

civil rights violation under the Illinois Human Rights Act (Act) (775 ILCS 5/1-101 *et seq.* (West 2008)). He contends that the Commission abused its discretion in sustaining that dismissal.

¶ 3 The record shows, in relevant part, that on March 18, 2008, petitioner, a public service administrator for the Illinois Environmental Protection Agency (IEPA), filed a charge of discrimination with the Department alleging racial harassment by his section manager, Paul Purseglove, during the period from March 1 to 12, 2008. He claimed that Purseglove stripped him of his managerial duties, asked him to relocate to a "non-state agency office," and told him "that all the employees in the office hate me *** because I am black." He also alleged that Purseglove issued him a negative performance evaluation based on his race, but did not do the same to other non-black public service administrators whose work performance was no better than his. Thereafter, a Department investigator conducted an investigation of petitioner's charge and submitted a report recommending a finding of a lack of substantial evidence on both counts. The following evidence, as pertinent to this appeal, appeared in that report.

¶ 4 As to the count of harassment, petitioner stated that on March 12, 2008, Purseglove told him that he would no longer hold the title of regional assistant manager, supervise staff, or keep inventory because he was not liked by his subordinates because he is black. Purseglove also told him that he was being reassigned to a non-state facility and suggested that petitioner leave or retire, even though other non-black supervisors who had grievances filed against them were not asked to transfer. Petitioner stated that since he became a supervisor in 2000, he never received a complaint from his staff, was fair to his subordinates, followed the guidelines of his position, and evaluated their work impartially.

¶ 5 Petitioner stated that he has been enduring "workplace violence" since 1992. Cliff Gould took over that year as senior regional manager, did not identify with petitioner, and "teamed up with the employees who expressed hatred for him." Charles Grigalauski then took

over and "continued to foment the workplace violence," stating at a regional meeting conference, "Every time I think of you, I go home and kick my dog!" Petitioner had problems with other employees as well. He was once supervising a "sampling mission" when a non-black employee named Gino Bruni and his team were unprepared for the job because they were without a workable camera. Petitioner provided them with one and instructed them to collect three samples, but they "refused to follow his guidance" and collected only two samples. Another employee named Mark Retzlaff took a picture of him in his office to prove that he was sleeping on the job, and an employee named Christopher Holly filed a grievance against him for issuing him a "needs improvement" on his performance review.

¶ 6 Petitioner also alleged that complaints he has made against non-black employees were ignored and that such employees were held to a different standard. For instance, he stated that nothing was done when he reported witnessing one of his subordinates and Retzlaff with a muzzle loaded cannon, or when he reported that Tina Kovaszny was recruiting employees to "hate" him "by encouraging them to be uncooperative, and to ignore [his] directives if they wanted to get along with the rest of the group." Petitioner also referred to an incident he reported, but which was not investigated, where a CD-R containing the personal information of Anna Van Orden, a non-black employee, was erroneously delivered to a site. He further noted that most of the grievances he has filed have gone unresolved because he has not received the same level of support given to non-black employees.

¶ 7 Petitioner alleged instances of discrimination against other employees as well. He noted that Charles Onyezia, a black employee, was suspended for inappropriate vehicle usage, while Purselove ignored a report from petitioner citing 142 instances of unaccounted vehicle usage because the individuals were non-black. He also noted that a black employee named Aaron Taylor was terminated because of discrepancies, and that an inspector named Michael

Orloff was terminated for a vehicle issue because he is Jewish. Petitioner stated that white employees would not be disciplined when reported, whereas black employees would be "dealt with immediately, and harshly."

¶ 8 Since 2000, petitioner has written memos to management in an attempt to correct the problems in the office, but doing so has "only encouraged the environment of a 'hate nest.' " He stated that "all of the hate stems from the fact that he is a black supervisor," and that his employees "did not want to be supervised by a black superior," citing as proof the fact that they work well with other non-black managers. He believes "that the real problem stems from 'the white entitlement these individuals feel.' "

¶ 9 An individual referred to as "Confidential Witness A" had no first-hand knowledge of the incidents in petitioner's charge and was only aware of them from speaking with petitioner. Similarly, Onyezia never witnessed any direct racial discrimination against petitioner, and also noted that he, himself, does not feel discriminated against or that he has been disciplined differently from others, and does not believe that the discipline he received for inappropriate vehicle usage involved his race .

