

STATE OF ILLINOIS
DEPARTMENT OF HUMAN RIGHTS

IN THE MATTER OF THE)
REQUEST FOR REVIEW BY:)
)
M.C.¹) CHARGE NO: 2008CA0658
) EEOC NO: 21BA72661
)

ORDER

This matter coming before the Chief Legal Counsel Designee upon Complainant's Request for Review ("Request") of the dismissal by the Department of Human Rights ("Department") of Charge No. 2008CA0658, M.C., Complainant, and State of Illinois, Department of Children and Family Services, Respondent; and the Chief Legal Counsel Designee having reviewed de novo the Department's investigation file, including the Investigation Report, Complainant's Request and supporting materials, Respondent's Reply to Complainant's Request ("Reply"), and Complainant's Surreply to Respondent's Reply ("Surreply"); and the Chief Legal Counsel Designee being fully advised of the premises;

NOW, THEREFORE, it is hereby ORDERED:

- I. The dismissal of Count F is VACATED and that count is REMANDED to the Department's Charge Processing Division for further investigation and other proceedings by the Department; and
- II. The dismissal of Counts B1, B2, B3, B4, B5, B6, B7, B8, B9, B10, B11, C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12, D8, D9, D10, D11, E1, E2, E3, E4, E5, E6, E7, E8, E9, E10, E11, E12, E13, E14, E15, E16, F1, L, M and N is SUSTAINED for LACK OF SUBSTANTIAL EVIDENCE.

¹ Complainant's name has been replaced by initials consistent with public policy favoring privacy where an individual's disability is at issue.

In support of which determinations the Chief Legal Counsel Designee states the following findings of fact and reasons:

1. Complainant filed a charge of discrimination with the Department on July 1, 2007, perfected September 18, 2007,² alleging that Respondent subjected her to harassment based on her physical disability, hearing impairment (Count A), issued her a verbal reprimand based on her physical disability (Count B), issued her written reprimands based on her physical disability (Count C), issued her verbal and written reprimands in retaliation for opposing unlawful discrimination and filing an unperfected charge of discrimination against Respondent with the Department (Count D), subjected her to unequal terms and conditions of employment based on her physical disability (Count E), failed to accommodate her physical disability (Count F), subjected her to harassment in retaliation for opposing unlawful discrimination and filing an unperfected discrimination charge against Respondent with the Department (Count G), and based on her age, 54 (Count H), suspended her based on her physical disability (Count I), and her age (Count J), and in retaliation for opposing unlawful discrimination and filing an unperfected charge of discrimination against Respondent with the Department (Count K), issued her unacceptable/negative performance evaluations based on her physical disability (Counts L and M), and in retaliation for opposing unlawful discrimination and filing an unperfected charge of discrimination against Respondent with the Department (Count N), subjected her to harassment based on her perceived physical disability (Count O), issued her a verbal reprimand based on her perceived physical disability (Count P), issued her written reprimands based on her perceived physical disability (Count Q), suspended her based on her perceived physical disability (Count R), subjected her to unequal terms and conditions of employment based on her perceived physical disability (Count S), failed to accommodate her perceived physical disability (Count T), and issued her unacceptable/negative performance evaluations based on her perceived physical disability (Counts U and V), in violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“Act”).

2. On August 20, 2008, the Department dismissed Counts A, B, C, E, F, I, L and M of Complainant’s charge for Lack of Jurisdiction and Counts D, G, H, J, K, N, O, P, Q, R, S, T, U and V of Complainant’s charge for Lack of Substantial Evidence. On September 22, 2008, Complainant requested an extension of time to file a Request for Review. On September 23, 2008, the Chief Legal Counsel determined that Complainant established good cause for the request, and, therefore, granted Complainant a fourteen day extension of time to file her Request for Review, until October 8, 2008. 56 Ill. Admin. Code, Chapter II, § 2520.580(b). On October 8, 2008, Complainant filed a timely Request for Review. On November 9, 2009, the Chief Legal Counsel vacated the dismissal of Counts A, B, C, D, E, F, I, L, M, N, O, P, Q, R, S, T, U and V of Complainant’s charge and remanded those counts to the Department’s Charge Processing Division for further investigation and sustained the dismissal of Counts G, H, J and K of Complainant’s charge. On January 8, 2010, the Department dismissed Complainant’s charge for

² On September 14, 1998, Complainant filed an unperfected charge against Respondent with the Department. The Department did not allow Complainant to perfect that charge. On May 24, 2001, Complainant filed a mandamus action in the Circuit Court of Cook County, asking that the claims under the Act be adjudicated. On September 19, 2007, the parties entered into a settlement agreement whereby the Department agreed to process Complainant’s claims.

Lack of Substantial Evidence.³ On January 15, 2010, Complainant requested an extension of time to file a Request for Review. On January 19, 2010, the Chief Legal Counsel determined that Complainant established good cause for the request, and, therefore, granted Complainant a fourteen day extension of time to file her Request for Review, until March 2, 2010. 56 Ill. Admin. Code, Chapter II, § 2520.580(b). On March 2, 2010, Complainant filed a timely Request for Review.

3. On August 29, 2011, the Chief Legal Counsel Designee vacated the dismissal of Counts B, C, D, D8, D9, D10, D11, E, F, L, M and N of Complainant's charge and remanded those counts to the Department's Charge Processing Division for further investigation and sustained the dismissal of Counts A, D1, D2, D3, D4, D5, D6, D7, I, O, P, Q, R, S, T, U and V of Complainant's charge. Therefore, Counts A, D1, D2, D3, D4, D5, D6, D7, I, O, P, Q, R, S, T, U and V are not before the Chief Legal Counsel Designee in this Request. On December 9, 2011, the Department dismissed Complainant's charge for Lack of Substantial Evidence. On January 13, 2012, Complainant requested an extension of time to file a Request for Review. On January 19, 2012, the Chief Legal Counsel determined that Complainant established good cause for the request, and, therefore, granted Complainant a fourteen day extension of time to file her Request for Review, until January 30, 2012. 56 Ill. Admin. Code, Chapter II, § 2520.580(b). On January 30, 2012, Complainant filed this timely Request.

4. Complainant, a Public Service Administrator, Agency Performance Team ("APT") Supervisor, alleges that Respondent issued her a verbal reprimand because of her physical disability, hearing impairment (Meniere's disease), on June 24, 1998 (Count B1), July 22, 1998 (Counts B2 and B3), July 23, 1998 (Count B4), August 6, 1998 (Count B5), August 14, 1998 (Count B6), August 25, 1998 (Count B7), September 15, 1998 (Count B8), September 28, 1998 (Count B9), October 15, 1998 (Count B10) and March 8, 1999 (Count B11). As to Counts B1 through B11, Complainant further alleges that Respondent treated her differently than other similarly-situated non-disabled APT Supervisors. Complainant alleges that Respondent issued her a written reprimand because of her physical disability on June 24, 1998 (Count C1), July 1, 1998 (Count C2), July 22, 1998 (Counts C3 and C4), July 23, 1998 (Count C5), August 6, 1998 (Counts C6 and C7), August 14, 1998 (Count C8), August 25, 1998 (Count C9), August 31, 1998 (Count C10), October 15, 1998 (Count C11), and March 8, 1999 (Count C12). As to Counts C1 through C12, Complainant further alleges that Respondent treated her differently than other similarly-situated non-disabled APT Supervisors.

