STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)		
	)		
LOUIS GERMANY III,	)		
	)		
	)		
Complainant,	)	CHARGE NO(S):	2005CF4027
	)	EEOC NO(S):	N/A
and	)	ALS NO(S):	06-314
	)		
BIOMEDICAL APPLICATIONS OF ILLINOIS, INC.,	)		
	)		
	)		
	)		
Respondent.	)		

NOTICE

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

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION) Entered this 17th day of March 2009

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
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LOUIS GERMANY, III,	)	
	)	**Charge No. 2005CF4027**
Complainant,	)	**EEOC No. N/A**
	)	**ALS No. 06-314**
and	)	
	)	
BIOMEDICAL APPLICATIONS OF ILLINOIS, INC.,	)	
	)	**Judge Reva S. Bauch**
Respondent.	)	

RECOMMENDED ORDER AND DECISION

This matter comes before the Commission on Respondent's Motion for Summary Decision ("Motion"). Complainant filed a letter, *ex parte*, which shall be considered a Response to the Motion.[1] Respondent filed a Reply. Accordingly, this matter is now ripe for a decision

Findings of Fact

The following facts were derived from uncontested sections of the pleadings or from uncontested sections of the affidavits and other documentation submitted by the parties. The findings did not require, and were not the result of, credibility determinations. All evidence was viewed in the light most favorable to Complainant.

1. Respondent operates dialysis clinics that provide treatment to patients with end-stage renal disease.

2. On March 29, 2004, Complainant began his employment with Respondent as a secretary/receptionist at Respondent's Evergreen, Illinois facility.

3. Complainant's supervisor at the Evergreen facility was Carolyn Rayner.

4. As a secretary/receptionist, Complainant was required to perform such tasks as filing reports, submitting specimens to the labs for analysis, answering telephones, inputting patient information into the system, and greeting patients.

5. Complainant's responsibilities also included verifying that information related to a patient's treatment was properly entered into the computer system, including the type of medication and treatment the patient had received.

6. In approximately August 2004, due to remodeling and renovations at the Evergreen facility, Complainant was transferred to Respondent's Greenwood facility.

7. All other Evergreen facility employees were transferred to other locations.

8. At the Greenwood facility, Complainant's supervisor was Mary Daniels, the clinic's Manager.

9. On October 18, 2004, Complainant arrived at work at the Greenwood facility smelling of alcohol.

10. Daniels could smell alcohol on Complainant's breath.

11. Daniels approached Complainant and stated that she could smell the alcohol on his breath.

12. Complainant admitted to Daniels that he had been out all night drinking and had not been home to clean-up.

13. Because of Complainant's admissions, Daniels sent Complainant home and did not allow him to work the remainder of the day.

14. On November 1, 2004, Daniels issued Complainant a final written warning ("2004 Final Written Warning") because of this incident and warned him that further corrective action could lead to his termination.

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[1] The Commission forwarded the Complainant's letter to Respondent with a letter admonishing Complainant not to send letters to ALJs without serving a copy on the other parties to the action.

15 The 2004 Final Written Warning had nothing to do with any purported mental handicap suffered by Complainant.

16. At that time, Daniels had no knowledge that Complainant suffered from any disease, handicap, condition or disability.

17. Complainant does not believe the 2004 Final Written Warning had anything to do with his alleged handicap.

18. On November 21, 2004, Complainant worked an eight hour shift of unapproved overtime when he was not scheduled to work.

19. Respondent's employees were told, and the policy was clear, that Daniels had to approve any overtime worked at the Greenwood facility.

20. Complainant admits that he worked eight hours of unapproved overtime.

21. Because Complainant was not scheduled to work and had not received approval for this overtime, on December 6, 2004, Daniels placed Complainant on a two day suspension.

22. Daniels's decision to give Complainant the suspension had nothing to do with any purported mental handicap or any other disease, condition, handicap or disability suffered by Complainant.

23. At that time, Daniels had no knowledge of any disease, handicap, condition or disability suffered by Complainant.

24. Complainant is not aware of anyone else who worked unapproved overtime and was not suspended.

25. In December 2004, Complainant took a medical leave of absence.

26. On December 20, 2004, Complainant provided Daniels with a physician's note stating only that he was unable to work due to a "medical illness."

