SIXTH DIVISION
July 17, 2015

No. 1-14-0821

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARGARET CORTRIGHT, Petitioner-Appellant, v. LON D. MELTESEN, Chief Legal Counsel of the State of Illinois Department of Human Rights; STATE OF ILLINOIS DEPARTMENT OF HUMAN RIGHTS; and STATE OF ILLINOIS DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Respondents-Appellees.	)	Petition for Review of Orders of the Chief Legal Counsel of the Illinois Department of Human Rights DHR No. 2008 CA 0658

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed the decision of the chief legal counsel sustaining the dismissal of petitioner's charges of age and disability discrimination and retaliation.

¶ 2 Petitioner, Margaret Cortright, appeals the decision of the chief legal counsel of the Illinois Department of Human Rights sustaining the dismissal of her charges of age and disability discrimination, and retaliation. We affirm.

¶ 3 I. Background

¶ 4 Petitioner was a caseworker for the Department of Children and Family Services (DCFS) from 1981 to 1994, when she was promoted to agency performance supervisor over a team of 12 persons who monitored the performance of agencies that contract with DCFS to provide services to client families. Jayne Doyle was petitioner's supervisor in 1997.

¶ 5 On December 12, 1997, Ms. Doyle wrote petitioner a "warning notice" regarding her job performance. Ms. Doyle explained that since March 14, 1997, petitioner had failed to alert Ms. Doyle to problems with credentialing, performance, and lack of training at one of petitioner's agencies. Ms. Doyle directed petitioner to prepare a memorandum summarizing each agency's issues/problems by the end of the month, noting that any future failure to monitor and inform Ms. Doyle of agency problems could lead to discipline.

¶ 6 On March 10, 1998, Ms. Doyle gave petitioner her annual evaluation for 1997. Ms. Doyle noted that during 1997, petitioner did not provide a high level of supervision to her staff, and that her continual failure "to remain alert and/or awake during meetings with staff, DCFS personnel and/or [point of service] agencies highlights a serious judgment issue." Ms. Doyle noted that petitioner had "nod[ded] off" more than once during agency meetings, and had to be "prodded to remain alert." Ms. Doyle rated petitioner overall as "accomplished/satisfactory" rather than "exceptional." Petitioner did not concur in the evaluation but promised to work on a "take charge" attitude. She added that she had sought unspecified medical care for her "sleepiness/fatigue problem," which she claimed was "resolved."

¶ 7 On May 26, 1998, Ms. Doyle sent petitioner a memorandum explaining that petitioner's hearing loss was evident and that it was impacting her ability to comprehend all that was being said to her. Ms. Doyle directed petitioner to have a hearing evaluation within a month and to report her prognosis.

¶ 8 Ms. Doyle was promoted to associate deputy director at DCFS and, in July 1998, she placed Carolyn Bailey in a supervisory capacity over petitioner. Ms. Bailey was 40-years old at the time; petitioner was 55-years old. On July 1, 1998, Ms. Doyle sent petitioner a memorandum on the subject of "inappropriate behavior." In it, Ms. Doyle explained that several of petitioner's staff members reported to her that petitioner had: (1) shared her 1997 performance evaluation with them; (2) told them that Ms. Doyle "pick[s]" on her and is "out to get" her; and (3) told them that [petitioner] was "going to have to work now" and that her new supervisor, Ms. Bailey, would do whatever petitioner told her to do. Ms. Doyle explained that these actions showed "unbelievably poor judgment" along with a lack of understanding of the proper boundaries between petitioner and her staff, and called into question her ability to supervise anyone.

¶ 9 Ms. Bailey supervised petitioner for two months. On July 23, 1998, Ms. Bailey documented a meeting with petitioner in which Ms. Bailey requested from petitioner the date and time of supervising conferences, but petitioner reported that she had no mechanism for tracking conferences, nor did she maintain a centralized file. Ms. Bailey set a deadline of August 7, 1998, for petitioner to complete the evaluations for her staff, which had been due six months earlier on February 1, 1998. Two evaluations had been completed, but Ms. Bailey noted they were "exact duplicates" of previous evaluations, "rewritten verbatim," which was unacceptable. Ms. Bailey told petitioner to schedule a case involving the "unusual death" of a child for clinical staffing "asap."

