2013 IL App (2d) 120386-U
No. 2-12-0386
Order filed February 8, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

IGNAZIA GRIMAUDO-WALLEN,	)	Appeal from the circuit court of
	)	Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 09-L-1199
	)	
NATIONAL CITY CORPORATION, MID-AMERICA BANK FSB, and THE PNC FINANCIAL SERVICES GROUP, INC.,	)	
	)	Honorable
	)	Hollis L. Webster,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly granted summary judgment in favor of defendants where plaintiff failed to raise any genuine issues of material fact that would allow her to establish either that similarly situated employees were not terminated or that the bank's articulated reason for terminating her was pretextual; the trial court did not abuse its discretion in denying plaintiff's motion to reopen PNC's deposition.

¶ 2 Plaintiff, Ignazia (Nancy) Grimaudo-Wallen, appeals from an order of the circuit court of Du Page County granting summary judgment in favor of defendants, National City Corporation,

Mid-America Bank FSB, and PNC Financial Services Group, Inc. (collectively the bank[1]) on plaintiff's age-discrimination claim brought pursuant to the Illinois Human Rights Act (the Act) (775 ILCS 5/2-101 *et seq*. (West 2008)). We affirm.

¶ 3 The following facts are taken from the documents filed in support of, and in opposition to, the bank's motion for summary judgment. Plaintiff initially worked as a teller for the bank from 1991 to 1998. In November 2003, the bank rehired plaintiff, who was then 41 years of age, as a teller supervisor at its Naperville South branch. One of the duties of a teller supervisor was to "balance the vault." This required the teller supervisor to physically count the cash in the vault to see that it reconciled with the balance on the bank's general ledger. If the two numbers were different, the teller supervisor had to remain and recount, contact another manager, or call bank operations. According to the bank's rules, "force balancing[2]" the vault, whether intentional or not, was a firing offense. "Force balancing" occurred, according to the bank's policy, when the vault was out of balance but the teller supervisor nonetheless showed that the cash count and the general ledger were the same. The bank also prohibited a teller supervisor from balancing the vault on a day

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[1]National City Corporation was the parent of National City Bank. National City Corporation acquired Mid-America Bank FSB on September 1, 2007. On December 31, 2008, PNC Financial Services Group, Inc. (or PNC Bank) became the successor to Mid-America Bank FSB and National City Bank. For ease of reference, unless otherwise dictated by the need for clarity, we collectively refer to defendants as "the bank," although the entity plaintiff worked for at the time of her termination was Mid-America Bank FSB.

[2]The record uses "force balancing" and "forced balancing" interchangeably when describing the practice.

preceding a vacation when the teller supervisor would be gone for more than three days. Plaintiff, as a teller supervisor, knew of these policies.

¶ 4 On November 17, 2007, a Saturday, plaintiff was working alongside two other teller supervisors, Marianne Diesem and Vilma Jovaisa.[3] It was undisputed that plaintiff was responsible for balancing the vault on that day. It was also undisputed that plaintiff acted against the bank's policy, because she was leaving for a Florida vacation and would be gone more than three work days following that Saturday. Plaintiff said that she forgot about the policy. However, the bank claimed that Vilma brought the matter to plaintiff's attention. Plaintiff and Marianne recalled that Vilma was working in another part of the bank on that day and would not have seen that plaintiff was counting the vault. Neither plaintiff nor Marianne heard Vilma say anything to plaintiff to the effect that plaintiff should not be balancing the vault.

¶ 5 In counting the cash in the vault, plaintiff miscounted a $2000 bag of coins as $1000. Plaintiff then wrote her total of $90,322.06 on the left-hand side of the "vault balance sheet." The general ledger balance on the right-hand side of the sheet was $91,322.06. Even though plaintiff's total did not reconcile with the general ledger, she entered $91,322.06 into the computer system, showing that the vault balanced. Plaintiff said that she did not catch the discrepancy and did not intentionally force balance the vault. Marianne had glanced at the vault balance sheet but she, too, did not catch the discrepancy. Plaintiff then left for her Florida vacation.

