

NOTICE
Decision filed 10/23/26. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2026 IL App (5th) 250278-U
NO. 5-25-0278
IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

MICHAEL EDWARDS,	)	Petition for Direct
	)	Administrative Review of an
Petitioner,	)	Order of the Illinois Human
	)	Rights Commission
v.	)	
	)	No. 2011SF2976
THE ILLINOIS HUMAN RIGHTS COMMISSION,	)	ALS No. 19-0085
THE DEPARTMENT OF HUMAN RIGHTS, and	)	
THE DEPARTMENT OF CORRECTIONS,	)	
	)	
Respondents.	)	

JUSTICE BOLLINGER delivered the judgment of the court.
Justices Boie and Vaughan concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission’s ruling in favor of the Illinois Department of Corrections was not against the manifest weight of the evidence on Edwards’s claim that he was denied promotion because of his sex, where Edwards did not prove by a preponderance of the evidence that the Department’s stated, legitimate nondiscriminatory reason for selecting another candidate was a pretext for sex discrimination. We also reject Edwards’s challenges to the dismissal of his race count, the treatment of a complaint paragraph as a judicial admission, the use of a substitute administrative law judge, and the denial of discovery sanctions.

¶ 2 In September 2010, petitioner Michael Edwards, who was employed by the Illinois Department of Corrections (IDOC) at that time, submitted an application for an open clinical services supervisor (CSS) position. Following the interview process, the position was awarded to a different applicant. Subsequently, petitioner lodged a charge of discrimination, asserting that he

was not granted the position due to unequal treatment during the interview process on account of his race, and that his promotion was denied on the basis of his gender. Thereafter, a two-count complaint was filed against IDOC with the Human Rights Commission (Commission), culminating in a three-day hearing several years later. The administrative law judge (ALJ) issued a recommended order and decision, dismissing the first count and ruling in favor of IDOC on the second count. After filing an exception, petitioner submitted a direct appeal to this court. After thoroughly reviewing the record, we affirm the Commission's order in favor of IDOC.

¶ 3

I. BACKGROUND

¶ 4 On February 22, 2019, in accordance with the provisions of the Illinois Human Rights Act (Act) (775 ILCS 5/1-101 *et seq.* (West 2018)), the Illinois Department of Human Rights (Department) filed a two-count complaint with the Commission on behalf of petitioner. In 2010, petitioner was employed by IDOC as a major and shift commander at Pinckneyville Correctional Center (PCC). A vacancy for a CSS was posted, with applications accepted from September 10, 2010, to September 23, 2010. Petitioner submitted his application in a timely manner and asserted that he was “well-qualified for the CSS position.” Another applicant, Kim Butler, also applied, and both candidates were interviewed. Petitioner contended that during his interview, interviewers asked him questions not posed to other candidates and interrupted him while he was responding. Additionally, he alleged that the interviewers spoke to him in a “low tone,” making it difficult for him to hear. Concerning the first count, he asserted that as a result of being subjected to “unequal terms and conditions of employment” during the interview process—allegedly due to his race, being Black—he suffered damages. Regarding the second claim, he maintained that Butler was selected despite being less qualified, and he contended that his nonselection was attributable to his gender, resulting in damages.

¶ 5 IDOC filed a responsive pleading, and the parties engaged in discovery. Relevant to this appeal, in December 2022, petitioner filed a motion for sanctions, alleging that IDOC willfully failed to comply with discovery. In February 2023, the ALJ declined to strike IDOC’s answer as a sanction to the claimed discovery violation. Instead, the ALJ indicated that it would consider petitioner’s request for attorney fees once counsel submitted a sworn affidavit specifying the number of hours spent preparing the sanctions motion. IDOC was granted additional time to respond to discovery. In March 2023, petitioner filed a motion to approve attorney fees and an emergency motion for sanctions, again alleging that IDOC had failed to comply with discovery. In April 2023, the ALJ issued an order denying petitioner’s emergency motion for sanctions and his motion to approve attorney fees. In May 2023, the ALJ issued a subsequent order denying petitioner’s motion to reconsider that ruling.

