

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).

FILED

August 5, 2016
Carla Bender
4th District Appellate
Court, IL

2016 IL App (4th) 150860-U

NO. 4-15-0860

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

YWCA OF MCLEAN COUNTY,)	Appeal from
Petitioner-Appellant,)	Circuit Court of
v.)	McLean County
THE CITY OF BLOOMINGTON HUMAN RELATIONS)	No. 15MR58
COMMISSION, an Illinois Municipal Corporation; and)	
ERIC TAPLEY,)	Honorable
Respondents-Appellees.)	Rebecca Simmons Foley,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The City of Bloomington Human Relations Commission did not err in finding the YWCA discriminated against Eric Tapley.

¶ 2 On December 19, 2014, the City of Bloomington Human Relations Commission (Commission) adopted its hearing officer's recommended findings the YWCA of McLean County (YWCA) discriminated against Eric Tapley, an African-American male. On January 23, 2015, the YWCA filed a petition for writ of *certiorari* in the trial court. On September 22, 2015, the trial court denied the petition for writ of *certiorari*. The YWCA appealed. We affirm the Commission's decision.

¶ 3 I. BACKGROUND

¶ 4 On November 16, 2012, Tapley was terminated from his position as a prevention educator specialist in the YWCA's Stepping Stones program. On September 23, 2013, Tapley

filed a complaint with the Commission, alleging he was terminated because of his race and his arrest record. He later filed an amended complaint, alleging he was terminated because of his race and gender. The YWCA denied Tapley's allegations and asserted affirmative defenses.

¶ 5 A public hearing was held in August 2014. Dontae Latson, executive director for the YWCA, testified he was not affiliated with the YWCA during Tapley's employment.

According to Latson, Tapley was terminated because of inappropriate behavior toward a female employee and a female intern. Latson was not aware of any other employee being terminated for that reason in the three years preceding Tapley's termination. A white female replaced Tapley.

¶ 6 Jane Chamberlain testified she was the YWCA's executive director when Tapley was terminated. Marabeth Clapp was the interim director of the Stepping Stones department at that time. Tapley and Hannah Cohen, an intern, both worked in the Stepping Stones department. Although Cohen was an intern, Chamberlain testified Cohen was obligated to follow the YWCA's mission statement and abide by appropriate workplace behavior like regular YWCA employees.

¶ 7 Chamberlain testified she was made aware of an incident between Tapley and Cohen in November 2012. Chamberlain testified she asked for a written statement from Cohen and the rest of the staff who witnessed the incident between Tapley and Cohen. Cohen sent Chamberlain a written statement via e-mail. However, Chamberlain never obtained a statement from Tapley.

¶ 8 Chamberlain testified she signed off on a recommendation made by either Marabeth Clapp or Nicole Kirstein, who also worked in the Stepping Stones department, to terminate Tapley. Chamberlain took no disciplinary action against Cohen and was not aware of any disciplinary action being taken against Cohen. Tapley was the only black man working at

the YWCA at that time. Cohen was a white female. Tapley's termination notice was prepared before the meeting where he learned he was fired and before Cohen and other staff members provided their written statements.

¶ 9 Chamberlain testified she discharged other employees while she worked at the YWCA. She said it was typical not to receive statements from the person about to be discharged. She considered Tapley's termination process to be typical.

¶ 10 Marabeth Clapp testified she served as interim director of the Stepping Stones program during part of Tapley's employment. On November 12, 2012, Clapp wrote a report with regard to an incident between Tapley and Cohen. Clapp testified Cohen was obligated to support the mission of the YWCA and maintain a high level of professionalism.

¶ 11 According to Clapp, the immediate cause of Tapley's termination was the incident with Cohen. However, the YWCA took no disciplinary action against Cohen. Clapp testified she had disciplined Tapley for a work performance issue prior to the incident with Cohen and informed him subsequent events or future offenses could threaten his position.

