2012 IL App (1st) 103821-U

FOURTH DIVISION
April 26, 2012

No. 1-10-3821

IN THE APPELLATE
COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

WESLEY BRAZAS, JR., Petitioner-Appellant, v. ROCCO J. CLAPS, Director, RAYMOND LUNA, Chief Legal Counsel, ILLINOIS DEPARTMENT OF HUMAN RIGHTS, and REYNOLD STERLIN, President, DB STERLIN CONSULTANTS, INC., Respondents-Appellees.	)	Petition for Review of Order of the Chief Legal Counsel of the Illinois Department of Human Rights. No. 2006 CN 1780

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Pucinski and Sterba concurred in the judgment.

ORDER

HELD: Illinois Department of Human Rights' decision upholding petitioner's termination was proper where evidence before Chief Legal Counsel clearly showed that employer did not discriminate based on petitioner's status as military reservist but, rather, terminated him due to documented and continuous problems with his disposition and attitude.

¶ 1 Petitioner-appellant Wesley Brazas, Jr. (Brazas) filed a complaint with respondent-appellee the Department of Human Rights (Department) asserting that his employer, respondent-appellee DB Sterlin Consultants, Inc. (DBS), and its president, respondent-appellee Reynold Sterlin (Sterlin), discriminated against him based on his military status. Following an investigation, the Department dismissed Brazas' claim and, upon further review, respondent-appellee Chief Legal Counsel Raymond Luna (CLC) of the Department issued a decision in affirmance. Brazas appeals, *pro se*, contending, among other things, that the Department's procedure in evaluating his claim violated his due process and equal protection rights, that he has protected civil rights under the Illinois Human Rights Act, and that the Department "exceed[ed] the threshold of substantial evidence." He asks that we vacate the Department's decision and remand with directions for a hearing before the Illinois Human Rights Commission. For the following reasons, we affirm.

¶ 2 BACKGROUND

¶ 3 Brazas is a United States Navy reservist. In January 2000, he began employment at DBS, an engineering and consulting firm. At that time, Brazas did not have an active engineering license due to a delinquency in his child support payments.

¶ 4 By 2002, Brazas became a vice president at DBS. He was assigned as a manager to a project involving the Chicago Transit Authority (CTA). However, by March 2002, he was removed from the project. In a letter to Brazas, Sterlin listed the consequences of his removal, including the loss of monthly billings for DBS, the loss of the "high visibility position" DBS had pursuant to the project, damage to DBS' reputation and other costs; Sterlin admonished Brazas

that "all employees should aim to work toward the interests and benefits of" DBS. In response, Brazas sent a letter to Sterlin acknowledging that he was removed from the CTA project due to "acrimony" and his "ineffectiveness in dealing" with the CTA's personnel, but asserting that this was "typical" of a contractor relationship and was caused by factors other than his behavior.

¶ 5 In the summer of 2002, Brazas went on military leave. When he returned that fall, DBS asked him to supply original documentation of his military pay. Brazas provided a redacted version, which DBS informed him was not acceptable and which resulted in DBS calculating his pay at $3,400 less than Brazas believed was proper. In response, Brazas wrote a letter to Sterlin and DBS, citing their "erroneous belief that military duty is nothing more than a resort vacation" and again refusing to provide the original documentation for "privacy reasons." In reply, Sterlin wrote Brazas a memo stating that his comments were an exaggeration, informing him that "the pattern" of behavior he had "been exhibiting lately is one that serves not to build [a] relationship but to destroy it," and warning Brazas that he was "running out of patience."

¶ 6 In December 2002, Brazas and Sterlin completed Brazas' annual employment review. In his self-assessment, Brazas commented that he was the only DBS employee "with the ability to take over" problematic projects and who was able to "work outside of his discipline." He further commented that DBS maintained a "hostile work environment toward military reservists." In his review of Brazas' self-assessment, Sterlin wrote that Brazas exaggerated his abilities, had a "poor and detrimental" attitude, did not interact well with coworkers, and "show[ed] no desire to cooperate with" DBS; Sterlin also noted that Brazas still lacked a professional engineering license. Sterlin warned that Brazas needed to improve his attitude "if he is to keep his job."

¶ 7 In January 2003, DBS entered into a contract to work on the modernization of O'Hare International Airport (O'Hare Project). This was a joint venture known as BPC Airport Partners (BPC) and involved DBS and three other firms: Primera, CH2MHill, and Bowman, Barrett & Associates. Unlike these other firms, DBS had only a small interest in the venture. Accordingly, DBS had no authority to direct work on the project or to remove workers from their positions. Sterlin assigned Brazas to be DBS' on-site project manager and secured positions for him to be on several of the project's committees. However, after two months, Brazas lost these appointments and was demoted to staff engineer.

¶ 8 At the end of 2003, Brazas and Sterlin again completed Brazas' annual employment review. Sterlin recommended that, while Brazas was bettering his relations with coworkers, he should enroll in classes to improve these skills because he needed to "recognize that others" can have worthy opinions on projects. Sterlin also commented that Brazas would be a bigger asset to DBS if and when he obtained his engineering license, which he was still missing. Sterlin praised the change in Brazas, but pointed out that he still showed "no respect for his employer" at times.