5. Further, as to Counts D8, D9, D10, D11 and N, Complainant alleges that she engaged in a protected activity on August 31, 1998, when she filed a union grievance regarding an oral reprimand she received from Respondent,⁴ and in September 1998, when she filed an

³ In its Addendum to the Investigation Report, dated December 31, 2009 ("Addendum"), the Department inadvertently indicated on Page two that it was again recommending that Counts G, H, J and K of the instant charge be dismissed for Lack of Substantial Evidence. The body of the Addendum, however, is silent as to Counts G, H, J and K, which is proper, where, as previously stated, the Chief Legal Counsel sustained the dismissal of those counts in his Order dated November 9, 2009.

⁴ The Department's original Investigation Report, Pages five, thirteen, eighteen and twenty and the Addendum, Page seven, indicate that Complainant alleges that on August 31, 1998, she opposed unlawful discrimination when she filed a union grievance regarding her request for a hearing aid-compatible telephone with an amplified receiver.

unperfected discrimination charge against Respondent with the Department. Complainant alleges that in retaliation for opposing unlawful discrimination and filing an unperfected discrimination charge against Respondent with the Department Respondent issued her verbal and written reprimands on September 28, 1998 (Count D8), October 14, 1998 (Count D9), September 15, 1998 (Count D10), and March 8, 1999 (Count D11). In addition, Complainant alleges that Respondent subjected her to unequal terms and conditions of employment based on her physical disability in March 1998 (Count E1), and on June 24, 1998 (Count E2), July 1, 1998 (Count E3), July 22, 1998 (Counts E4 and E5), July 23, 1998 (Count E6), August 6, 1998 (Count E7), August 7, 1998 (Count E8), August 14, 1998 (Count E9), August 24, 1998 (Count E10), August 25, 1998 (Count E11), August 31, 1998 (Count E12), September 15, 1998 (Count E13), October 15, 1998 (Count E14), March 8, 1999 (Count E15), and April 23, 1999 (Count E16).

6. As to Count F, Complainant alleges that on or about August 7, 1998, Respondent failed to accommodate her physical disability in that Respondent denied her a hearing aid-compatible telephone with an amplified receiver. As to Count F1, Complainant alleges that beginning in August 1998, Respondent failed to accommodate her physical disability in that she requested, but was not allowed to take, breaks to engage in simple physical activities, such as stretching and pacing, to ward off drowsiness caused by her medication or to leave a meeting if she felt dizzy or ill as a result of her medication. Further, Complainant alleges that Respondent issued her an unacceptable/negative performance evaluation based on her physical disability in March 1998 (Count L), and in April 1999 (Count M). As to Count N, Complainant alleges that Respondent issued her an unacceptable/negative performance evaluation in March 1998, and in April 1999, in retaliation for opposing unlawful discrimination, and filing an unperfected discrimination charge against Respondent with the Department.

7. As to Counts B1, B2, B3, B4, B5, B6, B7, B8, B9, B10, B11, C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12, E1, E2, E3, E4, E5, E6, E7, E8, E9, E10, E11, E12, E13, E14, E15, E16, F, F1, L and M, Respondent denies that Complainant is a disabled person within the meaning of Section 1-103(I) of the Act. Further, as to Counts B1 and C1, Respondent denies that it disciplined Complainant. In addition, as to Counts B2, B3, B4, B5, B6, B7, B8, B9, B10 and B11, Respondent denies that it disciplined Complainant based on her physical disability. Also, as to Counts C2, C3, C4 and C5, Respondent further denied that Respondent issued Complainant a written reprimand based on her physical disability. Furthermore, as to Counts C6, C7, C8, C9, C10, C11 and C12, Respondent further denied that Respondent disciplined Complainant based on her physical disability. As to Counts D8 through D11, Respondent denies that it disciplined Complainant in retaliation for opposing unlawful discrimination. Rather, Respondent contends that it issued verbal and written reprimands to Complainant prior to the time that she engaged in a protected activity when Complainant filed a union grievance on August 31, 1998, October 28, 1998, and in January 1999, filed an unperfected discrimination charge against Respondent with the Department in September 1998, and filed her discrimination charge against Respondent with the EEOC on March 19, 1999, and June 17, 1999. Additionally, as to Counts E1 through E16, Respondent further denies that Respondent subjected Complainant to unequal terms and conditions of employment based on her disability.

In her charge, Complainant alleges that she grieved on August 31, 1998, reprimands she received from Respondent on August 25, 1998. Documentation in the Department's investigation file shows that Complainant filed a grievance on August 31, 1998, regarding an oral reprimand she received from Respondent on August 25, 1998.

8. Further, as to Count F, Respondent contends that Respondent provided Complainant with a reasonable accommodation in accordance with its reasonable accommodation policy. In addition, as to Count F1, Respondent contends that Complainant never requested a reasonable accommodation. Also, as to Counts L and M, Respondent further denies that Respondent issued Complainant an unacceptable/negative performance evaluation based on her physical disability. Respondent contends that Respondent evaluated Complainant's performance in accordance with its performance evaluation policy. As to Count N, Respondent denies that it issued Complainant an unacceptable/negative performance evaluation in retaliation for opposing unlawful discrimination. Rather, Respondent contends that it evaluated Complainant's performance in accordance with its performance evaluation policy. Respondent further contends that it issued Complainant verbal and written reprimands for performance-related problems prior to Complainant's having engaged in a protected activity on August 31, 1998, in September 1998, on October 28, 1998, in January 1999, on March 19, 1999, and on June 17, 1999.

9. As to Counts B1 through B11, Counts C1 through C12, and Counts E1 through E16, the Department's investigation did not reveal substantial evidence that Respondent issued Complainant verbal reprimands because of her physical disability and written reprimands because of her physical disability and subjected her to unequal terms and conditions of employment because of her physical disability. The Department's investigation did not reveal substantial evidence that Respondent's articulated non-discriminatory reason is pretext for unlawful discrimination. The Department's investigation revealed that Respondent's Discipline Policy, included in Article IX, Section 1 of the Agreement between the American Federation of State, County and Municipal Employees, Council 31, AFL-CIO ("AFSCME"), of which Complainant was a member, and the State of Illinois, Department of Central Managements Services ("CMS"), dated July 1, 1997, through June 30, 2000 ("AFSCME Union contract"), provides that Respondent agrees with the tenets of progressive and corrective discipline and that disciplinary actions or measures shall include only oral reprimand, written reprimand, suspension and discharge. The Department's investigation revealed that Section 302.626 of Respondent's Discharge and Discipline Policy included in CMS's Personnel Rules, dated November 1997,⁵ entitled "Progressive Corrective Discipline," provides, in part, that "[u]nless grounds clearly are present warranting immediate discharge or suspension pending decision on discharge, employees shall be subject to corrective discipline progressively utilizing counseling, warnings, and/or suspension, as the facts and circumstances dictate, prior to discharge."

