

(Department) dismissal of his charge of public accommodation discrimination by Woodforest National Bank pursuant to the Illinois Human Rights Act (Act) (775 ILCS 5/1-101 *et seq.* (West 2014)). Petitioner alleged that Woodforest National Bank discriminated against him based on his race (“black”) and sex (“male”). The Department dismissed his charge for lack of substantial evidence. Petitioner appealed to the Commission and it sustained the Department’s decision. Petitioner has appealed the Commission’s order. We affirm.

¶ 3 On March 26, 2014, petitioner filed a public accommodation discrimination charge alleging that Woodforest National Bank denied him the full and equal enjoyment of its facilities because of his race, “black” (count A), and sex, “male” (count B). Petitioner’s charge alleged that he was waiting in line for service in Woodforest National Bank when a black female teller permitted a white female, who was not in line, to receive services ahead of him even after he objected.¹ No effective action was taken by the teller or management to address petitioner’s concerns. Petitioner alleged that similarly situated non-black customers and female customers who have had complaints about the service at the bank were treated differently, but did not provide specific examples. The record includes a letter from petitioner signed on April 3, 2014, clarifying his public accommodation complaint. He stated he was waiting in line to cash a check from “EG News” when a white female, who was behind him in line, asked if she could ask the teller, a black female, a question, and he gave her permission. After she asked the question, the teller served the patron over petitioner’s multiple objections. Petitioner then waited to speak with the manager, who

¹ Petitioner in his “Public Accommodation Complainant Information Sheet” stated that the date of discrimination was “unknown, last EG news check cashed on or about February 2, 2014.”

was not black. The manager told petitioner that the teller was the bank's best employee, and "there must have been a misunderstanding." Petitioner's check was then cashed.

¶ 4 The Department investigated petitioner's charge. The Department interviewed petitioner; Brian Abraham, identified as a non-black male by the Department; and Obaid Haleem, identified as a non-black male by the Department. Petitioner's statements to the Department contained additional information not in his charge. He stated he had a savings and checking account with Woodforest National Bank. On December 13, 2013, he went to cash a check from EG News at a branch of Woodforest National Bank. Petitioner permitted a non-black female patron to ask a question ahead of him but he was in a hurry and did not expect it would take so long or that the patron would be serviced before him.

¶ 5 Abraham provided to the Department documentation of Woodforest National Bank's anti-harassment and discrimination policy, concerns section information from the bank's website, and informal complaints policy. Haleem, the branch manager, told the investigator he remembered a conversation with petitioner regarding long wait times where petitioner did not mention any other customer that was serviced ahead of him. He reviewed surveillance video for February 1, 2014, through February 3, 2014, and did not find any visual evidence petitioner entered the branch on the date of the charge. Petitioner did cash a check from EG News on December 13, 2013, but there was no video from December 2013 because videos were subject to a 90-day retention schedule.

¶ 6 In rebuttal, petitioner stated he did not have knowledge of a formal complaint procedure and complained verbally.

¶ 7 The investigator found no evidence that petitioner was denied full and equal enjoyment of Woodforest National Bank's facilities due to his race or sex. The investigation revealed that

petitioner used Woodforest National Bank's services to cash a check. Petitioner permitted a non-black female to go ahead of him to ask a service question. The evidence showed petitioner was serviced when he cashed the check he had originally gone into the bank to cash. The investigator recommended a finding of lack of substantial evidence as to both counts of petitioner's charge, noting petitioner had remained a customer of Woodforest National Bank and been serviced since filing the charge. The investigator also noted there was no evidence the bank held a race or sex-based animus against him. The Department subsequently dismissed petitioner's charge.

¶ 8 Petitioner filed a request for review, stating that the Department misconstrued what he said verbally and in writing. He argued that the Department omitted the fact that he had waited behind two or three other patrons before it was his turn, that the non-black female patron was in line behind him before asking petitioner if she could ask a question, that the patron asked about stamps, that petitioner did not care about the teller sharing information with the patron but that the teller sold stamps to the patron over petitioner's multiple objections, and that the teller did not respond to him raising these objections. Petitioner stated he complained to Haleem about discrimination and not long lines. Petitioner also stated that he cashed a check on December 20, 2013, and weekly through January 13, 2014. He argued that since he had to wait for the other patron to be serviced, he was denied full and equal treatment under the Act.

¶ 9 The Department responded that its investigation showed petitioner permitted a patron to ask the teller a question even though petitioner was in front of her in line. The patron asked and received information, and even though petitioner thought the reply was too lengthy, there was no animus based on race or gender. Moreover, the investigation did not reveal evidence of harm to petitioner since his check was cashed.

