, or who were "significantly younger" than petitioner, were not being harassed in the same manner.

¶ 6 Count C of the charge alleges that petitioner was placed on a six-month probation on February 10, 2009, due to her race. Count C alleges that, on February 10, 2009, Inger Anthony, the hospital's pediatric emergency room coordinator, who was also black, placed petitioner on a six-month probationary period. Anthony informed petitioner that she was being placed on probation due to poor work performance. However, count C alleges that similarly situated non-black nurses who had similar levels of work performance were not placed on probation.

¶ 7 Count D of the charge alleges that petitioner was placed on a six-month probation on February 10, 2009, due to her age. Count D raised almost-identical allegations as count C, alleging that Anthony, who was in her 50s, placed petitioner on probation, and that similarly situated nurses who were younger than 40, or who were "significantly younger" than petitioner, were not placed on probation despite similar levels of work performance.

¶ 8 Finally, count E of the charge alleges that petitioner was placed on a six-month probation on February 10, 2009, "in retaliation for openly opposing race discrimination." Count E alleges that on September 11, 2008, petitioner filed a race discrimination charge against the hospital with the Department and that her probation "followed [her] protected activity within such a period of time as to raise an inference of retaliatory motivation."

¶ 9 On July 22, 2010, the Department issued an investigation report, finding a lack of substantial evidence as to each charge. As to counts A and B, the report indicated that the hospital's defense to those counts was that petitioner was not harassed. The hospital further claimed that petitioner was given a verbal reprimand due to poor performance, and was informed about the hospital's employee assistance program "hoping that [petitioner's] work performance would improve if she took care of external issues." The report also indicated that the investigator had spoken with several individuals in connection with the investigation.

¶ 10 First, the investigator spoke with petitioner, who stated that on July 12, 2008, Thiligam asked petitioner to take on a greater patient load and more responsibilities; Thiligam told petitioner that if she could not do the work that Thiligam requested, then petitioner "would be seen as incompetent." Petitioner also claimed that Karen Parham, the adult night nursing supervisor, who was 47 and black, told petitioner that petitioner "was mentally ill and psychotic and that [petitioner] seemed to be playing the victim." Additionally, on February 18, 2009, petitioner received a verbal warning "because [the hospital] was telling her staff to complain about" her. Petitioner stated that she had taken care of a number of patients who other staff members would not assist, and was not always provided with the staff she needed to care for the patients; at times, she had only three nurses, which was inadequate. Petitioner claimed that she was not provided with adequate staffing "so that she could fail and [the hospital] could get rid of her."

¶ 11 Next, the investigator spoke with Thiligam, who denied harassing petitioner. Thiligam stated that, as part of petitioner's duties as a charge nurse II, she is responsible for assisting her staff with their patients. Thilgam claimed that during petitioner's shift, she would receive approximately two patients per night, while the day shift received approximately 20 patients a

day and the afternoon shift received approximately 15 patients a day. Thiligam denied that petitioner was understaffed. Three exhibits provided by the hospital showed activity logs demonstrating that (1) during the 11 p.m. to 7 a.m. shift on December 17 through December 18, 2009, there were no patients; (2) during the 7 a.m. to 3:30 p.m. shift on February 17, 2009, there were 18 patients; and (3) during the 3 p.m. to 11:30 p.m. shift on February 17, 2009, there were 15 patients. Thiligam also denied ever asking staff members to complain about petitioner's work, and never recommended that petitioner seek counseling. However, Thiligam stated that petitioner "did not meet [the hospital's] expectations," and that petitioner showed no initiative and had difficulty communicating with staff.

¶ 12 The investigator also spoke with Parham, who denied ever telling petitioner that she was mentally ill and psychotic, or that she was "playing the victim." Parham stated that she did not work directly with petitioner, but that she would be available if there were any problems during the night shift. Parham further stated that petitioner never complained to her about any harassment or discrimination, and Parham was unaware of any harassment or discrimination.