¶ 10 On July 27, 1998, Ms. Bailey sent petitioner a memorandum on the subject of "Requested Information," in which she noted that at the agency performance (AP) supervisor meeting a week earlier, Ms. Doyle requested information on the training that AP staff had received in the past two years. Such information was to be submitted on July 28, 1998, at the next AP meeting. Ms.

Bailey learned that petitioner's team was not made aware of the request for information, and she informed petitioner that it was her responsibility to pass information to her team in a timely manner.

¶ 11 On August 6, 1998, Ms. Bailey issued a memo to petitioner on the subject of "Failure to Meet Established Deadlines," in which she noted that petitioner completed none of the tasks Ms. Bailey set for her at the meeting two weeks earlier on July 23, 1998. Further, petitioner failed to complete two additional tasks that Ms. Bailey assigned to her after the meeting. Ms. Bailey set new deadlines for the incomplete tasks.

¶ 12 On August 14, 1998, Ms. Bailey issued petitioner a memo on the subject of "Counseling Session" in which she stated that on July 31 she directed petitioner to provide documentation on a case involving a death by August 3, and on August 1 instructed her to provide a response on another case by August 5. Petitioner failed to meet either deadline. Ms. Bailey reminded petitioner that she had set a new date of August 13 to complete those tasks, yet petitioner still had not completed them. Ms. Bailey informed petitioner that her continued failure to meet established time frames would lead to further discipline.

¶ 13 On August 20, 1998, Ms. Bailey sent petitioner an internal email directing her to ensure that certain cases were scheduled for clinical staffing. At a meeting with Ms. Bailey five days later, petitioner did not acknowledge receiving that communication and provided Ms. Bailey with no update on the status of clinical staffing.

¶ 14 On August 24, 1998, Ms. Bailey noted that petitioner had failed to inform her staff that clinical staffing cases were supposed to be referred to Hu-Tech (a clinical staffing unit), with the result that one of petitioner's staff had referred a case to the wrong entity. Again, she instructed petitioner to inform her staff in "a professional and timely manner" of information disseminated

at AP supervisor meetings. On August 25, 1998, Ms. Bailey wrote a memorandum to petitioner in which she noted that she had orally reprimanded petitioner for failing to schedule staffing on three cases.

¶ 15 On August 27, 1998, petitioner sent Ms. Doyle a memo stating that she suffers from hearing loss, Meniere's disease, tinnitus, and dizziness. Petitioner acknowledged that her hearing loss impaired her ability to function at "full capacity," and "directly impacted upon" her job performance. Petitioner stated that she hoped to have the money to pay for her hearing aids by September 2, 1998.

¶ 16 On August 31, 1998, petitioner filed a grievance over the oral reprimand that Ms. Bailey issued to her six days earlier because she had failed to schedule clinical staffing on three cases. The grievance was denied. Also on August 31, 1998, Ms. Doyle issued a memorandum informing petitioner she was changing petitioner's immediate supervisor from Ms. Bailey to Steven Minter, effective September 2, 1998.

¶ 17 Mr. Minter documented petitioner's performance during the week of September 28 through October 2, 1998, and noted that petitioner facilitated a team meeting where she distributed pertinent information relating to new initiatives and addressed current changes in the POS monitoring division. However, he noted that during the same period she allowed case files from a closed agency to remain "on her team" for more than the five-day limit, leading to children and families without services. He also wrote that there had been an incident where petitioner fell asleep during a meeting and was told to "remove herself."

¶ 18 Mr. Minter issued petitioner a written reprimand on October 15, 1998, for falling asleep during meetings with DCFS staff on September 29, 1998, and on October 14, 1998. Petitioner

grieved this reprimand, claiming it was excessive discipline and that the allegation of her sleeping on duty was untrue to her recollection and belief. The grievance was denied.

¶ 19 Petitioner later provided a note from her physician stating that she had been prescribed medication for Meniere's disease that could cause sleepiness at work, particularly when she has been sitting for long periods of time such as at a meeting.

¶ 20 In March 1999, petitioner was suspended for seven days for falling asleep during four different meetings on January 20, January 21, January 26, and January 29, 1999. Petitioner admitted her medication made her drowsy and that she had to close her eyes during meetings, but she denied sleeping. Petitioner later submitted letters from other attendees at those meetings, who stated they did not observe her sleeping.