27. Complainant did not provide Daniels with specifics about his illness or disclose the nature of his illness

28 Daniels was not aware of any specific illness or condition suffered by Complainant or that Complainant took any medication.

29 The extent of Daniels's knowledge relating to Complainant's condition was that Complainant needed a leave of absence in December 2004.

30 Respondent gave Complainant a leave of absence.

31. Daniels was also aware that at times Complainant took off work for doctor's appointments.

32. Daniels was not aware of the reasons for Complainant's doctor's appointments.

33. Complainant admits that he did not tell anyone at Respondent about the nature of his doctor's appointments.

34. Respondent always granted Complainant's requests for time off for doctor's appointments.

35 Based on his physician's note, Daniels allowed Complainant this medical leave of absence.

36. On January 20, 2005, Complainant was released by his physician to return to work without restrictions.

37. After Complainant was released to return to work, he was transferred back to Respondent's Evergreen facility.

38. The Evergreen facility was again operational.

39. On January 20, 2005, Complainant showed up for work at the Evergreen facility.

40. Rayner had not worked with Complainant since he had been transferred to the Greenwood facility.

41. Complainant was not on the schedule, nor was Rayner expecting him, on January 20, 2005.

42. Complainant showed up with a physician's note stating only that he was able to return to work without restrictions.

43. Because he was not on the schedule, Rayner advised Complainant to return the next day after she confirmed the details of his return to work.

44. Complainant returned the next day and was put to work.

45. Rayner was aware that Complainant had been on a leave of absence while working at the Greenwood facility, but she was not aware of the reason he was out on leave.

46. Complainant never told Rayner the cause of his leave of absence.

47. Within a few weeks of Complainant returning to work at the Evergreen facility, Rayner observed multiple errors in Complainant's work, as well as his general lack of organizational skills.

48. Complainant's requisitions (blood samples sent to a laboratory for testing), were not sent with the corresponding request for analysis.

49. Some requisitions that Complainant submitted did not include the blood sample itself.

50. It is critical that lab work is timely processed so that patients' treatment may be adjusted accordingly.

51. Complainant's error ultimately delayed the clinic's receipt of the test results, thereby delaying modifications that would ensure proper patient care.

52. Within a few weeks of returning to the Evergreen facility, Rayner observed that Complainant did not correctly process "validations."

53. A validation is a reconciliation that is executed to verify that the specifications of a patients' treatment are correctly logged in the computerized tracking system. This method generates a record of what specific medicine and treatment have been administered to a particular patient to ensure proper billing practices.

54. Although this process had been explained to Complainant on multiple occasions, Complainant failed to demonstrate an understanding of the correct procedure

55. In response to Complainant's multiple errors, Rayner created a new system whereby the Charge Nurse assumed the additional duty of verifying that Complainant had correctly submitted the requisitions and processed validations.

56 On Friday, February 25, 2005, the Evergreen facility's water purification system malfunctioned.

57 Because of the malfunction, Respondent was unable to perform dialysis treatment on the patients scheduled to receive dialysis that day.

58. Rayner asked Complainant to call all of the patients who were scheduled for dialysis treatment that afternoon, notify them about the malfunction, and inform them that Respondent would contact them to reschedule their treatment.

59 Complainant began calling patients as Rayner had directed.

60 At some point, Complainant began telling some patients to come in for their appointments on Sunday, February 27, 2005.

61. Rayner never instructed Complainant to tell patients to come in for their appointments on Sunday.

62. The Evergreen facility is normally closed on Sundays.

63. When Rayner became aware that Complainant was telling patients to come in on a Sunday, she confronted him and asked why he was scheduling patients on a Sunday.

64 Complainant told Rayner that "someone told me to do it," but he could not identify who that "someone" was.

65 Rayner told Complainant to call the patients back, apologize, and tell them that the clinic was not open on Sundays

66. Complainant was unable to reach all of the patients he had told to come in on Sunday.

67. The Evergreen facility was forced to open the clinic on Sunday and pay its staff overtime.

68. On March 4, 2005, Rayner issued Complainant a written warning relating to this incident because Complainant failed to follow her instructions (2005 Written Warning).