¶ 10 The evidence for IEPA showed that Purselove stated that the decision to strip petitioner of his supervisory duties and transfer him was based on a letter submitted to director Doug Scott on February 19, 2008, wherein eight staff employees from the Bureau of Land complained that petitioner exhibited inappropriate and unprofessional behavior which had created a hostile work environment, and noted that they were concerned for their safety and that petitioner was causing low morale. A 2006 petition signed by those same employees had similarly claimed that petitioner had created a hostile work environment. Purselove addressed these work-related issues, as was his responsibility, according to the Employee Evaluation and Development training, and denied ever harassing petitioner. Moreover, Purselove stated that

Gary King, the bureau chief, made the final decision to strip petitioner of his supervisory duties and transfer him so as to remedy the hostile work environment, and that petitioner agreed to the transfer in an e-mail.

¶ 11 Purséglove also denied that petitioner received a negative job performance evaluation, noting that he was not barred from his scheduled pay increase, and if the evaluation had been negative, he would have been ineligible for it. Rather, petitioner received a "needs improvement" in human relations based on the complaints filed against him. Purséglove noted that petitioner struggled with building positive relationships with his staff and working with them to resolve issues, and would instead send interdepartmental and outside correspondence tarnishing their reputations. Purséglove noted that petitioner created an "intimidating environment" where his employees could not freely discuss their concerns for fear that he would reveal that information outside the department to create problems and damage their reputations.

¶ 12 Purséglove also detailed a history of problems with petitioner being unable to work with others. From 1998 to 2000, petitioner so alienated everyone in the workplace that he had to eventually be supervised by "Head Quarters Managers" because no one could work with him. In 2006, AFSCME had to remove petitioner from his supervisory duties and reassign him to remedy the hostile work environment reported by eight employees in 2002. Petitioner was also unable to work with Gould or Grigalauski, his senior regional managers, and called them "incompetent." Purséglove noted that petitioner's comments about Gould and Grigalauski "were based on incomplete information, off-mark, and incorrect because he did not bother to collect all the facts before speaking as was his style."

¶ 13 With respect to petitioner's allegations of discrimination in the workplace, Purséglove explained that Chris Holly filed a grievance against petitioner only after he was blocked from an expected promotion because petitioner had given him an unsatisfactory

evaluation which Holly believed was inaccurate. He also noted that Aaron Taylor was discharged because of an attendance problem related to drug usage, that Charles Onyezia was disciplined for improperly making private deliveries with a state vehicle, and that the vehicle violations reported by petitioner were investigated and resolved. Grigalauski, on the other hand, recalled once joking, "I think I'll go home and kick the dog," but noted that the comment was not directed at petitioner, nor was it related to anyone's race.

¶ 14 Several of petitioner's complaints had also been addressed by IEPA. Purseglove, himself, had addressed issues including a "fake dummy bullet" in the office, but some issues were not resolved to petitioner's satisfaction and no further action was taken. Jill Johnson, the Equal Employment Opportunity (EEO) officer, also had discussed an incident involving someone spitting on petitioner's chair and recommended a course of action to petitioner for addressing the issue. Other complaints made by petitioner regarding harassment by employees and supervisors were also investigated.

¶ 15 In petitioner's rebuttal, he called Gould and Grigalauski "haters," and stated that if he lacked information in making his comments, it was because IEPA "kept him out of the loop on purpose to make him look bad." He also alleged that IEPA "operates on increasing the element of fear to intimidate others into joining the hate club against him," and that AFSCME "aligned itself with the hate" and would not address the poor performance of those he reported. Petitioner believed he was the target of harassment because "he does not play along to cover up the fact that the public is not protected because the onsite inspections are not conducted appropriately."

¶ 16 As to the count of discrimination based on his allegedly negative performance evaluation, petitioner stated that he was discriminated against unless the 15 employees who stated they hated him were evaluated by Purseglove, and also unless Grigalauski received a

"needs improvement" in human relations for his comment about kicking the dog. He also stated that white employees whose performance was not better than his did not receive negative evaluations, citing that management and the union sided with them as a result of "the white entitlement," and that "his subordinates resent receiving orders from a black manager."

¶ 17 Purséglove denied that petitioner did, in fact, receive a negative evaluation, noting that if it had been negative, he would not have received his scheduled pay raise. He stated that the "needs improvement" in human relations given to petitioner resulted from the investigation triggered by his subordinates' complaint, and also that he never heard Grigalauski's alleged comment about the dog.

¶ 18 In petitioner's rebuttal, he stated that "management is aligned with the hate feeling in the staff and the union" and did not resolve his complaints of harassment in the office because he is black, and that it used his evaluation "to continue to spread the hate."