¶ 10 Petitioner filed a reply arguing that he did not allege the public accommodation discrimination occurred on December 13, 2014, or February 2, 2014, but “around the holiday season of Christmas and New Years.” He stated he “put a date down knowing that the actual date was within the 6 month required time and the February 2, 2014 date.” Petitioner went on to state the teller sold the patron stamps, not just providing information and he objected twice to this. Petitioner alleges “the problem” was that the patron was sold stamps and received service before petitioner.

¶ 11 On November 7, 2018, the Commission sustained the Department’s dismissal of petitioner’s charge for lack of substantial evidence. The Commission found that on or about December 13, 2013, petitioner was a customer at Woodforest National Bank. When he was waiting in line, a non-black female patron asked petitioner if she could ask a question even though she was behind him in line. “Petitioner did not mind that she ask[ed] a question regarding the availability of postage stamps” but “he was displeased with the fact that the [t]eller also provided pricing information and sold stamps to her,” thereby servicing the other patron ahead of petitioner. After reaching the teller’s counter, he asked to speak to a manager and was told by the manager it was likely some sort of misunderstanding. Petitioner then cashed his check. The Commission found the teller’s actions did not rise to unlawful discrimination as petitioner was still able to cash his check and was not denied any services. The Commission also found that there have been no other complaints involving race and gender discrimination or non-equal enjoyment of the facilities against Woodforest National Bank.

¶ 12 On December 12, 2018, petitioner filed his petition for direct review of the Commission’s decision in this court. See Ill. S. Ct. R. 335(a) (eff. July 1, 2017); 775 ILCS 5/8-111(B)(1) (West

2014) (after the Commission has entered a final order, a complainant may obtain judicial review by filing a petition for review in the appellate court within 35 days of the decision).

¶ 13 In his *pro se* brief, petitioner argues that the record is incomplete and contains “many material omissions and inaccuracies too many to enumerate at this time.” The Department responds that because petitioner fails to set forth any further argument in his opening brief, he has forfeited any challenge to the merits of the Commission’s decision. See *In re Marriage of Winter*, 2013 IL App (1st) 112836, ¶ 29. Moreover, the Department argues that the Commission’s decision sustaining the Department’s dismissal of petitioner’s charge of race and sex discrimination was not an abuse of discretion. For the following reasons, we agree with the Department.

¶ 14 First, we note petitioner’s brief does not comply with Illinois Supreme Court Rule 341(h) (eff. May 25, 2018), which governs the form and content of an appellate brief. Rule 341 requires a statement of facts in order to provide this court with the facts necessary for an understanding of the case, “without argument or comment, and with appropriate reference to the pages of the record.” Ill. S. Ct. R. 341(h)(6) (eff. May 25, 2018). Petitioner fails to set forth the facts of the case, and instead argues that the Commission is “not providing the requisite ‘record on appeal’ ” and that the record provided “contains many material omissions and inaccuracies too many to enumerate.” Petitioner’s brief also does not include a statement on the nature of the case, issues presented for review, or argument supported by citations to the record. Petitioner only cites a single case: *Cooper v. Salazar*, No. 98 C 2930, 2001 WL 1351121 (N.D. Ill. Nov. 1, 2001), an unreported federal district court decision. Unreported federal district court decisions have no precedential value in this court. See *County of Du Page v. Lake Street Spa, Inc.*, 395 Ill. App. 3d 110, 122 (2009); *Burnette v. Stroger*, 389 Ill. App. 3d 321, 329 (2009). Despite petitioner’s *pro se* status, he

has the responsibility to comply with the appellate procedures established by our supreme court.

Wing v. Chicago Transit Authority, 2016 IL App (1st) 153517, ¶ 7.

¶ 15 Although we may dismiss an appeal where it “fails to comply with the requirements of Rule 341” (*Zale v. Moraine Valley Community College*, 2019 IL App (1st) 190197, ¶ 32) we will address plaintiff’s arguments here because we have the benefit of the opposing party’s cogent brief and it is clear petitioner challenges the Commission’s final order. See *Stolfo v. KinderCare Learning Centers, Inc.*, 2016 IL App (1st) 142396, ¶ 19.