¶ 6 The two-count complaint eventually proceeded to a hearing held on August 23, 2023, which lasted for three days. For context, both the petitioner and Butler applied for the CSS position, a role that would have constituted a promotion for each. A two-member panel conducted Rutan¹ interviews with petitioner, Butler, and four other candidates. The panel received standardized questions, each scored on a scale of one to four, with each score’s weight predetermined. Candidates were evaluated based on knowledge and experience, education and training, planning, leadership and interpersonal relations, and communication skills. The scores for each category were aggregated, weighted according to the predetermined percentages, averaged between the two interviewers, and subsequently summed to determine a final score. More specifically, Butler

¹“The *Rutan* structured interview process is named for the U.S. Supreme Court case, *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 110 S. Ct. 2729, 111 L.Ed.2d 52 (1990), which held that hiring, promotion, transfer, and recall of employees may not be based on party affiliation or support and, instead, must be based on the merits and qualifications of candidates.” *Leskovisek v. Illinois Department of Transportation*, 506 F. Supp. 3d 553, 559 (C.D. Ill. 2020).

scored 3.667 in knowledge and experience, compared with petitioner's score of 3.333. Both scored 2.500 in education and training and 3.000 in planning. In leadership and interpersonal skills, Butler scored 3.333, while petitioner scored 2.333. Both scored 2.500 in communication. The composite final scores were 3.117 for Butler and 2.817 for petitioner. Petitioner took issue with the scoring in some of the individual categories. Only the testimony relevant to the issues on appeal will be discussed herein.

¶ 7

A. William Peyton

¶ 8 Peyton participated as an interviewer on December 17, 2010, and was familiar with the Rutan interview requirements. While employed by IDOC, he conducted approximately 100 Rutan interviews. He was never subject to disciplinary action related to any conduct during these interviews. Prior to conducting the interview for the CSS position, he was unfamiliar with the interviewees. He affirmed that no undue influence during the Rutan interviews led him to assign Butler a higher score. All candidates were asked the same set of questions provided to him in the interview packet; he did not compose them himself. His subjective determinations of the candidate's answers were subjected to oversight because, once the Rutan interview was completed, the results were forwarded to the human resources personnel, who then sent them to the hiring department for review. It was appropriate to discuss his evaluations with the other scorer, and indeed it was encouraged.

¶ 9 He documented the candidate's responses and was permitted to discuss them with the other interviewer before the score was tabulated. Butler was rated based on her acting as the clinical service supervisor the previous year and her nine-year tenure as a supervisor at Pinckneyville. He gave Butler a combined average score of 3.667 points for knowledge and experience. More specifically, regarding the three questions concerning knowledge and experience, he rated both

petitioner and Butler as four on the first two questions. For the third question, which asked to “describe a typical situation in which you were required to rely upon your knowledge and experience in order to successfully counsel and guide an individual with behavioral problems,” he scored petitioner at two and Butler at three. He differentiated their assessments because Butler provided an answer that was directly pertinent to the work involved. She described a scenario in which she had to assess and evaluate an inmate’s treatment and educational needs to determine his capacity to complete the program. This was significant to him because it directly related to the responsibilities and required her to rely on her own knowledge and experience to effectively counsel and guide an individual through the system. Her response was more explicitly aligned with the question posed.

¶ 10 With regard to education and training, the criteria mandated an equivalency to a master’s degree in behavioral and social sciences. Petitioner possessed a master’s degree in rehabilitation counseling, and Butler held a bachelor’s degree; both individuals received the same score of 2.500. Butler accumulated 15 credit hours towards a rehabilitation counseling degree and possessed “above average additional training.” If an individual possessed a degree higher than a master’s, it would bring them closer to a score of four. Additionally, work experience could be a relevant factor. He considered Butler’s IDOC experience when determining her scores.

¶ 11 Regarding leadership and interpersonal relationships, Butler discussed a hostage situation in which she was involved. She outlined her plans for the following day and described fostering teamwork among her colleagues. Petitioner stated that he “compiled a lot of info” for the attorney general’s office and maintained a positive rapport, though he did not specify a particular incident. The distinction between their answers was that she emphasized her interactions with her staff and efforts to unify them into an effective team, whereas petitioner did not detail a specific situation.

¶ 12 Peyton contested petitioner's allegations that he failed to record all of his answers, explaining that it was not feasible to document every response. Regarding why he asked petitioner an additional question during the interview, Peyton stated that he asked petitioner about a certain certification he held to clarify whether it pertained to a substance abuse certification. Under Rutan procedures, he was permitted to ask clarifying questions. Confirming petitioner's certification would not adversely influence his evaluation; in fact, it could potentially enhance it. He did not recall whether, during the interview, petitioner made any complaints that he could not hear or that they were being too softly spoken.