¶ 9 In 2004, DBS laid off four nonmilitary employees, citing delays in larger projects and, consequently, a lack of work. In August 2004, Brazas was mobilized for military duty. When he returned in early 2005, he went back to work at DBS. Sterlin asked BPC to reinstate Brazas as a DBS project manager on the O'Hare Project. Sterlin wrote a letter to joint venture partner Lou Bowman on Brazas' behalf, citing his military service and his desire to be on the project. Sterlin also wrote an email to Brazas expressing his gratitude for his military service, telling him he was trying to get him back on the O'Hare Project, and offering him three other project opportunities at

DBS, if he so desired. By March 2005, Brazas returned to work on the O'Hare Project. However, after a month, Brazas was again demoted to staff engineer.

¶ 10 In April 2005, Brazas was again mobilized for military duty. He returned in June 2005 and again resumed work on the O'Hare Project. Soon thereafter, Larry Martin, a project manager for the BPC joint venture, sent a letter to Sterlin telling him that Brazas would be removed from his position on the O'Hare Project. Martin detailed that BPC was "informed of several issues" concerning Brazas, including a lack of "the appropriate management skills and experience to match the needs of the position." Martin further commented that BPC had "no other work tasks for which [Brazas] could be reassigned."

¶ 11 On June 26, 2005, Sterlin terminated Brazas from DBS. In a letter to Brazas, Sterlin attached Martin's letter and informed Brazas that Martin had requested he be removed from the O'Hare Project and returned to DBS. Sterlin then discussed that he decided to terminate Brazas from DBS, providing that "the reasons *** are that we do not have any position suitable for your skill and disposition at the office." In July 2005, David Rose, retired from the military, was hired by CH2MHill to work on the O'Hare Project as the lead aviation pavement engineer.

¶ 12 Following this, Brazas filed a complaint of employment discrimination with the Department, alleging that he was "laid off" by DBS due to his status as a military reservist. An investigation was commenced by Department investigator Corey Sullivan. Investigator Sullivan issued his report in January 2007. At the outset, he clarified that Brazas had been terminated from his employment at DBS and not "laid off," as Brazas had alleged in his complaint. Investigator Sullivan further noted that he tried to contact BPC employees Martin and Bob

Aycock[1] from the O'Hare Project, but was unable to speak to either of them. The fact section of investigator Sullivan's report contained statements regarding Brazas' assertions that Sterlin denounced his military status and Sterlin's claims that he did not terminate Brazas because of it, that BPC ordered Brazas' removal from the O'Hare Project, and that Brazas received several warnings about his attitude and disposition before this occurred. After considering witness interviews and several documents, including Sterlin's letters requesting Brazas' reinstatement on the O'Hare Project, offering Brazas other work opportunities and finally terminating him, investigator Sullivan recommended a "finding of [**l**]**ack of substantial evidence**" because his investigation revealed that DBS did not terminate Brazas due to his military status. Based on investigator Sullivan's report, the Department determined that there was no substantial evidence to support Brazas' allegations and dismissed his complaint.

¶ 13 In March 2007, Brazas filed a request for review, asserting that the Department performed an "incomplete investigation" into his charge and conducted an "improper application of law." Upon review, the CLC issued an order vacating the Department's dismissal and remanding for further investigation. The CLC stated that the Department was to interview Martin, Aycock and Rose to determine if DBS discharged Brazas due to a lack of work and his disposition as it claimed, and whether he was replaced.

¶ 14 In accordance with the CLC's order, Department investigator Dean Reed began a supplemental investigation, entitled "Addendum." Investigator Reed interviewed Martin,

[1]Aycock, an employee of CH2MHill, was BPC's Deputy Program Manager on the O'Hare Project.

Aycock and Rose and considered some additional documentation, including Brazas' 2002 and 2003 performance evaluations and his current license status. In his interview, Martin stated that Brazas was removed from the O'Hare Project by BPC, not Sterlin or DBS, because Brazas was having "issues" with Aycock, who was "unhappy with [Brazas'] performance." Martin specified that Brazas "had problems with positive and successful interaction and coordination with co-workers." In his interview, Aycock stated that, while Brazas was technically a good engineer, he had "a very rigid, strong-willed approach to work, and was not flexible." Aycock noted that he had a conversation with Martin regarding this and telling him that Brazas "was not a good fit for his position since it required positive interaction and cooperation with personnel on many varied issues in order to keep the project moving along." Aycock further commented that he and others on the project found Brazas "difficult to deal with" and that he lacked the "appropriate management skills and personality" for the job. In his interview, Rose told investigator Reed that he was employed by CH2MHill on the O'Hare Project, not by DBS. He revealed that he was not hired to replace Brazas; Rose's position as lead aviation pavement engineer encompassed more duties than Brazas' position, including a role as a national advisor on the project.

¶ 15 Investigator Reed also obtained an updated affidavit from Sterlin. In it, Sterlin stated that, during his employment at DBS, Brazas "displayed a poor disposition and his 'behavior caused discord' " among other employees. Sterlin specifically cited three instances of this discord: one employee resigned stating that he did not want to work with Brazas anymore, and two more threatened to resign, along with "the entire office staff," rather than continue reporting to Brazas. Sterlin noted that he had to reorganize the office to prevent this from happening.