¶ 12 Clapp testified she did not witness the incident between Tapley and Cohen but was concerned with the verbal confrontation, especially Tapley's threat that "snitches get stitches." Clapp recalled speaking to Cohen about the incident but did not remember speaking with Tapley. Clapp also discussed the incident with Chamberlain.

¶ 13 Tapley testified he was a 27 year old black man. Erica Thurmon, who was the director of Stepping Stones when he was hired and also black, interviewed Tapley and offered him a position at the YWCA. He began working for the YWCA's Stepping Stones program in February 2012 as a prevention educator.

¶ 14 Tapley testified he had regular contact with Cohen at the YWCA. She worked in the same room and assisted him with projects. Cohen attended staff meetings, assisted in preparing presentations, and sometimes made presentations on her own in the community. According to Tapley, although an intern, Cohen had nearly all the same duties and responsibilities he had as a paid employee of Stepping Stones.

¶ 15 Tapley testified he performed his duties in a satisfactory manner throughout his employment with the YWCA. He received compliments on numerous occasions from community members and YWCA staff on his work. With regard to a disciplinary report dated September 10, 2012—for failing to report to work without notifying his supervisor of his intent to be absent on September 7, 2012—Tapley testified he had sent a text message to his supervisor at 4:56 a.m. on September 7, 2012, stating he was at the hospital with his son. It was uncontroverted he produced the text to Thurmon at the time she reviewed the September 10, 2012, disciplinary report with him. He also let Nicole Kirstein know he was at the hospital with his six-year-old son. The only other disciplinary report he was aware of resulted in his termination.

¶ 16 Tapley denied yelling at or threatening Cohen during the incident on November 12, 2012. According to Tapley, Marabeth Clapp never talked to him about the incident with Cohen or about the other incident mentioned during the meeting where he was terminated. That incident involved Tapley leaving a time-off request on Nicole Kirstein's desk when she was absent. The YWCA claimed this was inappropriate. Tapley testified this happened during a time of transition. Although Marabeth Clapp was officially the interim director of the Stepping Stones program, Tapley testified the Stepping Stones employees were reporting to Kirstein. Tapley also testified he told Kirstein he was going to need to take half a day off approximately a

week before he did so. At that time, he was not sure which day he would need to be absent.

Kirstein said this was fine. He testified his coworkers knew he was going to be gone for a few hours that day.

¶ 17 Tapley stated he only met with Marabeth Clapp two times while she was interim director at Stepping Stones. When Clapp was first made interim director, she had individual meetings with all the staff members. The other staff members talked about how nice Clapp was during the meetings. However, at his meeting, Clapp said she did not believe Tapley liked his job. She brought up the fact he missed an appointment at Normal Community High School. He explained to her this was a result of a scheduling issue which resulted from the prior director's sudden departure. Tapley testified he accepted the blame for the missed appointment and told Clapp it would not happen again. Tapley's second meeting with Clapp was when he was terminated.

¶ 18 Regarding the incident with Cohen, Tapley testified he came into the Stepping Stones office and saw Hilary Pacha, assistant director of prevention and empowerment services, was upset. He testified their jobs were stressful and emotional. Tapley testified he tried to cheer Pacha up by joking with her about her lunch; a restaurant had not correctly filled her order. While he was talking to Pacha, Cohen came into the room and yelled at Tapley to leave Pacha alone. Tapley testified he and Pacha were friends at the time, and Tapley told Cohen to mind her own business. Cohen kept yelling at Tapley to leave Pacha alone. Pacha then told Cohen to stop speaking to Tapley and to leave the office.

¶ 19 According to Tapley, Cohen was never seated during the encounter. He further denied making a gesture with his fist and the palm of his other hand. From the time of that incident until his termination, Tapley did not think Cohen was fearful of him in any manner.

