STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
LEONARD TREJO,	)	
	)	Charge No. 1997SF0356
Complainant,	)	EEOC No. 21B970474
	)	ALS No. S10306
and	)	
	)	
BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS,	)	
	)	
Respondent.	)	

ORDER AND DECISION

December 21, 2005

The Illinois Human Rights Commission *en banc*; J. B. Pritzker, Chairman, Marti Baricevic, David Chang, Marylee V. Freeman, Dolly Hallstrom, Sakhawat Hussain, M.D., Munir Muhammad, Spencer Leak Sr., Rozanne Ronen, Gregory G. Simoncini, Yonnie Stroger, Diane M. Viverito, Commissioners.

For Complainant:	Robert G. Kirchner Lerner & Kirchner
For Respondent:	Richard P. Klaus Heyl, Royster, Voelker & Allen
For the Commission:	James E. Snyder, General Counsel, Matthew Z. Hammoudeh, Asst. General Counsel.
Additional Parties of Record:	The Illinois Department of Human Rights Raymundo Luna, Counsel.

This matter comes before the Commission pursuant to the Complainant's Petition for Rehearing. On review of Judge Robinson's recommendations, the public hearing record and the exceptions and response filed by the parties, the Complainant's petition and the record of oral argument, the Recommended Order and Decision is ADOPTED. The matter is dismissed.

I. Nature of the Case.

On August of 1994, the Respondent, the Board of Trustees of the University of Illinois (University), hired the Complainant, Dr. Leonard Trejo (Trejo), as a non-tenured assistant professor in the University's Department of Psychology. The University elected not to renew Trejo's contract and articulated that it was because of Trejo's untrustworthy and unprofessional behavior. Trejo filed a Charge of Civil Rights Violation with the Illinois Department of Human Rights (Department). He charged that he was issued a terminal contract as a result of discrimination based on his national origin and ancestry (Mexico).

II. Proceedings.

Following an investigation the Department filed Complaint of Civil Rights Violation against the University, naming Trejo as a Complainant. The Department is a party of record to the proceedings before this Commission. The University filed a motion for summary decision.

On May 4, 2004, Judge Robinson entered a Recommended Order and Decision recommending that summary decision be granted and that the Complainant’s claims be dismissed with prejudice.

Robinson concluded that Trejo failed to establish a *prima facie* case of national origin and ancestry discrimination because the record does not contain any evidence linking his national origin and ancestry to the investigation of charges against him, or in the decision not to reappoint him.

Trejo filed exceptions to the Recommended Order and Decision. The University filed a response to Trejo's exceptions. A panel of this Commission reviewed the exceptions, responses and record: Commissioners David Chang, Marylee V. Freeman and Yvette Kanter. On December 9, 2004 we adopted Judge Robinson's recommendation of dismissal, by the order of Commissioners Chang, Freeman and Kanter (the Panel Order).

Trejo filed a Petition for Rehearing asking the Commission en banc to rehear that order. On March 23, 2005 we granted this petition and vacated the Panel Order. Oral argument was heard before the Commission en banc on July 27, 2005.

Because we have reached a similar conclusion to that panel, we adopt much of the language of the Panel Order.

III. Findings.

In reviewing an Administrative Law Judges' findings of fact, the Commission will adopt the Judge's findings unless they are contrary to the manifest weight of the evidence presented at the hearing, 775 ILCS 5/8A-103(E)(2). The Commission reviews a question of law *de novo* and is empowered to modify, reverse, or sustain the Judge's recommendations, in whole or in part, 775 ILCS 5/8A-103(E).

The question before the Commission is whether Judge Robinson properly granted a summary decision in favor of the Respondent, as authorized by section 8-106.1 of the Illinois Human Rights Act ("Act"). Under the Act, a party is entitled to summary decision "if the pleadings and affidavits…show that there is no genuine issue as to any material fact and that the moving party is entitled to a recommended order as a matter of law," 775 ILCS 5/8-106.1. See also, *Sola v. Human Rights Comm'n*, 316 Ill App 3d 528 (1st Dist 2000). The overall purpose of a summary decision is not to be a substitute for a trial, but rather to determine whether triable issues of fact exist.

The Act prohibits discrimination in employment based on national origin and ancestry. It prohibits discrimination based on national origin and ancestry "with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment," 775 ILCS 5/2-102(A). A complainant may prove employment discrimination under the Act in one of two ways: he may attempt to meet his burden by presenting direct evidence that ancestry or national origin were determining factors in the employment decision, or he may use the indirect method of proof set forth by the United States Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 US 792 (1973) and the Supreme Court of Illinois in *Zaderaka v Illinois Human Rights Comm'n*, 131 Ill 2d 172, 545 NE2d 684 (1989).