Sterlin also discussed that he decided to finally terminate Brazas following his removal from the O'Hare Project because Sterlin "had no other work available based on [Brazas'] high rate of pay, his lack of a professional engineering license, poor disposition and interpersonal skills."

¶ 16 In October 2006, investigator Reed issued his addendum report, wherein he stated that there was "no substantial evidence that [DBS] discharged [Brazas] due to his military status." In the analysis section, he noted that his investigation revealed, "and was corroborated by documented evidence," that Brazas had "issues concerning a bad attitude, anger" towards Sterlin and DBS "and other personal issues" that needed to be addressed, "including his disposition" regarding his relationships with coworkers and other professionals and personnel, all of which had been documented. Investigator Reed further commented that DBS' engineering contracts required all staff to be licensed, and that Brazas was not and had yet to renew his license at the time of the addendum's filing. Finally, investigator Reed pointed out that four other, nonmilitary DBS employees were also terminated in 2004-05, all due to a lack of work for them, as was Brazas. Accordingly, because Brazas "did not provide evidence" that Sterlin treated him differently due to his military status, investigator Reed recommended a finding of "**lack of substantial evidence**" of Brazas' alleged discrimination. Investigator Reed's supervisor, Leonette Smith, then issued a memorandum stating that she reviewed the case file and the addendum report, agreed with the finding and recommendation, and "determined that [investigator Reed] did not rely on an assessment of the credibility of witnesses." On October 6, 2009, the Director dismissed Brazas' claim for lack of substantial evidence.

¶ 17 Following this, Brazas again sought review of the decision from the CLC, alleging that

there was a "failure to construe facts" to his "benefit" and a "failure to follow" applicable law. The parties briefed the cause, during which time Brazas referred to a number of documents not in the record. On November 30, 2010, the CLC issued a final administrative decision sustaining the Director's dismissal of Brazas' claim. In that decision, the CLC detailed his *de novo* review of the Department's investigations and found that they revealed that DBS discharged Brazas "due to a lack of fit between [his] skill set with the existing needs of" the firm, and due to Brazas' "failure to correct his problems noted during his 2002-2003 Performance Reviews." The CLC further found that DBS had "a good faith belief" in terminating Brazas, that the evidence did not show that the considerations for his termination were a pretext for unlawful discrimination due to his military status, and that Brazas "did not establish" any evidence that DBS treated nonmilitary personnel differently.

¶ 18 ANALYSIS

¶ 19 Brazas makes several contentions in his *pro se* brief on appeal. Principally, he asserts that the Department violated his due process and equal protection rights in a variety of ways. He then cites several federal laws and acts which he claims the Department failed to apply in violation of his civil rights and, finally, asserts that the Department ultimately "exceed[ed] the threshold of substantial evidence." We disagree with his contentions.

¶ 20 As a threshold matter, we must begin by establishing the appropriate standard of review applicable to the instant cause. At the outset of his brief on appeal, Brazas asserts that a *de novo* standard is proper here because there are legal questions concerning "the Department's long history of due process violations" and its failure to "establish[] constitutionally compliant

procedures" when reviewing his case. The Department, Director and CLC, meanwhile, claim that an abuse of discretion standard is required because the essence of this appeal involves the factual question of whether the CLC's decision dismissing Brazas' employment discrimination claim was proper.

¶ 21 Neither description is entirely correct. When dissected, Brazas' appeal involves two sets of arguments. The first, as he notes, is procedural; it questions whether the Department, Director and CLC handled his employment discrimination allegation against Sterlin and DBS properly. Brazas devotes the majority of his brief on appeal to this argument, citing several specific instances in which he asserts they did not and arguing that these violated his due process and equal protection rights. As Brazas aptly points out, even in an administrative law context, the issue of whether a complaintant's due process or equal protection rights were violated is a legal question and merits a *de novo* standard of review. See *Girot v. Keith*, 212 Ill. 2d 372, 379 (2004) (citing *Lyon v. Department of Children & Family Services*, 209 Ill. 2d 264, 271 (2004)).

¶ 22 However, Brazas' appeal does not end there. Rather, he includes a second, more minor, argument, and this one is substantive; he asserts that he met the threshold of proof required for the Department, Director and CLC to sustain his employment discrimination claim, which he insists should not have been dismissed. Here, he is asking that we examine the factual matters presented in his cause to determine if his claim was viable. In this instance, our review cannot be *de novo*, as he insists. This is because we, as a reviewing court, are limited in our review in that we may not reweigh the evidence or substitute our judgment for that of the Department. See *Owens v. Department of Human Rights*, 403 Ill. App. 3d 899, 917 (2010) (citing *Anderson v.*

Chief Legal Counsel, Illinois Department of Human Rights, 334 Ill. App. 3d 630, 634 (2002), and *Welch v. Hoeh*, 314 Ill. App. 3d 1027, 1034 (2000)); accord *Budzileni v. Department of Human Rights*, 392 Ill. App. 3d 422, 442 (2009). Rather, we may decide only whether the CLC's dismissal is arbitrary and capricious, or an abuse of discretion. See *Welch*, 314 Ill. App. 3d at 1034 (this would include a decision found to be impossible, illogical or in contravention of the legislature's intent or agency's expertise); accord *Owens*, 403 Ill. App. 3d at 917; *C.R.M. v. Chief Legal Counsel of Illinois Department of Human Rights*, 372 Ill. App. 3d 730, 733 (2005) (appellate court's review is limited accordingly). As the Department, Director and CLC point out, "it is well settled that a decision to sustain the dismissal of a human rights violation charge will not be disturbed absent an abuse of discretion." *Welch*, 314 Ill. App. 3d at 1034; accord *Owens*, 403 Ill. App. 3d at 917; *Budzileni*, 392 Ill. App. 3d at 442.

