2020 IL App (1st) 191857-U

No. 1-19-1857

Order filed December 14, 2020

First Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

SARA GLENN, Petitioner-Appellant, v. THE HUMAN RIGHTS COMMISSION, THE DEPARTMENT OF HUMAN RIGHTS, and COOK COUNTY RECORDER OF DEEDS OFFICE, Respondents-Appellees.	)	Petition for Direct Administrative Review of a Decision of the Illinois Human Rights Commission. No. 2018 CR 1395

JUSTICE COGHLAN delivered the judgment of the court.
Presiding Justice Walker and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: The Illinois Human Rights Commission did not abuse its discretion by sustaining the dismissal of petitioner's claims of employment discrimination for lack of jurisdiction and lack of substantial evidence.

¶ 2 Petitioner Sara Glenn (petitioner) appeals *pro se* from a final order entered by the Illinois Human Rights Commission (Commission) sustaining the Illinois Department of Human Rights' (Department) dismissal of her charge of employment discrimination by her former employer, the

Cook County Recorder of Deeds Office (Recorder), brought under the Illinois Human Rights Act (Act) (775 ILCS 5/1-101, *et seq*. (West 2016)). Petitioner alleged Recorder laid her off and she was subsequently not rehired due to her race and age. The Department dismissed her lay off claims for lack of jurisdiction, and her failure to rehire claims for lack of substantial evidence. The Commission sustained the Department's decision and petitioner appealed. We affirm.

¶ 3 Petitioner was hired by Recorder as a real estate indexer in September 2008. On or about November 4, 2016, petitioner was informed that she would be laid off effective December 4, 2016. Recorder terminated her employment, and failed to subsequently rehire her in 2017. On October 13, 2017, petitioner filed a charge of employment discrimination with the Equal Employment Opportunity Commission (EEOC). After the EEOC dismissed her charge on October 20, 2017, petitioner requested that the Department investigate her claims that she was laid off and "not recalled" due to discrimination based on her race (Black) and age (57).[1]

¶ 4 The Department's investigation included interviews with petitioner, Jeanette Soto, Recorder's former Human Resources Director, and Jennifer Ward, Real Estate Indexer.

¶ 5 Petitioner told the Department investigator (investigator) that she worked for Recorder as a real estate indexer and that she "met expectations on [the] 2016 performance evaluation" issued by her former supervisor, Roslyn Whitlock. Petitioner was "not sure" if the employee handbook she received from Recorder "prohibits unlawful discrimination." In mid-November 2016, Whitlock informed petitioner that she would be laid off effective December 4, 2016, "due to lack of work and budget." Including petitioner, Recorder laid off a total of 15-20 employees, three of

[1] Petitioner also initially alleged she was laid off and subsequently not rehired on the basis of retaliation, but withdrew this argument before the Department issued its investigation report.

whom were real estate indexers. Petitioner and another real estate indexer, Johnathan S. (non-Black, age 30) were laid off and subsequently not returned to work.[2] All the other individuals who had been laid off were returned to work by June 2017, including real estate indexer Patricia W. (Black, age 53).

¶ 6 When petitioner requested to be returned to work in June 2017, she was informed she would be returned if "someone retires, resigns, or is fired." Petitioner asserts that Recorder was supposed to return employees to work according to their seniority and that Recorder improperly used the employees's ID numbers in making the seniority determinations. Petitioner claims she had more seniority than the employees who returned to work in her department. Although she does not believe her failure to return to work was due to her race (because Patricia W. was also Black), she does believe "it was due to her age," because she was older and "had two (2) year [*sic*] from being vested."

¶ 7 Jennifer Ward, another real estate indexer, indicated that she did not know why petitioner and Johnathan S. were not returned to work. She also verified that Patricia W. was the only laid off indexer who had been returned to work.

¶ 8 Recorder provided the investigator with its Equal Opportunity Policy, which states that Recorder prohibits unlawful discrimination. Recorder also provided its December 27, 2016 memorandum of understanding for Cook County recorder of deeds and service employees international union local 72. According to this memorandum, Recorder negotiated the terms of the

[2] For privacy reasons, we do not use these former and current employees' full names. Further, Johnathan S. was referred to as non-Black in the Department's investigative report, but the Commission, in its order, notes he was referred to as Black in various investigative materials. It found his race was "not determinative of the issues in front of the Commission."

lay off and recall with the union, and the union agreed that employee ID numbers would be used to determine seniority if employees shared a seniority date, and the "lowest last (2) digits in the ID number will be considered the highest seniority."

