

No. 1-11-1476

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

**IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

PROFESSIONAL NEUROLOGICAL)	Appeal from the
SERVICES, LTD.,)	Circuit Court of
)	Cook County
Plaintiff-Appellant,)	
)	
v.)	No. 10 CH 06667
)	
CITY OF CHICAGO, a municipal corporation, by)	
its COMMISSION OF HUMAN RELATIONS,)	
and DENA LOCKWOOD,)	The Honorable
)	Mary Anne Mason,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE HARRIS delivered the judgment of the court.
Justices Simon and Pierce concurred in the judgment.

ORDER

Held: Appellant's due process rights were not violated by the City of Chicago's Commission of Human Relations; the factual findings of the Commission were not against the manifest weight of the evidence, and the Commission's rulings as to damages were not clearly erroneous.

¶ 1 Plaintiff, Professional Neurological Services, Ltd. (PNS), filed a petition for writ of *certiorari* in the circuit court of Cook County naming the city of Chicago (City), through its Commission on Human Relations (Commission), and a former employee, Dena Lockwood, as defendants. Lockwood had previously filed a employment discrimination complaint with the Commission alleging that she had been subject to parental status discrimination in violation of the Chicago Human Rights Ordinance. The Commission found PNS liable and awarded Lockwood damages and fines, as well as her attorneys fees.

¶ 2 As discussed *infra*, PNS raised numerous issues before this court, including several broad-based constitutional challenges to the Commission itself. PNS, however, did not properly preserve the majority of those issues. As such, we will review only the following issues: (1) whether the Commission violated PNS's due process rights by not requiring Lockwood to plead with greater specificity; (2) whether the factual findings of the Commission are against the manifest weight of the evidence; and (3) whether the Commission's rulings as to damages are clearly erroneous. We hold that PNS's due process rights were not violated by the Commission; the factual findings of the Commission were not against the manifest weight of the evidence, and the Commission's rulings as to damages were not clearly erroneous.

¶ 3 JURISDICTION

¶ 4 On April 27, 2011, the circuit court entered its final order in this matter in which it granted Lockwood's motion to include attorneys fees; denied a "post-judgment motion to vacate" filed by PNS; and entered judgment against PNS. On May 23, 2011, PNS filed its notice of appeal. Accordingly, this court has jurisdiction pursuant to Illinois Supreme Court Rules 301

and 303 governing appeals from final judgments entered below. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 5

BACKGROUND

¶ 6 On February 17, 2010, PNS filed a petition for writ of *certiorari* in the circuit court of Cook County naming the Commission and Lockwood as defendants. The Commission entered a final order of liability and relief and an award of fees against PNS. In its petition, PNS alleged the following: that the ordinance establishing the Commission and the Commission's procedures exceeded the authority granted to it by the Illinois Constitution; that the relevant city ordinances were vague; that its right to a jury trial was violated, that its right to freedom of contract was infringed upon, that the Commission failed to provide for an independent finder of fact; and that the Commission failed to provide reasonable procedures. In regards to the Commission's findings, PNS alleged that they were against the manifest weight of the evidence and that the awards ordered by the Commission were excessive and unconstitutional.

¶ 7 In response, the Commission filed the administrative record. The administrative record showed that during proceedings before the Commission, the following occurred. On November 29, 2006, Lockwood filed her complaint against PNS alleging she was terminated as a sales representative for PNS due to her parental status in violation of the Chicago Human Rights Ordinance. PNS filed a position statement denying Lockwood's material allegations and alleging that it terminated Lockwood because she failed to meet company expectations and for excessive absences from work. The Commission found substantial evidence of a violation of the Chicago Human Rights Ordinance and assigned a hearing officer. Both parties served requests for

discovery and both parties filed motions to compel certain discovery materials.

¶ 8 A hearing was held over three days in 2008 whereby Lockwood testified on her own behalf, and also called four additional witnesses. PNS called four witnesses on its behalf. Lockwood testified she is a single parent of two children and that her position with PNS was a sales position. PNS conducted three interviews of her prior to offering her the position, two formal interviews and then a third interview to negotiate her salary. The first interview occurred with Maryann Gordon and Dr. Garoufaldis while the second interview was conducted by Amanda Reid-Snider¹ and Dr. Herzog. She could not recall if Gordon was at the second interview. She started working for PNS on April 26, 2004. She recalled that during the second interview, Reid-Snider asked her if having children would prevent her from working 70 hours a week, to which Lockwood answered "no." No other statements regarding her parental status were made during the interview process. During the third interview, Dr. Herzog and Dr. Garoufaldis offered her five days of vacation. She testified she objected and they told her to not "worry about it." PNS initially offered her a salary of \$35,000 per year plus 10% commission. She told them that the base salary was too low to support two children, but offered to take a lower commission. Lockwood stated that one of the doctors told her that her base salary was substantially higher than anyone else's due to her lower commission.

¶ 9 Lockwood testified that one of the doctors told her during the third interview that once

¹ It was later shown that Amanda Reid changed her name to either Amanda Snider or Amanda Reid-Snider. The parties and witnesses refer to her both ways at various points in the litigation. We will refer to her as Reid-Snider to avoid confusion.

No. 1-11-1476

she brought in \$300,000 worth of sales, her commission would rise to 10%. After about a year of working at PNS, in May of 2005, she had exceeded the \$300,000 in sales. She asked to meet with Dr. Garoufalis and Dr. Herzog, who she described as the owners of PNS. The meeting occurred in the middle of May of 2005. At the meeting, Dr. Herzog informed her that she would not be getting the 10% commission and that they were going to come up with a new contract with a different set of goals. The new sales goal was "60 tests a month" before Lockwood would receive a 10% commission. She explained that she considered herself "a medical rep" where she offered the services of neurologists employed by PNS to various physicians. The services were basically nerve and muscle tests performed by PNS's neurologists. She was upset that PNS wanted to prepare a new contract for her.

¶ 10 In May of 2005, Lockwood signed a second agreement with PNS. Although she signed the document, she did not receive her copy until "[a]lmost a year" later. She called Dr. Garoufalis two or three times and emailed him in order to get a copy of the contract, but did not receive a response. Prior to her commission percentage being changed, Lockwood had never scheduled 60 tests. She named the other full time sales representatives that worked for PNS at the time she started as: "Amanda Reid, Melissa Tramp Wojcik, Julia Sheade, Amy Achberger, Debbie McKinley, Gretchen Fiala, and Mark Garoufalis." Only Debbie McKinley, Julia Sheade, and Mark Garoufalis had children. Mark Garoufalis is Dr. Garoufalis's brother. A person named Hilary Courtman was added to the sales staff in 2005. PNS conducted regularly scheduled meetings every other week with Dr. Garoufalis and/or Dr. Herzog. They also had "some Wednesday night sales training meetings without them." The meetings were mandatory.