¶ 13 He was not personally acquainted with Butler but had interacted with her in a professional capacity. He did not know her outside the workplace, nor was he influenced to assign her undeserved scores. Ultimately, he and the other interviewer, Gregory Schwartz, recommended Butler.

¶ 14 B. Gregory Schwartz

¶ 15 Schwartz obtained certification to conduct Rutan interviews in 2004. During his tenure with IDOC, he conducted more than 100 Rutan interviews. The human resources department in Springfield determines the percentage weight assigned to specific scores, and he did not set these weights himself.

¶ 16 He was acquainted with petitioner, as petitioner was one of his employees at PCC during the period when Schwartz served as the acting warden from November 2008 to December 2009. He appointed petitioner as a temporary CSS. Merely having temporarily worked in a position does not entitle an individual to be awarded that position permanently when it becomes available. He knew Butler before the interview because of their previous working relationship.

¶ 17 The CSS position posting stated that it “[r]equires education and experience equivalent to a master’s degree,” which he equated to being based on experience, education, and training. No established guidelines specified the amount of training required, in conjunction with a bachelor’s degree, to be deemed equivalent to a master’s degree. It was subjective.

¶ 18 Butler’s points were reviewed with him. He noted that she possessed caseworker experience within the Bureau of Identification, where inmates were required to obtain ID cards and undergo fingerprinting upon entry. This department was part of the CSS division, and she served there for seven years, including one year as acting CSS. She was subsequently promoted to counselor, then to a role within the Bureau of Identification, followed by caseworker supervisor, and ultimately served as acting CSS. Petitioner had 10 years of clinical experience.

¶ 19 Regarding the inquiry about a situation that positioned them in a leadership role, he rated Butler higher than petitioner because her response was more detailed than petitioner’s. On the question about the specific techniques they would implement to manage caseloads, he rated Butler higher than petitioner because her answer was more specific.

¶ 20 In his capacity as warden, he was never involved in disciplinary actions concerning petitioner and did not encounter any issues with him as an employee. Petitioner’s race or sex did not influence the interviews. He denied informing Terri Bryant that it would be a cold day in hell before petitioner ever attained the position of CSS.

¶ 21 He disagreed with petitioner’s assertion that he did not fully score his answers. He did not recall whether petitioner ever lodged a complaint about being unable to hear the questions or about them being mumbled and spoken in a low voice.

¶ 22

C. Kimberly Butler

¶ 23 She was retired from IDOC and worked part-time with a private investigator firm. She earned a bachelor's degree in 1992 from Southern Illinois University, majoring in the administration of justice. She served in the National Guard and subsequently held a supervisory position with the Bureau of Identification from July 2004 to November 2006. She then served as a casework supervisor from November 2006 to July 2009 at Menard Correctional Center (Menard). In July 2009, she transferred to PCC, where she also served as casework supervisor.

¶ 24 She applied for the vacant CSS position at PCC in 2010. Before the interview, she performed CSS clinical service functions. At the time of her application, she had worked for IDOC for 18 years. When she applied for the position, she was pursuing a master's degree in rehabilitation but did not complete it. She opined that her 18 years of experience, although not gained through classroom instruction, constituted practical expertise. Before interviewing for the CSS position, she volunteered for additional duties to gain comprehensive knowledge of the system. She volunteered and joined the audit team. She also contributed to the American Correctional Association accreditation process and served on the hostage team.

¶ 25 After being awarded the CSS position, she remained in it for approximately one year before transitioning to the role of assistant warden of programs at Menard, where she served for three years. She was later promoted to warden of programs at Menard in 2014. She later became chief of programs for the entire state, from which she retired in 2017.

¶ 26

D. Terri Bryant

¶ 27 At the time of her testimony, she served as an Illinois State Senator; however, she previously worked for IDOC at PCC for 14 years, during which she served as public service administrator. She was acquainted with both petitioner and Butler, having worked with them both.

¶ 28 She recalled having discussions with Schwartz regarding petitioner but did not remember whether these discussions occurred when he was serving as warden or assistant warden. She opined that petitioner did not obtain the position due to his race.