¶ 13 Next, the investigator spoke with Cynthia Przislicki, director of emergency nursing, who was white and 51 years old, who stated that it is a charge nurse's responsibility to take initiative and support her staff with their patients and to relieve them for their breaks and lunch. Przislicki stated that, during the night shift, the pediatric emergency room received approximately five patients a night, while the day shifts received 15 to 20 patients per day. Przislicki stated that, after observing petitioner's performance and speaking with petitioner and her staff, the hospital determined that petitioner was unable to perform the tasks required of a charge nurse II during her shift. Przislicki stated that petitioner had been warned about her performance and that neither of the other two charge nurses had been warned about their performance.

¶ 14 Finally, the investigator spoke with Inger Anthony, nurse coordinator, who was black and 50 years old, who stated that in evaluating petitioner, she spoke with petitioner and to her staff. Anthony stated that petitioner's staff informed her that petitioner was not involved in patient care or in emergency situations; Anthony stated that doctors also complained about petitioner's performance. Anthony claimed that she observed petitioner being unable to start an intravenous drip and that she did not check crash carts to ensure that they were operational. Anthony spoke with petitioner about her poor job performance and addressed the hospital's employee assistance program at the time; Anthony stated that petitioner had a stoic affect and was slow in her responses, and had no explanation for her difficulties in performing her job duties.

¶ 15 Several exhibits provided by the hospital showed the hospital's disciplinary policy and petitioner's disciplinary history. The hospital's disciplinary policy from 2006-2008 indicated that employees would be disciplined for failure to perform satisfactorily. Discipline was progressive except for major offenses, and included a verbal warning, written warning, suspension, and discharge. The policy indicated that an employee would be suspended more than 30 days or discharged for repeated infractions. Petitioner received a written warning on October 20, 2000, for narcotics that were missing during her shift. A performance evaluation report dated May 1, 2006, indicated that petitioner was rated as "excellent" in a number of areas and received an overall rating of "excellent." A performance evaluation report from April 2007 through April 2008 indicated that petitioner was rated as "good" in a number of areas and received an overall rating of "good." Finally, on February 18, 2009, petitioner received a verbal warning "when she failed to provide coordination of patient care, perform cardiopulmonary resuscitation, prioritize intervention, ensure staff coordination and performance, ensure recording of events, perform accurate assessment, assist staff,

interpersonal relationships, promote teamwork, and communication skills." Petitioner was also "instructed to review her job description and improve her performance including being advised of [the hospital's employee assistance program] if needed."

¶ 16 In rebuttal, petitioner informed the investigator that she assisted her staff with their patients, and that the night shift typically received seven to nine patients in the emergency room.

¶ 17 After considering the parties' evidence, the Department concluded that the investigation did not reveal any harassment due to race or age, and that the allegations of harassment fell within the legitimate boundaries of a manager. The Department found that petitioner did not establish that the hospital was motivated by discriminatory intent or that she was subjected to a pattern of incidents that was pervasive.

¶ 18 As to counts C and D, concerning a six-month probation, the report indicated that the hospital's defense to those counts was that petitioner was never placed on probation, and that probation was not part of the hospital's disciplinary policy. In addition to the evidence as set forth above, the investigator spoke with several individuals about petitioner's alleged probation.

¶ 19 First, petitioner claimed that she was told by Diane Ellis, a union employee, who was 56 and black, that the hospital would be placing petitioner on a six-month probation. Petitioner stated that she was not provided with any documentation showing that she was on probation, and could not recall if Anthony ever informed her that she was on probation.

¶ 20 Next, Przislicki stated that petitioner was never placed on a six-month probation. Przislicki stated that the hospital used progressive discipline, which included counseling, a verbal warning, a written warning, a one-day suspension, a three-day suspension, and discharge. The

hospital's discipline policy did not include probation, and hospital records did not indicate that any employee had ever been placed on probation.