10. As to Counts B1 through B11, Counts C1 through C12, and Counts E1 through E16, the Department's investigation revealed that Section 302.630 of CMS's Discharge and Discipline Policy included in its Personnel Rules, dated November 1997,⁶ entitled "Disciplinary Action Warning Notice," provides that "[t]he agency head or his/her designee may warn an employee either orally or in writing as a disciplinary measure. A copy of any written notice shall be submitted to the Department and shall become part of the employee's personnel records. The notice shall bear the signature of the issuing official." The Department's investigation revealed

⁵ Section 302.626 of CMS's Discharge and Discipline Policy was not exhibited in the Department's investigation file. As such, it has been labeled as "Exhibit XX1."

⁶ Section 302.630 of CMS's Discharge and Discipline Policy was not exhibited in the Department's investigation file. As such, it has been labeled as "Exhibit XX2."

that Chapter 3, Section 3.7 of Respondent's Employee Conduct Policy, entitled "Use of Intoxicants or Narcotics," included in Respondent's Employee Handbook, dated June 2006, states, in relevant part, that it is Respondent's policy to provide its employees with a drug-free workplace and further states that "[e]mployees legitimately using prescription drugs/medication(s) may be exempt from this policy provided that they advise their supervisor, and that such use does not result in less than acceptable job performance and/or that their behavior does not bring adverse criticism on the Department." The Department's investigation revealed that Respondent's Evaluations Policy, included in Article XXVII, Section 1 of the Agreement, entitled "Informal Conferences," provide that "[t]he Union and [Respondent] encourage periodic informal evaluation conferences between the employee and his/her supervisor to discuss work performance, job satisfaction, work-related problems and the work environment. If work performance problems are identified, the supervisor shall offer constructive suggestions and shall attempt to aid the employee in resolving the problem."

11. As to Counts B1 through B11, Counts C1 through C12, and Counts E1 through E16, the Department's investigation revealed that Respondent's Evaluations Policy, included in Article XXVII, Section 2 of the Agreement, entitled "Written Evaluations," provides that "[i]t is the intent of [Respondent] to conduct ongoing evaluations as provided in Section 1 above. . . . In addition, [Respondent] may prepare periodic evaluations of certified employees." The Department's investigation revealed that Respondent's Employee Evaluations policy included in Chapter 5, Section 5.4 of Respondent's Employee Handbook states, in relevant part, that the basic purpose of an evaluation is to document an employee's performance. Respondent's Employee Evaluations policy further states that the "evaluation becomes part of an employee's official personnel history and may be used to support a personnel transaction or disciplinary action." Respondent's Employee Evaluations policy also states that "[e]valuations normally take place every 12 months." The Department's investigation revealed that Respondent is a state agency that investigates the abuse and neglect of minors and provides services to families to prevent abuse and neglect. The Department's investigation revealed that in 1998, Complainant was employed as a PSA APT Supervisor for Respondent's Cook County south region. The Department's investigation revealed that Complainant job duties included supervising a team of 12 workers who monitored the performance of outside child welfare agencies under contract with Respondent to provide social services to the children and families Respondent served.

12. In addition, as to Counts B1 through B11, Counts C1 through C12, and Counts E1 through E16, the Department's investigation revealed that in March 1998, Jayne Doyle ("Doyle") (non-disabled, no protected activity), Associate Deputy Director, was Complainant's supervisor. Doyle also supervised Karolyn Mitchell ("Mitchell") (non-disabled, no protected activity), Carolyn Bailey ("Bailey") (non-disabled, no protected activity), and Treva Hamilton ("Hamilton") (non-disabled, no protected activity). On or about March 10, 1998, Doyle issued to Complainant Complainant's performance evaluation for the period January 1, 1997, to December 31, 1997 (Complainant's 1997 performance evaluation), in which Doyle indicated that Respondent had employed Complainant for 18 years, and that the last three of those years Complainant had been in the position of PSA. Complainant's 1997 performance evaluation reflected an overall performance rating of "Accomplished/Satisfactory," and noted job performance concerns, including, but not limited to, "[Complainant's] continu[ed] failure to remain alert and/or awake during meetings . . . [which] highlight[ed] a serious judgment issue,"

“[her] receipt of a warning notice for failing to report serious problems with one agency during the 1997 reporting period, and “little critical thinking or leadership in her position as supervisor.” The Department’s investigation revealed that Bailey, PSA – Field Service Manager, was Complainant’s immediate supervisor from July 1, 1998, through August 31, 1998.

13. Also, as to Counts B1 through B11, and Counts C1 through C12, Complainant alleges that Respondent reprimanded her because of her physical disability on June 24, 1998 (for lacking communication skills), July 1, 1998 (for inappropriate behavior), July 22, 1998 (for inability to understand management directives and for being incompetent, having an inability to understand management directives, and failing to meet deadlines), July 23, 1998 (for inability to comprehend what was said at meetings), August 6, 1998 (for failing to meet deadlines), August 14, 1998 (for failing to meet deadlines), August 25, 1998 (for failing to schedule clinical staffing), August 31, 1998 (for a continued lack of acceptable job performance), September 15, 1998 (criticizing her supervision of her team), September 28, 1998 (for sleeping at meetings), October 15, 1998 (for sleeping at meetings on September 28, 1998, and October 14, 1998) and March 8, 1999 (for falling asleep during four meetings in January 1999). Further, as to Counts E1 through E16, Complainant alleges that from March 1998, through April 13, 1999, Respondent subjected her to unequal terms and conditions of employment because of her physical disability in that Respondent disciplined her by issuing her the foregoing reprimands, as well as a reprimand on August 7, 1998 (for performance-related concerns), issuing her an unacceptable negative performance evaluation in March 1998, and on April 23, 1999, sending her a posting for an alternate job outside of Complainant’s division for less pay and making it known to Complainant that Bailey wanted Complainant to leave her job, and issuing her a suspension on March 8, 1999.