¶ 11 Lockwood testified that she was scheduled to meet with Peter Salvestrini on June 2, 2006. PNS had recently hired Salvestrini to work with the sales staff in what Lockwood described as a "consultant managerial position." The meeting was scheduled to allow Lockwood to get to know Salvestrini. Lockwood's daughter, however, developed pink eye so she called Salvestrini to reschedule their meeting. She told Salvestrini that she was going to contact her daughter's father to have him watch her. If her daughter's father would watch her daughter, she proposed that the meeting be rescheduled until that afternoon. Lockwood testified that Salvestrini responded by rescheduling the meeting for the next Monday, which she agreed to. Lockwood testified that around a half an hour later, she received a call from PNS. The call was made over a speaker phone, and Salvestrini, Dr. Herzog, and she believed Gordon were on the line. Salvestrini told her that "it just wasn't working out." Lockwood responded by saying that she thought that they had rescheduled the meeting for Monday. Lockwood testified that Salvestrini gave her three choices: to be terminated with cause, to be terminated without cause, or to resign. Lockwood responded that she would have to think about it. Salvestrini told her to come in at 9:00 a.m on Monday morning with her company cellular phone and laptop computer.

¶ 12 That Monday, June 5, 2006, she met with Salvestrini, Dr. Herzog, and Gordon. Salvestrini asked her at the meeting if she wanted to be terminated or if she would like to resign, to which Lockwood responded that she had a few questions. When she asked what the cause of her termination was, Salvestrini told her that he did not have to give her a cause. Lockwood testified that PNS never criticized her based on attendance. Following her termination, Lockwood found a job in sales, but it took her about a year to build a customer base.

¶ 13 Lockwood testified that three other full-time sales representatives had children: Mark Garoufalis, Julia Shade, and Debbie McKinley. Shade only worked with Lockwood two or three months. Mark Garoufalis was Dr. Garoufalis' brother. After a few months of working, she noticed that Dr. Herzog treated McKinley in a negative manner. Lockwood testified that once McKinley left, Dr. Herzog's began treating her in a negative manner. Lockwood testified that during her time with PNS, no one ever told her or gave her a warning that she was not meeting company performance expectations.

¶ 14 Lockwood testified regarding Dr. Herzog's treatment of a co-worker, Amanda Reid-Snider. Prior to Reid-Snider announcing that she was pregnant, Dr. Herzog treated Reid-Snider positively and was receptive to her suggestions and input; whereas Dr. Herzog stopped taking Reid-Snider's suggestions and recommendations after she announced her pregnancy. During this time, Dr. Herzog responded positively to suggestions and recommendations from two sales representatives, Amy and Melissa, who did not have any children. Lockwood testified that prior to June 2, 2006, no one from PNS ever had any discussions with her regarding her attendance.

¶ 15 Lockwood testified that it took her approximately one year after her termination from PNS to begin making the same monthly income as she had made with PNS. Lockwood testified that on the date of her termination, June 2, 2006, it was her son's high school graduation. She was in shock. She began to see a doctor. She saw him four or five times. He prescribed "Xanax." She also testified regarding the financial pressures she faced after losing her job and likened the pain as the same degree as when her parents passed away. She stated that "it's affected my entire life for the last couple of years."

¶ 16 On cross-examination, Lockwood testified that she did not have a receipt of purchase with her at that time for any of the medication prescribed to her. She further testified that she was never able to attain 60 tests per month and never complained to anybody regarding her parental status discrimination. She testified that by the middle of 2005, she believed that she was being singled out for being a parent. She admitted that Julia Sheade was not being singled out even though she had children, but explained that she was only an employee for a very short time. Mark Garoufalis, the brother of one of the owners, Dr. Garoufalis, also had children, but was not singled out. When asked about another single mother and employee, Carmen Harper, Lockwood testified that she did not know that Harper had kids and that she did not really know Harper. She admitted that PNS knew that she had children when they hired her. She clarified that she did not feel singled out for being a parent the first year that she worked for PNS, but did feel singled out after Debbie McKinley left around a year after Lockwood was hired. She began to feel singled out "within a few weeks, a month" after McKinley left.

¶ 17 Melissa Rae Wojcik testified that she used to work for PNS as an electro neurodiagnostic technician where she assisted the neurologists that worked testing patients of clients. She did technician work full-time for a year or a year and a half before moving into a sales position. She worked both as a technician and a sales position, and had two contracts; one related to sales and one related to being a technician. She believed that her compensation plan for her sales position was \$40,000 base salary and a commission of 10%. She always received the 10% commission unless another "rep" would put work into the account. She did not have to get a certain number of tests to receive her commission. She testified that after Lockwood was fired, Bernice Garcia

No. 1-11-1476

took over her position. Garcia did not have any children. Wojcik resigned her position in February of 2007. She testified she resigned because she wanted to start a family and had difficulty working with Gordon.

¶ 18 Gina Iliopoulos testified that she is married, but does not have any children. She testified that she began working for PNS in April of 2006 at a salary of \$50,000 per year with a four day work week and a commission of 10% of tests performed. She worked for PNS for approximately 6 months. When she started working for PNS there were five or six full-time sales representatives; when she stopped working it was up to seven or eight. She testified that she never heard PNS management ever say Lockwood's job performance was unacceptable. In June or July of 2006, Dr. Herzog told her that he wanted sales representatives "that were young, single and lived in the city." She explained that PNS was "looking for reps that *** would not have other responsibilities to worry about, that would be dedicated to PNS." Salvestrini told her that, while reviewing resumes, all males were eliminated and that the search was limited "to young women that lived in the city." She testified further that after Lockwood's termination, Lockwood's sales territory was divided up between three other women, none of whom had children. Iliopoulos testified she was later terminated by PNS and had subsequently filed a legal action against PNS.

¶ 19 Dr. Matthew Garoufalis, one of the owners of PNS, testified that he was involved in the hiring of Lockwood. He testified that PNS did not have a policy of not hiring women with children and stated that "[a]t one time or another I think half our sales team had children." He testified they were "understanding" when child care issues arose and explained that sometimes

children would attend sales meeting and that they would even hire employees' children for summer or after school work. Dr. Garoufalis testified that Lockwood did not meet her sales expectations for PNS. Amongst the sales staff, Debbie McKinley had children as well as his brother Mark Garoufalis. Eventually Mark resigned because he was not meeting his performance expectations. McKinley and PNS mutually agreed to part ways because McKinley had started a side business in violation of her contract with PNS. He stressed that McKinley was not terminated because she had children. Dr. Garoufalis testified that three current PNS salespeople had children. Regarding Reid-Snider, Dr. Garoufalis testified that once she became pregnant, they restructured her responsibilities within the company to change her workload to her satisfaction.

¶ 20 Dr. Garoufalis testified that Lockwood came to him and stated that she wanted more commissions. After a meeting with Dr. Herzog and Lockwood, Dr. Garoufalis testified that PNS would not change the commission structure until Lockwood had attained her prior goal of 60 tests per month. Eventually, PNS hired Salvestrini, a consultant, to review the performances of the sales team. Dr. Garoufalis testified that Salvestrini was of the opinion that Lockwood "wasn't doing what we asked her to do." Dr. Garoufalis stated that he was not involved in Lockwood's termination. He denied that it was ever company policy to only hire young women as sales representatives or to not hire people with children.

