2020 IL App (1st) 190460-U

No. 1-19-0460

Order filed February 18, 2020

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JAMES WHITMORE, Petitioner-Appellant, v. HUMAN RIGHTS COMMISSION, THE DEPARTMENT OF HUMAN RIGHTS, and STEINER SECURITY SERVICES, Respondents-Appellees.	)	Petition for Direct Administrative Review of a Decision of the Illinois Human Rights Commission. No. 2015 CF 1167

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: The Human Rights Commission did not abuse its discretion by sustaining the dismissal of petitioner's claims of employment discrimination for lack of substantial evidence.

¶ 2 Petitioner James Whitmore appeals *pro se* from a final order entered by the Illinois Human Rights Commission (Commission) sustaining the Illinois Department of Human Rights' (Department) dismissal of his charge of employment discrimination by his former employer,

Steiner Security Services (Steiner), brought under the Illinois Human Rights Act (Act) (775 ILCS 5/1-101, *et seq*. (West 2014)). Petitioner alleged Steiner had discriminated against him where, because of his disabilities, a coworker harassed him, Steiner issued petitioner a written reprimand, he was subjected to unequal terms and conditions of employment, and he was discharged. The Department dismissed his charge for lack of substantial evidence. The Commission sustained the Department's decision and petitioner appealed. We affirm.

¶ 3 Petitioner was employed as a security officer at Steiner from June 25, 2014, through October 31, 2014. His job responsibilities included providing security services for Steiner's clients. After petitioner's employment terminated, he filed a charge of disability discrimination with the Department.

¶ 4 Petitioner asserted eight bases for the charge, alleging he had two disabilities at the time of his employment, anemia and stroke, and suffered four types of discrimination based on those disabilities: harassment, adverse job action, unequal terms and conditions of employment, and discharge. Petitioner charged that, on September 27, 2014, he was harassed because of those disabilities when his coworker Eddie Bibbs called him names and threatened him and manager Denise Hunter took no action to address the situation when petitioner reported the incident. Petitioner charged that, on October 7, 2014, he suffered an adverse job action when Hunter issued him a written reprimand for unsatisfactory job performance because of his disabilities and similarly situated employees without disabilities were not disciplined for job performance comparable to his. Petitioner charged he was "subjected to unequal terms and conditions of employment" because of his disabilities on October 31, 2019, when Hunter transferred him from an inside location to an outside location with no reason given. He lastly charged that he was discharged on that date as a

result of his disabilities but was told by Steiner that he resigned. Petitioner claimed he never resigned, and his disabilities were unrelated to his ability to perform the essential functions of his job with an accommodation.

¶ 5 Petitioner's complaint was investigated by the Department, which interviewed petitioner, Steiner president Vivian McGrew, management consultant Denise Hunter, and Steiner sergeant Seneca Fikes. Petitioner told the investigator he had informed McGrew about his medical condition when he was hired, and gave her medical documentation which proved he was disabled. Petitioner provided the investigator with a letter from his doctor dated December 5, 2014, which indicated petitioner had suffered a stroke on February 15, 2010, and was prescribed medication which increased his risk of bleeding. According to petitioner, this had the side effect of giving him anemia. In the letter, petitioner's physician requested he be returned to work with a restriction of "no hazardous work" and noted that, if petitioner felt weak, "it might be hazardous" for him to work outside in icy conditions due to increased risk of bleeding from a fall.

¶ 6 Petitioner told the investigator that, on September 27, 2014, he was subjected to harassment because of his disabilities when his co-worker Bibbs called him a "punk m***f***r" and a "m***f***ing b***ch," and petitioner was afraid that Bibbs would physically attack him. On September 28, 2014, petitioner told his supervisor Fikes and McGrew about what had happened, but Steiner did not address the harassment and instead issued him a written reprimand. He did not believe Bibbs received any discipline. Petitioner believed the harassment was because of his disabilities and that Steiner targeted him but did nothing to Bibbs. He claimed the harassment created a hostile, offensive, and intimidating work environment.

¶ 7 Petitioner claimed he was subjected to disability discrimination on October 7, 2014, when

Steiner issued him a written reprimand for "allegedly not making his rounds." Petitioner denied he failed to make rounds, and believed he was targeted because of his disabilities. Petitioner believed the written reprimand was issued to him because Steiner was "looking for a reason to fire him because he was disabled." He claimed similarly situated non-disabled employees were treated more favorably under similar circumstances.