¶ 16 Under the Act, a person who is aggrieved by an alleged civil rights violation may file a charge of discrimination with the Department. 775 ILCS 5/7A-102(A) (West 2014). The Department will then investigate to determine if the allegations in the charge are supported by substantial evidence. 775 ILCS 5/7A-102(C)(1) (West 2014). “Substantial evidence is evidence which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance.” 775 ILCS 5/7A-102(D)(2) (West 2014). Mere speculation and conjecture do not constitute substantial evidence of discrimination. *Willis v. Illinois Department of Human Rights*, 307 Ill. App. 3d 317, 326 (1999). If the Department determines that there is no substantial evidence, the charge will be dismissed. 775 ILCS 5/7A-102(D)(3) (West 2014). The complainant may then file a request for review with the Commission. 775 ILCS 5/7A-102(D)(3) (West 2014).

¶ 17 “When a request for review is properly filed, the Commission may consider the Department's report, any argument and supplemental evidence timely submitted, and the results of any additional investigation conducted by the Department in response to the request.” 775 ILCS 5/8-103(B) (West 2014). After the Commission has entered a final order, a complainant may obtain

judicial review by filing a petition for review in the appellate court within 35 days of the decision. 775 ILCS 5/8-111(B)(1) (West 2014).

¶ 18 We review the Commission’s order, not the Department’s decision. *Zaderaka v. Illinois Human Rights Comm’n*, 131 Ill. 2d 172, 180 (1989). The Commission’s order is reviewed for an abuse of discretion. *Young v. Illinois Human Rights Comm’n*, 2012 IL App (1st) 112204, ¶¶ 31-33. “Under the abuse of discretion standard, the court should not disturb the Commission’s decision unless it is arbitrary or capricious. [Citation.] A decision is arbitrary or capricious if it contravenes legislative intent, fails to consider a critical aspect of the matter, or offers an explanation so implausible that it cannot be regarded as the result of an exercise of the agency’s expertise.” *Young*, 2012 IL App (1st) 112204, ¶ 33. On review, we will not reweigh the evidence or substitute our judgment for that of the Commission. *Owens v. Dep’t of Human Rights*, 403 Ill. App. 3d 899, 917 (2010). There is an abuse of discretion when no reasonable person could agree with the Commission’s order. *Owens*, 403 Ill. App. 3d at 917.

¶ 19 The Act provides that it “is a civil rights violation for any person on the basis of unlawful discrimination to *** [d]eny or refuse to another the full and equal enjoyment of the facilities, goods and services of any public place of accommodation.” 775 ILCS 5/5-102(A) (West 2014). A “place of public accommodation” includes grocery stores, clothing stores, shopping centers, or other sales establishments and would also include a bank. 775 ILCS 5/5-101(A)(5) (West 2014). Unlawful discrimination under the Act includes discrimination on the basis of race or sex. 775 ILCS 5/1-103(Q) (West 2014).

¶ 20 In this case, petitioner does not present any direct evidence of discrimination. We analyze petitioner’s claim under the three-part test set forth in *McDonnell Douglas Corp. v. Green*, 411

U.S. 792 (1973). *Zaderaka*, 131 Ill. 2d at 178-79; *Young*, 2012 IL App (1st) 112204, ¶ 34. Under this test, the petitioner has the burden to “establish a *prima facie* case of unlawful discrimination by a preponderance of the evidence.” *Young*, 2012 IL App (1st) 112204, ¶ 34. After the petitioner establishes a *prima facie* case, the respondent must articulate “a legitimate, nondiscriminatory reason” for its actions. *Young*, 2012 IL App (1st) 112204, ¶ 36. If the respondent does so, the burden is on the petitioner to show that this “reason was only a pretext for unlawful discrimination.” *Young*, 2012 IL App (1st) 112204, ¶ 36. The burden of persuasion is on the petitioner at all times, not on the respondent. *Young*, 2012 IL App (1st) 112204, ¶ 36.

¶ 21 To establish a *prima facie* case of public accommodation discrimination a petitioner is required to show that “1) the petitioner is a member of a protected group; 2) the petitioner applied for an opportunity and was qualified for the opportunity; 3) the opportunity was denied to the petitioner; and 4) after the opportunity was denied, the opportunity was offered to others not in the protected group.” *Turner v. Human Rights Comm’n*, 177 Ill. App. 3d 476, 487 (1988). “The elements required to prove a *prima facie* case are not inflexible, as ‘[t]he facts necessarily will vary’ ” in different cases. *Turner*, 177 Ill. App. 3d at 488 (quoting *McDonnell Douglas Corp.*, 411 U.S. at 803, n. 13).