¶ 21 Finally, Ellis denied ever informing petitioner that she was being placed on probation. Ellis stated that she did not work directly with petitioner, but that petitioner had informed her that she was being harassed by her supervisors. However, Ellis did not personally witness any discrimination.

¶ 22 In addition to employee interviews, several exhibits provided by the hospital showed the job description for a charge nurse II and performance evaluations for two other charge nurses, both of whom received evaluations of "excellent" and "superior." Anthony informed the investigator that neither of the other two charge nurses had ever been disciplined.

¶ 23 After considering the parties' evidence, the Department concluded that the investigation did not reveal that petitioner had been placed on probation due to race or age, and that the evidence established that petitioner had never been placed on probation at all.

¶ 24 As to count E, concerning retaliation, the report indicates that the hospital's defense to the allegation was, again, that petitioner was never placed on probation, and that probation was not part of the hospital's disciplinary policy. As with counts C and D, the Department concluded that the investigation did not reveal that petitioner had been placed on probation in retaliation for filing a previous discrimination charge, because the evidence established that petitioner had never been placed on probation. Accordingly, on all five counts of the charge, the Department made a finding of lack of substantial evidence.

¶ 25 Petitioner filed a *pro se* request for review of the Department's decision before the Commission. Petitioner claimed that Thilgam and Parham had lied to the investigator about their comments to petitioner on July 12, 2008, and that a different nurse witnessed what was

said to petitioner but chose not to participate in the investigation. Petitioner further claimed that she was provided with inadequate staffing, was expected to handle a larger workload than other charge nurses, and was not provided with assistance from supervisors. Petitioner claimed that her supervisors wanted her to fail, and had created an environment in which she was continually harassed.

¶ 26 On December 5, 2016, the Commission entered an order sustaining the dismissal of petitioner's charge. As to counts A and B, the Commission found that the alleged incidents of harassment were job-related and arose from the hospital's supervision of petitioner. Additionally, the Commission found that petitioner did not show a pattern of discriminatory incidents motivated by her race and age that were sufficiently severe or pervasive to alter the terms and conditions of petitioner's work environment. As to counts C, D, and E, the Commission found that there was no evidence that the hospital had engaged in an adverse action against petitioner because there was no evidence that petitioner had been placed on probation for any reason. Accordingly, the Commission sustained the dismissal of petitioner's charge.

¶ 27 On January 5, 2017, petitioner filed a timely petition for direct administrative review before this court. However, on February 20, 2018, respondents, the Commission and the Department, filed a motion to dismiss the appeal because petitioner had not named the hospital as a necessary party. We granted the motion and dismissed the appeal on March 22, 2018. However, on May 31, 2018, the supreme court entered a supervisory order directing us reinstate the action and permit petitioner to join the hospital as a necessary party. Accordingly, on June 8, 2018, we vacated the dismissal and permitted petitioner to join the hospital as a necessary party. This appeal follows.

¶ 28 ANALYSIS

¶ 29 On appeal, petitioner claims that the Commission erred in sustaining the Department's dismissal, because she established that she had been subject to race and age discrimination, as well as retaliation from the hospital. The Illinois Human Rights Act (Act) (775 ILCS 5/1-101 *et seq.* (West 2008)) provides that it is a civil rights violation for an employer "to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of unlawful discrimination." 775 ILCS 5/2-102(A) (West 2008). "Unlawful discrimination" includes both discrimination due to race and due to age. 775 ILCS 5/1-103(Q) (West 2008). It is also a civil rights violation for a person to "[r]etaliate against a person because he or she has opposed that which he or she reasonably and in good faith believes to be unlawful discrimination, *** or because he or she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under this Act." 775 ILCS 5/6-101(A) (West 2008).