¶ 8 Petitioner claimed he was subjected to unequal terms and conditions of employment due to his disabilities when, on October 31, 2014, Steiner assigned him to work at an outdoor construction site. As soon as petitioner arrived on site, he told Fikes he was not able to work outside in the cold because of his anemia and asked to be transferred back to his previous indoor location. Fikes spoke to McGrew, but she refused to transfer petitioner. Petitioner stated that, although Fikes told him that Steiner had a vehicle with a heater he could use, "he did not want to do so because he was worried that if the vehicle was damaged he would be held responsible." Several other security officers were transferred to the construction site but did not have disabilities which prevented them from working outside in cold weather.

¶ 9 Petitioner lastly charged that Steiner discharged him on October 31, 2014, because of his disabilities. He stated he told Fikes he could not work outside because of the cold and requested to be returned to his former indoor work assignment. Fikes told him he had spoken to McGrew, and McGrew said that if petitioner would not work his currently assigned post, "then he was discharged." Petitioner stated Fikes told him McGrew had made the decision to discharge him. Fikes told petitioner to turn in his badge, which he did. Petitioner believed his discharge was due to his disabilities because Steiner tried to force him to work in cold weather when he was not able to, and fired him when he told them he could not.

¶ 10 In response, Steiner provided its harassment policy, which indicated that Steiner prohibited harassment based on, *inter alia*, disability, and anyone who believed they had been subjected to harassment should report such harassment, which Steiner would fully investigate. McGrew told the investigator that petitioner was hired on June 25, 2014, and was employed as a security officer, responsible for providing security services for Steiner's clients. McGrew stated that, when petitioner applied for a position with Steiner, he indicated he was applying for several armed and unarmed security positions, and "the job descriptions indicate that all applicants must be physically able to perform all duties assigned to the post, including standing for extended periods of time and walking an extended patrol route."

¶ 11 McGrew denied she was aware petitioner had a disability. When petitioner was hired, he signed a fitness for duty affidavit indicating he had no physical limitations. He "later" gave her a return to work authorization dated December 3, 3013, which indicated he was supposed to "avoid confrontational situations." The document did not provide any information about petitioner having any specific medical condition, nor did petitioner ever provide McGrew with any further medical documentation. Steiner provided copies of the fitness for duty affidavit and return to work authorization to the investigator.

¶ 12 McGrew stated Steiner has no written policy regarding assignments, but its practice was to assign security officers based on business need, and officers were "constantly" assigned to different posts. Steiner did not have a discharge policy, but would use disciplinary actions such as verbal and written warnings, suspension, or discharge when necessary. Steiner would allow an employee to resign his or her position. McGrew denied petitioner was harassed.

¶ 13 Fikes told the investigator petitioner told him that he had previously had a stroke. On

September 27, 2014, petitioner complained to Fikes that Bibbs had harassed and insulted him but did not state it was because of a disability. Fikes met with both petitioner and Bibbs, and Bibbs denied threatening or insulting petitioner but stated petitioner called Bibbs a pedophile. Steiner management consultant Hunter told the investigator that, on October 7, 2014, she met with petitioner and Bibbs and counseled them on the need to maintain a professional posture at all times. Petitioner and Bibbs apologized to each other, agreed to work together, and "signed off," indicating that the matter was closed. Neither petitioner nor Bibbs was disciplined. Hunter stated that, from October 7, 2012 to October 7, 2014, Steiner did not receive any complaints of harassment. Steiner submitted a copy of the October 7, 2014, "acknowledgment of closure" letter signed by petitioner and Bibbs.

¶ 14 Fikes told the investigator that, on October 5, 2014, petitioner and another, non-disabled, security officer, Andreas Payton, were working a security post at which they were required to make continuous 50-minute rounds of the property and to ensure that doors on the property were locked. Fikes stated that neither petitioner nor Payton conducted the security rounds as required and, as a result, both petitioner and Payton were issued written warnings on October 7, 2014. Steiner's documentation showed eight other security officers were reprimanded from October 7, 2012 to October 7, 2014, and none of these security officers had a reported disability.

¶ 15 Fikes stated that, in October 2014, he received complaints from residents of the complex where petitioner worked regarding his "yelling at children who lived in the complex." Fikes met with petitioner regarding these complaints. Petitioner believed some of the residents "were making fun of him because he was disabled." He told Fikes his current work site was "too stressful for him" and asked to be transferred. On October 31, 2014, petitioner and two other security officers

were assigned to work at an outdoor construction site.