¶ 22 In this case, the Commission sustained the Department’s dismissal of petitioner’s complaint based on a lack of substantial evidence that petitioner was denied full and equal enjoyment of Woodforest National Bank’s facilities due to his race and sex. The Commission found that in order to establish a *prima facie* case of discrimination in public accommodation, petitioner was required to show that (1) he was a member of a protected class, (2) he was denied or refused the full and equal enjoyment of the facilities and services, and (3) similarly situated

individuals outside of petitioner's protected class were treated differently. The Commission found that there was no substantial evidence that petitioner was denied the full and equal enjoyment of Woodforest National Bank's facilities where he was able to complete his transaction and he could not show that any similarly situated customers outside of his protected class were treated more favorably. It was petitioner who allowed another customer to go ahead of him. Although he claimed that the customer was only going to ask a question to the teller, once he allowed the person to go ahead of him, any reasonable teller would believe that they needed to service the person.

¶ 23 We find the Commission did not abuse its discretion in sustaining the Department's dismissal of the charge. The record shows that petitioner did not present any evidence that he was denied the full and equal enjoyment of Woodforest National Bank's services, where it was undisputed that he was able to enter and conduct his business. See, e.g., *Robertson v. Burger King, Inc.*, 848 F. Supp. 78, 80-81 (E.D. La. 1994) (finding complaint of slow service, alleging white customers were served first, failed to state a claim for violation of civil rights where plaintiff was not denied admittance or service); *McCaleb v. Pizza Hut of America, Inc.*, 28 F. Supp. 2d 1043, 1048 (N.D. Ill. 1998) (comparing cases with no violation, where plaintiffs were not precluded from entering a store or purchasing items, to cases where plaintiffs were denied the opportunity to purchase items and were provided with less than what they paid for, in violation of their civil rights).

¶ 24 Additionally, petitioner failed to show that Woodforest National Bank treated other similarly situated customers outside his protected class more favorably. Petitioner stated he waited in line behind two or three customers, and, when he was at the counter, he permitted the patron behind him to ask if Woodforest National Bank sold stamps. The teller answered the question and

then the teller went on to sell the stamps, making petitioner wait for this additional service. The other customer was not similarly situated to petitioner because petitioner gave the customer permission to go ahead of him, as noted. Petitioner does not provide any evidence, other than his own speculation, that any employees of Woodforest National Bank had animus toward him due to his race or sex. “A petitioner’s discrimination charge consisting of mere speculation and conjecture does not constitute substantial evidence.” *Folbert v. Department of Human Rights*, 303 Ill. App. 3d 13, 25 (1999). Therefore, petitioner has failed to demonstrate how the Commission’s order was an abuse of discretion.

¶ 25 In coming to this conclusion, we briefly note that petitioner claims that the record in this case is incomplete and contains “many material omissions and inaccuracies too many to enumerate at this time.” However, petitioner has the burden to show the material omissions and inaccuracies as this court cannot speculate what they are. The Commission, in reviewing the Department’s dismissal of a charge for lack of substantial evidence, was permitted to “consider the Department’s report, any argument and supplemental evidence timely submitted, and the results of any additional investigation conducted by the Department in response to the request.” 775 ILCS 5/8-103(B) (West 2014). The record on direct administrative review includes those documents that were before the agency (here, the Commission). See 735 ILCS 5/3-110 (West 2014); Ill. S. Ct. R. 335 (eff. July 1, 2017). Thus, petitioner was free to present supplemental evidence before the Commission. However, we cannot consider any new or additional evidence on review that was not before the Commission. See 735 ILCS 5/3-110 (West 2014). Accordingly, we reject petitioner’s contention that the record is incomplete because petitioner failed to include additional evidence on appeal that was not presented before the Department or the Commission.

¶ 26 We also reject petitioner’s argument, as set out in his reply brief, that the issue for review is “the taking of Woodforest credibility over” his own. We briefly note that we need not consider petitioner’s argument in his reply brief because it is forfeited where he did not raise it in his opening brief. *Shakari v. Illinois Department of Financial & Professional Regulation*, 2018 IL App (1st) 170285, ¶ 34. In any event, there is no indication that the Commission or the Department found petitioner’s account incredible. Instead, petitioner’s account of events was insufficient to establish that he was denied full and equal enjoyment of Woodforest National Bank’s facilities due to his race and sex.

¶ 27 For the aforementioned reasons, the Commission’s order sustaining the Department’s dismissal of petitioner’s charge for lack of substantial evidence is sustained.

¶ 28 Affirmed.