¶ 20 Tapley believed the YWCA discriminated against him based on his race and gender. According to Tapley, he was fired based on three white women's versions of his encounter with Cohen. He was never given an opportunity to respond or give his version of events. Tapley denied ever telling Cohen that "snitches get stitches."

¶ 21 Hilary Pacha also testified about the incident between Tapley and Cohen. Pacha testified she and Tapley had a "joking relationship, always fun." According to Pacha:

"That particular day was no different. He was just giving me a hard time. At first, it was no big deal, but I was just really irritated. I made a statement like: [']Now is not the time.[']

Then he just kept kind of picking at it and still joking. I just had repeated basically: [']Now is not the time.['] "

At that time, Cohen inserted herself into the conversation and "pretty much politely" told Tapley to leave Pacha alone. Tapley told Cohen she did not know his and Pacha's situation and to "back off." The encounter escalated at that point.

"Then [Cohen] repeated back to Eric, 'No, you heard her. She said leave it be.' So he became agitated.

So then she basically kept reiterating: 'No, leave her alone.' And then Eric proceeded to kind of raise his voice at her. I believe he said something to the effect of, 'Know your place' and 'Sit your munchkin ass down.' "

The exchange started to become "more heated," and Tapley took a few steps toward Cohen. Pacha intervened and told both Cohen and Tapley to leave. Pacha had an appointment and did not want to leave them alone in the office. She did not see Tapley make any physical gesture

with his hands toward Cohen. Pacha talked to Cohen later that day about the incident. Cohen was "crying hysterically" on the phone.

¶ 22 Hannah Cohen also testified about the confrontation. Cohen said she saw Pacha getting upset. At that time, Cohen told Tapley to give Pacha some space. Tapley turned to Cohen and asked, "Am I talking to you?" Cohen testified she responded, "Well, you're not listening to her. I'm trying to advocate for Hilary. You're not hearing what she's saying." Tapley then told Cohen he was not talking to her and for her to know her place and be quiet. Tapley started walking toward Cohen. Cohen and Tapley then started yelling over each other. Cohen stated she talked to Kirstein, Chamberlain, Pacha, and Clapp about the incident. Cohen admitted she had not acted very professionally. Cohen did not hear Tapley refer to her as "munchkin ass."

¶ 23 Nicole Kirstein testified she did not remember having a discussion with Tapley about him needing to take some time off in November 2012. She found Tapley's time off-request on her desk when she returned from vacation.

¶ 24 Kirstein testified Cohen, like Tapley, was bound by the YWCA's harassment and antiviolence policies. She testified Tapley's actions qualified as harassment, but Cohen's did not, based on what she was told by Cohen and Pacha. Kirstein also stated Tapley's actions violated the violence prevention policy. She acknowledged she had not spoken with Tapley to get his version of what happened.

¶ 25 The hearing officer closed the proofs in the case on September 9, 2014. On November 14, 2014, the hearing officer made his recommendations to the Commission. The hearing officer found Tapley, an African-American, was the only man working in the Stepping Stones department of the YWCA. The hearing officer noted Tapley's May 14, 2012, evaluation

showed Tapley met expectations with regard to the YWCA's values, teamwork, customer service, adaptability, initiative, and judgment. The evaluation found Tapley required guidance and help with regard to dependability, attention to detail, accountability, and his skill set. Tapley was not graded as unsatisfactory in any category. The YWCA offered no evidence to rebut Tapley's assertion he had improved in the areas where he required guidance and help. Tapley testified neither Clapp nor Chamberlain provided him any further job guidance.

¶ 26 With regard to an employee disciplinary report dated September 9, 2012, which stated Tapley failed to report to work without notifying his supervisor of his intent to be absent, the hearing officer found Tapley had messaged his supervisor at 4:56 a.m. on the day he was absent, stating he was at the hospital with his son and would not be in that morning. The hearing officer found the employee disciplinary report was improperly given because Tapley complied with the unspecific terms of the YWCA's employee handbook.