¶ 16 Fikes stated that, immediately upon arriving at the outdoor job site, petitioner told Fikes he could not work in the cold. Fikes told petitioner he "would be assigned one of [Steiner's] vehicles so that [petitioner] would not need to be in the cold for long periods of time." Petitioner "began yelling" at Fikes and told him he was not going to work at the construction site. Petitioner tried to hand over his badge several times. Fikes asked petitioner to wait and called McGrew. She told Fikes that, if petitioner wanted to resign, "to take his badge and let him go." Fikes stated he then took petitioner's badge and let him leave. Fikes denied that he told petitioner McGrew made the decision to discharge him. McGrew told the investigator petitioner resigned his position and she did not tell Fikes to discharge him.

¶ 17 Petitioner stated in rebuttal that he answered the fitness for duty affidavit truthfully, and that the affidavit did not mention anything about being required to work outside in the cold. Petitioner further stated that Steiner discharged him and fraudulently indicated on its paperwork that he had resigned.

¶ 18 After its investigation, the Department concluded the evidence did not reveal that Steiner harassed, reprimanded, treated unequally, or discharged petitioner because of his physical disabilities, finding a lack of substantial evidence for each claim. The Department noted petitioner was disabled under the Act, and Steiner denied it was aware of his disabilities. The Department found no evidence that petitioner was harassed because of his physical disabilities, as petitioner's allegations did not include incidents which referred to his disabilities or were sufficiently severe or pervasive to rise to the level of harassment. Further, there was no evidence Steiner engaged in any actions to create a hostile work environment. The Department found Steiner took prompt

remedial actions regarding petitioner's harassment complaint against Bibbs.

¶ 19 The Department found no evidence Steiner "suspended" petitioner because of his physical disability. Rather, Steiner issued petitioner a written reprimand "for failure to make required rounds," and the evidence showed Steiner had issued a written reprimand to a non-disabled employee for the same conduct. The Department found petitioner failed to identify, or the investigation to reveal, any other employee who was not issued a written reprimand under similar circumstances.

¶ 20 The Department found no evidence that Steiner subjected petitioner to unequal terms and conditions of employment because of his disabilities when it assigned him from an indoor post to an outside post. It found Steiner's practice was to assign security officers based on business needs, officers were constantly assigned to different posts, and two other, non-disabled, employees were given the same outdoor assignment. Further, when Steiner offered petitioner to use of a heated vehicle to avoid the cold, he declined the offer.

¶ 21 The Department lastly found no evidence that Steiner discharged petitioner because of his physical disabilities. Noting the parties disagreed regarding whether petitioner was discharged or had resigned, the Department found that, even if Steiner did discharge him, it had also discharged non-disabled employees and there was no evidence it held an animus against petitioner because of his disabilities. The Department dismissed petitioner's charge for lack of substantial evidence.

¶ 22 Petitioner filed a request for review with the Commission. He argued that, during the Department's "Fact Founding Meeting" on January 27, 2015, McGrew admitted to the Department's investigator that she had fired petitioner because he had a medical disability, specifically because he was "anemic" to cold and could not work outside. Petitioner also argued,

inter alia, McGrew admitted to a case worker from the Illinois Department of Employment Security (IDES) that she knew petitioner could not work outside in the cold and that Hunter lied to the IDES administrative law judge about petitioner being fired.[1] Petitioner alleged McGrew filed a "false" lawsuit against him, "committed fraud," and, along with Hunter, "made false documents to the State of Illinois Department of Human Rights."

¶ 23 The Department responded to petitioner's request for review reiterating the findings from its investigation. It specified that petitioner's job description indicated he may be assigned to a variety of worksites, including outdoor construction sites, and he must be physically capable of walking extended patrol routes as part of the job. The Department also argued that petitioner's allegations regarding McGrew and Hunter's false statements and perjury were bare assertions and did not constitute evidence linking Steiner's actions to protected disabilities. The Department argued petitioner's request for review contained no evidence establishing a nexus between Steiner's actions and any protected disability.

¶ 24 On February 28, 2019, after reviewing petitioner's request and the Department's response, the Commission sustained the Department's dismissal of all counts of petitioner's charge for lack of substantial evidence. The Commission found there was no evidence that the one-time interaction with Bibbs "rose to the level of a 'steady barrage' of hostile and abusive conduct required for an actionable harassment claim," or that this interaction was motivated by any discriminatory animus toward petitioner. Further, the Commission found no substantial evidence that the October 7, 2014, reprimand constituted an "adverse" job action to support a discrimination claim, or that the

[1] Documentation attached to petitioner's request for review by the Commission shows he filed for unemployment benefits with IDES. Steiner contested the claim, IDES denied petitioner benefits, and he filed for administrative review in the circuit court.

reprimand was motivated by petitioner's disabilities given that a non-disabled coworker was subject to the same discipline regarding the same conduct.