¶ 6 When the discrepancy was discovered, the bank's branch manager, John Hutchinson, conferred with a human resources manager and the head of teller operations, both of whom

[3]Vilma is referred to in the record at times as Vilma Jovaisa and at other times as Vilma Milvydaite. She is also referred to at times as "Velma."

recommended that plaintiff be fired. On November 30, 2007, the bank terminated plaintiff's employment. The "employee termination log" reflected five previous disciplinary actions, as follows:

"05/20/06 Not following proper procedures

07/21/06 Not following proper procedure

02/07/07 Security procedure violation

03/28/07 Not following proper procedures

06/18/07 Carelessness (resulting in forced balancing)"

Under the "Notes" section of the log, the following was written:

"On 06/18/07[,] [plaintiff] counted the vault and mistakenly counted $40,000 as $20,000 but still showed that the vault was in balance. This is considered forced balancing. At that time she was issued a Performance Improvement and told that the next occurrence of this type would result in further disciplinary action up to and including termination.

On 11/17/07[,] [plaintiff] counted the vault. This is a violation of policy as supervisors are not allowed to balance the vault if they are leaving for vacation the following day. [Plaintiff] was scheduled to begin her vacation on 11/18/07. Another Supervisor questioned [plaintiff] and reminded her that she should not be balancing the vault but [plaintiff] chose to ignore her and balance the vault anyway ("[plaintiff] just blew me off").

When counting the vault on 11/17/07, [plaintiff] miscounted the coin [*sic*] by $1,000.00 but entered the GL balance into the system ($91,322.06) rather than the physical count ($90,322.06) which showed the vault being in balance when actually the physical count

was $1,000 short. This is considered forced balancing. The shortage of $1,000 was not found until 11/29/07.

As a result of the Performance Improvement issued on 06/18/07 which stated that 'the next occurrence of this type will result in further disciplinary action up to and including termination' and that [plaintiff] chose to violate [the bank's] policy which prohibited her from balancing the vault before leaving on vacation, [plaintiff] is being terminated."

¶ 7 Plaintiff filed suit against the bank alleging that she was fired because of her age (45) in violation of the Act.[4] She alleged that the stated reason for her firing, that she had force balanced the vault on a day before she left on vacation, was pretextual, and she alleged that other, similarly situated employees were treated more favorably under similar circumstances. At her deposition, plaintiff testified that she based her age-discrimination claim on the fact that she was fired unjustly and that a younger employee, Vilma, was promoted to the position of teller supervisor. According to plaintiff, no one made any direct comments about her age, but plaintiff felt that Vilma was treated better than she. As an example, plaintiff said that she bore the "brunt" of the work but nothing was expected of Vilma. As another example, plaintiff testified that the branch was overstaffed but that Mr. Hutchinson, the branch manager, created a teller-supervisor position just for Vilma. Another reason plaintiff felt she was discriminated against was that Vilma "did the exact same thing"—meaning Vilma force balanced the vault—"and nothing was done." Plaintiff stated that Elaine Hopper, the assistant branch manager, had once also force balanced the vault, the basis for her belief being that the day after Elaine balanced the vault it was short $1,000 and the money

[4]Plaintiff initially included a federal claim, which she dismissed upon the bank's removal of the case to federal court. The federal district court then remanded the cause to state court.

"mysteriously" turned up in an envelope about a month later on a day that Elaine opened the branch. Another example of discrimination plaintiff offered was that other people made the same mistakes she did and were not punished. "It just seemed like everything was always blown out of proportion," plaintiff said. Plaintiff stated that when anything went wrong, the blame was placed on her shoulders. Plaintiff felt that she had been treated unfairly under her prior branch manager, Katherine Donohue, as well even though Donohue was older than she. Plaintiff's reason for believing that Donohue discriminated against her was because Donohue criticized her work performance on occasion.

¶ 8 The bank moved for summary judgment, which the trial court granted on March 7, 2012. On April 3, 2012, plaintiff filed a notice of appeal. The notice of appeal specified only the order of March 7, 2012. In the notice of appeal, plaintiff sought the reversal of the March 7, 2012, order and remand for further proceedings.

¶ 9 ANALYSIS

¶ 10 Plaintiff raises two issues. First, she contends that the trial court erred in granting summary judgment in favor of the bank. Second, plaintiff argues that the trial court erred in denying her motion to reopen the deposition of defendant, PNC Financial Services Group, Inc. (PNC).