¶ 9 Edmund Michalowski, Labor Counsel for Recorder, told the investigator that job performance evaluations and disciplinary history were not considered in the layoff or rehiring process. Michalowski stated that on or about November 4, 2016, Recorder laid off petitioner, Patricia W., and Johnathan S. effective December 4, 2016. Patricia W. shared the same seniority date as petitioner and Johnathan S., but had the lowest employee ID number, and therefore the highest seniority among the three employees. Accordingly, in February 2017, Patricia W. was recalled instead of petitioner and Johnathan S.

¶ 10 Under the Act, a petitioner must file a charge of discrimination within 180 days after the date an alleged civil rights violation has been committed. The investigator recommended a finding that petitioner's discrimination claims were not timely filed, because she was notified of her lay off on November 4, 2016, but did not file the charge until October 13, 2017.

¶ 11 The investigator also recommended a finding of lack of substantial evidence that petitioner was not recalled to work due to her age or race. The evidence showed that Recorder laid off and recalled employee real estate indexers "based on seniority date and employee ID number" as agreed to in negotiations with the union. The evidence further showed that the employee recalled, Patricia W., was the same race as petitioner, and within petitioner's protected age category, and the employee not recalled, Johnathan S., was significantly younger than petitioner. Accordingly, there was no evidence that Recorder failed to return petitioner to work due to her race or age.

¶ 12 The Department subsequently dismissed petitioner's charge. Petitioner filed a request for review of the Department's decision with the Commission. Petitioner reiterated that when she requested to return to her position, she was informed that Recorder would only be able to do so if a current employee resigned or retired. Regardless, former employees have been "back to work" and "new employees have started" since petitioner was laid off, but she has not been recalled.

¶ 13 The Department responded that petitioner's claims of discrimination regarding her lay off were untimely, so the Department did not have jurisdiction over those counts. The Department also argued that its investigation did not reveal substantial evidence that petitioner was not reinstated due to her race or age. Rather, the evidence showed petitioner was "released" due to a budgetary reduction mandated by the Cook County Board, and Recorder had negotiated the terms of the layoff and recall with petitioner's union. That agreement required that employees with more seniority would be reinstated first, and that employee ID numbers would be used to determine seniority if employees shared a seniority date. Therefore, even if petitioner had established a *prima facie* case of discrimination, Recorder articulated a non-discriminatory reason for not recalling petitioner: her ID number was higher than the number of the employee who had been recalled. Finally, petitioner failed to show Recorder's reason was a pretext for discrimination or provide any evidence showing discriminatory animus by Recorder.

¶ 14 On August 13, 2019, the Commission issued its final administrative decision, sustaining the Department's dismissal of the charge for lack of jurisdiction (Counts A & B) and lack of substantial evidence (Counts D & E). Regarding her claims that she was laid off due to her race and age, the Commission found petitioner filed her charge more than 180 days after being notified

of the layoff and, accordingly, the Commission did not have jurisdiction to proceed on Counts A and B of her charge.

¶ 15 The Commission further held that petitioner did not establish a *prima facie* case for employment discrimination regarding her failure to be recalled, because she provided no evidence of a similarly situated employee being treated more favorably than her. Petitioner provided no evidence that Recorder considered her age or that she was "only two years from being vested" in not rehiring her. Moreover, Recorder articulated a legitimate, non-discriminatory reason for its decision to reinstate Patricia W. over petitioner, which petitioner failed to show was a pretext for discrimination. Finally, the fact that Recorder rehired employees other than petitioner did not, in and of itself, show that Recorder's decision not to reinstate her was based on race or age. On September 16, 2019, petitioner filed her petition for direct review of the Commission's decision in this court.

¶ 16 As an initial matter, we note petitioner's appellate brief does not comply with Illinois Supreme Court Rule 341(h) (eff. May 25, 2018), which governs the content of appellate briefs. Petitioner's brief does not contain any "Points and Authorities" statement, outlining the points argued and authorities cited in the Argument (see Rule 341(h)(1)), no statement of jurisdiction (see Rule 341 (h)(4)), and no argument supported by citations to the record or to legal authority (see Rule 341(h)(7)). *Pro se* petitioners are not exempt from the requirement of compliance with supreme court rules. See *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2001). We may strike a brief and dismiss an appeal for failure to comply with the supreme court rules. *Marzano v. Dept. of Emp't. Sec.*, 339 Ill. App. 3d 858, 861 (2003). However, since we have the benefit of a cogent brief from unnamed respondents the Commission and

Department, we will review the merits of the appeal. See *North Community Bank v. 17011 South Park Ave., LLC*, 2015 IL App (1st) 133672, ¶ 14 (reviewing merits of the appeal despite appellant's numerous violations of Supreme Court Rule 341(h)).