¶ 21 Petitioner filed a grievance over the seven-day suspension, claiming it was unwarranted. DCFS management subsequently reversed the suspension.

¶ 22 Mr. Minter determined that petitioner's overall performance for 1998 was "unacceptable." Mr. Minter noted that petitioner provided limited supervision to her staff and made excuses for their failure to perform "instead of setting expectations and holding staff to a high level of achievement." For most of the evaluation period, petitioner had no formalized system of providing direction to her staff, so that some staff failed to adequately monitor their agencies while others were so aggressive that they "alienated themselves" from their function as monitors.

¶ 23 Mr. Minter noted that petitioner completed 90% of her staff evaluations, but all were evaluated the same and none contained constructive criticisms. She did not demonstrate an ability to evaluate strength and weakness, and so had difficulty with subordinate development. Though aware of policy and procedures, she did not effectively communicate them in a way to resolve problems. She submitted work that was requested but did not thoroughly review the

material, and so her work was often returned to her for further clarification. Moreover, she lacked judgment, in that "[d]ecisions aren't thought through," and she loses control of her team, does not know what is occurring with the agencies, and is unaware of what her staff is doing. Petitioner also had difficulty setting boundaries for her staff, acting more like a caseworker than a manager. She did not set limits for her team, who often told her what they were going to do or not do. In sum, petitioner lacked leadership skills, gave insufficient supervisory guidance, and had difficulty placing demands on her team.

¶ 24 Mr. Minter determined that petitioner's overall performance for the next year, 1999, was "acceptable," meaning she met many of the standards for the position, "but for a number of reasons the general performance level cannot be characterized as 'accomplished.' " Mr. Minter noted that petitioner established a supervision schedule but had difficulty adhering to it because she was regularly absent from work and because she allowed her staff to schedule other meetings during their scheduled supervision times. Some of her staff failed to fill out their weekly itinerary and petitioner did not enforce the expectation that they detail their whereabouts each week.

¶ 25 Mr. Minter noted that petitioner offered limited staff development and that her outings with her staff were primarily social. Some of her staff failed to timely submit their monthly reports and she failed to address this issue with them. Petitioner failed to attend 10 out of 35 supervisor's meetings due to unplanned absences, and in her absence some of her team members attended meetings for which they were unprepared. Some of her own work was "laden" with typographical errors and was incomplete, resulting in it being returned to her for corrections.

¶ 26 Mr. Minter also criticized petitioner's judgment because, for example, she allowed a member of her staff to take five weeks of sick leave without proper notification and

documentation, resulting in her other staff having to cover for this worker. On two occasions, petitioner was asked to remove herself from acting as a witness for the union, which made her own supervisors think she did not understand her role as a supervisor. When her staff's behavior was inappropriate, petitioner minimized their actions and had to be instructed in how to address the problem.

¶ 27 In July 2000, Treva Hamilton became petitioner's immediate supervisor. Her overall evaluation of petitioner for the year 2000 was "accomplished." Nonetheless, Ms. Hamilton noted that petitioner continued to face challenges in enforcing expectations that her staff submit itineraries, arrive to work on time, and call to request time off.

¶ 28 Petitioner retired from DCFS in 2001.

¶ 29 II. Procedural History

¶ 30 On March 19, 1999, petitioner filed a charge with the Equal Employment Opportunity Commission (EEOC) and asked that it be cross-filed with the Illinois Department of Human Rights (Department). Petitioner claimed in her complaint that her supervisors, Ms. Doyle, Ms. Bailey, and Mr. Minter engaged in age discrimination and disability discrimination against her. On June 17, 1999, petitioner filed another charge with the EEOC, asserting that she had been discriminated against because of her age and disability and that her supervisors at DCFS had retaliated against her for filing the earlier EEOC charge by giving her an "unacceptable" performance evaluation on April 26, 1999. Petitioner did not seek to have this second charge cross-filed with the Department.

¶ 31 On October 5, 1999, the EEOC issued petitioner a letter stating that her charges had been dismissed because the evidence the EEOC had gathered was unlikely to establish a violation of

the statutes it enforces. The letter instructed petitioner that if she wished to pursue the matter in court, she must file suit within 90 days.