¶ 23 Accordingly, we are operating under two different standards of review: *de novo* in regards to Brazas' due process and equal protection arguments, and abuse of discretion in regards to the substance of the dismissal of his discrimination claim. Ultimately, under either standard, we find that Brazas' contentions cannot stand.

¶ 24 We turn first to the procedural argument since, again, it is to this that Brazas devotes the majority of his brief on appeal. As noted earlier, Brazas alleges that the Department committed due process and equal protection violations in various ways during the procedural investigation of his case. He cites five specific instances, namely: that the Department's investigators and Director engaged in the unauthorized practice of law, that the Department improperly made "credibility determinations when there was conflicting testimony," that the Department's

supervisor and the CLC had personal "pecuniary interest[s]" in dismissing his claim, that the Department "dragged on" the proceedings "without any good cause," and that the record on appeal is incorrect. Upon review of each of these claims, however, we find that none of them are meritorious.

¶ 25 Brazas is correct that due process and equal protection requirements apply to administrative proceedings. However, while this is true, it is axiomatic that "the full panoply" of "procedural rights, essential to a judicial or quasi-judicial proceeding, are inapplicable in fact-finding or investigative proceedings before the Department." *Willis v. Illinois Department of Human Rights*, 307 Ill. App. 3d 317, 325 (1999). Instead, in determining what process is due, a balance of three factors is considered: the private interest that is affected, the risk of erroneous deprivation of such interest through the procedures used along with the value of additional safeguards, and the government's interest. See *Folbert v. Department of Human Rights*, 303 Ill. App. 3d 13, 23 (1999). At the core, there is a distinct difference between an investigatory and an adjudicatory agency. See *Folbert*, 303 Ill. App. 3d at 22-23; accord *Willis*, 307 Ill. App. 3d at 325. Procedural rights such as discovery, confrontation and cross-examination, simply do not apply in proceedings before the Department, which is an investigatory agency with the primary role of investigating charges of civil rights violations to determine whether they lack substantial evidence. See *Folbert*, 303 Ill. App. 3d at 22-23. As such, then, a claimant is procedurally protected by the requirements that investigators file a report with the Department, by his right to request review of the dismissal by the CLC, and by his right to judicial review. See *Willis*, 307 Ill. App. 3d at 325. Moreover, to prove an equal protection violation, Brazas would be required

to show that he was treated differently from similarly situated individuals. See *In re C.E.*, 406 Ill. App. 3d 97, 112 (2010).

¶ 26 **Unauthorized Practice of Law**

¶ 27 Brazas' first allegation that his due process and equal protection rights were violated is that the Department's investigators and the Director were involved in the unauthorized practice of law while addressing his claims against Sterlin and DBS. Brazas insists that investigators Sullivan and Reed, along with supervisor Smith, practiced law when they made the recommendations in their reports (Sullivan's initial report and Reed's addendum upon remand) that his employment discrimination claim lacked substantial evidence, and that the Director did the same when he issued his memorandum in October 2009 dismissing his claim. Brazas asserts that, because these documents contained sections entitled "Analysis" and "Findings and Conclusion," they clearly went beyond simple fact-finding and instead require "a trained legal mind to intelligently comprehend the substantive provisions of discrimination law."

¶ 28 Brazas is essentially asking that every Department investigator and the Director be a licenced attorney in order that claimants' due process and equal protection rights be protected. In addition to failing to cite any rule of law supporting such a request, he fails to understand the distinction our law has established between investigatory and adjudicatory agencies. See *Folbert*, 303 Ill. App. 3d at 22-23; accord *Willis*, 307 Ill. App. 3d at 325. As we have already noted, since the Department is solely an investigatory agency, full due process rights are not required, particularly because claimants have the right of review of their claims by the CLC and by our courts–adjudicatory bodies. See *Folbert*, 303 Ill. App. 3d at 22-23 (CLC's role provides

adequate due process and is constitutional); accord *Willis*, 307 Ill. App. 3d at 325 (the ultimate right of judicial review satisfies due process in this context). Moreover, we point out that, as courts of review, we examine the ultimate conclusions of the CLC, an attorney, and not those of the Department or the Director. See *Willis*, 307 Ill. App. 3d at 327. Accordingly, there is no government interest in requiring that Department investigators, supervisors or its Director be licensed attorneys; their investigation reports are not considered "law" by any adjudicatory body, and thus, their acts do not constitute the practice of law.