¶ 11 I. Summary Judgment

¶ 12 Summary judgment is proper where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Richardson v. Bond Drug Co. of Illinois*, 387 Ill. App. 3d 881, 884 (2009). The trial court may grant summary judgment based on the pleadings, depositions, admissions, exhibits, and affidavits on file. *Richardson*, 387 Ill. App. 3d at

884. The court construes the evidence in favor of the nonmoving party. *Richardson*, 387 Ill. App. 3d at 884. We review the grant of summary judgment *de novo*. *Richardson*, 387 Ill. App. 3d at 884.

¶ 13 Intentional discrimination can be shown by either direct evidence or indirect evidence. *Koulegeorge v. Illinois Human Rights Comm'n*, 316 Ill. App. 3d 1079, 1092 (2000). Here, plaintiff is proceeding under the indirect-evidence approach established by the United States Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), and adopted by our supreme court in *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill. 2d 172 (1989).

¶ 14 First, the plaintiff must establish by a preponderance of the evidence a *prima facie* case of unlawful discrimination. *Zaderaka*, 131 Ill. 2d at 178-79. If the plaintiff establishes a *prima facie* case, a rebuttable presumption arises that the employer unlawfully discriminated against the plaintiff. *Zaderaka*, 131 Ill. 2d at 179. To rebut the presumption, the employer must articulate—not prove—a legitimate, nondiscriminatory reason for its decision. *Zaderaka*, 131 Ill. 2d at 179. If the employer carries its burden of production, the presumption falls and the plaintiff then must prove by a preponderance of the evidence that the employer's articulated reason was pretextual. *Zaderaka*, 131 Ill. 2d at 179. The Act makes it unlawful for an employer to discriminate against an employee on the basis of age and applies to persons who are between 40 and 70 years old. *Ring v. R.J. Reynolds Industries, Inc.*, 597 F. Supp. 1277, 1280 (N.D. Ill. 1984).

¶ 15 In order to prove a *prima facie* case in an age discrimination case, the plaintiff must show: (1) she is a member of a protected class; (2) she was performing satisfactorily; (3) she was discharged despite the adequacy of her work; and (4) a similarly situated employee who was not a member of the protected class was not discharged. *Anderson v. Human Rights Comm'n*, 314 Ill. App. 3d 35, 49 (2000). Here, plaintiff was 45 years old when she was discharged. She claimed that

she was performing satisfactorily in that she received positive performance reviews until 2006, when the bank began replacing older employees with younger ones. Plaintiff claimed that Vilma and Elaine were similarly situated employees who were not discharged. In granting the bank's motion for summary judgment, the trial court specifically found that plaintiff failed to establish any evidence relating to similarly situated employees and that plaintiff failed to show that the bank's articulated reason for her discharge—that she force balanced the vault on a day before she left on vacation—was pretextual.

¶ 16 The parties do not dispute that plaintiff is a member of a protected class. In this appeal, plaintiff argues that there were numerous genuine issues of material fact that should have precluded summary judgment.

¶ 17 First, she maintains that her positive performance reviews prior to 2006 show that she was performing her job satisfactorily. Plaintiff claims that her positive reviews shifted after that when the bank began replacing older employees with younger employees. Plaintiff testified at her deposition that John Hutchinson succeeded Katherine Donohue as branch manager. Plaintiff believed that Hutchinson was 15 or 20 years younger than his predecessor. Plaintiff also testified that Elaine Hopper replaced Linda Ensser as assistant branch manager and was at least 15 years younger than Ensser. Other than her belief, plaintiff offered no evidence of any correlation between the arrival of younger managers and the 2006-2007 disciplinary actions the bank took against her. Indeed, plaintiff felt that Katherine Donohue had also discriminated against her. Moreover, there is no evidence in the record that the arrival of Hutchinson and Hopper was part of a corporate scheme to replace older employees. Plaintiff admitted that a number of tellers and teller supervisors

were older than she. Marianne Diesem was 69 years old in 2007, when plaintiff claims she was discriminated against at age 45.