¶ 32 Petitioner did not file a lawsuit in state or federal court within 90 days. Instead, on January 3, 2000, she filed a complaint with the Illinois Court of Claims. The Illinois Court of Claims ordered petitioner to exhaust her administrative remedies before proceeding and placed the case on a general continuance.

¶ 33 In March 2001, petitioner filed a complaint against Ms. Doyle, Ms. Bailey, and Mr. Minter in the circuit court of Cook County alleging: disability discrimination under the Illinois Human Rights Act (Human Rights Act) (775 ILCS 5/1-101 *et seq*. (West 1998)), and Americans with Disability Act of 1990 (ADA) (42 U.S.C. §12101 *et seq*. (2000)), (count I); age discrimination under the Human Rights Act and Age Discrimination in Employment Act of 1967 (ADEA) (29 U.S.C. §621 *et seq*. (2000)), (count II); defamation (count III); retaliatory practices (count IV); and intentional infliction of emotional distress (count V).

¶ 34 In March 2006, petitioner filed a fourth-amended complaint in the circuit court of Cook County alleging: defamation (count I); intentional infliction of emotional distress (count II); and interference with prospective economic advantage and contractual relationship (count III) against Ms. Doyle, Ms. Bailey and Mr. Minter. Plaintiff alleged: disability discrimination (count IV); age discrimination (count V); and retaliation (count VI) against DCFS. Plaintiff also alleged two *mandamus* claims (counts VII and VIII) against the Department director.

¶ 35 The circuit court eventually dismissed all of petitioner's claims. On direct appeal of the dismissal of counts I, II, and III of her fourth-amended complaint, the appellate court affirmed. See *Cortright v. Doyle*, 386 Ill. App. 3d 895 (2008).

¶ 36 On May 2, 2007, petitioner and the Department entered into a settlement agreement whereby the Department agreed to process and investigate the charges that petitioner had brought before the EEOC in 1999. The Department eventually dismissed petitioner's charges for lack of substantial evidence. Petitioner requested review from the Department's chief legal counsel (CLC), who, in the course of the proceedings, entered various remand orders instructing the Department to examine petitioner's discrimination charges and split them into separate counts "by separating the verbal reprimands from the written reprimands and by then making a separate finding for each alleged incident (*e.g.* separate date of harm)." The Department complied with the remand orders, split the discrimination charges into separate counts, and issued addendums to its investigation report which again dismissed the counts for lack of substantial evidence. The CLC sustained the dismissal. This appeal followed.

¶ 37 III. Analysis

¶ 38 The Human Rights Act specifically defines the following conduct as a civil rights violation in the employment context:

> "For any employer to refuse to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of unlawful discrimination ***." 775 ILCS 5/2-102(A) (West 2015).

"Unlawful discrimination" is defined in pertinent part as discrimination against any individual because of her age or her physical or mental disability. 775 ILCS 5/1-102(A) (West 2015).

¶ 39 The Human Rights Act also defines retaliation as a civil rights violation, noting:

"*** It is a civil rights violation for a person, or for two or more persons to conspire, to:

(A) Retaliation. Retaliate against a person because he or she has opposed that which he or she reasonably and in good faith believes to be unlawful discrimination, sexual harassment in employment or sexual harassment in elementary, secondary, and higher education, discrimination based on citizenship status in employment, because he or she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding or hearing under this Act, or because he or she has requested, attempted to request, used, or attempted to use a reasonable accommodation as allowed by this Act." 775 ILCS 5/6-101(A) (West 2015).

¶ 40 At the time this action commenced, the Human Rights Act provided that after receipt of a charge of a civil rights violation, the Department must conduct a full investigation of the allegations set forth in the charge and provide a written report of such an investigation to the Director. 775 ILCS 5/7B-102(C), (D) (West 2004). After reviewing the investigation report, the Director shall determine whether there is substantial evidence that the alleged civil rights violation has been committed. 775 ILCS 5/7A-102(D)(2) (West 2004). Under the Human Rights Act, "substantial evidence" is defined as "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." *Id.* If the Director determines there is no substantial evidence, the charge is dismissed. 775 ILCS 5/7A-102(D)(2)(a) (West 2004).