¶ 27 With regard to the incident involving Tapley leaving a time-off request on Nicole Kirstein's desk, the hearing officer found the conflicting evidence in the case favored Tapley's belief Nicole Kirstein was acting as the *de facto* interim director of Stepping Stones with regard to some of Marabeth Clapp's duties, even though Clapp was officially the interim director.

¶ 28 As for the incident between Tapley and Cohen, the hearing officer noted conflicting testimony was presented as to what happened. During the incident, both Tapley and Cohen raised their voices. This was after Tapley twice asked Cohen to mind her own business. Cohen admitted she had not acted professionally. Pacha and Kirstein also stated Cohen's behavior was not appropriate in a professional setting. The hearing officer found the claim Tapley pounded one hand into another during the incident was not credible. Pacha testified she did not see this, and Cohen made no reference to this in her memo of the incident.

¶ 29 The hearing officer also found Cohen's testimony "less than credible." According to the hearing officer:

"Of all the witnesses, Ms. Cohen was the most animated in demeanor, which is consistent with one who would [insert] herself into a semi-private conversation between two people who were obviously close, and then start [advocating] against a full-time employee. This finding is also made in part based on [Pacha's] testimony that after [Tapley] had told [Cohen] to mind her own business, that the intern became upset ***, and in an almost insubordinate manner told [Tapley], a full-time employee, not to speak to [Cohen] like that. This finding is also based in part on the fact that [Pacha's] memo of the incident makes no allegation that [Tapley] harassed or physically threatened the intern in any manner or form. The claim that [Tapley] told [Cohen] to 'know your place' *** in the context of this verbal altercation can have disparate meanings: one of an attempt to intimidate; one of an attempt to get a third party out of a private conversation; or one of an attempt to stop insubordinate behavior. More probably than not, given the description of the close relationship of [Tapley] and Ms. Pacha as testified by [Tapley], Ms. Pacha and [Cohen], the lack of evidence that [Tapley's] nature was one who performed acts of intimidation in his ordinary course of employment, [Tapley's] repeated requests to [Cohen] to 'mind her own business',

and the fact Ms. Pacha's own written report of the incident does not state or imply that she was in need of advocacy ***, it is reasonable to assume that [Tapley's] use of the words 'know your place' was an attempt to get the intern out of a conversation between two friends into which the intern 'inserted' herself."

Additionally, the hearing officer found the allegation Tapley engaged in an act of harassment or an act of violence or intimidation not credible because YWCA's response protocols for these types of situations were not implemented or followed.

¶ 30 The hearing officer found Kirstein's report as to the interaction between Tapley and Cohen carried "very little weight" because it was based on biased hearsay. Kirstein did not speak with Tapley about the incident before preparing her report. In addition, the hearing officer noted the report's inaccuracies, including a lack of evidence Tapley cursed at Cohen and Pacha was successful in de-escalating the situation between Tapley and Cohen.

¶ 31 In addition, with regard to the incident on November 9, 2012, where Tapley was alleged to have inappropriately left a time-off request on Kirstein's desk, the hearing officer found this was not improper because Kirstein had signed off on other time-off requests. The hearing officer also found Kirstein had a "strong past and current bias" in favor of the YWCA, which made the officer give little weight to her testimony.

¶ 32 The hearing officer also gave little weight to the testimony of Marabeth Clapp. The officer noted her memory was vague and weak regarding the events in question. The hearing officer found Clapp's "testimonial amnesia as to some testimony clouds all of her testimony." In addition, Clapp appeared hostile to Tapley at their very first meeting.

¶ 33 The hearing officer noted no one in the YWCA organization involved in the termination process talked to Tapley to get his version of the altercation with Cohen.

¶ 34 The hearing officer found Tapley established a *prima facie* case of gender discrimination. The hearing officer noted the YWCA stated it terminated Tapley for nondiscriminatory reasons. However, the hearing officer found these reasons were "totally pretextual" based on the totality of circumstances in this case. On December 19, 2014, the Commission issued its final order, adopting the hearing officer's recommended findings.