¶ 29 **Improper Credibility Determinations**

¶ 30 Brazas' second allegation of due process and equal protection violations is that the Department's personnel and the Director inappropriately made "credibility determinations" in examining his employment discrimination claim. However, we find no basis for this allegation. That is, Brazas fails to point to anything in the record indicating that Department personnel or its Director made any "credibility determinations." To the contrary, investigators Sullivan and Reed's reports are replete with statements describing what each witness recounted, not what they (Sullivan and Reed) believed was true or not true in this case. In addition, their reports contained, when applicable, documents supporting what the witnesses recounted. For example, apart from Martin, Aycock and Sterlin's affidavits, attached to the investigation report and addendum were, among other documents, Sterlin's letter to BCP to have Brazas reinstated on the O'Hare Project following his return from deployment, Brazas' performance reviews containing his and Sterlin's comments regarding his disposition, Martin's letter to Sterlin removing Brazas and returning him to DBS due to his inability to function with other personnel on the O'Hare

Project, Sterlin's termination letter detailing that he was firing Brazas because of his personality and DBS' lack of other work suitable for him, and information from DBS documenting the firing of four other employees due to a lack of work. In fact, in submitting investigator Reed's addendum to the Director, supervisor Smith wrote a memorandum specifically stating that she had reviewed the case file and the addendum and "determined that [investigator Reed] did not rely on an assessment of the credibility of witnesses." Ironically, Brazas, without any support, indicates that supervisor Smith purposefully did this in order to disguise the fact that the opposite was true. We will not entertain what amounts to circular speculation in this regard. In light of the record before us, and without more on Brazas' part pointing us to instances where the Department made the alleged credibility determinations, we simply cannot uphold his contention here. See, *e.g.*, *Budzileni*, 392 Ill. App. 3d at 451 (decision to dismiss discrimination charge was not based on a credibility determination where there was nothing in record to suggest that CLC or Department made such determinations in the investigation proceedings regarding claimant's cause, and instead there was ample documentation establishing the propriety of her termination).

¶ 31 **Pecuniary Interests**

¶ 32 Next, Brazas alleges that his rights were violated in the review of his claim because both Department supervisor Smith and the CLC had a "pecuniary interest" in dismissing his employment discrimination charges. Regarding supervisor Smith, Brazas asserts that, because she "botched" the initial investigation by closing it before investigator Sullivan had interviewed Martin or Aycock, and because the cause was remanded to conduct these interviews, she had a pecuniary interest "to show that her initial dismissal was correct by concluding with a dismissal

on remand" so she would not be subjected to "poor performance reviews and *** possibly termination." Regarding the CLC, Brazas lays forth what he claims is an "inverted superior-subordinate relationship" between the CLC and the Director, which he asserts resulted in the CLC ignoring part of the "record" and having an interest in dismissing his claim in an effort to avoid "a substantial increased workload" for his staff, since "writing a dismissal order is much less work" than granting a claim.

¶ 33 We find these allegations to be baseless. Apart from providing case law to describe what a pecuniary interest is, Brazas provides no other support for his claims either from the record or from legal precedent. Regarding supervisor Smith, we note that, again, we do not review the Department's decision nor the recommendations of its staff or supervisors, but rather, the decision of the CLC. See *Willis*, 307 Ill. App. 3d at 327. And, to assert that supervisor Smith somehow went to the lengths of recommending the dismissal of Brazas' discrimination claim on remand solely to avoid bad work reviews or termination, without any indication in the record that this occurred, broaches malice. Likewise is Brazas' assertion that the CLC dismissed his discrimination claim because he is, essentially, lazy.

¶ 34 Instead of addressing the merits and reasoning supporting the dismissal of his discrimination claim, Brazas improperly focuses on the character of those who investigated it. Most dangerously, he does so without any viable, record-based evidence. We fail to see how the potential risk of a poor work review or perhaps a somewhat lesser workload would be such temptations that would prompt a Department supervisor and the CLC to specifically and purposefully seek out to dismiss Brazas' cause for their own interests. To the contrary, the

protection of one's rights in the administrative context does not require that every member of that administration be unfamiliar with the cause at hand; rather, the only bias that would result in an improper interest is if a member based his decision on something other than what was learned in the cause. See *Landenheim v. Union County Hospital District*, 76 Ill. App. 3d 90, 95 (1979). In addition, there is a "presumption of honesty and integrity" among those serving in such administrative roles, which Brazas is required to overcome with "sufficient proof" showing that the risk of unfairness to his rights was intolerably high. *Emergency Treatment, S.C. v. Department of Employment Security*, 394 Ill. App. 3d 893, 907 (2009). As we have discussed, he simply has not done so here. Therefore, without more, we will not void the dismissal of his discrimination claim on this ground.

¶ 35 **"Unwarranted" Lapse of Time**

¶ 36 Brazas' fourth allegation of the violation of his due process and equal protection rights deals with the time frame surrounding the resolution of his employment discrimination claim. He asserts that, pursuant to section 7A-102(G)(1) of the Illinois Human Rights Act, the Department was required to complete the investigation of his claim within 365 days of its filing. Then, citing the three years and seven months between February 26, 2006, the day he says he perfected his filing, and October 6, 2009, the day the Department's addendum was issued, he insists that the CLC "d[id] not care" about proper procedure in his cause in violation of his rights.