¶ 30 When a civil rights violation has allegedly been committed, the aggrieved party may file a charge with the Department. 775 ILCS 5/7A-102(A)(1) (West 2008). The Department then conducts "a full investigation" of the allegations set forth in the charge, including a factfinding conference. 775 ILCS 5/7A-102(C) (West 2008). This investigation results in a report, which is then reviewed to determine "whether there is substantial evidence that the alleged civil rights violation has been committed." 775 ILCS 5/7A-102(D)(2) (West 2008). Under the Act, "[s]ubstantial evidence is evidence which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance." 775 ILCS 5/7A-102(D)(2) (West 2008). If the charge is not

supported by substantial evidence, the charge is dismissed, and the petitioner has the right to seek review of the dismissal before the Commission. 775 ILCS 5/7A-102(D)(3) (West 2008).

¶ 31 In reviewing the dismissal, the Commission may consider the Department's report, any timely-submitted supplemental evidence, and the results of any additional investigation conducted by the Department in response to the request for review. 775 ILCS 5/8-103(B) (West 2008). If the Commission sustains the dismissal, the petitioner may seek review directly in the appellate court. 775 ILCS 5/8-111(B)(1) (West 2008). In reviewing the dismissal, it is the decision of the Commission, not the Department, that we review. *Marinelli v. Human Rights Comm'n*, 262 Ill. App. 3d 247, 253 (1994). Under the Act, "the Commission's findings of fact shall be sustained unless the court determines that such findings are contrary to the manifest weight of the evidence." 775 ILCS 5/8-111(B)(2) (West 2008). However, a reviewing court is not bound to give the same deference to the Commission's conclusions of law or its statutory construction, and exercises independent review over such questions. *Raintree Health Care Center v. Illinois Human Rights Comm'n*, 173 Ill. 2d 469, 479 (1996).

¶ 32 Furthermore, we review the Commission's decision for an abuse of discretion. *Young v. Illinois Human Rights Comm'n*, 2012 IL App (1st) 112204, ¶ 32. Under this standard, we will not disturb the Commission's decision unless it is arbitrary or capricious, meaning that "it contravenes legislative intent, fails to consider a critical aspect of the matter, or offer[s] an explanation so implausible that it cannot be regarded as the result of the agency's expertise." *Young*, 2012 IL App (1st) 112204, ¶ 33. The reviewing court may not reweigh the evidence or substitute its judgment for that of the Commission, and an abuse of discretion will be found "where no reasonable man could agree with the position of the lower court." *Young*, 2012 IL App (1st) 112204, ¶ 33.

¶ 33 When an employee alleges a violation of the Act based on unlawful discrimination by an employer, Illinois courts generally apply the three-prong test set forth by the Illinois supreme court in *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill. 2d 172 (1989), which is based on the framework employed by federal courts in employment discrimination cases. *Owens v. Department of Human Rights*, 403 Ill. App. 3d 899, 918 (2010). First, the petitioner must establish a *prima facie* case of unlawful discrimination by a preponderance of the evidence. *Zaderaka*, 131 Ill. 2d at 179. If the petitioner successfully establishes a *prima facie* case, a rebuttable presumption arises that the employer unlawfully discriminated against the petitioner. *Zaderaka*, 131 Ill. 2d at 179. Second, in order to rebut the presumption, the employer must articulate, not prove, a legitimate, nondiscriminatory reason for its decision. *Zaderaka*, 131 Ill. 2d at 179. Finally, if the employer carries its burden of production, the presumption of unlawful discrimination falls and the petitioner must then prove by a preponderance of the evidence that the employer's articulated reason was not its true reason, but was instead a pretext for unlawful discrimination. *Zaderaka*, 131 Ill. 2d at 179. The determination of whether an employer's articulated reason is pretextual is a question of fact. *Zaderaka*, 131 Ill. 2d at 180.