¶ 35 On January 23, 2015, the YWCA filed a petition for writ of *certiorari* in the trial court. On September 22, 2015, the trial court denied the petition for *certiorari*.

¶ 36 This appeal followed.

¶ 37 II. ANALYSIS

¶ 38 We review the decision of the Commission, not the trial court. *Lindsey v. Board of Education*, 354 Ill. App. 3d 971, 973, 819 N.E.2d 1161, 1167 (2004). The appropriate standard of review depends on the type of question presented. We review *de novo* an agency's interpretation of its own rules or a statute. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210, 886 N.E.2d 1011, 1018 (2008). We review purely factual findings using a manifest weight of the evidence standard. *Walk v. Illinois Department of Children and Family Services*, 399 Ill. App. 3d 1174, 1186, 926 N.E.2d 773, 784 (2010). If an agency's decision presents a mixed question of law and fact, we will only disturb the decision if it was clearly erroneous. *Id.* at 1187, 926 N.E.2d at 784. A mixed question concerns the legal effect of a given set of facts. *Cinkus*, 228 Ill. 2d at 211, 886 N.E.2d at 1018. We will only find a decision clearly erroneous if we are left with a definite and firm conviction a mistake has been made. *Id.*

¶ 39 The headings of the YWCA's brief breaks its argument into two parts, arguing both the Commission's factual findings are against the manifest weight of the evidence and the Commission erred in its application of the facts to Illinois law. However, we note the YWCA's actual arguments are different. For example, within the section of its brief titled, "Whether the findings of fact adopted by the Commission are against the manifest weight of the evidence," the YWCA actually argues the Commission's *decision* should be vacated because it is against the manifest weight of the evidence. An argument the Commission erred with regard to a factual finding is different than an argument the Commission's ultimate decision was wrong. Hypothetically, this court could agree some of the Commission's factual findings were against the manifest weight of the evidence but still affirm the Commission's ultimate decision based on its other factual findings. Because of the confusing nature of the YWCA's brief, we only address the arguments actually made and not in the order argued by the YWCA.

¶ 40 In this case, Tapley sought to establish the YWCA discriminated against him based on indirect or circumstantial evidence. An employee can establish discrimination indirectly through circumstantial evidence, which, when viewed as a whole, establishes the employer's actions were based on racial or gender animosity. *Coleman v. Donahoe*, 667 F.3d 835, 862-63 (7th Cir. 2012). Because Tapley was not trying to prove discrimination through direct proof, we ignore the YWCA's "straw-man arguments" regarding a lack of direct proof of discrimination.

¶ 41 To establish indirect discrimination, an employee must first establish a *prima facie* case of discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973); *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill. 2d 172, 179, 545 N.E.2d 684, 687 (1989). To establish a *prima facie* case, an employee must show he was a member of a protected class;

he was meeting his employer's business expectations; he suffered an adverse employment action; and he was treated less favorably than similarly situated employees who were not members of his protected class. *Owens v. Department of Human Rights*, 403 Ill. App. 3d 899, 919, 936 N.E.2d 623, 640 (2010). The burden of proof for establishing a *prima facie* case is not onerous. *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981).

¶ 42 Tapley met his *prima facie* case here. His claim was based on his race and gender. Tapley, a black man, testified he was performing his job well and people were happy with his work. He was terminated after a confrontation with a white female who also worked at the YWCA and shared similar duties. The white female was not disciplined at all. " 'All things being equal, if an employer takes an action against one employee in a protected class but not another outside that class, one can infer discrimination.' " *Coleman*, 667 F.3d at 846 (quoting *Filar v. Board of Education of the City of Chicago*, 526 F. 3d 1054, 1061 (7th Cir. 2008)).