69. Rayner also counseled Complainant to seek clarifications of any directives given to him in the future.

70. The 2005 Written Warning had nothing to do with any purported mental handicap suffered by Complainant.

71. At that time, Rayner had no knowledge of any disease, handicap, condition or disability suffered by Complainant.

72 Complainant did not believe the 2005 Written Warning had anything to do with his alleged handicap.

73. On March 17, 2005, Rayner placed Complainant on a "Developmental Action Plan" to ensure the delivery of quality and safe dialysis care and in hopes that he would be able to improve his performance with specific set goals.

74 The Developmental Action Plan stated that Complainant's failure to demonstrate satisfactory performance would result in further corrective action up to and including termination.

75. The Developmental Action Plan had nothing to do with any purported mental handicap suffered by Complainant.

76. At that time, Rayner had no knowledge that Complainant suffered from any disease, handicap, condition or disability.

77. Complainant did not have any issues with the Developmental Action Plan.

78. On or about March 24, 2005, Complainant again failed to follow Raynr's specific instructions.

79 Rayner instructed Complainant to enter information into the computer system relating to a patient's allergy to certain medication.

80 Rayner had Complainant enter this information so the medication would not be administered to the patient in the future.

81. Rayner even went as far as to place a note on Complainant's computer with the name of the medication – Keflex-Cephalexin – and reminded him of the importance of entering this information into the system.

82 The following day, on or about March 25, 2005, Rayner noticed that Complainant had failed to make the change to the patient's record as she had instructed.

83 Complainant's failure to make the change to the patient's record was a serious error which could have led to an allergic reaction or even death.

84. When Rayner confronted Complainant, he stated that he had "meant to do it," but offered no excuse for not making the entry.

85 On March 28, 2005, given all of Complainant's previous corrective actions and because of the seriousness of the failure to make the change on the patient's profile, Rayner terminated Complainant's employment.

86. Rayner's decision to terminate Complainant had nothing to do with any purported mental handicap or any other disease, handicap, condition or disability suffered by Complainant.

87 Complainant is not sure why he was terminated.

88. Neither Rayner nor Daniels was aware that Complainant took any medications.

89 Complainant never informed any member of Respondent's management or any of Respondent's employees that he suffered from a mental handicap or disability.

90. Complainant admits that he did not tell anyone at Respondent about the nature of his doctor's appointments.

91. Complainant filed his initial Charge with the Department on August 31, 2005.

92 On September 26, 2006, Complainant filed this Complaint with the Commission fully incorporating his Charge

Conclusions of Law

1. Complainant is an "aggrieved party" and Respondent is an "employer" as those terms are defined in the Illinois Human Rights Act ("Act"), 775 ILCS 5/1-103(B) and 5/2-101(B).

2. The Illinois Human Rights Commission ("Commission") has jurisdiction over the parties and the subject matter of this action.

3. Complainant failed to establish a *prima facie* case for mental handicap discrimination.

4. Respondent can articulate a legitimate, non-discriminatory reason for terminating Complainant.

5. There is no genuine issue of material fact on the issue of pretext, and Respondent is entitled to a recommended order in its favor as a matter of law.

6. Complainant failed to establish a *prima facie* case for mental handicap harassment.

Discussion

Pursuant to Section 7/7A-102(A) of the Act, a charge must be filed within 180 days "after the date that a civil rights violation has been committed." 775 ILCS 7A-102(A). The 180-day filing requirement is jurisdictional. Failure to file a charge within the prescribed time deprives the Department and the Commission of jurisdiction to proceed further. **Trembczynski v. Human Rights Comm'n, 252 Ill App3d 966 (1993)**. Complainant filed his initial Charge with the Department o August 31, 2005.

Respondent argues that Complainant's claims are time-barred. This may be true as to certain acts, but not as to others. However, even it Complainant's claims were not time-barred, as set forth below, this matter should be dismissed because Complainant has failed to provide any evidence that would suggest a genuine issue of material fact.