¶ 34 To establish a *prima facie* case of employment discrimination, the petitioner must first 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) the employer treated similarly situated employees outside the class more favorably. *Owens*, 403 Ill. App. 3d at 919. To show the third element, that she 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." (Internal quotation marks omitted.) *Young*, 2012 IL App (1st) 112204, ¶ 35. A materially adverse employment action is

" 'one that significantly alters the terms and conditions of the employee's job.' " *Owens*, 403 Ill. App. 3d at 919 (quoting *Griffin v. Porter*, 356 F.3d 824, 829 (7th Cir. 2004)). This includes actions 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." *Owens*, 403 Ill. App. 3d at 919. "However, not everything that makes an employee unhappy is an actionable adverse action." (Internal quotation marks omitted.) *Owens*, 403 Ill. App. 3d at 919-20. Accordingly, "it has repeatedly been held that oral and written reprimands alone do not alter an employee's terms or conditions of employment to such an extent so as to constitute an adverse employment action for purposes of establishing a *prima facie* case of employment discrimination." *Owens*, 403 Ill. App. 3d at 920.

¶ 35 In the case at bar, the Commission sustained the Department's dismissal of counts A and B because it found that the alleged incidents of harassment were job-related and arose from the hospital's supervision of petitioner, and further found that petitioner had failed to establish a pattern of discriminatory incidents motivated by her race and age that were sufficiently severe or pervasive to alter the terms and conditions of her work environment. We cannot find that this determination was an abuse of discretion.

¶ 36 Counts A and B alleged that, beginning on July 12, 2008, and through February 18, 2009, petitioner had been harassed by Thiligam, who (1) issued unfounded verbal reprimands, (2) claimed that petitioner's work performance was substandard even though Thiligam "improperly assign[ed] the required number of staff," and (3) told petitioner that she should "seek employee counseling for external problems." In investigating petitioner's charge, petitioner further informed the investigator that she was being harassed by Thiligam and other hospital supervisors, who wanted her to fail at her job. After considering petitioner's charge,

the report issued by the Department, and petitioner's arguments in support of her request for review, the Commission found that the complained-of conduct was all related to petitioner's performance at her job and occurred within the context of the hospital's supervision of petitioner. We will not reweigh this evidence or substitute our judgment for that of the Commission. *Young*, 2012 IL App (1st) 112204, ¶ 33.

¶ 37 Moreover, we note that, even accepting petitioner's claim that the hospital's supervisors behaved improperly, petitioner has not provided any evidence suggesting that this behavior was based on her age or her race. "Essential to a claim of discrimination is proof that the adverse treatment by the employer was motivated by the complainant's membership in a protected class." *Moren v. Illinois Department of Human Rights*, 338 Ill. App. 3d 906, 910 (2003). Petitioner claimed that she was treated differently than similarly situated younger and nonblack employees. However, the only individual she named as an example of this different treatment was another charge nurse who was older than petitioner and who received higher scores on her performance evaluations, according to the Department's report.

¶ 38 Finally, we find unpersuasive petitioner's claim that the hospital's reasons for its actions were pretextual. Petitioner points to three ways to show that an employer's proffered reason is pretextual, set forth in *Wheeler v. McKinley Enterprises*, 937 F.2d 1158, 1162 (6th Cir. 1991): "(1) by showing that the stated reasons had no basis in fact, (2) by showing that they were not the actual reasons, and (3) by showing that they were insufficient to explain the discharge." As noted, the determination of whether an employer's articulated reason is pretextual is a question of fact. *Zaderaka*, 131 Ill. 2d at 180. Here, the Commission had all of the evidence before it, and found that the reasons proffered by the hospital explained the allegedly discriminatory conduct. While petitioner may disagree, we cannot find that it was against the manifest weight

of the evidence for the Commission to find that the conduct resulted from legitimate issues with petitioner's job performance. Accordingly, we affirm the Commission's finding that there was a lack of substantial evidence supporting counts A and B of petitioner's charge.