¶ 29 She spoke with Schwartz, who reportedly expressed that “hell would freeze over” before petitioner would secure the job, leading her to believe that petitioner faced discrimination based on his racial background. She acknowledged that Schwartz did not explicitly state it was because of race. She deemed petitioner qualified for this position.

¶ 30 E. Petitioner

¶ 31 In 2015, he retired from his position as assistant warden of programs at IDOC. His employment with IDOC commenced on July 26, 1993. He initially served as an officer at Menard Correctional Center, then advanced to counselor. In 1998, he transferred to the PCC. He served as major, overseeing the security shift and was responsible for assembling the roster, assigning officers to various posts, managing security concerns, and overseeing staff discipline. In 2009, he applied for a temporary assignment to CSS, which was subsequently granted with specific conditions. At that time, Schwartz served as the acting warden. The conditions required him to perform CSS duties temporarily alongside his regular responsibilities as a shift commander. The temporary assignment was scheduled for four months. After completing this assignment, he returned to his role as the midnight shift major. A permanent position became available in May, to which he applied; however, he received no response. The minimum qualifications for this opening included at least four years of college education supplemented by a master’s degree in behavioral or social sciences, which he possessed. No other candidates applied for this position, and it was subsequently reposted in September 2010, with identical educational requirements. He applied for

this reposted position, holding both a bachelor's and a master's degree at the time of application, and testified about his employment history and all relevant certificates.

¶ 32 He found it ridiculous that he and Butler received identical scores on education. He believed he should have been rated a four instead of a two for education and training because he held a master's degree. He claimed the interviewers deliberately spoke quietly, preventing him from hearing them.

¶ 33 Petitioner affirmed that he had not been reprimanded or suspended at any time. He testified about his promotions, three of which he received between 1993 and 1998. He obtained the CSS position in 2013. The minimum prerequisites for the CSS job posting required candidates to have knowledge, skills, and mental development equivalent to completing four years of college, supplemented by a master's degree. However, he interpreted this as requiring both a college degree and a master's degree. He lacked evidence that the withdrawal of the initial job posting in May 2009 was due to his race or sex; rather, this was his perception.

¶ 34 Approximately two weeks after Butler obtained the position, he submitted a complaint to IDOC. After submitting the complaint, IDOC's affirmative action office interviewed him. He told Vickie Fair, the interviewer from the IDOC's affirmative action department, that his allegations stemmed from his personal feelings. At that time, he questioned Butler's suitability for the position because she lacked a master's degree. He also consulted his union representative, Terri Bryant, and asked her to file a grievance. He conveyed that he believed he was overlooked for the position for three reasons, none of which were related to sex or race.²

²Although the petitioner did not testify as to the "three reasons," the document about which he testified was his typed narrative, which included a summary of his complaint to Bryant. The three reasons he gave her for not receiving the position were: (1) the warden and assistant warden wanted Butler to receive the position; (2) PCC "established a different set of qualifications against which an applicant should be measured for the position"; and (3) he was not given "full credit" for his knowledge, skill, and abilities.

¶ 35 He stated that Schwartz, who held a position of authority over him, did not communicate with him, and “in [his] mind” it was because he was Black. He noted that Schwartz treated him differently than other employees. Throughout his employment, he filed two grievances against Schwartz; however, neither grievance was related to race. He was unsure why Schwartz had a problem with him. He and Schwartz disagreed about how petitioner completed his reportables. When staff members made errors, he addressed the issues directly and documented them accordingly. Schwartz commenced requiring petitioner to submit his reportables to him for review and subsequent transmission, aiming to “minimize them.”

¶ 36 F. Tamara Brown

¶ 37 She was employed by the Department of Corrections Office of Affirmative Action. Her office reviewed, investigated, and responded to complaints concerning discrimination, harassment, and sexual harassment. She held this position for 13 years, including in 2009. She was familiar with the internal complaint filed by petitioner. Employees had a process to report allegations of discrimination or harassment. Petitioner submitted a complaint to the affirmative action department regarding the Rutan interviews and his failure to obtain the CSS position. The complaint was investigated (although she did not testify as to the outcome). Petitioner was the only individual to file a complaint against Peyton or Schwartz concerning alleged racial discrimination during an interview process.