The Complainant has not presented any direct evidence of national origin and ancestry discrimination in the employment decision not to renew his contract. Further, in its motion for summary decision, the Respondent offered a non-discriminatory explanation for its decision to discharge the Complainant; the Respondent, by its agent Dr. Shoben, determined that it did not want to retain the Complainant because of his conduct in Toronto and his conduct in the related investigation of that matter. In order to prevail at public hearing, the Complainant would have to prove that this explanation was unworthy of belief and was, as a matter of fact, pretext for unlawful discrimination. *Clyde v. Human Rights Comm'n*, 206 Ill App 3d 283, 288, 564 NE2d 265 (1990).

The truthfulness or pretext of the University's explanation for the employment decision is a material question of fact. The Respondent has shown that, in light of the pleadings and affidavits before Judge Robinson, with all reasonable inferences drawn against the Respondent, there is no question of fact on this issue.

The Complainant in this case was the Plaintiff in a related federal matter. The Commission stayed this case while the United States District Court for the Northern District of Illinois was deciding *Trejo v. Shoben*, 319 F3d 878 (7th Cir 2003). The federal District Court found in favor of the Defendant in that case.

The issue of unlawful discrimination under the Illinois Human Rights Act was not before the federal District Court, and their decision does not estopp this case automatically. However, the Court's findings are part of the motion for summary decision.

Judge Robinson noted that the federal District Court, and ultimately, the United States Court of Appeals for the Seventh Circuit made the determination that: "[Respondent] terminated [Complainant] because his lack of professionalism, poor judgment, and insufferable behavior around his colleagues and fellow graduate students disrupted the educational process and tarnished the University's good name", *Trejo* at 890.

In addition, Judge Robinson noted that the Complainant, through his pleadings, conceded that 1) Dr. Shoben was the fact-finder in the investigation who collected evidence that he deemed relevant in reaching a decision about the Complainant and then presented that evidence to the Department's Advisory Committee; and 2) the reason Dr. Shoben recommended a notice of non-reappointment for the Complainant was because he that the Complainant was untrustworthy, guilty of unprofessional conduct, and displayed lack of professional judgment in his relations with female graduate students; and 3) Dr. Shoben actually believed in the truth of the facts and conclusions that he set forth in his summary of his investigation into the Complainant's conduct.

On rehearing Trejo argued that the record includes direct evidence of discrimination, or at least a question of fact on that issue. Trejo argued that: "The most direct instance of discriminatory animus was Dr. Shoben's own discussion of Dr. Trejo's national origin - Hispanic - as acknowledge during (Brandy) Isaac's deposition testimony". We have reviewed Isaac's deposition and have found no such reference.

Trejo also argues that the percentages of persons working for the University who are Hispanic constitute direct evidence of discrimination. Although it is arguable that statistical evidence may demonstrate that a facial neutral policy has a disparate impact, Trejo has never made such a claim. Trejo argues that this statistics are direct evidence of discriminatory treatment in his employment decision. Direct evidence is proof that

demonstrates that national origin was a factor in the employment decision "without reliance on inference or presumption", *Lalvani v. Human Rights Comm'n*, 324 Ill App 3d 774, 755 NE2d 51, 65 (1st Dist 2001). *See also Miller v. Borden Inc.*, 168 F3d 312 (7th Cir 1999).

Trejo argues that Dr. Shoben was the sole decision maker. The University's reviews above Shoben were *pro forma*. The general university statistics that are discussed do not create a question of fact regarding the motivation for Shoben's decision. They do not regard Shoben's specific motivation for this employment decision at all. Even with great reliance on inference these statistics could not demonstrate Dr. Shoben's motivation.

Trejo also argues that a notation in Dr. Shoben's investigation records in which Shoben wonders if "people may be out to get (Trejo) for ethnic reasons" demonstrates Shoben's racial animus. This is not direct evidence of Shoben holding anti-Hispanic animus. It may be evidence to the contrary. But it does not create a question of fact on the University's non-discriminatory explanation for terminating Trejo: His conduct in Toronto and his false statement during the investigation.

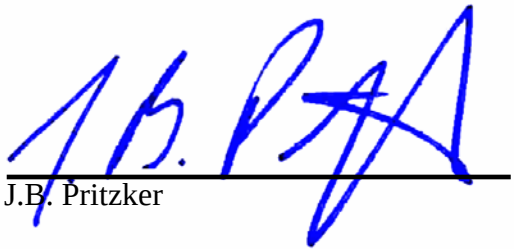
Therefore, after review of the record, we find that there are no genuine issues of fact, material to the charge of discrimination. Accordingly, summary decision was properly entered.

IT IS HEREBY ORDERED THAT:

1. The Recommended Order and Decision issued in this matter is ADOPTED;

2. The Administrative Law Judge's Recommended Order and Decision, entered on May 4th 2004, has become the Order of the Commission.

STATE OF ILLINOIS)
HUMAN RIGHTS COMMISSION) Entered this 21st day of December 2005.



J.B. Pritzker