¶ 39 With respect to counts C and D, the Commission sustained the Department's dismissal because it found that there was no evidence that the hospital had engaged in an adverse action against petitioner. On appeal, petitioner makes no arguments concerning the dismissal of these counts. It is well settled that points not argued in the appellant's brief are forfeited. *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 253 (2010); Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2017) ("Points not argued [in the appellant's brief] are forfeited and shall not be raised in the reply brief, in oral argument, or on petition for rehearing."). Therefore, we affirm the Commission's finding that there was a lack of substantial evidence supporting counts C and D of petitioner's charge.

¶ 40 Finally, with respect to count E, the Commission sustained the Department's dismissal of petitioner's retaliation claim because it found that there was no evidence that the hospital had engaged in an adverse action against her. In order to establish a *prima facie* case of retaliation under the Act, the petitioner must show that (1) she was engaged in a protected activity; (2) her employer committed a material adverse act against her; and (3) a causal nexus existed between the protected activity and the adverse act. *Hoffelt v. Illinois Department of Human Rights*, 367 Ill. App. 3d 628, 634 (2006).

¶ 41 In count E, petitioner alleged that she was placed on a six-month probation on February 10, 2009, "in retaliation for openly opposing race discrimination." Count E alleges that on September 11, 2008, petitioner filed a race discrimination charge against the hospital with the Department and that her probation "followed [her] protected activity within such a period of

time as to raise an inference of retaliatory motivation." The Commission found that petitioner had properly alleged that she was engaged in a protected activity by filing a race discrimination charge. However, the Commission found that there was no evidence that the hospital had committed an adverse action against her. We cannot say that this finding was against the manifest weight of the evidence.

¶ 42 Petitioner alleged in her charge that the action taken against her was a six-month probation. However, during the Department's investigation, everyone denied that petitioner had ever been placed on probation. Indeed, the hospital's disciplinary policy does not even allow for probation. Petitioner herself even told the investigator that she never received any documentation showing that she was placed on probation and could not recall if Anthony ever mentioned it to her. On appeal, petitioner does not appear to contest the fact that she was never actually placed on probation, acknowledging that, "[t]rue enough, [the hospital] never formerly [*sic*] placed [petitioner] on probation." Instead, petitioner points to other "retaliatory acts" that occurred after she had filed a discrimination charge. First, these acts were the same acts already considered by the Commission in counts A and B. More importantly, however, petitioner's charge was based on being placed on probation, not on other "retaliatory acts." Issues not raised by the parties before an administrative agency will not be considered for the first time on administrative review. *Franklin County Board of Review v. Department of Revenue*, 346 Ill. App. 3d 833, 839 (2004); see also *Deen v. Lustig*, 337 Ill. App. 3d 294, 304-05 (2003) ("On review of an administrative agency decision, this court is limited to considering the record that was before the agency and may not consider new or additional evidence." (Internal quotation marks omitted.)). Consequently, we do not consider petitioner's argument that different acts

could have supported her retaliation charge and find that the Commission properly found that there was a lack of substantial evidence supporting count E of petitioner's charge.

¶ 43 CONCLUSION

¶ 44 For the reasons set forth above, we find that the Commission did not abuse its discretion in sustaining the Department's dismissal of petitioner's charge.

¶ 45 Affirmed.

**No. 1-17-0026**

| | |
|---|---|
| **Cite as:** | *Spencer v. Illinois Human Rights Comm'n*, 2021 IL App (1st) 170026 |
| **Decision Under Review:** | Petition for review of order of Illinois Human Rights Commission, No. 2009-CA-3113. |
| **Attorneys for Appellant:** | David Lewarchik, of Lewarchik Law PLLC, of Chicago, for appellant. |
| **Attorneys for Appellee:** | Kwame Raoul, Attorney General, of Chicago (Jane Elinor Notz, Solicitor General, and Janon E. Fabiano, Assistant Attorney General, of counsel), for respondents Illinois Human Rights Commission and Illinois Department of Human Rights. |