¶ 19 On September 10, 2009, the Department dismissed petitioner's charge of discrimination for lack of substantial evidence.

¶ 20 On October 5, 2009, petitioner filed a *pro se* request for review of the Department's dismissal of his charge in which he primarily commented on the evidence. Notably, however, he stated that when Purséglove stripped him of his supervisory duties, he stated that it was "[b]ecause they don't like you." On October 7, 2009, petitioner submitted a document titled "memorandum" to the Commission which addressed the incident of the CD-R containing the personal information of Anna Van Orden and Purséglove's alleged harassment of him stemming from it, and on October 13, 2009, he filed another document with the Commission which, *inter alia*, commented on the Department's analysis.

¶ 21 On November 9, 2009, the Department filed a response to petitioner's request for review asserting that petitioner failed to establish a *prima facie* case of racial harassment where

the employment decisions he complained of were within IEPA's scope of authority, and the alleged comment made by Purseglove that the employees hated petitioner because he was black was an isolated statement. The Department also asserted that petitioner failed to establish that he received a negative performance evaluation because of his race where he met expectations in 20 out of 21 criteria, and did not suffer any negative consequences based on the evaluation.

Petitioner subsequently filed a reply asserting, *inter alia*, that IEPA had failed to articulate a legitimate non-discriminatory reason for the employment action taken against him by Purseglove.

¶ 22 On April 28, 2010, the Commission entered a final order sustaining the dismissal of petitioner's charge by the Department for lack of substantial evidence. With respect to petitioner's claim of harassment, the Commission found that his claims that he was stripped of his supervisory authority, relocated, and told by Purseglove that his subordinates hated him because he was black, did not rise to the level of actionable harassment under the Act. It noted that Purseglove's "isolated statement" did not constitute substantial evidence of "a pattern of racially motivated events that were so pervasive that they constituted a different term and condition of employment based on the Petitioner's race," and that there was no substantial evidence that the employment actions taken against him were part of a pattern of racial harassment. The Commission also found no substantial evidence of pretext where IEPA took action against petitioner only after his subordinates filed an official complaint against him.

¶ 23 The Commission further found that there was no substantial evidence that petitioner received a poor evaluation because of his race. It found that his evaluation was not poor where he met 20 of 21 expectations, and that petitioner's speculation that his subordinates resisted his authority because he was black did not constitute substantial evidence that IEPA was racially motivated when citing his failure to work well with his subordinates. Petitioner now

challenges the order of the Commission sustaining the dismissal of his charge of employment discrimination.

¶ 24 As an initial matter, we note that the statement of facts in petitioner's brief is non-compliant with Illinois Supreme Court Rule 341(h)(6) (eff. Jul. 1, 2008), which requires inclusion of those facts necessary to an understanding of the case, stated accurately and fairly without argument or comment, because petitioner has omitted facts unfavorable to his position. *Kulchawik v. Durabla Manufacturing Co.*, 371 Ill. App. 3d 964, 967 n. 1 (2007). It is not our duty to determine what the real issues are, nor to seek material for their disposition. *Kulchawik*, 371 Ill. App. 3d at 967 n. 1.

¶ 25 That said, a reviewing court will not overturn the Commission's decision¹ to sustain the dismissal of a charge of employment discrimination unless the decision was arbitrary and capricious or an abuse of discretion. *Owens v. Department of Human Rights*, 403 Ill. App 3d 899, 917 (2010). An arbitrary and capricious decision is one which contravenes the intent of the legislature, fails to consider a crucial aspect of the problem, or offers an impossible explanation contrary to agency expertise. *Budzileni v. Department of Human Rights*, 392 Ill. App. 3d 422, 442 (2009).

¶ 26 Under the Act, the Department must determine whether there is substantial evidence that a civil rights violation has occurred, and dismiss the charge if there is not. 775 ILCS 5/7A-102(D)(2)-(3) (West 2008). Substantial evidence is evidence which a reasonable mind would find sufficient to support a particular conclusion, and consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance. 775 ILCS 5/7A-102(D)(2) (West 2008). However, mere speculation and conjecture do not constitute substantial evidence

¹ The Chief Legal Counsel handled requests for review for charges filed prior to January 1, 2008. 56 Ill. Adm. Code 2520.573(a) (2008).

of discrimination. *Willis v. Illinois Department of Human Rights*, 307 Ill. App. 3d 317, 326 (1999).