¶ 17 It is a civil rights violation under the Act to discharge an employee based on unlawful discrimination. 775 ILCS 5/2-102(A) (West 2016). Discrimination based upon an individual's race or age is unlawful under the Act. 775 ILCS 5/1-102(A) (West 2016). At the time petitioner filed her charge, the Act required any person wishing to challenge an alleged civil rights violation to file a charge with the Department within 180 days of the alleged violation. 775 ILCS 5/7A-102(A)(1) (West 2016).[3] A charge filed with the EEOC "shall be deemed filed with the Department on the date filed with the EEOC" and if the EEOC is designated to investigate the charge first, the Department "shall take no action until the EEOC makes a determination of the charge" and the petitioner notifies the Department of the EEOC's determination. 775 ILCS 5/7A-102 (A-1)(1) (West 2016).

¶ 18 Where a petitioner brings a charge under the Act, the Department shall conduct an investigation to determine whether the allegations are supported by substantial evidence. 775 ILCS 5/7A-102(C)(1) (West 2016). "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 2016). If the Department determines no substantial evidence supports the charge, it shall dismiss the charge. 775 ILCS 5/7A-102(D)(3) (West 2016). The petitioner may then either commence a civil action

[3] The current Act requires a petitioner to file a charge with the Department or EEOC within 300 calendar days of the alleged violation. 775 ILCS 5/7A-102(A)(1), (A-1)(1) (West 2020). Petitioner filed her charge 343 days after she was informed of her layoff, which is untimely under either version of the Act.

in a circuit court or, as petitioner did here, file a request for review of the dismissal with the Commission. 775 ILCS 5/7A-102(D)(3) (West 2016). A petitioner may seek direct review of a final order by the Commission directly with this court. 775 ILCS 5/8-111(B)(1) (West 2016).

¶ 19 We review the final order of the Commission, not the Department decision. *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill. 2d 172, 180 (1989). We review a final order of the Commission under the abuse of discretion standard of review. 775 ILCS 5/8-111(B)(1) (West 2016); *Young v. Illinois Human Rights Comm'n*, 2012 IL App (1st) 112204, ¶ 32. Under this standard, the court should not disturb the Commission's decision unless it is arbitrary or capricious. *Young*, 2012 IL App (1st) 112204, ¶ 33. A decision is arbitrary or capricious if it contravenes the legislature's intent, fails to consider a crucial aspect of the problem, or offers an impossible explanation contrary to agency expertise. *Owens v. Dept. of Human Rights*, 403 Ill. App. 3d 899, 917 (2010).

¶ 20 The Commission's findings of fact "shall be sustained unless the court determines that such findings are contrary to the manifest weight of the evidence." 775 ILCS 5/8-11(B)(2) (West 2016). A reviewing court may not reweigh the evidence or substitute its judgment for that of the Commission, and abuse of discretion will only be found where no reasonable person could agree with the position of the lower court. *Young*, 2012 IL App (1st) 112204, ¶ 33.

¶ 21 Initially, we find the Commission did not abuse its discretion in ruling it lacked jurisdiction to review petitioner's claims that she was unlawfully laid off due to her race and age (Counts A & B). Under the Act, petitioner was required to file her charge of employment discrimination with the Department or EEOC within 180 days of Recorder informing her of the layoff. 775 ILCS 5/7A-102(A)(1), (A-1)(1) (West 2016). She received notice of the layoff on November 4, 2016 and filed

her charge with the EEOC on October 13, 2017, 343 days later. Because petitioner did not file her charge within the required time period, neither the Department nor the Commission had jurisdiction over her claims. Accordingly, the Commission did not abuse its discretion in sustaining the Department's dismissal of these counts for lack of jurisdiction.