¶ 18 Plaintiff argues that her good performance reviews prior to 2006 demonstrate that she was performing her job satisfactorily and that fact alone should have precluded summary judgment. Satisfactory performance is but one element of a *prima facie* case. Even if she established that she was performing satisfactorily, she still had to meet the remaining requirements.[5]

¶ 19 Plaintiff next argues that the bank did not terminate other similarly situated employees. To determine whether employees were similarly situated, courts focus on the similarity of misconduct and the employees' work records. *Loyola University of Chicago v. Human Rights Comm'n*, 149 Ill. App. 3d 8, 19 (1986). Here, plaintiff asserts that Vilma and Elaine Hopper were similarly situated employees who were not disciplined. We look first at Vilma. Vilma was a teller supervisor at Naperville South with the same duties as plaintiff. She was in her twenties, substantially younger than plaintiff. The evidence showed that while plaintiff was on vacation in November 2007, Vilma

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[5]The bank does not argue in its brief that plaintiff's performance was not satisfactory even though she received five disciplinary actions beginning in 2006. We are neutral on this factor, because there is support for the view that where a plaintiff argues that an employer's discipline is meted out in an uneven manner, the legitimate-expectations inquiry dovetails with the pretext question. *Gates v. Caterpillar, Inc.*, 513 F.3d 680, 691, n. 8 (7th Cir. 2008). In other words, if the reason for termination was pretextual, to inquire whether plaintiff was performing satisfactorily begs the question. It makes no sense to evaluate whether a plaintiff is meeting legitimate expectations when she admits to violating company policies but is alleging she was treated more harshly than other employees who also violated the policies.

balanced the vault. She came up $1,000 short in her physical count of the money. She remained at the bank and summoned Marianne Diesem, a teller supervisor with more experience. When Marianne and Vilma did a recount, Marianne discovered a $1,000 coin bag inside the vault, which she thought made up the shortage. Vilma then reported the vault as balanced. Later, it was determined that the coin bag Marianne found should not have been counted in that day's totals.

¶ 20 The bank contends that Vilma was not guilty of force balancing the vault because she followed procedure and immediately summoned another supervisor rather than reporting the vault as balanced into the system when the physical count did not match the general ledger. Under *Cook v. Illinois Department of Corrections*, 736 F. Supp. 2d 1190 (S.D. Ill. 2010), a case plaintiff cites, to assess whether two employees are similarly situated, the court takes into account whether they engaged in similar conduct "without such differentiating or mitigating circumstances as would distinguish their conduct or the employer's treatment of them." *Cook*, 736 F. Supp. 2d at 1199. We agree with the bank that Vilma's conduct was not the same as plaintiff's conduct. Vilma caught the error; plaintiff did not. Vilma followed procedure and summoned another supervisor; plaintiff did not. Even though Vilma counted a bag of coins and then it was later determined that the bag should not have been counted, the fact that she had summoned another teller supervisor is a "differentiating or mitigating" circumstance under *Cook*. Furthermore, employees are not similarly situated where one has previously been disciplined and the other has not. *Johnson v. Human Rights Comm'n*, 318 Ill. App. 3d 582, 589 (2000). The record in the present case showed that Vilma had not previously been disciplined whereas plaintiff had been disciplined on multiple occasions. The most recent discipline prior to plaintiff's termination occurred just five months before and was for carelessness that resulted in plaintiff's reporting the vault as balanced when she had miscounted the cash by

$20,000. On that occasion, plaintiff was notified that the next such incident could lead to termination.

¶ 21 With respect to Elaine Hopper, who was 10 years younger than plaintiff, the record shows the following. Plaintiff testified at her deposition that Elaine force balanced the vault on a day before Elaine went on vacation. According to plaintiff, she was working with Elaine on a Friday when Elaine balanced the vault. The next day, Saturday, plaintiff was not working, but she received a call from Marianne Diesem telling her that the vault did not balance. Plaintiff testified that she went into the branch at Marianne's request around 4 o'clock or 4:30 that Saturday afternoon. According to plaintiff, Elaine must have force balanced the vault the previous day, because on Saturday everything was "accounted for," but the vault was $1,000 short. Then, about a month later, on a day when Elaine opened the branch, $1,000 in hundred-dollar bills "mysteriously" showed up in an envelope in the drive-through. Plaintiff initially stated that this occurred in the spring of 2009; then she said it occurred in the spring of 2006; she then recalled that the incident occurred in the spring of 2007. Plaintiff testified at her deposition that Elaine balanced the vault on that Friday before she left on a vacation that lasted more than three days. Although plaintiff initially recalled that Elaine returned to work on Tuesday, when the bank's counsel pointed out that Tuesday would have been less than three days (because the branch was closed on Sunday), plaintiff said she was certain Elaine returned on Wednesday. Plaintiff admitted that her belief that Elaine had taken $1,000 from the vault and then placed the envelope full of cash in the drive-through was speculation on her part. According to plaintiff, security personnel questioned people about the missing $1,000, including Elaine Hopper, but plaintiff had no knowledge whether Elaine had been disciplined.