14. Furthermore, as to Counts B1 through B11, Counts C1 through C12, and Counts E1 through E16, in order to establish a prima facie case of disability discrimination, Complainant must show: (1) that she is disabled within the meaning of the Act; (2) that her disability is unrelated to her ability to perform the essential functions of her job; and (3) an adverse job action was taken against her because of her disability. See Ill. Dep’t of Corrections v. Illinois Human Rights Commission, 298 Ill. App. 3d 536, 540, 699 N.E.2d 143, 145-46 (3rd Dist. 1998), citing Truger v. Department of Human Rights, 293 Ill. App. 3d 851, 859, 688 N.E.2d 1209, 1213 (2nd Dist. 1997). Section 1-103(I) of the Act defines “disability” as “a determinable physical or mental characteristic of a person . . . 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). The Department’s investigation revealed that Complainant’s medical condition was unrelated to her ability to perform the duties of her job and that, as such, Complainant was disabled under the Act. Thus, Complainant satisfied the first and second prongs of a prima facie case of disability discrimination. However, as to each of these counts, as will be shown below, Complainant failed to establish the third prong of a prima facie case of disability discrimination, that is, that Respondent took an adverse action against her because of her physical disability. “An adverse action is an essential element of a prima facie case of unlawful discrimination. If a complainant cannot allege that [s]he has been detrimentally affected in some way by an action of the respondent, there is nothing to remedy under the . . . Act.” Davis and METRA/Metropolitan Rail, __ Ill. HRC Rep. __, Charge No. 1991CF3732, 1997 WL 377553 at *5 (May 5, 1997). “An adverse action must be sufficiently pervasive or severe to constitute a term or condition of

employment. If it fails to meet that standard, it cannot give rise to a cause of action under the Act.” Sessler and CF Motor Freight, ___ Ill. HRC Rep. ___, (1998SF0588, May 31, 2002), citing Campion and Blue Cross and Blue Shield Ass’n, ___ Ill. HRC Rep. ___, (1988CF0062, June 27, 1997).

15. Additionally, as to Counts B1, C1 and E2, during the Department’s investigation, Complainant indicated that on or about June 24, 1998, during a meeting, Doyle issued Complainant an oral and written reprimand for allegedly lacking in communication skills in that Doyle told Complainant that Complainant “c[ould]n’t do a simple meeting right.” During the Department’s investigation, Complainant further indicated that Bailey, who was present at that meeting, rolled her eyes and made a snide remark. The Department’s investigation revealed that on or about June 24, 1998, Doyle held a meeting with Complainant during which Bailey was present, and Complainant was criticized for her work performance. The Department’s investigation did not reveal, and Complainant did not show, that Respondent’s June 24, 1998, meeting with Complainant, which was not memorialized, was disciplinary in nature. Further, the Department’s investigation revealed that Doyle provided verbal and written criticism and/or counseling, respectively to similarly-situated non-disabled employees, Mitchell, APT Supervisor, and Susan Bernstein (“Bernstein”), APT Supervisor, for performance-related problems. As to Counts C2 and E3, during the Department’s investigation, Complainant indicated that on or about July 1, 1998, Respondent issued her a written reprimand and instructed her not to complain to anyone about the reprimand. The Department’s investigation revealed that on or about July 1, 1998, Bailey met with Complainant and issued her a memorandum dated July 1, 1998, from Doyle to Complainant regarding Complainant’s inappropriate behavior with Complainant’s staff.⁷ In her July 1, 1998, memorandum, Doyle indicated, among other things, that Complainant’s poor judgment and total lack of understanding of boundaries between Complainant and her staff called into question Complainant’s ability to supervise. The evidence shows that Doyle’s July 1, 1998, memorandum to Complainant Respondent criticized Complainant about her work performance and that it was not disciplinary in nature. The Department’s investigation revealed that Respondent provided verbal and written criticism and/or counseling, respectively, to similarly-situated non-disabled APT Supervisors, Mitchell and Bernstein, for performance-related problems.

16. Further, as to Counts B2, B3, C3, C4, E4 and E5, during the Department’s investigation, Complainant indicated that on or about July 22, 1998, Respondent reprimanded her for allegedly being incompetent and/or unable to understand management directives and further indicated that on that same date, Bailey and Doyle set unreasonable deadlines designed to expose Complainant to further criticism, which included giving Complainant until August 7, 1998, to compete 10 staff evaluations, and giving her until July 28, 1998, to provide her team’s intake schedule, despite knowing that Complainant had previously scheduled vacations days in July 1998, to seek medical evaluation and treatment in connection with her medical condition. Complainant further indicated that Bailey demanded, without providing her a deadline, that Complainant obtain a copy of Respondent’s policy and procedures manual. The Department’s investigation did not reveal and Complainant did not show that Respondent disciplined Complainant on July 22, 1998. The Department’s investigation revealed that on July 23, 1998, Bailey met with Complainant to

⁷ Although a copy of Doyle’s July 1, 1998, memorandum to Complainant was sent to Mary Sue Morsch in Personnel there is no mention that it was intended to be placed in Complainant’s personnel file.

discuss Complainant's role as a supervisor and discuss work deadlines. The Department's investigation file includes a copy of Bailey's notes of her July 23, 1998, meeting with Complainant which indicate that Bailey and Complainant discussed, among other things, that Bailey was in the process of developing supervisory objectives for Complainant, that Bailey would be attending team meetings beginning July 28, 1998, that Complainant must provide a copy of the intake schedule at the team meeting on July 28, 1998, that Complainant must submit her team evaluations by August 7, 1998, that Complainant must obtain a policy and procedure manual and that Bailey and Complainant would meet each Thursday, at 10:00 a.m., beginning August 6, 1998, for a supervisory session. The Department's investigation revealed that Respondent provided verbal and written criticism and/or counseling, respectively, to similarly-situated non-disabled APT Supervisors, Mitchell and Bernstein, for performance-related problems.

17. Further, as to Counts B4, C5 and E6, during the Department's investigation, Complainant indicated that on or about July 23, 1998, Respondent reprimanded her for allegedly being unable to comprehend what was said during meetings. Again, Bailey's July 23, 1998, notes of her meeting with Complainant on that date show that Respondent was criticizing Complainant's job performance and was not disciplining her. The Department's investigation revealed that Respondent provided verbal and written criticism and/or counseling, respectively, to similarly-situated non-disabled APT Supervisors, Mitchell and Bernstein, for performance-related problems. As to Counts B5, C6, C7, and E7, during the Department's investigation, Complainant indicated that on or about August 6, 1998, Respondent reprimanded her and sent her an email, accusing Complainant of having "very poor judgment" and threatening her with "progressive discipline." The Department's investigation revealed that on August 6, 1998, Complainant failed to comply with several deadlines, and Bailey issued her a memorandum entitled "Failure to Meet Established Deadlines." In her August 6, 1998, memorandum, Bailey indicated that previously, including at Complainant's July 23, 1998, supervisory session, Bailey had given Complainant certain tasks to complete, that as of August 6, 1998, Complainant had not completed the tasks and that therefore Complainant was being given new deadlines. Bailey directed Complainant to complete the staff evaluations and staff supervisory sessions by August 10, 1998, and to provide the intake schedule by close of business on August 6, 1998. There is no evidence that Respondent's August 6, 1998, criticism of Complainant's job performance was disciplinary in nature. The Department's investigation revealed that Respondent provided verbal and written criticism and/or counseling, respectively, to similarly-situated non-disabled APT Supervisors, Mitchell and Bernstein, for performance-related problems.