¶ 21 On cross-examination, Dr. Garoufalis admitted that his brother's base salary was \$73,000 per year. His brother had been hired at the same time as Lockwood. He testified Lockwood was given the goal of 60 tests per month based on her territory and what PNS felt she could

produce. He was aware of three other sales representatives who had sold more than 60 tests in a month "[s]everal times." He testified that Reid-Snyder asked to be a sales representative instead of a sales manager. On redirect examination, Dr. Garoufalis testified that each sales representative had a different contract that they individually negotiated. Additionally, some sales representatives had other job functions outside of sales.

¶ 22 Carmen Harper, testified that she has one child who is 16-years-old and has worked for PNS the past ten years. She was part-time until 2006, when she became a full-time employee. She denied that PNS had a policy of discriminating against sales representative with children. On cross-examination, she admitted that her sister has been Dr. Herzog's girlfriend for the last 12 years. She denied that she received her job with PNS due to her sister's relationship with Dr. Herzog. She later admitted that "it helped" that her sister dated Dr. Herzog.

¶ 23 Caryn King testified that she has worked for PNS since 1997. Beginning in 1999, she started doing sales for PNS. She has held several different jobs within PNS. When she had a child in January of 2005, she took three months of maternity leave. Her responsibilities with PNS changed by "mutual choice" with the company. She had her second child in January of 2007. After another three month maternity leave, she was asked to do sales in Northwest Indiana. This change did not upset her and she did not feel discriminated against. She has never observed any discrimination at PNS. She described Lockwood as "outspoken," and testified that she never saw Dr. Herzog treat Lockwood unusually during company meetings.

¶ 24 Maryann Gordon testified that she has worked for PNS for a little over five years. She started as an office manager and is now the director of operations. She also did a little human

resources work for PNS, including terminating employees and employee recruitment. She testified that she was never instructed to look for men rather than women, or for married people, or for people without children when recruiting new employees. Gordon testified that she interviewed Lockwood with Drs. Herzog and Garoufalis. During the interview, Lockwood informed them that she had a child while she attended college. Gordon did not attend Lockwood's second interview. Gordon testified at the time Lockwood was hired, two other new employees were also hired, Julia Sheade and Mark Garoufalis. All three were hired at 5% commission. Gordon testified that Sheade stayed only a short period of time while Mark Garoufalis stayed only a year. She testified that Lockwood could be "disruptive" and "opinionated" during company meetings. Gordon testified that she questioned Lockwood about her requests for days off. Gordon informed Lockwood that she had already taken too much time off. Lockwood responded by saying that she had permission from her manager and Dr. Garoufalis. Dr. Garoufalis later told Gordon that she could not take off as much time as she wanted. Gordon further testified that Lockwood was requesting more time off than anyone else.

¶ 25 On cross-examination, Gordon testified that she never saw any written reviews of sales staff. She denied that she sat in on a phone conversation where Lockwood was terminated. She was only at the meeting where Lockwood was terminated in person. She recalled Lockwood saying that her daughter had pink eye.

¶ 26 Dr. Malcolm Herzog testified that he is one of the owners of PNS. He described PNS as a "electro diagnostic testing company" that "provide[s] testing services for physicians who require EMG's and nerve conduction velocity tests." He testified that the company's salespeople

No. 1-11-1476

travel in the field promoting electro diagnostic testing. The sales staff consists of full-time and part-time employees, and salespeople that also perform other functions for the company. Dr. Herzog testified that when looking for sales representatives, he always looks for good communicators who have "the ability to close a deal." He claimed the parental status of potential employees is not considered in the hiring process and denied ever instructing his employees to consider an applicant's parental status. He denied that PNS had any policies forbidding the hiring of parents. Herzog testified that PNS allowed salespeople to bring their children into the office and had even hired employees' children at times. He named four female employees of the company who he believed had brought their children to sales meetings at the office. He never told employees not to bring children into the office. When asked whether he ever told anyone at PNS that he only wanted to hire "young single women to be sales representatives," Dr. Herzog answered, "[n]o."

¶ 27 Dr. Herzog testified that Gordon provided the initial review of all resumes that came into the office before presenting them to himself or Dr. Garoufalis. Dr. Herzog was not at Lockwood's initial interview, but the results of the interview were reported to him. Dr. Herzog was at the next interview, where Lockwood told him that she had children. He denied that he considered Lockwood's parental status when deciding whether to hire her, stating it was "irrelevant" to his hiring decisions. He answered "[y]es," when asked whether he had hired other salespeople with children and named nine people who he believed had children. Herzog testified further that he had "reservations" regarding hiring Lockwood and described her as "brazen." He was unsure whether she would "live up to her promises" regarding the amount of sales she could

generate. When asked about Lockwood's sales experience prior to PNS hiring her, he described it as "mediocre at best." He thought that PNS hired Lockwood at a 5% commission rate. He stated that if she were to bring in \$300,000 worth of revenue, than PNS would increase her commission rate. Herzog testified further that he did not want to hire Lockwood.

¶ 28 Dr. Herzog denied that PNS only hired young single females as sales representatives. He denied that he ever told Amanda Reid-Snider that he wanted attractive young females to work as sales representatives for PNS. Dr. Herzog testified that Lockwood did not perform up to PNS's expectations and was never able to sell her goal of 60 completed orders per month. He denied his attitude changed toward Amanda Reid-Snider after she announced her pregnancy, and claimed he was unaware that she was unhappy. He stated Amanda Reid-Snider had no objections to PNS hiring a new sales manager.

¶ 29 Dr. Herzog recalled a meeting Lockwood had called with him and Dr. Garoufalis in which she requested her commission go from 5% to 10% because she stated that she had met her goal of \$300,000 in revenue brought in. Dr. Herzog was concerned with her performance because he felt it took her too long to meet that goal for her territory size. Dr. Herzog alleged that Lockwood did not provide any documentation that she had met the \$300,000 in revenue. He told her that she had to meet a goal of 60 tests per month, stating:

"Yeah, I told her that she was to hit 60 tests per month, that was in her agreement. And she said she was happy she had 52. And I asked her *** if you were to write your own plan right now, can you do 60 a month consistently and she said yes. And I go if I

create a new agreement and I put 60 a month in there and even if I give you a 90-day leeway to hit that, and if you don't hit that, we'll terminate you upon our discretion. Is that something you are willing to work with and she said yes."

Dr. Herzog testified that later Lockwood agreed to a new contract with the goal of 60 tests per month. According to Dr. Herzog, Lockwood's performance soon dropped and she never hit her goal of 60 tests per month.