¶ 22 Vicky Diaz, another teller-supervisor at the Naperville South branch when plaintiff was employed there, testified at her deposition that Elaine Hopper had balanced the vault on a day before she left on vacation. Vicky did not recall when this happened, and did not remember whether she was present on the day Elaine balanced the vault. Vicky testified that she recalled the incident, because it was ironic that the vault was short $1,000 after Elaine counted it and then the money reappeared on the day Elaine returned from vacation. Vicky testified that she knew that Elaine was gone more than three days after the day she balanced the vault, even though Vicky could not remember her own vacations.

¶ 23 We conclude that plaintiff's evidence regarding similarly situated employees does not rise above speculation. Plaintiff had no personal knowledge that Elaine Hopper force balanced the vault. Plaintiff testified that she was engaged in her own work and did not see what Elaine did. Vicky Diaz did not recall whether she was even present at the branch when Elaine balanced the vault. Both plaintiff and Vicky Diaz believed Elaine must have force balanced the vault before she left on vacation, because the next day the vault was $1,000 short and an envelope full of cash mysteriously appeared either the day Elaine returned from vacation or a month later when Elaine opened the branch. Mere speculation, conjecture, or guess is insufficient to withstand summary judgment. *Benson v. Stafford*, 407 Ill. App. 3d 902, 912 (2010).

¶ 24 However, even if we assume that plaintiff could prove a *prima facie* case, and that the burden of production shifted to the bank to articulate a nondiscriminatory reason for its action, we do not believe that plaintiff can demonstrate that the articulated reason was pretextual. To prove pretext, plaintiff must show that the employer's reason was false and that discrimination was the real reason for the action. *Sola v. Human Rights Comm'n*, 316 Ill. App. 3d 528, 537 (2000). Plaintiff has to

show: (1) that the articulated reason has no basis in fact; (2) that the articulated reason did not actually motivate the employer's decision; or (3) that the articulated reason was insufficient to motivate the employer's decision. *Sola*, 316 Ill. App. 3d at 537.

¶ 25 Here, plaintiff contends that the bank's articulated reason for its action in the litigation differed from its reason at the time of termination. Specifically, plaintiff asserts that the employee termination log and the bank's discovery responses were different. She quotes the last paragraph of the employee termination log, as follows:

> "As a result of the Performance Improvement issued on 06/18/07 which stated that 'the next occurrence of this type will result in further disciplinary action up to and including termination' and that [plaintiff] chose to violate [the bank's] policy which prohibited her from balancing the vault before leaving on vacation, [plaintiff] is being terminated."

Plaintiff cites the bank's answer to plaintiff's interrogatory no. 10, as follows:

> "Plaintiff was terminated for violation of company policy. On June 18, 2007, Plaintiff engaged in carelessness, resulting in forced balancing. On November 17, 2007, Plaintiff violated company policy by balancing the vault before leaving on vacation and forced balanced the vault. *** (emphasis added)."

Presumably, plaintiff is arguing that the termination log mentioned only that plaintiff violated policy by leaving on vacation but the interrogatory answer added force balancing, something new. This argument is specious. The third paragraph of the Notes section of the employee termination log specifically said that on November 17, 2007, plaintiff force balanced the vault. Plaintiff ignores that paragraph and cites only the fourth paragraph.

¶ 26 Plaintiff maintains that Elaine Hopper gave differing reasons for plaintiff's termination. According to plaintiff, Elaine first said in her deposition that plaintiff was terminated for carelessness, force balancing issues, security violations, and not following procedures, but that Elaine later denied that the termination was for previous disciplinary issues. The record shows that when plaintiff's counsel asked Elaine for the reasons the bank terminated plaintiff, Elaine said, "May I see her termination log?" At that point, counsel refused to show the witness the document and said, "[L]et's exhaust your memory first." From memory, Elaine testified:

> "There was carelessness. There was [*sic*] force balancing issues. There were security violations, to name a few. *** I also recall that she was just not performing satisfactorily. *** Not following the policies and procedures when it comes to balancing the vault, not following policies and procedures when it comes to the security measures of the branch."