18. Further, as to Count E8, during the Department's investigation, Complainant indicated that on or about August 7, 1998, Respondent subjected her to unequal terms and conditions of employment because of her physical disability in that Bailey and Doyle had set the unreasonable deadline of August 7, 1998, for Complainant to complete 10 staff evaluations which was designed to expose Complainant to further criticism. Respondent's action of setting a deadline for Complainant to complete her staff evaluations was not disciplinary in nature. The Department's investigation revealed that Respondent provided verbal and written criticism and/or counseling, respectively, to similarly-situated non-disabled APT Supervisors, Mitchell and Bernstein, for performance-related problems. In addition, as to Counts B6, C8 and E9, during the Department's investigation, Complainant indicated that on August 14, 1998, despite

her having furnished Bailey with a large amount of the requested information in a timely manner, Bailey reprimanded her for failing to meet established deadlines and threatened that Complainant's failure to meet established time frames would lead to further discipline. The Department's investigation revealed that on August 14, 1998, Respondent held a formal counseling with Complainant. The Department's investigation file includes Bailey's August 14, 2013, memorandum to Complainant, entitled "Counseling Session," which notes that on July 31, 1998, Complainant was given a directive to provide documentation on a matter by August 3, 1998, and on August 1, 1998, was instructed to provide a response to the letter of Respondent's Director by August 5, 1998, but that Complainant failed to meet those deadlines, as well as an extension of the deadlines. The AFSCME Union contract, as previously indicated, defined a discipline as an oral reprimand, written reprimand, suspension or discharge. As such, a "[c]ounseling by definition cannot be an adverse act." Downen and State of Illinois Department of Corrections, __ Ill. HRC Rep. __, Charge No. 1990SF0486, 2001 WL 34778824 at *3 (July 31, 2001).

19. Furthermore, as to Count E10, during the Department's investigation, Complainant indicated that on or about August 24, 1998, Respondent subjected her to unequal terms and conditions of employment because of her physical disability in that Respondent suggested that Complainant leave for a lower paying position. Complainant further indicated that no other supervisor was similarly pressured to leave her position. The Department's investigation did not reveal and Complainant did not show that Respondent's alleged suggestion was sufficiently pervasive or severe to constitute a term or condition of employment to constitute an adverse action. See Sessler and CF Motor Freight, __ Ill. HRC Rep. __, (1998SF0588, May 31, 2002). In addition, as to Counts B7, C9, and E11, during the Department's investigation, on August 25, 1998, Complainant indicated that Bailey reprimanded her for being stupid and/or unable to comprehend directions or follow orders. The Department's investigation file includes a note written by Bailey dated August 25, 1998, indicating that Bailey met with Complainant regarding a progress note sent to Complainant on August 20, 1998, which asked Complainant to schedule a clinical staffing. Bailey wrote in her August 25, 1998, note that Complainant did not acknowledge receiving the progress note and provided no update on the status of clinical staffing. The Department's investigation revealed that Bailey's written confirmation of Complainant's August 25, 1998, oral reprimand was not officially recorded as progressive discipline and was never placed in Complainant's personnel file. Also, as to Count E10, Complainant's August 25, 1998, meeting with her supervisor, Bailey, without more, does not qualify as an adverse job action. See Eisenberg and State of Illinois Department of Transportation, __ Ill. HRC Rep. __, Charge No. 2002CA1233, 2010 WL 5313800 at *4 (August 23, 2010).

20. Further, as to Counts C10 and E12, during the Department's investigation, Complainant alleged that on or about August 31, 1998, Doyle issued Complainant a memorandum advising her that effective September 2, 1998, Steven Minter ("Minter"), Field Service Manager, would replace Bailey as Complainant's immediate supervisor and that Complainant had been engaged in a "continued lack of acceptable job performance" which "could lead to discipline." The Department's investigation revealed that on August 31, 1998, Doyle met with Complainant and Bailey regarding her decision to change Complainant's supervisor from Bailey to Minter, effective September 2, 1998. The Department's investigation file includes a memorandum dated

August 31, 1998, from Doyle to Complainant, memorializing the meeting Doyle and Bailey had with Complainant on that same date to discuss Complainant's change in supervisor from Bailey to Minter and job expectations.⁸ In her August 31, 1998, memorandum, Bailey wrote that Complainant's "continued lack of acceptable job performance could lead to discipline, if [she] fail[s] to perform at an acceptable level." Complainant's August 31, 1998, meeting with her supervisors, Doyle and Bailey, and Doyle's memorandum on that same date, does not qualify as an adverse job action. See Eisenberg, __ Ill. HRC Rep. __, Charge No. 2002CA1233, 2010 WL 5313800 at *4 (August 23, 2010).

21. Additionally, as to Counts B8, D10, and E13, during the Department's investigation, Complainant stated that on or about September 15, 1998, after a team meeting with Hu-Tech, an outside vendor, Doyle criticized Complainant's supervision of her team on the ground that Complainant's team had asked too many questions and otherwise created a negative atmosphere. The Department's investigation revealed that on or about September 15, 1998, Doyle criticized Complainant for Complainant's team's failure to follow the proper protocol for referring cases for clinical staffing by Hu-Tech. Complainant's team was not assigned to review Hu-Tech but to follow said protocol. Doyle's criticism of Complainant was not disciplinary in nature and did not constitute an adverse act. The Department's investigation revealed that Respondent provided verbal and written criticism and/or counseling, respectively, to similarly-situated non-disabled APT Supervisors, Mitchell and Bernstein, for performance-related problems.

22. Also as to Counts B8, D10, and E13, Complainant filed her Complainant's Information Sheet on September 14, 1998, the day before the events in Counts B8, D10, and E13. Thereafter, on March 19, 1999, or 185 days after September 14, 1998, Complainant filed a charge of discrimination at the Equal Employment Opportunity Commission ("EEOC"). See Allen vs. Lieberman, 359 Ill. App. 3d 1170, 836 N.E.2d 64 (5th Dist. 2005) (holding that, under certain circumstances, a charge timely filed with the EEOC is deemed to be a charge timely filed with the Department). Section 7A-102(A) of the Act states that a charge must be filed within 180 days after the date that a civil rights violation allegedly has been committed. Section 7A-102(A) of the Act is a jurisdictional requirement and failure to file a charge within the prescribed time period deprives the Department of jurisdiction to investigate the charge. Trembczynski v. Human Rights Commission, 252 Ill.App.3d 966, 625 N.E.2d 215, 218 (1st Dist. 1993). Herein, Complainant alleges in Counts B8, D10, and E13, that on September 15, 1998, she was harmed by Doyle. Since Complainant did not file her charge of discrimination until more than 180 days after the alleged harm, the Department does not have jurisdiction to investigate Counts B8, D10, and E13, of Complainant's charge.

23. As to Counts B9 and D8, during the Department's investigation, Complainant stated that on or about September 28, 1998, Respondent reprimanded her for sleeping at meetings, despite her having explained to Respondent that her medication caused her to become drowsy and her eyelids to appear droopy when she remained seated and inactive during long administrative meetings. Complainant further stated that she had not fallen asleep during these meetings. The Department's investigation did not reveal and Complainant did not show that Respondent verbally reprimanded Complainant on September 28, 1998. The Department's investigation

⁸ Doyle's August 31, 1998, memorandum was not exhibited in the Department's investigation file. As such, it has been labeled as "Exhibit XX3."

revealed that Respondent provided verbal and written criticism and/or counseling, respectively, to similarly-situated non-disabled APT Supervisors, Mitchell and Bernstein, for performance-related problems.