¶ 30 Dr. Herzog described Lockwood as "combative," "argumentative," "rude," and "disruptive" during sales meetings. He stated that she did not routinely answer her company phone and PNS had a difficult time locating her out in the field. He testified that in 2006, Gordon informed him that Lockwood was taking off more time than she had left in sick, personal, or vacation days. Dr. Herzog testified that a meeting was scheduled with Lockwood for June 2, 2006, to discuss her performance. Lockwood, however, did not come to the appointment. He could not recall what Lockwood's "excuse" was for missing the appointment. On June 5, 2006, Dr. Herzog, Dr. Garoufalis, Gordon, and Salvestrini decided to terminate Lockwood. He denied that Lockwood was terminated for having children. He also denied that PNS terminated any employee for having children or becoming pregnant.

¶ 31 During cross-examination, Dr. Herzog could not recall if he ever gave Lockwood a written discipline or emailed her regarding her performance. He clarified that the decision to terminate Lockwood was made at the June 5, 2006, meeting. He testified that Salvestrini put together a document to present to Lockwood at the June 5, 2006 meeting.

¶ 32 Amanda Reid-Snider testified that she began working for PNS as a sales representative in the year 2000. Around 2002, she was promoted to sales manager. In July of 2005, she told Drs. Herzog and Garoufalis that she was pregnant. She had a good relationship with the company at that time and got along well with both Dr. Herzog and Dr. Garoufalis. Prior to her pregnancy, she had not received any negative feedback from either doctor. After announcing her pregnancy, Reid-Snider noticed changes occurred to her employment situation at PNS. She testified that her "duties as a sales manager were gradually taken away." Prior to her pregnancy, she felt that her opinion was valued. After announcing her pregnancy, however, she felt she was being "ignored." She testified that a few months after she announced her pregnancy, Drs. Herzog and Garoufalis had a meeting with her in which they questioned her performance as a sales manager and told her that she would be better suited as a sales representative. She felt "shocked." Drs. Herzog and Garoufalis told her "that the numbers *** had been stagnant" to which she disagreed. Eventually Noreen Duggan, who had adult children and was in her 40's or 50's, was hired as the sales manager. She testified that although she received commissions on sales she made prior to going on maternity leave, she was not paid a base salary during maternity leave.

¶ 33 Reid-Snider testified that she was Lockwood's sales manager and that Lockwood's "performance was as good as any of the other people that [were] hired *** at the same time." She never heard either Drs. Herzog or Garoufalis criticize Lockwood's performance. She described one incident, which occurred about nine months prior to Lockwood's termination, where Drs. Herzog and Garoufalis expressed concern that Lockwood's numbers would fall while she was absent due to her father's death. This did not lead to any disciplinary action against

Lockwood. She did not see any documentation that was critical of Lockwood's job performance. PNS did not keep any documentation of attendance records. She was not aware of any tracking performed by PNS of its salespeople.

¶ 34 Reid-Snider left PNS almost two months after her return from maternity leave. She felt "uncomfortable with the company climate" upon her return. She testified that she resigned after being called in to be reprimanded for an incident. She explained that her son had gone to the emergency room very early in the morning for severe dehydration. She called off work through email and by phone, but forgot that she had a lunch appointment scheduled that day as a PNS representative. The next day she was called in by Dr. Herzog, Dr. Garoufalis, Gordon, and Salvestrini to be written up for an incident. This was the first time in her career she had been written up for an incident. She could not recall any other sales representative being disciplined for a similar situation. On the day she missed, another person from the office arranged to have the lunch delivered. She apologized to the client and testified that "orders actually started coming in after this particular incident" from the client. PNS still disciplined her even though she explained to them that she had spoken with the client and that the client had placed orders. Reid-Snider refused to sign the incident report given to her by PNS and resigned.

¶ 35 Reid-Snider also testified regarding a conversation she had with Dr. Herzog regarding the marriage of an employee, Melissa Wojcik. Dr. Herzog asked her how quickly she thought Wojcik would have children after her wedding. She testified that on one occasion, Dr. Herzog told her that he wanted young single attractive females to work as sales representatives. Dr. Herzog had told her that doctors respond well to attractive young ladies.

¶ 36 The parties were invited to file closing briefs addressing the hearing. Relevant to this appeal, Lockwood argued that the evidence established the following: that only non-parents received a 10% commission with a base salary; Lockwood's performance met PNS's legitimate expectations; other non-parent sales representatives were not terminated; PNS failed to present evidence of a legitimate business reason for the termination; that the circumstances surrounding her termination support a finding of a discriminatory motive; the testimony presented by PNS was not credible; and that she provided evidence to support compensatory damages, punitive damages, and her attorneys fees. Lockwood additionally sought, and was allowed, to file a supplemental brief.

¶ 37 PNS argued in its closing brief that Lockwood failed to meet her burden of establishing discrimination. PNS asserted that Lockwood failed to meet legitimate performance expectations; Lockwood was not given less-favorable treatment than non-parents; that lack of performance was the reason for her termination; the personnel practice of PNS were legitimate and not pretextual; and that Lockwood proved no damages.

¶ 38 Lockwood filed a reply brief in which she included a chart showing all of the full-time sales representatives hired during her employment with PNS. Out of the seven people on the chart, the three people with children only received a 5% commission rate whereas the non-parents received a commission rate of 10%.

¶ 39 On January 16, 2009, the hearing officer issued a recommended opinion on liability and damages finding PNS liable for violating the Human Rights Ordinance. The hearing officer concluded that PNS discriminated against Lockwood and other employees that had children. The

No. 1-11-1476

hearing officer found that PNS gave higher starting commissions to non-parents, that parents were treated worse than non-parents, that female sales representatives were subject to adverse treatment once announcing they were pregnant, and that PNS instructed managers to only hire young single people with no responsibilities. The hearing officer found that Lockwood "either hit the \$300,000 [sales] target or came very close when she asked for an increase in her commission and that there was no documentary evidence that PNS ever criticized Lockwood's performance. The hearing officer found there was no evidence that PNS told Lockwood that she was not meeting expectations and her sales were higher than many of the other sales representatives. Regarding Lockwood's alleged absences from work, the hearing officer found that she did not exceed her allotment of vacation days. The hearing officer found that the documentation of Lockwood's absences that Dr. Herzog claimed he reviewed before terminating her was not prepared until after her termination which indicated pretext for discrimination. In addition to discrimination, the hearing officer additionally found PNS retaliated against Lockwood.

¶ 40 Regarding damages, the hearing officer recommended emotional distress damages of "no less than \$100,000." The hearing officer recommended that she be awarded, in lost income, her salary of \$45,000 plus \$33,601.25 in commissions. The hearing officer found that PNS never supplied Lockwood with records of unpaid commissions and granted Lockwood's request for an accounting of the unpaid commissions due to her. The hearing officer also recommended the following damages: punitive damages of "not less than \$100,000;" a fine of \$1,500; and that Lockwood recover all attorneys fees.