¶ 41 If the charge is dismissed, the dismissal is reviewable by the CLC. *Id.* Petitioner may seek review of the CLC's order in the appellate court. 775 ILCS 5/8-111(A)(1) (West 2004).

¶ 42 Our standard of review of the CLC's decision to sustain the Department's dismissal of petitioner's charges of age discrimination, disability discrimination, and retaliation for lack of substantial evidence is whether the CLC's decision was arbitrary and capricious or an abuse of discretion. *Budzileni v. Department of Human Rights*, 392 Ill. App. 3d 422, 442 (2009). A decision is arbitrary and 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. *Id*. Abuse of discretion will be found when a decision is reached without employing conscientious judgment or when the decision is clearly illogical. *Id*.

¶ 43 Initially, petitioner argues that the CLC erred by ordering the Department to split her discrimination charges into separate counts for each verbal and written reprimand. Petitioner contends the effect of these orders was to "piecemeal" her charges, *i.e*., to require the Department to consider each reprimand as a separate, self-contained act of discrimination and thereby frustrating any showing of a pattern and practice of discrimination by DCFS, "which is practically essential to a sustainable charge of employment discrimination based on an employee's disability." Petitioner has cited no pertinent authority indicating that it was error for the CLC to enter such orders; accordingly, the issue is waived. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). Even if the issue had not been waived, petitioner points to no indication in the record that the Department's and the CLC's individual examination of her charges led to a failure to consider them as a whole, or caused them to ignore a pattern and practice of discrimination by DCFS.

¶ 44 Petitioner also argues that the Department's second addendum to its investigation report, prepared after the Department complied with the CLC's order to split the discrimination charges into separate counts, was a "thoughtless, mechanical exercise of copy and paste of stock, all

purpose text" and should not have been considered by the CLC. We disagree. An addendum report is to be read in conjunction with all prior reports, and in the original report the investigator discussed in detail the evidence for and against the charges. Thereafter, the investigator summarized the evidence in the addendum report, rather than repeat it for each of the incidents petitioner alleged. The CLC committed no error in considering the second addendum.

¶ 45 We proceed to address whether the CLC abused its discretion or rendered an arbitrary and capricious decision by sustaining the dismissal of petitioner's charges of employment discrimination based on her age and disability. Petitioner makes no argument on appeal that the CLC erred in sustaining the dismissal of her age discrimination charge; accordingly, the issue is waived. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). With respect to the CLC's sustaining of the dismissal of the disability discrimination charges, petitioner argues that the CLC erred because her employer engaged in disability discrimination in 1998 through 1999 by: fabricating charges that she slept on the job; failing to reasonably accommodate her disability by denying her requests to take short breaks at work to overcome the drowsiness caused by the medication prescribed for her Meniere's disease and by denying her a telephone specially equipped to compensate for her hearing loss; singling her out for arbitrarily short work deadlines, "knowing full well that they conflicted with time off that [she] needed to obtain medical consultation and treatment for her disability"; and otherwise verbally harassing her.

¶ 46 We find no abuse of discretion or any arbitrariness and capriciousness by the CLC in sustaining the dismissal of petitioner's charges of employment discrimination based on her disability. To establish a *prima facie* case of employment discrimination, petitioner must show: (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 v. Department of Human Rights*, 403 Ill. App. 3d 899, 919 (2010).

¶ 47 Here, petitioner failed to show substantial evidence that she met her employer's legitimate business expectations during the years (1998 through 1999) in which she was allegedly subject to discrimination based on her disability. Specifically, the record reveals that petitioner's supervisors, Ms. Doyle, Ms. Bailey, and Mr. Minter, identified and documented numerous deficiencies in petitioner's job performance for the years in question unrelated to her disability or to the medication for her disability that caused her drowsiness. Such deficiencies included: her failure to alert her superiors to problems with the agencies she was monitoring; her lack of appropriate boundaries with staff; her failure to comply with deadlines and to complete staff evaluations; her failure to schedule cases for clinical staffing; her failure to pass job-related information to her team; her failure to provide adequate direction to her staff; her difficulty with subordinate development; her lack of judgment and loss of control of her team; her regular absences from work; and her submission of written work laden with typographical errors. These deficiencies in petitioner's job performance resulted in a warning notice and oral and written reprimands, as well as an overall "unacceptable" performance rating for 1998.