¶ 37 We find Brazas' claim to be myopic, contrary to the record, and inapplicable in light of the particular circumstances involved here. It is true that the Department has a certain time limit regarding its review of the claims before it. Once a charge is filed, the Department has "365 days

thereof or within any extension of that period agreed to in writing by all parties[to] issue its [written investigation] report." 775 ILCS 5/7A-102(G)(1) (West 2008). The record in the instant cause reflects that Brazas filed and perfected his employment discrimination claim before the Department on February 23, 2006.[2] On January 30, 2007, investigator Sullivan issued his investigation report to the Department, and on the following day, the Department issued its decision dismissing Brazas' claim for lack of substantial evidence. The record is clear, then, that section 7A-102(G)(1) of the statute was obeyed: the Department issued its written investigation report within 365 days of the filing of Brazas' claim.

¶ 38 On appeal, Brazas includes the entire investigatory period of his claim when asserting that the Department violated the 365-day statutory time limit. This is improper and disingenuous. First, the facts of Brazas' cause are, unmistakably, peculiar. That is, after the Department timely issued its report pursuant to section 7A-102(G)(1) and made its decision dismissing his claim, Brazas requested review of that decision. He did this on March 6, 2007. Accordingly, it was Brazas himself that prolonged review of his claim *after* the 365-day period following its filing. Once he made the request, the CLC was required to review his claim. As the record shows, the CLC did so and issued a remand on July 30, 2007. The Department thereafter began another investigation of Brazas' claim and issued a new, addendum report in October 2009.

¶ 39 That the addendum report was issued three years and seven months after Brazas first filed

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[2]This is in contradiction to Brazas' assertion in his brief on appeal that he perfected and filed the claim on February 26, 2006. The record clearly shows that Brazas filled out the charges against Sterlin and DBS on February 22, 2006, and that they were officially filed before the Department on February 23, 2006. All the documents in the record which discuss the date of filing verify that it was, indeed, on February 23, 2006.

his claim with the Department is irrelevant here. We find it inconceivable to require, as Brazas would have us, that the Department, upon a remand issued by the CLC more than 365 days after the claimant's claim was initially filed, to somehow abide by section 7A-102(G)(1); it is simply impossible. Moreover, even were we to examine the time between the CLC's remand (July 2007) and the issuance of the addendum report (October 2009), the strictures of the statute are inherently clear: the 365-day time limit applies to the completion of the Department's investigation report–not to an addendum or supplemental report ordered by the CLC upon remand of a claim. See 7A-102(G)(1), (D) (West 2008). Brazas insists that section 7A-102(G)(1) "does not reset the investigational time clock to automatically allow an extension of time to complete" an addendum. However, he provides no legal precedent to support this assertion, nor does he recognize, as we have, that this statutory section does not apply, or even refer, to addendum Department investigation reports or the procedure on remand ordered by the CLC. See 775 ILCS 5/7A-102(G)(1) (West 2008).

¶ 40 Furthermore, even were we to accept Brazas' insistence that the Department violated section 7A-102(G)(1), we still could not accept his argument in light of the remainder of that statute. First, as noted above, the Department has 365 days "or within any extension of that period agreed to in writing by all parties" to complete the investigation report. Brazas alludes in his brief on appeal that the Department requested extensions during the supplemental investigation on remand, but states nothing more, such as whether he objected to them. The Department, Director and CLC, too, acknowledge in their brief that there were such time extension requests, but insist that Brazas consented to them. No such extension requests are

included in the record on appeal; thus, we may not consider their details. Ultimately, however, the fact remains that all parties concede that extensions were requested and had. Accordingly, even were we to apply the 365-day limit to include addendum reports as Brazas would have us, there is a question that extensions here would have tolled it–a question which remains unresolvable by this court in light of the record before us. See, *e.g.*, *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 41 Second, the statute Brazas relies on actually places the duty on him to take action if the Department violates the 365-day time limit. That is, if the Department fails to issue its investigation report within the time allotted by section 7A-102(G)(1) (*i.e.*, 365 days or any agreed extension), "the complainant shall have 90 days to either file his or her own complaint with the Human Rights Commission or commence a civil action in the appropriate circuit court." 775 ILCS 5/7A-102(G)(2) (West 2008). It is only when the complainant chooses to perform either of these options (or if the time period for filing his complaint has expired) that there are any ramifications upon the Department. See 775 ILCS 5/7A-102(G)(3) (West 2008) (only at this point must the Department "immediately cease its investigation and dismiss the claim" or suffer permanent enjoinment from the investigation and be liable for costs). There no indication in the record before us that Brazas ever attempted, in response to a perceived violated statutory deadline, to file his employment discrimination claim against Sterlin or DBS with the Human Rights Commission or commence a court action. Accordingly, even if the Department could be held in this cause to the statutory standard Brazas asserts, Brazas himself failed to preserve any issue regarding the timeliness of the issuance of the investigation report and his argument must

fail. See, *e.g.*, *Budzileni*, 392 Ill. App. 3d at 452-53 (claimant's argument regarding lapse of time between CLC's remand order and subsequent investigation reports issued by Department could not stand in light of record).

¶ 42 **Record on Appeal**

¶ 43 Brazas' fifth and final allegation of due process and equal protection violations is that the method of preparing the record on appeal violated his rights. He asserts that the record is missing over 400 pages relevant to his employment discrimination claim and that the CLC improperly omitted them in compiling the record in an effort to keep substantial evidence regarding his claim from our review.