24. Further, as to Counts B10, C11, and E14, during the Department's investigation, Complainant stated that on or about October 15, 1998, Respondent reprimanded her for sleeping at meetings which Complainant denies. Complainant further stated that she had previously made Doyle, Bailey and Minter aware of her condition and the potential side effects of her medication. The Department's investigation revealed, as previously indicated, that in her 1997 performance evaluation, Respondent warned Complainant that it was unacceptable for complainant to sleep or be drowsy on the job. During the Department's investigation, Minter stated that in January 1998, Complainant acknowledged this problem and assured Respondent that she had resolved the issue. Minter further stated that despite her previously being counseled for having been observed falling asleep at work on September 28, 1998, and October 14, 1998, Complainant was again observed sleeping on the job. The Department's investigation file includes a formal written reprimand dated October 15, 1998, from Minter to Complainant for her unprofessional conduct when she fell asleep on duty on September 29, 1998, at approximately 2:20 p.m., during a meeting at Chicago Youth Center, and on October 14, 1998, at about 2:30 p.m. during an Interstate Compact meeting. The evidence shows that Respondent had a good-faith belief that Complainant engaged in unprofessional conduct and, assuming *arguendo* that Complainant was legitimately using prescription drugs/medication(s), she engaged in less than acceptable job performance. The evidence shows that Respondent had a reasonable belief that Complainant's conduct warranted her formal written reprimand.

25. Additionally, as to Counts B10, C11, and E14, Respondent is entitled to make employment decisions based on its reasonable belief surrounding the situation. "Respondent 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 Respondent in its decision. . . ." Carlin v. Edsal Manufacturing Company, __ Ill. HRC Rep. __, page 14, Charge No. 1992CN3428 (October 21, 1996), quoting Homes and Board of County Commissioner, Morgan County, 26 Ill. HRC Rep. 63 (1986). See also Shah v. Illinois Human Rights Comm'n, 192 Ill. App. 3d 263, 273-74, 548 N.E.2d 695, 701 (1st Dist. 1989) ("A good faith belief for an employment decision is sufficient to rebut an intentional discrimination charge."). Complainant has not provided any evidence other than her speculation that Respondent's motivation for formally reprimanding her was her physical disability. However, mere speculation or conjecture does not constitute substantial evidence of discrimination. See Willis v. Illinois Dep't of Human Rights, 307 Ill. App. 3d 317, 326, 718 N.E.2d 240 (4th Dist. 1999). The investigation revealed that Respondent followed Section 3.7 of its Employee Handbook. There is no evidence that Respondent's decision to formally reprimand Complainant was motivated by her physical disability. Therefore, there is no substantial evidence that Respondent's articulated, non-discriminatory reason for formally reprimanding Complainant was pretext for unlawful discrimination.

26. Further, as to Counts B11, C12, D11 and E15, the Department's investigation revealed that Respondent suspended Complainant on March 8, 1999, for the period March 11, 1999, to

March 18, 1999.^{9 10} The Department's investigation revealed that Complainant acknowledged that she was taking medication that caused drowsiness, that made her sleepy and that she had her eyes closed during the meetings, although she denies sleeping during those meetings. Respondent issued the suspension for unprofessional conduct/sleeping while on duty in connection with her falling asleep during a training class on January 20, 1999, and January 21, 1999, and during a meeting on January 26, 1999, and January 29, 1999. Complainant's suspension notice further indicated that on October 15, 1998, Complainant was issued a written reprimand for sleeping on duty. The suspension notice advised Complainant that in the event of any similar incidents Respondent intended to initiate more severe disciplinary action, which could include discharge. The evidence shows that Respondent had a good-faith belief that Complainant engaged in unprofessional conduct and, again, assuming *arguendo* that Complainant was legitimately using prescription drugs/medication(s), she engaged in less than acceptable job performance. The evidence shows that Respondent had a reasonable belief that Complainant's conduct warranted her suspension.

27. Additionally, as to Counts B11, C12, D11 and E15, as explained above in Paragraph 25, Respondent is entitled to make employment decisions based on its reasonable belief surrounding the situation. Complainant has not provided any evidence other than her speculation that Respondent's motivation for suspending her was her physical disability and, as explained above in Paragraph 25, mere speculation or conjecture does not constitute substantial evidence of discrimination. The investigation revealed that Respondent followed Section 3.7 of its Employee Handbook. The investigation further revealed that Respondent followed its Progressive Corrective Discipline policy in suspending Complainant from March 11, 1999, to March 18, 1999. There is no evidence that Respondent's decision to discipline Complainant was motivated by her physical disability. Therefore, there is no substantial evidence that Respondent's articulated, non-discriminatory reason for disciplining Complainant was pretext for unlawful discrimination.

28. Further, as to Counts E1 and L, during the Department's investigation, Complainant stated that in March 1998, Doyle issued her a performance evaluation with an overall rating of "Accomplished/Satisfactory," which Complainant believed to be an unacceptable performance evaluation rating. Complainant further stated that for the past 20 years she had been rated as "outstanding/exceptional" and that the quality of her work had not lessened or changed from the time of her previous reviews. The Department's investigation file includes Complainant's March 1998, performance evaluation in which Complainant received an overall performance rating of "Accomplished/Satisfactory" for the period January 1, 1997, to December 31, 1997.

⁹ Complainant's March 8, 1999, suspension was not exhibited in the Department's investigation file. As such, it has been labeled as "Exhibit XX4."

¹⁰ Count I alleged Complainant was suspended on March 8, 1999. As respectively indicated in paragraphs two and three above, Count I was previously dismissed for Lack of Substantial Evidence and sustained on a prior Request for Review. Complainant alleged in Counts B11, C12, D11 and E15 that on March 8, 1999, she was reprimanded and subjected to unequal terms and conditions of employment when, in fact, on March 8, 1999, Complainant was suspended for sleeping on the job. In order to give distinct meaning to Counts B11, C12, D11 and E15, the Department analyzed Counts B11, C12, D11 and E15 as claims of reprimands and unequal terms and conditions of employment.

Complainant's March 1998, performance evaluation was not an adverse employment action. If an aggrieved party is unable to allege that she has been detrimentally affected in some way by the employer's action, there is nothing to remedy under the Act. Andres Santiago and Board of Education of the City of Chicago, Charge No. 2008CF2479, 2010 WL 3457712 *3 (Jan. 13, 2010). Although Complainant may have believed her performance warranted a higher rating, "a performance evaluation of 'satisfactory' can hardly be called an adverse action." Id. As such, Complainant did not establish a prima facie case of disability discrimination. As to Count E1, there is no substantial evidence that Respondent subjected Complainant to unequal terms and conditions of employment because of her physical disability when in March 1998, it issued her an overall "Accomplished/Satisfactory" rating on her 1997 performance evaluation. As to Count L, there is no substantial evidence that Respondent gave Complainant an unacceptable negative performance evaluation because of her physical disability.