¶ 43 Once an employee establishes a *prima facie* case of discrimination, the employer must rebut the *prima facie* case by articulating a legitimate, nondiscriminatory reason for the alleged discriminatory act. *McDonnell Douglas Corp.*, 411 U.S. at 802. If the employer is able to rebut the employee's *prima facie* case, the employee must prove the reasons articulated by the employer were pretext for unlawful discrimination. *Id.* at 807.

¶ 44 The YWCA presented evidence it terminated Tapley for legitimate reasons. The YWCA presented evidence Tapley had received prior oral and written reprimands. In addition, the YWCA presented evidence Tapley's behavior toward an intern was inappropriate and rude. As a result, the burden shifted back to Tapley to prove the reasons provided by the YWCA for his termination were pretext for unlawful discrimination.

¶ 45 The YWCA argues nothing supports the Commission's finding the YWCA's excuses for firing Tapley were pretextual, or in other words, not the real reasons for which he was fired. We disagree. In *Coleman*, the Seventh Circuit offered the following explanation how an employee can establish his employer's facially legitimate, nondiscriminatory reason for the termination was pretextual.

"[An individual] 'must present evidence suggesting that the employer is dissembling.' [Citation.] 'The question is not whether the employer's stated reason was inaccurate or unfair, but whether the employer honestly believed the reasons it has offered to explain the discharge.' [Citation.] 'It is not the court's concern that an employer may be wrong about its employee's performance, or may be too hard on its employee. Rather, the only question is whether the employer's proffered reason was pretextual, meaning that it was a lie.' [Citations.]" *Coleman*, 667 F.3d at 852.

The Seventh Circuit continued by explaining an individual can establish pretext by identifying implausibilities, weaknesses, contradictions, or inconsistencies in the employer's reasons that would convince a reasonable person the stated reasons for termination should not be believed.

Id.

¶ 46 The YWCA argues Tapley failed to present evidence the reasons articulated by Jane Chamberlain, Marabeth Clapp, or Nicole Kirstein for his termination were false. We disagree. The strongest evidence supporting Tapley's claim of discrimination was the disparity between his treatment and Cohen's treatment after their encounter. Cohen admitted she acted unprofessionally during the encounter. In addition, other witnesses testified Cohen's behavior

violated YWCA policy. However, while Tapley was terminated as a result of this encounter, Cohen was not disciplined in any fashion.

¶ 47 The YWCA argues the fact Cohen was not disciplined is not relevant because she and Tapley were not similarly situated. The YWCA contends the Commission erred in finding Tapley and Cohen were similarly situated. According to the YWCA, Tapley and Cohen were not similarly situated because they were not directly comparable in all material respects. The YWCA states:

"[T]he evidence established that Hannah Cohen was an intern. She was not even an employee of the YWCA. While some of the witnesses testified that Hannah Cohen would have been obligated to adhere to the mission statement of the organization, she clearly was not an employee of the YWCA and was not subject to the same standards as employees of the YWCA. Specifically, in comparison to Tapley, Hannah Cohen did not have the same education and she was subordinate to Tapley not similarly situated [*sic*]."

The Commission did not err in finding Tapley and Cohen were similarly situated.

¶ 48 In *Coleman*, the Seventh Circuit stated, "[t]he similarly-situated analysis calls for a 'flexible, common-sense' examination of all relevant factors." *Coleman*, 667 F.3d at 846.

"Similarly situated employees 'must be "directly comparable" to the plaintiff "in all material respects," ' but they need not be identical in every conceivable way. [Citation.] We are looking for comparators, not 'clone[s].' [Citation.] So long as the

distinctions between the plaintiff and the proposed comparators are not 'so significant that they render the comparison effectively useless,' the similarly-situated requirement is satisfied. [Citations.]