¶ 27 In *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill. 2d 172, 178-79 (1989), the supreme court followed the approach set out by the United States Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) to analyze a claim of employment discrimination under the Act. Under that approach, petitioner must first establish a *prima facie* case of unlawful discrimination. *Zaderaka*, 131 Ill. 2d at 179. To do so, he must show that (1) he is a member of a protected class, (2) he met the employer's legitimate business expectations, (3) he 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.

¶ 28 Once a *prima facie* case has been established, there exists a rebuttable presumption that the employer unlawfully discriminated against petitioner, and to rebut that presumption, the employer must articulate a legitimate, non-discriminatory reason for its decision. *Zaderaka*, 131 Ill. 2d at 179. If the employer meets its burden of production, the presumption is lost, and petitioner must prove by a preponderance of the evidence that the employer's reason was pretext for unlawful discrimination. *Zaderaka*, 131 Ill. 2d at 179.

¶ 29 Petitioner first maintains that the Commission abused its discretion in finding a lack of substantial evidence of racial harassment. He claims that there was clear racial harassment where he was stripped of his managerial duties, asked to relocate, and told that it was because all the employees in the office hated him because he was black. He also claims that the Commission abused its discretion by considering Purselove's statement in isolation and not in the context of the other actions taken against him, and also by failing to consider the statement as direct evidence of discrimination. The Department responds that the isolated remark made by

Purseglove does not constitute racial harassment, and that, even if it did, there is no substantial evidence of pretext.

¶ 30 This court has recognized that racial harassment involves more than a few isolated incidents of harassment. *Village of Bellwood Board of Fire and Police Commissioners v. Human Rights Comm'n*, 184 Ill. App. 3d 339, 350 (1989). Thus, racial comments that come up in casual conversation, by accident, or sporadically do not trigger civil rights protections. *Village of Bellwood Board of Fire and Police Commissioners*, 184 Ill. App. 3d at 350.

¶ 31 Here, petitioner's charge contains only one allegation in support of his claim of racial harassment which directly references his race, *i.e.*, Purseglove telling him "that all the employees in the office hate me *** because I am black." Moreover, the record contains evidence showing that the decision to strip petitioner of his supervisory duties and transfer him to another office was ultimately made by Gary King, the Bureau Chief, based on a letter from eight employees "concerned for their safety" who claimed that petitioner had created a hostile work environment, and who had also previously submitted a signed petition asking that he be removed from the chain of command for the same reason. Since Purseglove was not the ultimate decision-maker, we do not find that the Commission abused its discretion in considering his alleged statement in isolation from the employment actions taken against petitioner (See *Sola v. Illinois Human Rights Comm'n*, 316 Ill. App. 3d 528, 542 (2000) (age discrimination case noting that stray remarks, such as statements made by non-decision makers, are insufficient to establish discrimination)), and in finding that one statement insufficient to show a pattern of racial harassment (*Village of Bellwood Board of Fire and Police Commissioners*, 184 Ill. App. 3d at 350).

¶ 32 Petitioner also maintains that the Commission abused its discretion in finding a lack of substantial evidence of discrimination with respect to his negative performance rating.

The Department responds that his overall evaluation was not negative where he met expectations in 20 out of 21 areas, and that, even if it was negative, he did not identify any tangible job consequences resulting from the evaluation.

¶ 33 To establish an adverse employment action, petitioner must show that the employment action was materially adverse, *i.e.*, one that significantly altered the terms and conditions of his job. *Owens*, 403 Ill. App. 3d at 919. Here, the record does not contain any evidence that the terms and conditions of petitioner's employment were altered as a result of his receiving a "needs improvement" in one category of his performance evaluation. Petitioner was not stripped of his managerial duties or transferred because of the rating, but rather, because of the letter sent by his employees. He was also not denied the pay raise he was scheduled to receive as a result of the rating. Petitioner has thus failed to establish that his negative performance rating constituted a materially adverse employment action, and, consequently, has not met his burden of establishing a *prima facie* case of employment discrimination. *Owens*, 403 Ill. App. 3d at 919. The commission therefore did not abuse its discretion in finding a lack of substantial evidence of employment discrimination with respect to petitioner's negative performance rating. *Owens*, 403 Ill. App. 3d at 917.

¶ 34 Accordingly, we affirm the order of the Commission sustaining the dismissal of petitioner's charge of employment discrimination by the Department for lack of substantial evidence of a civil rights violation under the Act.

¶ 35 Affirmed.