¶ 38 G. Damages

¶ 39 The parties immediately proceeded to the damages segment of the hearing. Petitioner testified that he was claiming financial loss dating back to 2010. He alleged a pay difference between his step and the corresponding step as CSS from 2010 to 2018, totaling \$184,384.07. Petitioner included up to 2018, as it was not his intention to retire in 2016; however, “[a]ll of the

stuff happened and the humiliation and the shame and embarrassment and tarnished reputation all resulted in me taking my early retirement and leave.”

¶ 40 The parties submitted written closing arguments. Petitioner contended that he had established a *prima facie* case demonstrating that IDOC engaged in unlawful discrimination on the grounds of race and sex by failing to promote him to the CSS position. He asserted that, compared with Butler, he was “far superior and more qualified.” He maintained that IDOC failed to “articulate a legitimate, nondiscriminatory reason for its actions by competent evidence.” He requested damages totaling \$300,567.71, which included back pay, longevity pay, and emotional distress.

¶ 41 On April 29, 2024, the parties filed a joint motion for the appointment of a substitute ALJ. The ALJ who had heard the testimony unexpectedly passed away before rendering a finding of fact and recommendation. The joint motion was granted, and ALJ Azeema N. Akram was assigned to the matter.

¶ 42 A recommended order and decision was issued on May 9, 2024. After reviewing the record and weighing the evidence, the ALJ concluded that petitioner did not establish by a preponderance of the evidence that IDOC’s failure to promote him was attributable to his membership in a protected class, thereby ruling in favor of IDOC. The ALJ noted that petitioner abandoned his claim of race discrimination, leading to its dismissal, and stated:

“Complainant has apparently abandoned his claim of Unequal Terms and Conditions of Employment based on race as pled in Count I of his complaint. Rather than advance that claim, he attempts to conflate his two claims by now alleging that Respondent failed to promote him based on his race (in addition to his sex). Throughout his post-hearing briefs, Complainant’s counsel insists that the failure to promote claim originally included

a race discrimination claim. However, a close reading of the Complaint reveals that Complainant asserted a race discrimination claim in his Charge of Discrimination only with respect [to] his Unequal Terms and Conditions of Employment claim, and a sex discrimination claim with respect to his failure to promote to the CSS position.

In a civil action such as this one, the ‘issues in controversy and the theories upon which recovery is sought are fixed in the complaint.’ *Steadfast Ins. Co. v. Caremark Rx, Inc.*, 373 Ill.App.3d 895, 900, 869 N.E.2d 910, 915 (2007) (internal citations omitted). A party cannot seek judgment on a claim or theory that was never pled in the complaint. See *id.* ‘If a [complainant] desires to place issues in controversy that were not named in the complaint, the proper course of action is to move to amend the complaint.’ *Abramson v. Marderosian*, 2018 IL App (1st) 180081, ¶ 55 (quoting *Filliung v. Adams*, 387 Ill.App.3d 40, 51, 899 N.E.2d 485, 496 (2008) (internal citations omitted)).”

The ALJ indicated that petitioner never amended his complaint to include a claim of failure to promote based on race, thereby maintaining his claim of unequal terms and conditions of employment based on race. The ALJ stated that he was precluded from transforming that claim into a race-based failure-to-promote claim, and that judgment cannot be entered on an unpled claim. Additionally, because petitioner did not pursue the claim he initially asserted regarding unequal terms and conditions of employment during his case-in-chief, that claim was dismissed.

¶ 43 The ALJ then discussed the three-step analysis required to determine whether there was a violation of the Act. More specifically, the claimant must first establish a *prima facie* case of unlawful discrimination by a preponderance of the evidence. At that point, the burden shifts to the respondent to “articulate a legitimate, non-discriminatory reason for the adverse action(s) taken against” complainant. If the respondent is successful, the presumption of unlawful discrimination

is no longer present, and the complainant is required to prove by a preponderance of the evidence that the respondent's articulated nondiscriminatory reason is a pretext for unlawful discrimination.