Whether a comparator is similarly situated is 'usually a question for the fact-finder,' and summary judgment is appropriate only when 'no reasonable fact-finder could find that plaintiffs have met their burden on the issue.' [Citation.] There must be 'enough common factors ... to allow for a meaningful comparison in order to divine whether intentional discrimination was at play.' [Citation.] The 'number [of relevant factors] depends on the context of this case.' [Citation.]" *Id.*

The Seventh Circuit stated a plaintiff must usually show both he and the comparator or comparators dealt with the same supervisor or decisionmaker, were subject to the same standards, and engaged in similar conduct. *Id.* However, the Seventh Circuit also stated this is not a "magic formula" and "the similarly-situated inquiry should not devolve into a mechanical, 'one-to-one mapping between employees.'" *Id.* at 847.

¶ 49 In this case, Tapley and Cohen were both involved in the same incident. Further, even the YWCA's witnesses testified Cohen acted unprofessionally. However, the same decision-makers decided to terminate Tapley but not discipline Cohen in any manner. In addition, while the decision-makers sought out Cohen's version of the incident, they did not do the same for Tapley. Because Cohen and Tapley were involved in the same incident, worked together, and had similar duties and responsibilities, the fact Cohen was an intern and Tapley

was a full-time employee bears little relevance in determining whether they were similarly situated.

¶ 50 The YWCA also points to the fact Tapley admitted the encounter with the intern occurred. As a result, the YWCA argues he admitted to the conduct that led to his termination. According to the YWCA, this establishes Tapley "was not meeting the YWCA's expectations at the time of his employment." Relying on *Peters v. Renaissance Hotel Operating Co.*, 307 F.3d 535, 539 (7th Cir. 2002), the YWCA contends the issue is not whether Tapley was meeting the YWCA's expectations in the past. Instead, "the question is whether the claimant was meeting his employer's expectations at the time he was terminated." The problem with this argument is Cohen engaged in the same behavior as Tapley. If Tapley was not meeting the YWCA's expectations, Cohen could not have been meeting its expectations either. However, the YWCA fired Tapley, a black male, but did not even discipline Cohen, a white female.

¶ 51 The YWCA also argues all of the supervisors who testified believed Tapley's behavior toward Cohen was so inappropriate termination was necessary. However, while Cohen engaged in the same type of behavior toward Tapley, these same supervisors felt no need to discipline Cohen in any manner. The hearing officer, who observed the witnesses, gave little weight to the testimony of Clapp and Kirstein. The officer noted Clapp's memory was vague. Further, Kirstein had both a "strong past and current bias" in favor of the YWCA. Based on the facts in this case, the Commission did not err in finding the YWCA discriminated against Tapley.

¶ 52 Finally, the YWCA makes the following argument:

"[T]he [d]ecision of the Commission is erroneous as a matter of law as the Commission acknowledges that Tapley admitted that he

had falsified information on his employment application; and therefore, YWCA proved its asserted Second Affirmative Defense that any claim for lost wages beyond the date of Tapley's termination was barred because even if YWCA did not have a legitimate basis to terminate Tapley for his actions in acting inappropriate to the intern, YWCA had a right to terminate Tapley for lying on his employment application. The hearing officer and the Commission in adopting the findings of the hearing officer improperly applied the law regarding after acquired information; and held that since Tapley was not terminated for providing false information on his employment application; his fraudulent acts would not bar a recovery for lost wages. That finding is contrary to the law of the State of Illinois; and by virtue of the fact that the hearing officer found that Tapley admitted his fraudulent conduct, all damages awarded against YWCA for wage loss should be reversed and vacated."

We note the YWCA provides no authority for this argument. This court is not a depository for an appellant to dump the burden of argument and research. *In re Austin C.*, 353 Ill. App. 3d 942, 947-48, 823 N.E.2d 981, 986 (2004). As a result, we find the YWCA forfeited this argument.

¶ 53

III. CONCLUSION

¶ 54

For the reasons stated, we affirm the Commission's ruling.

¶ 55

Affirmed.