¶ 41 PNS objected to the recommendations of the hearing officer in regards to liability and damages. Relevant to this appeal, PNS alleged that its due process rights were violated by the procedures of the Commission. Specifically, PNS argued that Lockwood's complaint was inadequate and that the Commission's limited discovery rules violated due process. PNS argued that the magnitude of the award was unprecedented by the Commission's own standards, that there was no evidence of emotional distress or lost income, and that there was "no basis for punitive damages." PNS asserted that there were no precedents to guide its conduct and, therefore, punitive damages should not have been awarded. PNS further argued there was no basis for either a fine or an award of attorneys fees. Lockwood moved to amend her complaint, which the hearing officer denied as unnecessary.

¶ 42 On June 8, 2009, the Commission issued its final order on liability and remedies. By way of introduction, the Commission noted "[t]here is no dispute that parental status discrimination in employment is prohibited by the Chicago Human Rights Ordinance" and that the parties agree on the importance of the ordinance "as a matter of public policy." The Commission issued the following relevant findings of fact. The Commission found Dr. Garoufalis's suggestion that Lockwood was given a "' standard average contract' " incredible. PNS offered Lockwood a significantly lower salary than non-parent sales representatives, but negotiated a higher base salary in exchange for a 5 % commission rate. Lockwood was under the impression that she would have her commission increased to 10% once she reached \$300,000 in sales, a target that PNS told her she had to keep track of because PNS would not. The Commission described PNS's commission records as "poor," but found that it was "clear that Lockwood either hit the

\$300,000 target or came very close by May of 2005." Full-time sales representatives that did not have children had various salaries, but all received 10 % commissions at the time of their hire. Full-time parent-employees were all paid a 5 % commission until they hit the \$300,000 in sales figure. The Commission found that "[a] number of the sales representatives who had no children received extra pay for selling more than a certain number of tests per month while employees with children were required to achieve a minimum of sixty but were not paid extra." In May of 2005, PNS refused to increase her commission from 5 % to 10 % as her contract provided. PNS insisted she sign a new contract that required her to sell at least 60 tests per month to qualify for the 10 % commission. Although Lockwood was disappointed and upset, she signed the contract because she had to support her family and felt like she had no choice. She never received the 10% commission.

¶ 43 The Commission found that no documents were produced that suggested any criticism of Lockwood's work, nor was there evidence supporting PNS's contention it told Lockwood that she was not performing as expected. Rather, Lockwood's "sales were higher than those of many of the other sales representatives." The Commission found that "PNS made no effort to show that Lockwood failed to live up to any performance standard" at the hearing. The Commission rejected PNS's argument that Lockwood was fired for excessive time-off, finding PNS did not have a attendance policy and did not keep track of absences. The Commission noted that "PNS conceded in closing that its policy about absences was lax." Furthermore, the Commission found that PNS's "rules for attendance changed constantly, insofar as there were any attendance rules in the first place." The Commission agreed with the hearing officer's determination that many of

PNS's contentions regarding Lockwood's alleged excessive absenteeism were false and that much of this evidence was "pretextual."

¶ 44 The Commission found that PNS had an "anti-parent animus." Specifically, that PNS treated parent employees worse than non-parent employees with respect to contracts. It found that Dr. Herzog's treatment of parents was "aggressive and mean." The Commission noted that PNS began treating Reid-Snider differently once she announced her pregnancy and discounted PNS's explanation regarding Reid-Snider's changing role in the company. Other evidence of an anti-parent animus included Dr. Herzog's statements that only young single women should be hired.

¶ 45 The Commission found that PNS did not give any reason for Lockwood's termination and found Lockwood's testimony that when she asked for a reason, PNS refused to give her one, to be credible. The Commission accepted Lockwood's testimony that she was told that she would be terminated on June 2, 2005 over PNS's position that she was terminated on June 5, 2005. The Commission found the timing of the termination was "strong circumstantial evidence" of parental status discrimination. The Commission rejected the hearing officer's finding that PNS only fired employees that were parents. The Commission accepted the hearing officer's finding that Lockwood was terminated to attend to a sick child while comparable sales representatives who took time off to deal with issues not related to children were not terminated.

¶ 46 The Commission found that it was undisputed that PNS did not pay Lockwood for commissions that came in after her termination. The Commission agreed with the hearing officer's finding that PNS wrongfully denied Lockwood's post-termination commissions, lied to

her about how to receive them, and treated her differently than non-parents who sought post-firing receipts. The Commission found Dr. Herzog's testimony not credible; that Dr. Garoufal's testimony was sometimes credible, but flawed and inconsistent; and that Gordon's testimony was flawed and exaggerated. The Commission agreed with the hearing officers' findings that all the other witnesses were credible.

¶ 47 The Commission issued the following findings regarding Lockwood's injury. That the timing of the termination caused an enormous emotional impact because it coincided with Lockwood's child's graduation. This forced her to see various therapists and be prescribed medication. She suffered from anxiety due to job loss and resulting stress. The Commission found Lockwood's financial injuries to be the loss of a full year of salary and commissions, due in part from the need to switch industries based on a non-compete clause signed with PNS.

¶ 48 As conclusions of law, the Commission found that Lockwood was performing her job to PNS's legitimate expectations, that there was ample proof that employees with children were treated worse than employees without children, and that there was no credible evidence that Lockwood failed to meet PNS's reasonable expectations. The Commission noted that Dr. Herzog treated parent employees rudely. Additionally, the Commission found that Lockwood was terminated due to a single absence and replaced by employees that did not have children. PNS, the Commission found, failed to provide any legitimate reason for Lockwood's termination. The Commission found that all of the reasons PNS offered for Lockwood's termination were "false, fraudulent, and pretextual."

¶ 49 The Commission, however, rejected the hearing officer's findings that PNS discharged

only sales representatives with children and that PNS had retaliated against Lockwood. It also found that the issue of unpaid post-termination commissions was tried by implied consent in accordance with Commission regulations.

¶ 50 Concerning remedies, the Commission found the damages for emotional distress to be appropriate, but disagreed with the hearing officer's recommendation of no less than \$100,000. The Commission lowered emotional distress damages to \$35,000 based on Commission precedent and found that Lockwood suffered "enormous emotional impact" due to the timing of the termination coinciding with her son's graduation and her daughter's medical condition. The Commission noted that Lockwood testified that she felt similarly when her parents died and that she consulted therapists and was prescribed medication. Additionally, the Commission pointed out that she worried about supporting her family.

¶ 51 The Commission adopted the hearing officer's findings that Lockwood was entitled to lost earnings of \$78,601.25, based on her salary and commissions earned from the previous year. The Commission found that Lockwood missed a full year of salary and commissions by having to rebuild her career. The Commission noted that PNS successfully compelled Lockwood to submit her W-2 and 1099 forms and evidence of self-employment earnings and that due to a non-compete clause with PNS, she was prevented from working in the same industry as PNS for a full year.

¶ 52 The Commission rejected the hearing officer's recommendation that an order be entered regarding unpaid commissions due to Lockwood. The Commission reasoned that PNS lacked any record concerning such commissions and that Lockwood did not testify to the amount of

unpaid commissions. The Commission further reasoned that PNS's "lack of cooperation with the discovery process *** has been taken into account in the award of punitive damages."