I. Standards for Summary Decision

Under Section 8-106.1 of Act, either party to a complaint may move for summary decision. **775 ILCS 5/8-106.1**. *See also* **86 Ill. Admin. Code §5300.735.** A summary decision is the administrative agency procedural analog to the motion for summary judgment in the Code of Civil Procedure. **Cano v. Village of Dolton, 250 Ill App3d 130 (1993).** Such a motion should be granted when there is no genuine issue of material fact and the undisputed facts entitle the moving party to a recommended order in its favor as a matter of law. **Fitzpatrick v. Human Rights Comm'n, 267 Ill App3d 386 (1994).** The purpose of a summary judgment is not to be a substitute for trial but, rather, to determine whether a triable issue of fact exists. **Herrschner v. Xttrium Lab. Inc., 26 Ill App3d (1969)**. All pleadings, depositions, affidavits, interrogatories and admissions must be strictly construed against the moving party and liberally construed against the nonmoving party. **Kolakowski v. Voris, 76 Ill App3d 453, (1979)**. If the facts are not in dispute, inferences may be drawn from undisputed facts to determine if the movant is entitled to judgment as a matter of law. **Turner v. Roesner, 193 Ill App3d 482 (1990)**. Where the facts are susceptible to two or more inferences, reasonable inferences must be drawn in favor of the nonmoving party. **Purdy County of Illinois v. Transportation Insurance Co., Inc., 209 Ill App3d 519 (1991)**. Although not required to prove his/her case as if at hearing, a nonmoving party must provide *some* factual basis for denying the motion. **Birck v. City of Quincy, 241 Ill App3d 119 (1993).** Only evidentiary facts, and not mere conclusions of law, should be considered. **Chevrie v. Gruesen, 208 Ill App3d 881 (1991).** If a respondent supplies sworn facts that if uncontradicted, warrant judgment in its favor as a matter of law, a complainant may not rest on his/her pleadings to create a genuine issue of material fact. **Fitzpatrick at 392.** Where the moving party's affidavits stand uncontradicted, the facts contained therein must be accepted as true and, therefore, the failure to oppose a summary judgment motion supported by affidavits

by filing counter-affidavits in response is frequently fatal. **Rotzoll v. Overhead Door Corp., 289 Ill App3d 410 (1997).** Summary decision is a drastic means of resolving litigation and should be granted only if the right of the movant to judgment is clear and fee from doubt. **Purtill v. Hess, 111 Ill2d 229 (1986).**

II. Analysis

There are two methods to prove an employment discrimination case, direct and indirect. Either one or both may be used. **Sola v. Human Rights Comm'n, 316 Ill App3d 528 (2000).** Since there is no direct evidence in this case, the indirect analysis will be used. The method of proving a charge of discrimination through indirect means was described in the U.S. Supreme Court case of **McDonnell Douglas Corp. v. Green, 411 US 792 (1973)**, and is well-established.

First, the Complainant must establish a *prima facie* showing of discrimination against him by Respondent. If he does, Respondent must articulate a legitimate, non-discriminatory reason for its actions. If this is done, the Complainant must prove by a preponderance of the evidence that the articulated reason advanced by the Respondent is a pretext. *See* **Texas Dep't. of Community Affairs v. Burdine, 450 US 248, 254-55 (1981).** This method of proof has been adopted by the Commission and approved by the Illinois Supreme Court. **Zaderaka v. Human Rights Comm'n, 131 Ill2d 172 (1989).**

The issues in this case revolve around mental handicap discrimination. In general, to establish a *prima facie* case for physical handicap discrimination, the Complainant must prove: (1) he is "handicapped" within the meaning of the Act; (2) his handicap is unrelated to his ability to perform her job, or if the handicap is related to that ability to perform, after his request, Respondent did not make reasonable accommodations to perform his job; and (3) Respondent took adverse action against him because of his handicap. **Whipple v. Ill. Dept. of Rehabilitative Services, 646 NE 2d 275 (1995).**

Complainant has failed to demonstrate a *prima facie* case of mental handicap discrimination. Whether or not Complainant has demonstrated that he can establish a *prima facie* case for mental handicap discrimination, however, is not fatal. In its submissions, Respondent articulated a legitimate, non-discriminatory reason for its actions Once such a reason is articulated, there is no need for a *prima facie* case Instead, at that point, the decisive issue in the case becomes whether the articulated reason is pretextual. ***Clyde and Caterpillar, Inc.*, 52 Ill. HRC Rep. 8 (1989),** *aff'd sub nom* ***Clyde v. Human Rights Comm'n*, 206 Ill App3d 283 (1990).**