29. Further, as to Counts E16 and M, during the Department's investigation, Complainant stated that in April 1999, Respondent issued her a performance evaluation with an overall performance rating of "unacceptable." The Department's investigation revealed that on April 26, 1999, Minter met with Complainant to discuss her performance problems for 1998. Complainant was given an "Unacceptable" performance rating on her annual evaluation based on her poor job performance. The Department's investigation file includes the performance evaluation for the period January 1, 1998, to January 1, 1999, which was signed and dated by Complainant, Minter and Doyle on April 29, 1999, May 3, 1999, and May 13, 1999, respectively. The 1998 evaluation indicated, among other things, that Complainant lacked initiative, had limited knowledge of Policy and Procedures, and had been disciplined twice that fiscal year for falling asleep during meetings. The Department's investigation revealed, as previously indicated, that Complainant acknowledged that she was taking medication that caused drowsiness and made her sleepy and that she had had her eyes closed during the meetings, although she denied sleeping during those meetings. The evidence shows that Respondent had a good-faith belief that Complainant engaged in less than acceptable job performance, assuming *arguendo* that Complainant was legitimately using prescription drugs/medication(s). The evidence shows that Respondent had a reasonable belief that Complainant's conduct warranted her rating of "unacceptable" on her 1998 performance evaluation. As stated above in Paragraph 25, the correctness of Respondent's reason is not important as long as Respondent had a good faith belief in its decision. Carlin v. Edsal Manufacturing Company, ___ Ill. HRC Rep. ___, page 14, Charge No. 1992CN3428 (October 21, 1996). There is no substantial evidence that Respondent subjected Complainant to unequal terms and conditions of employment because of her physical disability when it issued her an annual performance evaluation with an overall rating of "unacceptable."

30. As to Count F1, the Department's investigation revealed that there is no substantial evidence that Respondent failed to accommodate Complainant's physical disability when it refused her rest/stretching breaks. The Department's investigation did not reveal, and Complainant did not show, that Complainant made a reasonable accommodation request for rest breaks. Further, the Department's investigation did not reveal, and Complainant did not show, that Respondent denied Complainant, who was a supervisor, the opportunity to stretch. In addition, the Department's investigation did not reveal, and Complainant did not provide, any medical documentation regarding what Complainant needed in terms of rest/stretching breaks

and when she needed those breaks. The Department's investigation did not reveal substantial evidence that Respondent failed to accommodate Complainant's physical disability when it refused her rest breaks.

31. As to Counts D8, D9, D10 and D11, the Department's investigation revealed that there is no substantial evidence that Respondent issued Complainant verbal and written reprimands in retaliation for opposing unlawful discrimination and filing an unperfected charge against Respondent with the Department. To establish a prima facie case for retaliation, Complainant must show that: (1) Complainant engaged in a protected activity; (2) Respondent committed an adverse action against Complainant; and (3) a causal connection existed between the protected activity and the adverse action. Carter Coal Co. v. Human Rights Commission, 261 Ill. App. 3d 1, 7, 633 N.E.2d 202 (5th Dist. 1994). A protected activity is opposition to that which a person reasonably and in good faith believes to be unlawful discrimination, sexual harassment in employment or sexual harassment in elementary, secondary, and higher education, discrimination based on citizenship status in employment, 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. See 775 ILCS 5/6-101(A). Here, as previously indicated, Complainant alleges that Respondent issued her verbal and written reprimands on September 28, 1998 (Count D8), October 14, 1998 (Count D9), September 15, 1998 (Count D10), and March 8, 1999 (Count D1), in retaliation for filing a grievance under her union contract on August 31, 1998, and for filing an unperfected charge of discrimination with the Department in September 1998. The Department's investigation revealed that Complainant filed grievances pursuant to her union contract on August 31, 1998, October 28, 1998, and in January 1999, and filed EEOC charges on March 19, 1999, and June 17, 1999.

32. Further, as to Counts D8, D9, D10 and D11, regarding the EEOC charges, it appears that they were filed after the verbal and written reprimands complained of in Counts D8, D9, D10 and D11, and as such, they could not be protected activities. See Bregenhorn and C.C. Services, Inc., ALS No. S10596, 2004 WL 3312882, at *6 (Ill. HRC Apr. 2, 2004) (holding that it is axiomatic that the adverse act must follow the protected activity or else, by definition, it cannot be retaliatory.) The Department's investigation revealed that on September 14, 1998, Complainant filed with the Department an unsworn Complainant's Information Sheet ("CIS"). Section 7A-102(A)(1) of the Act provides that a charge must be under oath or affirmation, 775 ILCS 5/7A-102(A)(1), and Section 7A-102(B) provides that the Department must serve a copy of the charge on the respondent, 775 ILCS 5/7A-102(B). Here, the CIS was not served on Respondent because it was not a charge. Thus, herein, the September 14, 1998, CIS filed with the Department also was not a protected activity.¹¹

33. Further, as to Counts D8 and D10, as previously indicated, Complainant did not show that Respondent committed an adverse act against her where there is no evidence of a verbal reprimand on September 28, 1998, and Doyle's September 15, 1998, criticism of Complainant was not disciplinary in nature. As such, Complainant did not satisfy the second and third prongs of a prima facie case for retaliation. As to Counts D9 and D11, even if Complainant did engage

¹¹ This is not to assert that filing a CIS can never be a protected activity, but rather, herein, there is no evidence that Complainant's CIS was ever served on Respondent. Since Respondent had no knowledge of the CIS, it could not have retaliated against Complainant for filing the CIS.

in a protected activity when she filed her union grievances and Respondent took an adverse action against her, the Department's investigation did not reveal that Respondent's articulated non-discriminatory reason for reprimanding Complainant was pretext for unlawful discrimination. As to Count D9, the Department's investigation file includes, as previously stated, a formal written reprimand dated October 15, 1998, from Minter to Complainant for her unprofessional conduct when she fell asleep on duty on September 29, 1998, and on October 14, 1998. As to Count D11, the Department's investigation file, includes the suspension Respondent issued to Complainant on March 8, 1999, for unprofessional conduct/sleeping while on duty in connection with her falling asleep during a training class on January 20, 1999, and January 21, 1999, and during a meeting on January 26, 1999, and January 29, 1999. As to Counts D9 and D11, the evidence shows that Respondent had a good-faith belief that Complainant engaged in unprofessional conduct and, assuming *arguendo* that Complainant was legitimately using prescription drugs/medication(s), she engaged in less than acceptable job performance. The evidence shows that Respondent had a reasonable belief that Complainant's conduct warranted her formal reprimand. As stated above in Paragraph 25, the correctness of Respondent's reason is not important as long as Respondent had a good faith belief in its decision. Carlin v. Edsal Manufacturing Company, __ Ill. HRC Rep. __, page 14, Charge No. 1992CN3428 (October 21, 1996). There is no substantial evidence that Respondent issued Complainant verbal and written reprimands in retaliation for opposing unlawful discrimination and filing an unperfected discrimination charge.