¶ 44 The ALJ first noted that petitioner admitted in his complaint that Butler scored higher than him:

“Complainant's counsel starts off his reply brief with his contention that Complainant wins this case because Respondent never presented a live witness to provide an articulation to explain why Complainant was not selected for the CSS position. Thus, assuming Complainant has established a *prima facie* case of sex discrimination, Respondent has not rebutted the *prima facie* case of discrimination. Yet, thanks to the judicial admission made in Paragraph Fifty of the instant Complaint that was drafted by the Department's counsel, there was no need to call some unknown functionary from the ‘hiring team’ to testify as to why Butler was hired as the successful candidate for the CSS position, since Paragraph Fifty tells us that ‘Butler was selected to fill the CSS position because her score was higher than Complainant's based on her performance at the interview.’ Moreover, for good measure, Respondent admitted to Paragraph Fifty in its Answer, and thus, Complainant is put in an untenable position of having to put on testimony to prove a fact (*i.e.*, the reason Butler was selected over Complainant) that his own attorney (through the Department) swore to, and a fact to which both parties have now admitted. Indeed, judicial admissions serve a highly useful purpose in dispensing with proof of formal matters of facts about which there is no dispute. See, *McCaskill v. SCI Mgmt. Corp.*, 298 F.3d 677, 681 (7th Cir. 2002).”

¶ 45 Regarding whether petitioner established a *prima facie* case of sex discrimination, the ALJ indicated that petitioner misunderstood the distinction between qualification and experience. The

ALJ noted that the job description did not require a master's degree but rather "knowledge, skill, and mental development equivalent to completion of 4 years of college supplemented by a Master's degree in behavioral or social science." Although petitioner possessed a master's degree, he "cannot argue that he is more qualified than the successful applicant by pointing to distinguishing accolades that were never sought" by IDOC during the application process.

¶ 46 The ALJ further stated that, even if petitioner's experience and education were sufficient to elevate his qualifications above Butler's, his interview was not as positive as Butler's. The interviewers testified that Butler simply provided more detailed answers to their questions. Regarding petitioner's allegations that he was treated differently during the Rutan interview, specifically that he was asked additional questions and that the interviewers spoke in low tones so that he could not hear, the ALJ indicated that these claims were discounted by petitioner's own admission during the hearing, wherein he conceded that he was not present at any of the other candidates' interviews. Additionally, the ALJ observed that Butler was the only candidate who scored higher than petitioner, and if discrimination on the basis of sex had occurred, other female applicants would have been scored higher than him as well.

¶ 47 On June 7, 2024, petitioner filed an exception to the recommended order and decision. On March 4, 2025, the Commission issued an order, accepting the review of the matter and partially adopting and modifying the decision issued on May 9, 2024. The Commission found that the ALJ's conclusion that petitioner failed to establish a *prima facie* case of sex discrimination, based on the lack of proof that he was more qualified than Butler, was in error, finding:

"Here, the Complainant established a *prima facie* case of failure to promote: he was a member of a protected class (male); he applied and was qualified for the Clinical Services Supervisor position; he was rejected despite his qualifications; and the position was filled

by Kimberly Butler (female), who was outside his protected class. The Respondent articulated a legitimate, nondiscriminatory reason for hiring Butler, which was that she scored the highest in the interviews. See *Champaign-Urbana Pub. Health Dist. v. Ill. Human Rights Comm’n*, 2022 IL App (4th) 200357, ¶ 208 (stating that ‘[h]iring someone who the employer believes is better qualified for the position is a legitimate, nondiscriminatory reason’); *Tex. Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248, 259 (1981) (stating that ‘the employer has discretion to choose among equally qualified candidates, provided the decision is not based upon unlawful criteria’). The Complainant did not, however, establish pretext—that his credentials were so superior to Butler’s that the Respondent’s hiring decision must have been based on his sex. Despite the Complainant’s insistence that Butler was not even qualified for the Clinical Services Supervisor position, there was sufficient testimony to support the ALJ’s conclusion that Butler was qualified and that the position did not require a master’s degree but only the equivalent of a master’s degree. This Commission concludes that the ALJ’s ruling in favor of the Respondent is not against the manifest weight of the evidence. See 775 ILCS 5/8A-103(E)(2) (providing that the Commission shall adopt the ALJ’s findings of fact if they are not contrary to the manifest weight of the evidence).”

The Commission affirmed the decision in favor of IDOC but modified the analysis with respect to count II. This appeal timely followed.

¶ 48

II. ANALYSIS

¶ 49 Petitioner raises multiple contentions on appeal. First, he asserts that the Commission erred in dismissing his first count and not considering it as a race-based failure-to-promote claim. Second, he contends that the ALJ erred in treating a statement in his complaint as a judicial

admission. Third, he argues that it was error for a substitute ALJ to review and issue the decision when that ALJ did not originally hear the evidence. Fourth, he claims that the Commission's conclusion that IDOC provided a legitimate, nondiscriminatory reason for promoting Butler was against the manifest weight of the evidence. Finally, he asserts that the ALJ abused its discretion in denying his motion for sanctions for pretrial discovery violations.