¶ 25 Lastly, with regard to petitioner's claims of unequal terms and conditions of employment and discharge, the Commission found the record did not show that Steiner failed to accommodate petitioner when he was assigned to the outdoor work site. It found Steiner reassigned petitioner at his request and he declined the offer to warm up in a vehicle. The Commission found petitioner's own claimed inability to work outside rendered him incapable of performing the job for which he was hired, with or without an accommodation, and there was no evidence of discrimination. The Commission sustained the Department's dismissal of petitioner's charge.

¶ 26 On March 11, 2019, petitioner filed a petition for administrative review with this court. We have jurisdiction to review the final order of the Commission pursuant to § 5/8-111(B) of the Act (775 ILCS 5/8-111(B) (West 20140)) and Supreme Court Rule 335 (eff. Oct. 15, 2015).

¶ 27 As an initial matter, we note petitioner's appellate brief does not comply with Illinois Supreme Court Rule 341(h) (eff. May 25, 2018), which governs the content of appellate briefs.[2] For example, petitioner's brief contains no "Points and Authorities" statement outlining the points argued and authorities cited in the Argument (see Rule 341(h)(1)), no statement of jurisdiction (see Rule 341 (h)(4)), and no argument supported by citations to the record or legal authority (see Rule 341(h)(7)). We may strike a brief and dismiss the appeal for failure to comply with the rules. *Marzano v. Dept. of Emp't. Sec.*, 339 Ill. App. 3d 858, 861 (2003). Further, as the Commission correctly points out, petitioner's failure to present a developed legal argument or support his

[2] Petitioner's brief consists of a cover page identifying the case and photocopies of the complaint for review he filed with the Commission and of the attachments thereto.

contentions with legal authority forfeits review of his claims. *In re. Je.A.*, 2019 IL App (1st) 190467, ¶ 57. Nevertheless, it is clear petitioner challenges the Commission's final order and we have the benefit of the Commission's cogent brief. As the issue is evident and the merits of the appeal can be readily ascertained from the short record on appeal, we choose to reach those merits. See *Twardowski v. Holiday Hospitality Franchising, Inc.*, 321 Ill. App. 3d 509, 511 (2011).

¶ 28 It is unlawful under the Act to discriminate against a person based on a physical or mental disability. 775 ILCS 5/5-102(A) (West 2014). Where an aggrieved person brings a charge under the Act, the Department investigates to determine whether the allegations are supported by substantial evidence. 775 ILCS 5/7A-102(C)(1) (West 2018). "Substantial evidence is evidence which a reasonable mind accepts as sufficient to support a particular conclusion and which consists of more than a mere scintilla but may be somewhat less than a preponderance." 775 ILCS 5/7A-102(D)(2) (West 2018). If the Department determines there is no substantial evidence supporting the charge, the charge is dismissed. 775 ILCS 5/7A-102(D)(3) (West 2018). The charging party may then commence an action in the circuit court or, as petitioner did here, file with the Commission a request for review of the dismissal. 775 ILCS 5/7A-102 (D)(3) (West 2014).

¶ 29 Upon a properly filed request for review, "the Commission may consider the Department's report, any argument and supplemental evidence timely submitted, and the results of any additional investigation conducted by the Department in response to the request." 775 ILCS 5/8-103(B) (West 2014). Judicial review of the Commission's final order is sought by the filing of a petition for review with this court. 775 ILCS 5/8-111(B)(1) (West 2014).

¶ 30 We review the Commission's final order sustaining the dismissal of a discrimination charge for lack of substantial evidence under an abuse of discretion standard. *Young v. Ill. Human*

Rights Comm'n, 2012 IL App (1st) 112204, ¶¶ 32-33. "Under the abuse of discretion standard, the court should not disturb the Commission's decision unless it is arbitrary or capricious." *Id*., ¶ 33. A decision is arbitrary or capricious if it contravenes the legislature's intent, fails to consider a crucial aspect of the problem, or offers an impossible explanation contrary to agency expertise. *Owens v. Dep't. of Human Rights*, 403 Ill. App. 3d 899, 917 (2010). An abuse of discretion will be found where no reasonable person could agree with the position of the lower court. *Young*, 2012 IL App (1st) 112204, ¶ 33.