34. As to Count N, even if Complainant did engage in a protected activity when she filed her union grievances and Respondent took an adverse action against her, the Department's investigation did not reveal that Respondent's articulated non-discriminatory reason for issuing Complainant an unacceptable negative performance evaluation was pretext for unlawful discrimination. The Department's investigation file includes, as previously indicated, the performance evaluation for the period January 1, 1998, to January 1, 1999, which was signed and dated by Complainant on April 29, 1999. The 1998 evaluation indicated, among other things, that Complainant lacked initiative, had limited knowledge of Policy and Procedures, and had been disciplined twice that fiscal year for falling asleep during meetings. The Department's investigation revealed, as previously indicated, that Complainant acknowledged that she was taking medication that caused drowsiness and made her sleepy and that she had had her eyes closed during the meetings, although she denied sleeping during those meetings. The evidence shows that Respondent had a good-faith belief that Complainant engaged in less than acceptable job performance, assuming *arguendo* that Complainant was legitimately using prescription drugs/medication(s). The evidence shows that Respondent had a reasonable belief that Complainant's conduct warranted her rating of "unacceptable" on her 1998 performance evaluation. Again, the correctness of Respondent's reason is not important as long as Respondent had a good faith belief in its decision. Carlin, __ Ill. HRC Rep. __, page 14, Charge No. 1992CN3428 (October 21, 1996). There is no substantial evidence that Respondent's articulated non-discriminatory reason is pretext.

35. In her Request, Complainant fails to provide any additional evidence that would warrant a reversal of the Department's original determination as to Counts B1, B2, B3, B4, B5, B6, B7, B8, B9, B10, B11, C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12, D8, D9, D10, D11, E1, E2, E3, E4, E5, E6, E7, E8, E9, E10, E11, E12, E13, E14, E15, E16, F1, L, M and N. Complaint

alleges that the Department's investigation of her charge was inadequate in that the Department did not comply with the Chief Legal Counsel Designee's August 29, 2011, Order, and misstated certain facts and did not make genuine findings in its Investigation Report. A review of the record reveals that the Department followed its procedures, conducted a full investigation and made findings based on the evidence discovered. Further, in alleging in her Request that the Department's dismissal of her claim of unequal terms and conditions of employment was unwarranted, Complainant sets forth allegations that were not included in her charge and lack any time period references (e.g. failure to provide locking door and/or file cabinets and desks with locks) and/or post-date the charges she filed with the EEOC in March 1999 and June 1999 (e.g. false accusations in August 1999 that Complainant had not posted her itinerary). The Chief Legal Counsel Designee has no jurisdiction to consider allegations not included in the charge. See Deen v. Lustig, 337 Ill. App. 3d 294, 785 N.E.2d 521 (4th Dist. 2003) (stating that the Chief Legal Counsel must strictly adhere to the charge of discrimination). To her 51-page Request, Complainant attached copies of over 50 pages of documentation, some of which contained handwritten notes, witness statements, emails, memorandums, letters and performance evaluations. Many of these documents were submitted during the Department's investigation. The Department and the Chief Legal Counsel Designee considered the documents and did not find that Respondent unlawfully discriminated against Complainant as to Counts B1, B2, B3, B4, B5, B6, B7, B8, B9, B10, B11, C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12, D8, D9, D10, D11, E1, E2, E3, E4, E5, E6, E7, E8, E9, E10, E11, E12, E13, E14, E15, E16, F1, L, M and N. Complainant's Request is not persuasive.

36. In its Reply, Respondent contends that the Department properly dismissed Counts B1, B2, B3, B4, B5, B6, B7, B8, B9, B10, B11, C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12, D8, D9, D10, D11, E1, E2, E3, E4, E5, E6, E7, E8, E9, E10, E11, E12, E13, E14, E15, E16, F1, L, M and N of Complainant's charge.

37. In its Surreply, Complainant fails to provide any additional evidence that would warrant a reversal of the Department's original determination as to B1, B2, B3, B4, B5, B6, B7, B8, B9, B10, B11, C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12, D8, D9, D10, D11, E1, E2, E3, E4, E5, E6, E7, E8, E9, E10, E11, E12, E13, E14, E15, E16, F1, L, M and N.

38. As to Count F, the Department's investigation is incomplete and further investigation is needed to determine whether there is substantial evidence that Respondent failed to accommodate Complainant's physical disability regarding her request for a hearing aid-compatible telephone with an amplified receiver. Complainant alleges, as previously indicated, that on or about August 7, 1998, Respondent failed to accommodate her physical disability when it denied her request for a hearing aid-compatible telephone with an amplified receiver. The Department's investigation revealed that Respondent contends that Complainant received from Respondent the hearing-aid compatible telephone with an amplified receiver that Complainant had requested. The Department's investigation revealed that Respondent ordered that telephone in January 1999, and that Complainant received the telephone in February 1999. The Department, on remand, must determine the reason approximately six months passed between the time that Complainant requested the telephone on or about August 7, 1998, and the time that she received that telephone in February 1999. The Department must determine the reason Respondent did not order the new telephone until January 1999. Further, during the

Department's investigation, Complainant indicated that her new telephone did not have conference call capability. The Department must determine if Complainant's prior telephone had conference call capability and if her new telephone had conference call capability and if not, why not. Thus, further investigation is necessary to determine whether there is substantial evidence that Respondent failed to accommodate Complainant's physical disability.

39. Therefore, pursuant to Section 2520.587 of the Rules and Regulations of the Department, the dismissal of Count F of Complainant's charge is hereby vacated and that count is remanded to the Department's Charge Processing Division for further investigation, including the items detailed above, and additional analysis as necessitated by all newly discovered information.

40. In sum, as to Counts B1, B2, B3, B4, B5, B6, B7, B8, B9, B10, B11, C1, C2, C3, C4, C5, C6, C7, C8, C9, C10, C11, C12, D8, D9, D10, D11, E1, E2, E3, E4, E5, E6, E7, E8, E9, E10, E11, E12, E13, E14, E15, E16, F1, L, M and N, Complainant failed to establish, and the Department's investigation failed to show, that Respondent issued her verbal reprimands because of her physical disability, issued her written reprimands because of her physical disability, subjected her to unequal terms and conditions of employment because of her physical disability, issued her verbal and written reprimands in retaliation for opposing unlawful discrimination and filing an unperfected discrimination charge against Respondent with the Department, failed to accommodate her physical disability, issued her an unacceptable/negative performance evaluation based on her physical disability, and issued her an unacceptable/negative performance evaluation in retaliation for reprimands in retaliation for opposing unlawful discrimination and filing an unperfected discrimination charge against Respondent with the Department.

41. This is a not a final Order. It may not be appealed until all aspects of the charge are resolved.

ENTERED THIS _____ DAY OF _____, 2013.

 Michael I. Lieberman
 Supervising Attorney
 Chief Legal Counsel Designee