¶ 53 Based on Commission precedent, the Commission found that punitive damages were appropriate in this case due to PNS's discrimination against employees with children, its creation of false records, the presentation of false evidence, and PNS's attempt to withhold legitimate discovery materials. The Commission additionally awarded pre- and post-judgment interest and \$1,500 in fines. The Commission agreed with the hearing officer that PNS should pay Lockwood's reasonable attorneys fees. Lockwood filed her petition for fees and PNS filed its objections, arguing that the hourly rates were not supported and that certain legal work performed should be excluded from the award. The hearing officer requested further briefing from the parties regarding fees, but only Lockwood filed a motion in response to the request. The Commission's final order on attorneys fees granted Lockwood attorneys fees and costs in the amount of \$87,655.61.

¶ 54 PNS subsequently petitioned the circuit court for writ of *certiorari*. After briefing and argument, the circuit court affirmed the Commission's orders on March 10, 2011. On March 15, 2011, Lockwood moved to have her attorney's fees awarded to her in connection with defending PNS's actions in the circuit court. On April 27, 2011, the circuit court denied a "post-judgment motion to vacate" filed by PNS; entered judgment against PNS; and granted Lockwood her attorneys fees for proceedings before that court. On May 23, 2011, PNS filed its notice of appeal.

¶ 55

ANALYSIS

¶ 56 Due to the state of the record and PNS's brief before this court, we must first determine what issues are properly before this court. PNS raised numerous issues, many of them broad-based constitutional challenges. The rules addressing appellate procedure, and procedural default are well established. The burden of presenting a sufficiently complete record falls on the appellant, and any doubts as to the record will be resolved against the appellant. *In re Marriage of Gulla*, 234 Ill. 2d 414, 422 (2009). Without a complete record, we must presume that the relevant order of the circuit court had a sufficient factual basis and conformed with the law. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). "Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Id.* at 392. Furthermore, issues raised for the first time on appeal and not first presented to the circuit court will not be considered. *Haudrich v. Howmedica, Inc.*, 169 Ill. 2d 525, 536 (1996); *Smith v. Airoom, Inc.*, 114 Ill. 2d 209, 229 (1986).

¶ 57 Illinois Supreme Court Rule 341 governs the form and contents of appellate briefs. Ill. S. Ct. R. 341 (eff. Feb. 6, 2013); *Voris v. Voris*, 2011 IL App (1st) 103814, ¶8. Compliance with Rule 341 is mandatory. *Id.* This court has held that the failure to elaborate on an argument, cite persuasive and relevant authority, or present a well-reasoned argument violates Rule 341(h)(7) and results in waiver of that argument. *Sakellariadas v. Campbell*, 391 Ill. App. 3d 795, 804 (2009) ("The failure to assert a well-reasoned argument supported by legal authority is a violation of Supreme Court Rule 341(h)(7), resulting in waiver."); Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Gandy v. Kimbrough*, 406 Ill. App. 3d 867, 875 (2010) ("Supreme Court Rule 341(h)(7)

requires a clear statement of contentions with supporting citation of authorities and pages of the record relied on. [Citation]. Ill-defined and insufficiently presented issues that do not satisfy the rule are considered waived."). "A reviewing court is entitled to have the issues clearly defined with pertinent authority cited and is not simply a depository into which the appealing party may dump the burden of argument and research." *People v. Hood*, 210 Ill. App. 3d 743, 746 (1991). Proper support for a claim of error requires more than just argument, it must also be supported by authority. *Id.*; see also *Vancura v. Katris*, 238 Ill. 2d 352, 370 (2010) ("Both argument and citation to relevant authority are required. An issue that is merely listed or included in a vague allegation of error is not 'argued' and will not satisfy the requirements of the rule.").

¶ 58 Rules for administrative review of a claim are also well established. Defenses, issues, or arguments not presented during an administrative hearing are procedurally defaulted and cannot be raised for the first time on administrative review. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 212 (2008). This is true even where, as here, a party questions the validity of a statute and the administrative agency lacks the authority to rule on the statute's validity. *Carpetland U.S.A, Inc. v. Illinois Department of Employment Security*, 201 Ill. 2d 351, 397 (2002). It is not sufficient for a party to raise an issue, argument, or defense for the first time before the circuit court, it must first be raised before the administrative tribunal. *Cinkus*, 228 Ill. 2d at 213. Our supreme court has explained that "[t]he rule is based on the demands of orderly procedure and the justice of holding a party to the results of his or her conduct where to do otherwise would surprise the opponent and deprive the opponent of an opportunity to contest an issue in the tribunal that is supposed to decide it." *Id.* Furthermore, a

party's due process rights are not violated if a party fails to exercise a right. *Dombrowski v. City of Chicago*, 363 Ill. App. 3d 420, 427 (2005); *Harmon v. Town of Cicero Municipal Officers Electoral Board*, 371 Ill. App. 3d 1111, 1116 (2007).

¶ 59 In this case, PNS's brief contained the following claims²: (1) whether the creation of a local court by the city infringes upon the judicial authority of the courts of Illinois under the Illinois constitution and violates the separation of powers provided for in Article II of the Illinois constitution; (2) whether the city lacks the power to regulate employment discrimination based on parental status; (3) whether the findings of fact of the Commission are against the manifest weight of the evidence; (4) whether the findings and award from the Commission improperly limited PNS's freedom of contract; (5) whether the Commission made erroneous findings and conclusions as to damages; and (6) whether the circuit court lacked the authority to award Lockwood attorney's fees in opposing PNS's writ of certiorari. In proceedings before the Commission, however, PNS did not raise most of these arguments. PNS challenged the Commission's factual findings and conclusions as to damages. It only raised two arguments concerning its due process rights: whether it was properly notified of Lockwood's claim; and

² We note that the claims listed here are the issues PNS provided in the argument section of its brief. Under the "Issues Presented For Review" section of its brief, PNS listed nine issues for our review, as opposed to the six listed here. As these nine issues were merely listed without any argument, it follows that we will only address the issues that have argument provided. *Vancura*, 238 Ill. 2d at 370. It may be an irrelevant distinction as it appears that most, if not all, of the nine issues contained under the title "Issues Presented For Review" are addressed at some point by PNS in the argument section of its brief. We further note that PNS did not file a reply brief in this matter.

whether the Commission's discovery procedures violated its due process rights.³ As such, we hold that PNS has procedurally defaulted its claims that: the creation of a local court by the city infringes upon the judicial authority of the courts of Illinois under the Illinois constitution and violates the separation of powers provided for in Article II of the Illinois constitution; the city lacks the power to regulate employment discrimination based on parental status; and that Commission improperly limited its freedom of contract rights.