¶ 48 Petitioner also failed to show substantial evidence that she suffered a materially adverse employment action. A materially adverse employment action is one significantly altering the terms and conditions of the employee's job, and includes such things as: termination of employment; a demotion evidenced by a decrease in wage or salary or less distinguished title; denial of promotion; reassignment to a position with significantly different job responsibilities; or an action causing a substantial change in benefits. *Id.* at 919. "[N]ot everything that makes an employee unhappy is an actionable adverse action. Otherwise, minor and even trivial

employment actions that an *** employee did not like would form the basis of a discrimination suit." [Internal quotation marks and citations omitted.] *Id*. at 919-20.

¶ 49 Here, petitioner suffered no termination, demotion, denial of promotion, reassignment or change in benefits[1]; she points only to oral and written reprimands. However, "oral and written reprimands alone do not alter an employee's terms or conditions of employment to such an extent so as to constitute an adverse employment action for purposes of establishing a *prima facie* case of employment discrimination." *Id*. at 920.

¶ 50 Accordingly, as petitioner failed to show substantial evidence that she met her employer's legitimate business expectations during 1998 through 1999 and suffered a materially adverse employment action, her employment discrimination charges based on her disability fail, and therefore the CLC did not abuse its discretion or act arbitrarily and capriciously in sustaining the Department's dismissal of the charges.

¶ 51 Next, we address whether the CLC abused its discretion or acted arbitrarily and capriciously in sustaining the Department's dismissal of petitioner's retaliation charge. To establish a *prima facie* case of retaliation under the Human Rights Act, petitioner must show: (1) she was engaged in a protected activity; (2) her employer committed a material adverse act against her; and (3) a causal nexus existed between the protected activity and the adverse act. *Hoffelt v. Illinois Department of Human Rights*, 367 Ill. App. 3d 628, 634 (2006). For purposes of a retaliation claim, a "material adverse act" is defined more broadly than it is for purposes of a discrimination claim; a retaliation plaintiff must only show " 'a reasonable employee would have found the challenged action materially adverse, which in this context means it well might have

[1] Petitioner did receive a seven-day suspension in March 1999, but it was later reversed by DCFS management.

dissuaded a reasonable worker from making or supporting a charge of discrimination.' " *Id*. at 635 (quoting *Burlington Northern & Santa Fe Ry. Co. v. White*, 548 U.S. 53, 68 (2006)).

¶ 52 Petitioner charged that she engaged in a protected activity by filing an employment discrimination charge in March 1999, that DCFS committed a material adverse act by subsequently giving her an "unacceptable" performance evaluation on April 26, 1999, and that a causal nexus existed between the protected activity and the adverse act (*i.e*., that the April 1999 performance evaluation was in retaliation for the March 1999 employment discrimination charge). However, as discussed earlier in this order, the April 26, 1999, performance evaluation indicated that petitioner's performance was rated as unacceptable because: she provided limited supervision to her staff and made excuses for their failure to perform; she had no formalized system of providing direction to her staff, so that some staff failed to adequately monitor their agencies while others were too aggressive in their monitoring; all of her staff evaluations were the same and none contained constructive criticisms; she showed difficulty in subordinate development; she did not effectively communicate policy and procedures; her work was often returned to her for further clarification; she lacked judgment and lost control of her team; and she had difficulty in setting boundaries for her staff. In sum, the performance evaluation concluded that petitioner lacked leadership skills, gave insufficient supervisory guidance, and had difficulty placing demands on her team.

¶ 53 On this record, the Department and CLC could find that petitioner failed to show substantial evidence of retaliation because there was no nexus between the protected activity and adverse act, *i.e*., that the April 1999 performance evaluation was not made in retaliation for petitioner's earlier employment discrimination charge, but rather was made because of

petitioner's deficient job performance. Accordingly, the CLC did not abuse its discretion or act arbitrarily and capriciously by sustaining the Department's dismissal of the retaliation charge.

¶ 54 For the foregoing reasons, we affirm the CLC. As a result of our disposition of this case, we need not address the other arguments on appeal.

¶ 55 Affirmed.