¶ 22 We next consider petitioner's claim of employment discrimination. In analyzing claims of employment discrimination under the Act, we are guided by federal case law relating to federal anti-discrimination statutes such as Title VII of the Civil Rights Act of 1964. *Zaderaka*, 131 Ill. 2d at 178. Petitioner has provided no direct evidence of discrimination, so we must analyze her claim using the three-part test set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Zaderaka*, 131 Ill. 2d at 178-79; *Lalvani v. Illinois Human Rights Commission*, 324 Ill. App. 3d 774, 790 (2001). Under this test, the petitioner bears the initial burden to show a *prima facie* case of unlawful discrimination by a preponderance of the evidence. *Young*, 2012 IL App (1st) 112204, ¶ 34.

¶ 23 If the petitioner establishes a *prima facie* case of employment discrimination, a rebuttable presumption of unlawful discrimination arises. *Id*., ¶ 36. In order to rebut the presumption, the respondent must articulate a legitimate, nondiscriminatory reason for its decision. *Id*. If the respondent does so, the burden shifts back to the petitioner to prove the respondent's reason was a pretext for unlawful discrimination. *Id*. The ultimate burden always remains with petitioner. *Zaderaka*, 131 Ill. 2d at 179.

¶ 24 To establish a *prima facie* case of employment discrimination under the Act, the employee has the burden of showing by a preponderance of evidence that (1) she is a member of a protected class; (2) she was meeting her employer's legitimate business expectations; (3) she suffered an

adverse employment action; and (4) the employer treated similarly situated employees outside the class more favorably. *Owens*, 403 Ill. App. 3d at 919. The burden then shifts to the employer to articulate, not prove, a legitimate, non-discriminatory reason for the adverse employment action. *Zaderaka*, 131 Ill. 2d at 179. If the employer meets this burden, the employee must then prove by a preponderance of the evidence that the employer's articulated reason was not legitimate and, in fact, was a pretext for unlawful discrimination. *Id.*

¶ 25 The Commission did not abuse its discretion in finding petitioner failed to establish a *prima facie* case of employment discrimination. The evidence before the Commission showed that Recorder laid off a total of 15-20 employees, three of whom were real estate indexers. Of the two other real estate indexers who were laid off, Johnathan S., a 30-year-old employee, was also not recalled to work. Additionally, the only real estate indexer recalled to work, Patricia W., was also Black and was 53 years old.

¶ 26 The Seventh Circuit has previously found a ten-year age difference to be a reasonable threshold for a petitioner's inference of discrimination to be presumptively "substantial." *Hartley v. Wisconsin Bell, Inc.*, 124 F. 3d 887, 892-93 (7th Cir. 1997) (citing *O'Connor v. Consolidated Coin Caterers Corp.*, 517 U.S. 308, 311-12 (1996)). While petitioner claimed that she was older (57) and "had two (2) year [*sic*] from being vested," the 4-year age difference between her and Patricia W. is likely not substantial enough to support an inference of age discrimination. Petitioner has not presented any evidence that Recorder considered her age to be significant. See *id.* (noting in cases where the disparity was less than 10 years, the petitioner "still may present a triable claim if she directs the court to evidence that her employer considered her age to be significant").

Accordingly, petitioner has not established a *prima facie* case of discrimination based on either her race or age.

¶ 27 Even if petitioner had presented evidence to the Commission that the other employees recalled to work were non-Black or significantly younger than her, Recorder articulated a legitimate, non-discriminatory reason for not recalling her: her employee ID number showed she had lower seniority than the employee who was recalled, which was consistent with Recorder's agreement with the union (where employees shared a seniority date, employee ID number would be used to determine seniority for recall to work). The evidence presented to the Commission showed that the three real estate indexers laid off shared a seniority date. Patricia W., the only employee to be recalled to work, had the lowest employee ID number, and was, therefore, the most senior employee among them.

¶ 28 Petitioner did not present any evidence to the Commission that Recorder was motivated by discriminatory animus rather than adherence to its own policies by not recalling her to work. She contended that she repeatedly requested Recorder to rehire her, was informed Recorder would rehire her if an employee, retired, resigned, or was fired, and discovered that other employees were hired after she laid off, but she provided no evidence that she was not recalled based on unlawful discrimination. Accordingly, we find that the Commission did not abuse its discretion in affirming the dismissal of petitioner's unlawful discrimination charges regarding her failure to be recalled to work for lack of substantial evidence.

¶ 29 For the foregoing reasons, the Commission's August 13, 2019, order sustaining the Department's dismissal of petitioner's charge for lack jurisdiction and lack of substantial evidence is affirmed.

¶ 30 Affirmed.