¶ 31 We review the final order of the Commission, not the Department decision. *Zaderaka v. Illinois Human Rights Comm'n*, 131 Ill. 2d 172, 180 (1989). The Commission's findings of fact "shall be sustained unless the court determines that such findings are contrary to the manifest weight of the evidence." 775 ILCS 5/8-11(B)(2) (West 2014). We will not reweigh the evidence or substitute our judgment for that of the Commission. *Owens*, 403 Ill. App. 3d at 917.

¶ 32 For the following reasons, we find the Commission did not abuse its discretion in sustaining the Department's dismissal of petitioner's charge for lack of substantial evidence that petitioner was harassed, reprimanded as an adverse job action, treated unequally to his non-disabled coworkers, or discharged due to his disabilities.

¶ 33 It is a civil rights violation for any employer to subject an employee to harassment based on unlawful discrimination. See *Village of Bellwood Bd. of Fire and Police Com'rs v. Human Rights Com'n*, 184 Ill. App. 3d 339, 350-51 (1989) (finding employer committed a civil rights violation, in part due to racial harassment of employee). In analyzing claims of violations under the Act, we are guided by federal case law relating to federal anti-discrimination statutes such as Title VII of the Civil Rights Act of 1964. *Zaderaka v. Illinois Human Rights Com'n*, 131 Ill. 2d

172, 178 (1989).

¶ 34 In the employment context, harassment is "conduct that unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment." *Ngeunjuntr v. Metropolitan Life Ins. Co.*, 146 F. 3d 464, 467 (7th Cir. 1998). Such conduct is "sufficiently severe or pervasive so that a reasonable person would find it hostile and the victim himself subjectively sees as abusive." *Id*. The employee must face a "steady barrage" of offensive comments, and "more than a few isolated incidents of harassment" in order to trigger civil rights protective measures. *Village of Bellwood*, 184 Ill. App. 3d at 350. An employer may avoid liability if it promptly investigates a complaint and, if necessary, takes reasonable steps to stop the harassment. *Lucero v. Nettle Creek School Corp.*, 566 F. 3d 720, 731 (7th Cir. 2009).

¶ 35 Petitioner charged that, on September 27, 2014, his coworker Bibbs harassed and threatened him due to his disabilities and that Steiner took no action to address the situation. However, petitioner provided no evidence that this incident of purported harassment was in any way related to his stroke and anemia disabilities. See *Ngeunjuntr*, 146 F. 3d at 467 (affirming summary judgment regarding employee's Title VII claim alleging workplace harassment where some of the incidents described did not give rise to an implication that the conduct was the result of discrimination). Further, the evidence before the Commission showed Steiner took immediate action to address the incident, and that petitioner and Bibbs both agreed the matter was settled. See *Lucero*, 566 F. 3d at 731 (employer avoids liability through prompt investigation of a harassment complaint and reasonable steps to stop the harassment). Lastly, a single, isolated incident of harassment is not enough to trigger civil rights protection under the Act. See *Village of Bellwood*, 184 Ill. App. 3d at 350. Accordingly, the Commission did not abuse its discretion in sustaining the

Department's dismissal of petitioner's harassment claims for lack of substantial evidence.

¶ 36 We also find the Commission did not abuse its discretion in dismissing his reprimand/adverse job action, unequal terms and conditions of employment, and discharge charges, which all allege various acts of employment discrimination. The Act prohibits employment discrimination against individuals with physical and mental disabilities. 775 ILCS 5/1-102(A) (West 2018); *Raintree Health Care Center v. Illinois Human Rights Com'n*, 173 Ill. 2d 469, 479 (1996). Petitioner provided no direct evidence of discrimination but can provide indirect evidence of discrimination by satisfying the three-part test set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Hoffelt v. Illinois Dep't of Human Rights*, 367 Ill. App. 3d 628, 632-33 (2006); *Zaderaka*, 131 Ill. 2d at 178-79.

¶ 37 Under this test, a complainant must first establish by a preponderance of evidence a *prima facie* case of unlawful discrimination. *Zaderaka*, 131 Ill. 2d at 178-79. If a *prima facie* case is established, a rebuttable presumption arises that the employer unlawfully discriminated against the complainant. *Id*. At 179. In order to rebut the presumption, the employer must articulate, not prove, a legitimate, nondiscriminatory reason for its decision. *Id*. Lastly, if the employer meets its burden, the complainant must then prove by a preponderance of the evidence that the employer's articulated reason was instead a pretext for unlawful discrimination. *Id*. The ultimate burden to prove of unlawful discrimination remains with the complainant. *Id*.