Elaine later in the deposition testified that, according to a document she was being shown, plaintiff was not terminated for any of the conduct that was the subject of the first four previous disciplinary actions:

> "Q. [By plaintiff's counsel]: According to this document, [plaintiff] was not terminated for any of the conduct that was the subject of the first four of the previous disciplinary actions, isn't that right?
>
> A. I think I would agree to that."

Thus, Elaine did not modify or change her testimony; she merely agreed that a document she was being shown (which was not identified for the record) indicated that plaintiff was not terminated for previous disciplinary actions.

¶ 27 Plaintiff insists that other bank employees offered yet other reasons for plaintiff's termination in affidavits they filed in support of the bank's motion for summary judgment. Diane Stutte, who was head of teller operations, furnished an affidavit in which she testified that plaintiff's conduct in November 2007 was considered force balancing by the bank. Brenda Panno, the bank's human resources manager, testified in an affidavit that the bank considered plaintiff's conduct force balancing, which, together with plaintiff's violation of policy in leaving for vacation the day after she balanced the vault and previous disciplinary actions for carelessness, caused Panno to recommend plaintiff's termination. John Hutchinson's affidavit recited that plaintiff had numerous performance issues while he was the branch manager, including carelessness, force balancing the vault, and violating policy by leaving for vacation the day after she balanced the vault. He testified in his affidavit that he terminated plaintiff based on her policy violations of November 17, 2007, "along with the other violations of Bank policy that she was counseled for during her tenure."

¶ 28 Inconsistencies given by an employer as to the reason for termination may tend to establish that the reason was pretextual. *Southern Illinois Clinic, Ltd. v. Human Rights Comm'n*, 274 Ill. App. 3d 840, 850 (1995). In *Southern Illinois*, a medical clinic's owner gave contradictory reasons for firing telephone receptionists when he said they were let go due to the shaky economic condition of the clinic and also stated that they were terminated because they were the clinic's worst employees, both of which allegations were shown not to be true. *Southern Illinois*, 274 Ill. App. 3d at 844-45. Here, the bank's reasons were consistent: plaintiff violated policy by force balancing the vault and leaving on vacation the day after she balanced the vault; she had previously been warned that force balancing the vault could lead to termination; and she had a history of carelessness. Each of the

bank's managers may not have used identical language in stating the reasons for termination, but the reasons themselves were consistent.

¶ 29 Plaintiff next argues that the bank was inconsistent in that it considered plaintiff's conduct to be careless at the time it occurred in 2007 but considered it to be intentional in opposing plaintiff's claim for unemployment benefits. This argument is without merit. The bank took the position when it opposed plaintiff's claim for unemployment benefits that force balancing was misconduct whether it was intentional or unintentional.

¶ 30 Plaintiff also argues that there is a genuine issue of material fact over what constitutes force balancing. She testified that, in her mind, she did not force balance the vault on November 17, 2007, because she did not do it intentionally. Vicky Diaz, who was another teller supervisor at Naperville South, testified in a deposition that she thought the action had to be intentional in order to constitute force balancing. Marianne Diesem, another teller supervisor, agreed with plaintiff and Diaz. The bank's handbook listed force balancing as a firing offense but did not define force balancing itself. The bank established through the affidavit of Brenda Panno, the human resources relationship manager, that during the time relevant to the instant case the bank considered force balancing to occur when the teller supervisor showed the vault to be in balance when it was not. Panno's affidavit stated that force balancing was grounds for termination whether the employee intended to force balance or whether it was an unintentional mistake. Plaintiff argues that, because force balancing was listed in the handbook, along with check kiting and theft, as situations that could result in immediate dismissal, and because check kiting and theft require intent, force balancing also required intent. We draw no such inference. The situations that could result in immediate dismissal were listed according to the seriousness of the employee's conduct. Balancing the vault was a task

assigned only to supervisors, who had more experience and training than regular tellers. The task also required that two supervisors confirm that the vault balanced. Thus, the bank considered the task to be one of utmost sensitivity and vital to its security. Whether the employee carelessly or intentionally force balances, the resulting damage to the employer is the same. If the vault is not in balance because the cash in the vault is less than the balance reported on the general ledger, money appears to be missing. Furthermore, plaintiff could not have been confused about the bank's definition of force balancing on November 17, 2007, because she had been warned five months earlier that carelessness resulting in force balancing could result in termination.