¶ 44 We have previously entertained Brazas' same argument during the progression of this appeal. As required, the CLC submitted the record on appeal to our Court; it consisted of two volumes of approximately 325 pages which the CLC reviewed to reach his decision below. On February 14, 2011, Brazas filed in our Court a "motion to compel filing of a complete investigative record," asserting that over 400 pages were missing from that record, including items such as extension requests, active duty orders, timesheets and some letters. Upon consideration, we denied Brazas' motion, holding that, since the record "comprised *** what the [CLC] reviewed" in this matter, it was "complete" and Brazas' assertions were otherwise incorrect.

¶ 45 Because we have already ruled on the issue of the propriety of the record on appeal, we need not address Brazas' identical reassertions regarding it again. We will succinctly note only that there was nothing improper in our denial of his motion. In administrative proceedings, the

entire record before the reviewing agency at the time it renders its decision comprises the record on review in our Court. See Ill. S.Ct. R. 335(d) (eff. Feb. 1, 1994). And because, again, we review the decision of the CLC and not the Department, the record on appeal is limited to what the CLC reviewed here, not what the Department may (or may not) have reviewed or the documents it used to form its recommendation to the CLC. See, *e.g.*, *Willis*, 307 Ill. App. 3d at 327.

¶ 46 Here, the CLC noted in its final order that it reviewed the Department's investigation file, including the investigation reports, Brazas' request and supporting materials, Sterlin and DBS' reply thereto, and Brazas' surreply. All these materials are contained in the two-volume record before us. Brazas never submitted the some-400 pages he claims are missing to the CLC for consideration in either his request or surreply, nor did he attach them to his motion before our Court. Consequently, we find no reason to depart from our prior decision. Upon our review of what is before us, the record in this cause is proper as compiled, containing only what the CLC reviewed to render his decision. It is therefore complete and Brazas' contention otherwise is meritless.

¶ 47 Reviewing all of Brazas' assertions regarding the alleged violations to his due process and equal protection rights, we conclude that none of them provide a viable basis for the vacation of the CLC's order dismissing his employment discrimination claim.

¶ 48 Having considered Brazas' procedural arguments, we now turn to his secondary assertion, which is substantive in nature. Brazas claims that he "exceed[ed] the threshold of substantial evidence of a civil rights violation" and, thus, that the CLC should not have dismissed his

employment discrimination claim against Sterlin and DBS. He asserts that, as a member of a protected group, he performed his job satisfactorily while Sterlin and DBS inappropriately took adverse action against him solely because of a bias against his military reservist status. We disagree.

¶ 49 Once an employee files a claim against his employer with the Department, the Department must conduct a full investigation and provide a written report of such. See *Owens*, 403 Ill. App. 3d at 916; accord *Budzileni*, 392 Ill. App. 3d at 441. After reviewing that, the Department must determine whether there is "substantial evidence" that the employer committed a civil rights violation against the employee. See *Owens*, 403 Ill. App. 3d at 916-17; *Budzileni*, 392 Ill. App. 3d at 441. "Substantial evidence" consists of evidence " 'which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a scintilla but may be somewhat less than a preponderance.' " *Owens*, 403 Ill. App. 3d at 917 (quoting 775 ILCS 5/7A-102(D)(2) (West 2004)). If the Department does not find any substantial evidence to support the charge, the cause is dismissed. See *Owens*, 403 Ill. App. 3d at 917; *Budzileni*, 392 Ill. App. 3d at 441-42. A dismissal is then reviewable by the CLC, and his decision can then be appealed to our Court. See *Owens*, 403 Ill. App. 3d at 917. As we noted earlier, we may not reweigh the evidence or substitute our judgment for that of the CLC. See *Owens*, 403 Ill. App. 3d at 917 (citing *Anderson*, 334 Ill. App. 3d at 634, and *Welch*, 314 Ill. App. 3d at 1034); accord *Budzileni*, 392 Ill. App. 3d at 442. Instead, we examine only whether the CLC abused his discretion or whether his dismissal was arbitrary and capricious. See *Owens*, 403 Ill. App. 3d at 917; accord *Welch*, 314 Ill. App. 3d at 1034; *C.R.M.*, 372 Ill. App. 3d at 733.

¶ 50 In evaluating charges of employment discrimination, we use a three-prong test. See *Owens*, 403 Ill. App. 3d at 918 (our state supreme court adopted this test pursuant to *Zaderaka v. Illinois Human Rights Commission*, 131 Ill. 2d 172, 178-79 (1989)). First, the claimant must establish a *prima facie* case of unlawful discrimination by a preponderance of the evidence; he must show that he is a member of a protected class, he was meeting the employer's legitimate business expectations, he suffered an adverse employment action, and the employer treated similarly situated employees outside the class more favorably. See *Owens*, 403 Ill. App. 3d at 918-19. If the claimant can establish a *prima facie* case, a rebuttable presumption arises that the employer did so discriminate. See *Owens*, 403 Ill. App. 3d at 918. To rebut this presumption, the employer "must articulate, not prove," a legitimate, nondiscriminatory reason for its decision. *Owens*, 403 Ill. App. 3d at 919. Finally, if the employer does so, the claimant must prove, again by a preponderance of the evidence, that the employer's reason was false and solely a pretext for the discrimination. See *Owens*, 403 Ill. App. 3d at 919. Ultimately, the burden rests on the claimant during the whole of the proceedings. See *Owens*, 403 Ill. App. 3d 919; accord *Zaderaka*, 131 Ill. 2d at 179.