¶ 38 To establish a *prima facie* claim for disability employment discrimination under the Act, a petitioner must establish (1) that he is disabled as defined in the Act; (2) an adverse employment action was taken against him because of his disability; and (3) his disability is unrelated to his ability to perform the functions of the job. *Van Campen v. International Business Machines Corp.*.

326 Ill. App. 3d 963, 971 (2001). Adverse employment action is "materially adverse" and not "mere inconvenience or an alteration of job responsibilities." *Owens*, 403 Ill. App. 3d at 919. Materially adverse employment actions could include "hiring, denial of promotion, reassignment to a position with significantly different job responsibilities, or an action that causes a substantial change in benefits." *Id*. This court has held that oral and written reprimands alone do not constitute adverse employment action for purposes of establishing a *prima facie* case of employment discrimination. *Id*. at 920.

¶ 39 Further, under the Department's regulations, employers must make reasonable accommodation of known physical limitations of otherwise qualified disabled employees. 56 Ill. Admin. Code § 2500.40(a). However, if an employee is incapable of performing his or her present job, the duty of reasonable accommodation does not extend to giving the employee another job which that employee can perform. *Fitzpatrick v. Human Rights Com'n*, 267 Ill. App. 3d 386, 392 (1994). For the following reasons, we find the Commission did not abuse its discretion in sustaining the Department's dismissal of petitioner's charges of employment discrimination based on his disabilities.

¶ 40 The Commission did not abuse its discretion when it affirmed the Department's dismissal of petitioner's charges that Steiner issued a written reprimand to him on October 7, 2014, because of his stroke and anemia disabilities. The evidence showed Steiner issued the written reprimand on that date due to petitioner's unsatisfactory job performance for "not making his rounds." Petitioner presented no evidence that Steiner issued this reprimand to him because of his disabilities. In fact, the evidence shows a non-disabled coworker was issued a reprimand for the exact same conduct. Further, a written reprimand alone does not constitute adverse employment

action for purposes of establishing a *prima facie* case of employment discrimination, and petitioner presented no evidence that the reprimand was so "materially adverse" that it impacted his job responsibilities or caused a substantial change in his benefits. See *Owens*, 403 Ill. App. 3d at 919-20. Accordingly, the Commission did not abuse its discretion in affirming the dismissal of the charges related to petitioner's reprimand.

¶ 41 Assuming Steiner did discharge petitioner on October 31, 2014, and he did not resign, we find the Commission also did not abuse its discretion in finding no substantial evidence that petitioner's reassignment to an outdoor work site and his subsequent discharge on October 31, 2014, was employment discrimination. Petitioner presented no evidence that he was transferred to the outdoor site because of his anemia or stroke. Rather, the evidence showed he was transferred from the indoor site at his own request when that site became too "stressful" for him, and that two other security officers, both non-disabled, were transferred to the outdoor site at the same time.

¶ 42 Petitioner claimed that he was unable to work outside because of his stroke and anemia disabilities and, therefore, his request for a transfer to an indoor location as an accommodation should have been allowed and he should not have been discharged. However, as the Commission found, Steiner was not required to transfer petitioner to an indoor job. Petitioner was hired with the knowledge that he could be assigned to different security posts due to need and was required to perform all duties related to those posts, including walking an extended patrol route, and he signed a fitness for duty affidavit, indicating he had no physical limitations to perform the duties of a security officer. Since petitioner's own evidence showed his disabilities interfered with his capability to perform all duties related to working as a security officer at the outdoor construction site, Steiner's duty of accommodation did not extend to giving petitioner another job which he

would be able to perform. See *Fitzpatrick*, 267 Ill. App. 3d at 392.

¶ 43 Moreover, the evidence shows that Steiner did in fact offer petitioner a reasonable accommodation for his disabilities, the use of a heated vehicle, but that petitioner refused it. Petitioner presented no evidence that his alleged discharge was for anything other than his resultant inability to perform the essential functions of his job. He presented no evidence that Steiner terminated his employment because of his stroke and anemia. The Commission thus did not abuse its discretion in affirming the Department's dismissal of petitioner's charges regarding his job reassignment and alleged discharge.

¶ 44 For the foregoing reasons, the Commission's February 2019 order sustaining the Department's dismissal of petitioner's charges for lack of substantial evidence is affirmed.

¶ 45 Affirmed.