Respondent's submissions are replete with facts documenting that Respondent had no knowledge of Respondent's purported mental health handicap. Complainant has failed to produce any evidence showing a relationship between his suspension and/or termination and his purported mental handicap. Both Daniels and Rayner, who made the relevant decisions, were unaware of any handicap suffered by Complainant. *See* **Horner v. Jack Schmitt Ford, Inc., 5095(s), Jan. 8, 1996** (there can be no handicap discrimination if the decision-maker has no knowledge of the handicap). When Daniels made the decision to suspend Complainant in December 2004, it was well before he even requested a leave of absence. Similarly, Rayner made the decision to terminate Complainant in March 2005. At that time, Rayner had no knowledge of a handicap suffered by Complainant, let alone that he was suffering from depression. The only information that Rayner had was that Complainant had taken a medical leave of absence at the end of December 2004 (well before his termination) and was released to return to work without restrictions, less than a month later. Complainant's physician's note which was given to Rayner only stated that he was allowed to return to work without restrictions and did not specify a medial condition. More importantly, Complainant admits that he never discussed his purported medical condition or diagnosis with Rayner

and also never requested an accommodation related to his alleged condition apart from his one leave of absence which was granted.

There is no evidence to dispute that Daniels or Rayner did not honestly believe Complainant's conduct warranted this suspension and termination. The undisputed facts show that both Daniels and Rayner had every reason to believe that Complainant was not meeting their legitimate expectations, thus warranting his suspension and termination. Respondent implemented multiple corrective actions and gave multiple warnings. A Developmental Action Plan was established to help Complainant with his job performance. Despite numerous attempts to assist him, Complainant's performance still suffered. He seemed to lack understanding of his job duties and failed to follow through with his supervisor's directives. At one point, Complainant showed up to work with alcohol on his breath and admitted he had been out all night without cleaning up for work. In sum, Respondent was justified in suspending and terminating Complainant. Respondent has a responsibility to create a safe, reliable environment for its patients.

Complainant has failed to raise any factual issue which might suggest that Respondent's articulation is a pretext for mental handicap discrimination. Although not required to prove his case as if at hearing, Complainant must provide *some* factual basis for denying the motion. ***Supra,* Birck at 123.** In his response, Complainant provides no evidentiary facts for the Commission to consider. Respondent submitted several affidavits to support its position, as well as deposition testimony and other discovery responses. Complainant failed to contradict these facts. Complainant may not rest on his pleadings once Respondent supplies sworn facts warranting a decision in its favor. Because Respondent's affidavits stand uncontradicted, I must accept, as true, the facts contained therein. ***Supra,* Rotzoll at 416.**

Complainant's Response was in the form of an *ex parte* letter to me that raised non-substantive, technical objections to the caption of the Motion, as well as citing to

Cooper v. Salazar, 2001 US Dist LEXIS 17952 (Nov. 1, 2001), a case not applicable to the Commission. In effect, Complainant has no response at all. In **Jones and Burlington Northern Railroad, 25 Ill HRC Rep 101 (1986),** the Commission faced a situation in which the respondent had filed a motion for summary decision but the Complainant had filed no response. The Commission panel stated, "[w]e will not search the record to find reasons to deny a motion. If a motion appears valid on its face, and if the other side cannot tell us why the motion should not be granted, we will grant the motion." ***Id* at 102.** The situation described in **Jones** is essentially the situation in the instant case. Accordingly, Respondent's Motion should be granted.

Regarding Complainant's harassment claim, that claim fails as well. Complainant claims he was harassed by Daniels and Rayner because he was given unjustified "write-ups" from Daniels and he was verbally harassed by Rayner when she accused him of things that "weren't necessarily true." Since Respondent did not know Complainant suffered from any handicap, Complainant cannot have been harassed for such handicap. As such, Complainant cannot claim handicap harassment.

Recommendation

Based on the foregoing, there is no genuine issue of material fact. Respondent is entitled to a recommended order in its favor as a matter of law. Accordingly, I recommend that the Complaint be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY:

REVA S. BAUCH
DEPUTY ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: August 20, 2008