¶ 51 Based on the record before us, we do not find that the CLC abused his discretion or issued an arbitrary or capricious dismissal of Brazas' employment discrimination claim.

¶ 52 First and foremost, Brazas fails to establish by a preponderance of the evidence a *prima facie* case of unlawful discrimination by Sterlin and DBS based on his status as a military reservist. Rather, while he is, undoubtedly, a member of a protected class and he suffered an adverse employment action, he provides no proof that he was meeting Sterlin and DBS'

legitimate business expectations or that Sterlin and DBS treated similarly situated employees outside the class more favorably. To the contrary, the record clearly supports the opposite.

¶ 53 Sterlin never had any problem with Brazas' technical work; rather, he repeatedly promoted Brazas to high positions on various important projects on behalf of DBS. However, the relentless and documented problems with Brazas' behavior and inability to work with others in a professional manner, as well as their adverse consequences to DBS, were evident as early as 2002. That year, Brazas was assigned as a manager on a project between DBS and the CTA. Yet, after only a few months, he was removed from the project due to, as he admitted in a letter to Sterlin, "acrimony" and "ineffectiveness in dealing" with CTA personnel. As Sterlin wrote in a letter to Brazas, his removal from the project cost DBS a "high visibility position," damaged DBS' reputation, and resulted in the loss of money for the small company.

¶ 54 After his first military leave, Brazas returned to DBS in the fall of 2002 to his job. However, after DBS asked him to supply original documentation of his military pay for that time, Brazas twice refused, citing "privacy reasons." When, absent the required documents DBS paid him less than what he felt was proper, Brazas wrote a letter to Sterlin accusing him of treating military duty as "nothing more than a resort vacation." At this time, Sterlin issued Brazas his first warning that his behavior was unacceptable; in a letter, Sterlin told Brazas he was "running out of patience" with his actions that were destroying the relationship between him (Brazas) and the company.

¶ 55 Instead of heeding his boss' advice, Brazas continued to incite acrimony. In December 2002, he filled out his annual employment self-assessment with statements citing DBS' "hostile

work environment toward military reservists" and his continued insistence that he was DBS' only competent employee. At this time, Sterlin issue yet another warning to Brazas that he should fix his "poor and detrimental" attitude if he wanted to keep his job, and told him he needed to obtain an updated engineering license, which was required to work on company projects.

¶ 56 In 2003, Sterlin continued to promote Brazas and his work, assigning him as a manager to the O'Hare Project–a project on which neither Sterlin nor DBS had the authority to direct work or remove workers from their positions due to DBS' small interest in the joint venture. However, again due to his temperament, Brazas soon lost the appointments Sterlin had obtained for him on the project's various committees and was demoted to staff engineer. In his annual review, Sterlin again cautioned Brazas that he needed to improve his relations with coworkers and show more respect for DBS, and again, that he had yet to renew his engineering license which would be required for his work on future projects.

¶ 57 The record further shows that, after Brazas returned from military duty in early 2005, not only did he return to work at DBS, but Sterlin took it upon himself to do all he could to get him back on the O'Hare Project, which Brazas wanted. In a letter to the joint venture partners, Sterlin asked the project managers to reinstate Brazas. And, in a letter to Brazas himself, Sterlin thanked him for his military service, told him he was doing all he could to put Brazas back on his project of choice, and also offered him three other opportunities at DBS if the O'Hare Project fell through. Yet, after getting Brazas back on the O'Hare Project, again in a managerial role no less, Brazas was once again demoted to staff engineer due to his inability to work with others. Finally, by summer 2005, the joint venture partners, as exhibited by Martin's request, could no longer

deal with Brazas' inappropriate behavior and removed him from the project.

¶ 58 It was only after all these chances and opportunities that Sterlin offered Brazas to improve his workplace relationship skills that he terminated Brazas from DBS. He further cited as reasons for Brazas' termination DBS' lack of other work and Brazas' failure to ever renew his engineering license after repeated orders to do so. In support of this, the record shows that DBS was forced to terminate four other, nonmilitary, employees even before it terminated Brazas due to a lack of work at the company.

¶ 59 From all this, it is clear that Brazas cannot establish a *prima facie* case of unlawful discrimination on the part of Sterlin and DBS. Moreover, even if he could, the record contains several legitimate, nondiscriminatory reasons articulated by Sterlin justifying his termination of Brazas: following the joint venture partners' request for Brazas' removal from the O'Hare Project, DBS had no other work available for Brazas due to his high rate of pay, his lack of a professional engineering license and, most critically, his poor disposition and interpersonal skills. In light of the repeated documentation concerning his behavior, and the fact that four other, nonmilitary, employees were also terminated from DBS, Brazas has failed to prove, by any evidence, that these reasons were untrue or a pretext for discrimination based on his status as a military reservist.

¶ 60 We find that the CLC did not abuse his discretion in concluding that there was a lack of substantial evidence demonstrating that Sterlin and DBS terminated his employment unlawfully. Therefore, as such, we hold that the CLC's dismissal of Brazas' employment discrimination claim was proper.

¶ 61 CONCLUSION

¶ 62 Accordingly, for all the foregoing reasons, the order of the CLC is affirmed.

¶ 63 Affirmed.