¶ 31 The bank contends that plaintiff simply disagrees with the bank's business policy, which does not raise any factual issue that would preclude summary judgment. The focus of a pretext inquiry is whether the employer's stated reason was honest, not whether the reason was accurate, wise, or well-considered. *Stewart v. Henderson*, 207 F. 3d 374, 378 (2000). Basically, we would have to be able to find evidence in the record that the bank lied about plaintiff's conduct, or lied about what it considered force balancing to be, and then infer from the lie a discriminatory reason for the decision to terminate plaintiff. See *Stewart*, 207 F. 3d at 378 ("In order to demonstrate that the reasons given for the decision were pretextual, [the plaintiffs] would have to provide evidence *** that [the employer] lied about using the STAR method and that we should infer from that a discriminatory reason for the decision.").

¶ 32 Plaintiff attempts to impeach the bank's stated policy that force balancing may occur unintentionally with *Minnig v. PNC Bank*, 2008 WL 4083007 (E.D. Pa. 2008), an age discrimination case against PNC in which PNC's policy considered force balancing to be a dishonest act. *Minnig*, 2008 WL 4083007, n. 4. We agree with the bank that PNC's policy is irrelevant. PNC did not

become the successor to Mid-America Bank FSB and National City Bank until December 31, 2008. Therefore, plaintiff would not have been operating under PNC's policy.

¶ 33 Nor are we persuaded by plaintiff's argument that the bank failed to follow its own procedures in disciplining her. She contends that, because she did not receive a "counseling"—a verbal warning—pertaining to leaving on vacation the day after she balanced the vault, the bank's articulated reason for firing her must be pretextual. However, the employee termination log included that she force balanced the vault on November 17, 2007. The employee handbook informed employees that force balancing could result in immediate termination. We find no evidence that the bank failed to follow procedure.

¶ 34 Plaintiff also claims that the bank failed to follow procedure because it never issued her a second written warning about "the issue of making mistakes" when balancing the vault. She asserts that the June 18, 2007, performance improvement counseling did not use the term "force balancing" but stated only that she was careless. While the June 18, 2007, form does not use the words "force balancing," it does say that plaintiff miscounted two bricks of twenties, which "caused the vault to balance since the vouchering was done incorrectly." What the form described was force balancing. Moreover, because force balancing could result in immediate termination, plaintiff was not entitled to a second written warning.

¶ 35 There is no evidence in the record to substantiate plaintiff's claim that the bank's reason for terminating her was pretextual. She has not demonstrated, under *Sola*, that the articulated reason had no basis in fact or that the articulated reason did not motivate the bank's action. Plaintiff admitted in an appeals hearing on her claim for unemployment benefits, and again at her deposition in the present case, that she (1) violated policy when she balanced the vault on the day before she went on

vacation; (2) miscounted a bag of coins as $1,000 when the bag was $2,000; (3) wrote the wrong total on the vault balance sheet; (4) did not recount, notify another supervisor, or notify bank operations; and (5) entered the general ledger amount into the system, showing the vault to be in balance when it was not.

¶ 36 The record shows that the branch manager, John Hutchinson, conferred with Elaine Hopper, the assistant branch manager, and two other managers after he learned that force balancing had occurred on November 17, 2007, and the others concurred in the decision to terminate plaintiff. The record also shows that the bank disciplined Marianne Diesem for her failure to catch the error on the vault balance sheet. Accordingly, there are no genuine issues of material fact, and the trial court properly granted summary judgment in the bank's favor.