¶ 60 Regarding PNS's two remaining due process claims, we hold that PNS has also procedurally defaulted its claim that the Commission's discovery procedures violated its due process rights. The Commission's regulations allow the parties to conduct discovery beyond the standard discovery request of documents, exhibits, and witness lists by either seeking leave or by the agreement of the parties. CCHR Reg. 240.435(a). The record shows that PNS only chose to seek documents as opposed to other types of discovery and never sought either Lockwood's agreement, or leave from the Commission, to conduct additional discovery. PNS cannot now argue that its due process rights were violated where it failed to exercise its rights to discovery before the Commission. *Dombrowski*, 363 Ill. App. 3d at 427. As such, the only due process claim of PNS's properly before this court is whether PNS was properly notified in Lockwood's complaint.

³ PNS, in its brief before this court, included these two due process arguments, amongst its other arguments, under its first issue, *i.e.*, whether the creation of a local court by the city of Chicago infringes upon the judicial authority of the courts of Illinois under the Illinois constitution and violates the separation of powers provided for in Article II of the Illinois constitution.

¶ 61 Similarly, PNS argues in its brief before this court that the circuit court lacked the authority to award attorney's fees based on proceedings that occurred before it on PNS's petition for writ of certiorari. PNS, however, failed to make any objection before the circuit court, file a motion, or in any manner give the circuit court the opportunity to rule on its objections to fees in the circuit court. *Smith*, 114 Ill. 2d at 229. The record shows that at some point it filed a "post judgment motion to vacate." Such a motion, however, is not part of the record before this court. *Foutch*, 99 Ill. 2d at 391-92. Therefore, PNS's contention that the award of attorneys fees for proceedings before the circuit court is also procedurally defaulted.

¶ 62 Additionally, we note that after briefing on this matter closed, our supreme court issued its opinion *Crittendon v. Cook County Comm'n on Human Rights*, 2013 IL 114876. In *Crittendon*, our supreme court concluded that a similar agency to the Commission in this case, the Cook County Commission on Human Rights, did not have the authority to award common law punitive damages. *Id.* ¶ 21. Our supreme court held that actions of an administrative agency must be expressly authorized by statute. *Id.* ¶ 14. We allowed the parties leave to address this decision. Lockwood, for her part, mainly argued that *Crittendon* was distinguishable to the case at bar. PNS argued that *Crittendon* invalidated not only the punitive damages at issue here; but also the entire judgment based on its contention the Commission had no authority to adjudicate any claim based on parental status discrimination. The Commission, however, stated that the City passed an amendment to the Human Rights Ordinance which expressly authorizes the Commission to award punitive damages when warranted. See Chicago Municipal Code §2-120-510 (I) (added December 21, 2013). On November 26, 2013, City Counsel passed the motion to

adopt the amendment. On December 11, 2013, City Counsel approved the journal of its November 26, 2013, proceedings making the amendment effective on December 21, 2013. In its supplemental brief, the Commission raised several relevant arguments including: whether the amendment was curative; whether the amendment should be applied retroactively; and the effect of the Chicago Municipal Code's adopting ordinance.

¶ 63 PNS, however, did not put forth any arguments addressing the amended ordinance in its supplemental brief. Similarly, in its initial brief before this court, PNS's only contention that the Commission was unable to issue punitive damages was its statement, without citation to any authority, that "[t]here is no basis for punitive damages." PNS did not challenge the Commission's authority to issue punitive damages before the Commission or the circuit court. Rather, PNS argued before the Commission and before the circuit court that the Commission's findings as to damages were clearly erroneous. As a court of review, we are entitled to clearly defined issues with supporting authority. *Hood*, 210 Ill. App. 3d at 746; *Vancura*, 238 Ill. 2d at 370. We remind PNS that this court "is not simply a depository into which the appealing party may dump the burden of argument and research." *Hood*, 210 Ill. App. 3d at 746. We hold that PNS is procedurally defaulted from raising the issue of whether the Commission was authorized to issue punitive damages due to its failure to present a proper argument addressing the topic. We stress that our holding here is only that PNS is procedurally defaulted from raising the issue in this case for the reasons stated above. We make no opinion here regarding whether the Commission had authority to issue punitive damages.

¶ 64 In review, we hold that PNS has only properly presented before this court the following

issues: (1) whether its due process rights were violated by the Commission when it did not require Lockwood to plead with greater specificity; (2) whether the factual findings of the Commission were against the manifest weight of the evidence; and (3) whether the Commission's rulings as to damages are clearly erroneous.

¶ 65 Review of an administrative agency's actions where the agency, such as the Commission here, does not expressly adopt the Administrative Review Law and does not provide for other forms of review is by way of the common law writ of *certiorari*. *Outcom, Inc. v. Illinois Department of Transportation*, 233 Ill. 2d 324, 333 (2009). The standards of review that apply to proceedings under the Administrative Review Law are the same as those applied to review of a writ of *certiorari*. *Landers v. Chicago Housing Authority*, 404 Ill. App. 3d 568, 571 (2010). As such, we review the decision of the administrative agency, not the determination of the circuit court. *Id.*

¶ 66 The amount of deference we must give to the Commission's decision “depends upon whether the question presented is a question of fact, a question of law, or a mixed question of law and fact.” *Marconi v. Chicago Heights Police Pension Board*, 225 Ill. 2d 497, 532 (2006). “An administrative agency's findings of fact are deemed *prima facie* true and correct.” *Swoope v. Retirement Board of the Policeman's Annuity and Benefit Fund of the City of Chicago*, 323 Ill. App. 3d 526,528 (2001). When reviewing questions of fact, the reviewing court must determine whether the decision of the agency is against the manifest weight of the evidence. *Marconi*, 225 Ill. 2d at 532. The opposite conclusion must be clearly evident for a decision to be against the manifest weight of the evidence. *Swoope*, 323 Ill. App. 3d at 529. “If the record contains any

evidence to support the agency's decision, it should be affirmed." *Id.* Questions of law, however, are reviewed *de novo*. *Id.* When the question presented is a mixed question of law and fact, the clearly erroneous standard is applied. *Id.* A mixed question of law and fact "involves an examination of the legal effect of a given set of facts ." *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). Our supreme court has described this standard as "between a manifest weight of the evidence standard and a *de novo* standard so as to provide some deference to the [agency's] decision." *Id.* An agency's "decision will be deemed 'clearly erroneous' only where the reviewing court, on the entire record, is 'left with the definite and firm conviction that a mistake has been committed.'" *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 395 (2001), (quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948)). The plaintiff bears the burden of proof in an administrative proceeding. *Marconi* 225 Ill. 2d at 532-33. On administrative review, it is not the function of this court to make independent factual determinations or to reweigh evidence. *Kouzoukas v. Retirement Board of the Policeman's Annuity and Benefit Fund of the City of Chicago*, 234 Ill. 2d 446, 463 (2009).

¶ 67

Notice

¶ 68 PNS first argues that the Commission violated its due process rights by not requiring Lockwood to plead with more specificity. In response, the Commission argues that PNS had adequate notice of the charge against it, including the alleged time period, discrimination, and facts. Lockwood adopted and incorporated the Commission's argument.