¶ 37 II. The Motion to Reopen PNC's Deposition

¶ 38 The bank argues that we lack jurisdiction over this issue, because the order denying plaintiff's motion to reopen PNC's deposition was not specified in the notice of appeal. The purpose of a notice of appeal is to inform the prevailing party that the opposing party seeks review of the judgment. *Perry v. Minor*, 319 Ill. App. 3d 703, 708 (2001). The appellate court has jurisdiction of only those matters raised in the notice of appeal. *Perry*, 319 Ill. App. 3d at 708. An unspecified order is reviewable only where it is a step in the procedural progression leading to the judgment specified in the notice of appeal. *Jiffy Lube International, Inc. v. Agarwal*, 277 Ill. App. 3d 722, 726 (1996). An order is a step in the procedural progression where there is a tie or a connection between the judgment specified in the notice of appeal and the prior, unspecified, order. *McGath v. Price*, 342 Ill. App. 3d 19, 34 (2003). There is no tie or connection where the two orders deal with totally different subject matters and claims within the case. *McGath*, 342 Ill. App. 3d at 34. A discovery

order may be an order that is reviewable as a step in the procedural progression leading to the final judgment. *Ruane v. Amore*, 287 Ill. App. 3d 465, 469-70 (1997) (order denying a motion to reopen discovery and to disclose an expert was a step in the procedural progression where summary judgment was granted in the absence of such an expert).

¶ 39 Here, the trial court closed written discovery on October 1, 2010. Nevertheless, on July 28, 2011, the trial court gave plaintiff leave to propound two supplemental document requests, known as Request No. 31 and Request No. 32, as follows:

> Request No. 31: "All documents relating to vacations and/or time taken off by Elaine Hopper between January 1, 2006 and July 1, 2007."
>
> Request No. 32: "All documents relating to dates on which Elaine Hopper counted the vault at the Naperville South Branch between January 1, 2006 and July 1, 2007."

The bank responded to Request No. 31 saying that it had no such documents in its possession. In response to Request No. 32, the bank produced three vault control sheets that it had previously produced, two sheets for the month of June 2007 and one sheet for November 2007.[6] Two discovery conferences then took place between plaintiff's counsel and the bank's counsel, which culminated in plaintiff filing a motion to reopen PNC's deposition to inquire into its document retention policies for the relevant time periods; document destruction policies for the relevant time periods; the manner in which business records were transferred when National City Corporation acquired Mid-America Bank FSB and when PNC acquired National City Corporation; the manner in which defendants

[6]According to the bank's response to plaintiff's motion to reopen PNC's deposition, the bank also produced Elaine Hopper's payroll records and ascertained that Elaine herself was not in possession of any documents responsive to either Request No. 31 or Request No. 32.

monitored their employees' vacation time during the relevant time periods; who conducted the search for documents responsive to Requests Nos. 31 and 32; and whether PNC consulted with Elaine Hopper to ascertain whether she was in possession of any of the requested documents. Plaintiff filed the motion to reopen on October 26, 2011, two weeks after the bank filed its motion for summary judgment. The trial court denied the motion to reopen PNC's deposition.

¶ 40 While redeposing PNC might not have unearthed evidence that would have precluded summary judgment, there is a tie or connection between the two orders. They involve the same subject matter, whether Elaine Hopper was a similarly situated employee. Consequently, the order denying leave to reopen PNC's deposition was a step in the procedural progression leading to the judgment specified in the notice of appeal, and this court has jurisdiction.

¶ 41 We review the trial court's denial of a discovery motion for abuse of discretion. *Shapo v. Tires 'N Tracks, Inc.*, 336 Ill. App. 3d 387, 395 (2002) ("Absent a manifest abuse of its discretion, affirmatively and clearly shown, the trial court's order concerning discovery shall not be disturbed on appeal."). Here, the trial court did not abuse its discretion in denying plaintiff's motion to redepose PNC, because the motion was untimely. Written discovery closed on October 1, 2010, and oral discovery closed on July 11, 2011. The record shows that plaintiff knew of Elaine Hopper's potential importance even before she filed suit. Plaintiff testified at the hearing on unemployment benefits that she believed Elaine had force balanced the vault before leaving on vacation. Plaintiff testified to the same at her deposition in the instant case. Plaintiff's counsel deposed Elaine Hopper on the subject. Thus, all of the discovery plaintiff sought after discovery closed could and should have been propounded before the deadlines passed. The trial court indulged plaintiff to a great extent in allowing supplemental written discovery on July 28, 2011, in the form of Request No. 31

and Request No. 32. The bank served its responses in August, and the parties held discovery conferences in September. Yet plaintiff waited until two weeks after the bank filed its motion for summary judgment to seek to redepose PNC. Further, plaintiff made no showing that redeposing PNC would lead to admissible evidence. Accordingly, no abuse of discretion occurred.

¶ 42 CONCLUSION

¶ 43 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 44 Affirmed.