¶ 69 This court has held that administrative proceedings do not require the same specificity as

in a judicial proceeding. *Morgan v. Department of Financial & Professional Regulation*, 388 Ill. App. 3d 633, 665-666 (2009). As such, due process requirements are satisfied where the charges filed " ' need only be drawn sufficiently so that the alleged wrong-doer is reasonably apprised of the case against him to intelligently prepare his defense.' " *Morgan*, 388 Ill. App. 3d at 666 (quoting *Rasky v. Department of Registration & Education*, 87 Ill. App. 3d 580, 585 (1980).

¶ 70 In this case, we hold that Lockwood's complaint apprised PNS of the charges against it and allowed it to prepare its defense. The complaint itself informed PNS that Lockwood claimed discrimination based on her parental status. As an exhibit, Lockwood informed PNS of the time period of the discrimination, the basis for the discrimination, and the facts of the discrimination. She noted in the complaint that the discriminatory behavior began with her interview for the position with PNS. Accordingly, we reject PNS's contention that the Commission violated its due process rights by failing to require Lockwood to plead with greater specificity.

¶ 71 Commission's Factual Findings

¶ 72 PNS next argues that the Commission's findings of fact are against the manifest weight of the evidence. Lockwood disagrees, and characterizes PNS's argument as an attempt to re-litigate the case. We note that under the Commission's regulations, Lockwood elected to use the *McDonnell-Douglas* method of proof as stated in *McDonnell-Douglas, Corp. v. Green*, 411 U.S. 792 (1973). Under this approach, Lockwood had to first establish that: (1) she was a member of a protected class, *i.e.* a parent; (2) that she was performing her job to PNS's legitimate expectations; (3) that she was terminated; and (4) that similarly situated PNS employees did not suffer the same adverse employment action. *Id.* 802. Upon establishing these elements, the

burden then shifted to PNS to provide a legitimate reason for Lockwood's termination. *Id.* at 802-803. PNS conceded that Lockwood was a parent who was terminated. Accordingly, she had to establish that she was performing to PNS's legitimate expectations and that similarly situated employees were treated differently. PNS had to provide a legitimate reason for Lockwood's termination.

¶ 73 In this case, after our review of the record, we cannot say that the findings of the Commission are against the manifest weight of the evidence. Specifically, the opposite conclusion is not clearly evident here and the record contains evidence to support its decision. *Swoopes*, 323 Ill. App. 3d at 529. Lockwood herself testified that she was never warned that she was not meeting company expectations. Gina Iliopoulos, a former sales manager at PNS testified that she never heard management criticize Lockwood's job performance. Amanda Reid-Snider also testified that she never heard PNS management criticize Lockwood's job performance. She also testified that Lockwood's "performance was as good as any of the other people that [were] hired *** at the same time." Notably, no documentary evidence was presented that indicated that Lockwood was not meeting PNS's expectations. In fact, Lockwood presented evidence that she had higher sales than many other sales representatives. Regarding PNS's treatment of similarly situated employees, Lockwood presented evidence that women who became pregnant were treated differently. She also presented evidence that non-parents were given higher salaries and commissions and that Dr. Herzog was rude to parent employees. She showed that only full-time parent employees were paid a 5% commission until they made \$300,000 in sales while other employees were paid 10 % commission. Accordingly, Lockwood presented evidence that she

was meeting company expectations and that similarly situated PNS employees were treated differently. Although PNS supplied evidence to the contrary, it is not our function on administrative review to make factual determinations or reweigh evidence. *Kouzoukas*, 234 Ill. 2d 446.

¶ 74 As a legitimate reason for Lockwood's termination, PNS argues that she was not meeting company expectations and she had excessive absences. Significantly, PNS failed to provide any credible documentary evidence supporting its contentions. PNS did provide testimony from employees and both of its owners in which they testified that Lockwood was excessively absent or not meeting company expectations, but the Commission and the hearing officer did not find the PNS witnesses credible. We reiterate that it is not our role to make credibility determinations on administrative review or reweigh the evidence. *Kouzoukas*, 234 Ill. 2d 446. Accordingly, as Lockwood presented sufficient evidence of discrimination, we hold that the findings of the Commission were not against the manifest weight of the evidence.

¶ 75 Damages

¶ 76 PNS's final contention is whether the findings of the Commission as to damages was clearly erroneous. PNS claims that there was no "competent" evidence that Lockwood suffered emotional distress and that the Commission's award for emotional distress was not consistent with Commission precedent. Similarly, PNS argues that Lockwood failed to provide any evidence of her lost income. Regarding punitive damages, PNS argues that the award was excessive and against Commission precedent. PNS's final contention as to damages is that the Commission erred when it awarded Lockwood attorneys fees because it did not evaluate the fee

petition and simply "rubber stamped the fee application." PNS does not challenge the Commission's award of interest on damages or fines under the Chicago Municipal Code. In response, Lockwood argues that all of the damages awarded by the Commission are reasonable, are supported by the evidence, and are consistent with Commission precedent.

¶ 77 In this case, we hold that the findings of the Commission were not clearly erroneous. Under the clearly erroneous standard of review, we will only reverse an administrative agency's decision if we are " 'left with the definite and firm conviction that a mistake has been committed.' " *AFM Messenger Service, Inc.*, 198 Ill. 2d at 395 (quoting *United States Gypsum Co.*, 333 U.S. at 395). In this case, we cannot say that we are left with the conviction that a mistake has been committed in this case. *Id.* Lockwood presented evidence that the timing of the termination caused her distress, depression, and anxiety. She was not able to enjoy her child's graduation and suffered distress over how she would support her family. She sought treatment, received medication, and likened the pain to when her parents passed away. Regarding lost income, Lockwood's W-2 and 1099 forms were produced as well as evidence of self-employment earnings. Although she found a job in a year, she was prevented from working in the same industry due to a non-compete clause and had to build a sales network. The new job was also a commissions only job. Concerning punitive damages, the Commission found that in addition to the discrimination Lockwood faced, PNS created false records, attempted to deceive Lockwood regarding non-existent company policies, attempted to deter Lockwood from pursuing her rights, and that PNS improperly withheld discovery materials. Additionally, the Commission found that PNS's unlawful preference for employees without children violated "the spirit and letter of the

Human Rights Ordinance." As far as attorneys fees, Lockwood submitted numerous documentation supporting her claim including billing records and affidavits. We reiterate that it is not the function of this court on administrative review to make independent factual determinations or reweigh the evidence. *Kouzoukas*, 234 Ill. 2d at 463. Additionally, although an agency's interpretation of its rules and regulations are not conclusive, they are entitled to deference. *Department of Corrections v. Illinois Civil Service Comm'n*, 187 Ill. App. 3d 304, 308 (1989). In this case, the Commission supported its decision with citation to relevant Commission authority and precedent. The attorney fees petition were particularly numerous and culminated in a lengthy final ruling on attorneys fees and costs. Accordingly, after our review of the record, we cannot say that the award of damages by the Commission was clearly erroneous.

¶ 78

CONCLUSION

¶ 79 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 80 Affirmed.