¶ 50 The complaint process begins when an aggrieved party files a written charge with the Department. 775 ILCS 5/7A-102(A)(1) (West 2018). The charge must be in sufficient detail to substantially apprise the respondent of the time, place, and facts surrounding the alleged civil rights violation. *Id.* § 7A-102(A)(2). The Department conducts a full investigation sufficient to determine whether the allegations are supported by substantial evidence. *Id.* § 7A-102(C)(1). If no substantial evidence is found, the charge is dismissed and the complainant is notified of the right to seek review of the dismissal before the Commission or to commence a civil action in the circuit court within 90 days of receipt of the Director's notice. *Id.* § 7A-102(D)(3). If the complainant files a request for review with the Commission, the complainant may not later commence a civil action in the circuit court. *Id.* Complaints are filed with the chief ALJ of the Commission. 56 Ill. Adm. Code 5300.610 (1992). After discovery, the matter proceeds to a hearing. 775 ILCS 5/8A-102(F), (G) (West 2018). Both the complainant and the respondent may appear and examine and cross-examine witnesses. *Id.* § 8A-102(G). When all testimony has been taken and posthearing submissions received, the ALJ determines whether the respondent engaged in the civil rights violation charged in the complaint. *Id.* § 8A-102(I)(1). A determination sustaining a complaint must be based upon a preponderance of the evidence. *Id.* The ALJ makes written findings of fact and, if the finding is against the respondent, issues and causes to be served on all parties and the IDHR a recommended order for appropriate relief. *Id.* § 8A-102(I)(2). After the ALJ issues the

recommended order, either party may file written exceptions within 30 days. *Id.* § 8A-103(A). If no exceptions are filed, the recommended order automatically becomes the order of the Commission without further review, and the Commission issues a notice to that effect. *Id.* If exceptions are filed, a three-member panel of the Commission decides whether to accept the case for review. *Id.* § 8A-103(E)(1). If the panel declines to review the recommended order, it becomes the order of the Commission by operation of law. *Id.* If the panel accepts the case, it may adopt, modify, or reverse in whole or in part the ALJ's findings and recommendations. *Id.* When reviewing a recommended order, the Commission must adopt the ALJ's findings of fact if they are not contrary to the manifest weight of the evidence. *Id.* § 8A-103(E)(2).

¶ 51 Once the Commission issues a final order, section 8-111(B) of the Act governs judicial review. *Id.* § 8-111(B). Under section 8-111(B)(1), any complainant or respondent may obtain judicial review of a final Commission order by filing a petition for review in the Illinois Appellate Court within 35 days from the date the decision was served upon the affected party. *Id.* § 8-111(B)(1). Unlike most state administrative proceedings, which are reviewed first in the circuit court under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2018)), the Act provides for direct review by the appellate court, bypassing the circuit court entirely. Section 8-111(B)(2) provides the governing standard: in any proceeding brought for judicial review, 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. 735 ILCS 5/8-111(B)(2) (West 2018). An administrative agency's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *Clark v. Human Rights Comm'n*, 312 Ill. App. 3d 582, 586 (2000). A reviewing court is not justified in reversing a finding made by an agency if it finds that the opposite conclusion is merely reasonable or it might have ruled differently. *Id.* To set aside an

agency's finding as against the manifest weight of the evidence, the reviewing court must be able to say that all reasonable and unbiased persons, acting within the limits prescribed by law and drawing all inferences in support of the agency's finding, would agree that the finding is erroneous. *Habinka v. Human Rights Comm'n*, 192 Ill. App. 3d 343, 371 (1989). Conversely, review of questions of law is given no deference and is subject to a *de novo* standard of review. *Sola v. Human Rights Comm'n*, 316 Ill. App. 3d 528, 535-36 (2000). When the question is a mixed question of fact and law, the reviewing court applies the clearly erroneous standard. *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 392 (2001). A fundamental principle of appellate review is that the reviewing court can review only the Commission's final decision, not the ALJ's findings and recommendations. *Fitzpatrick v. Human Rights Comm'n*, 267 Ill. App. 3d 386, 392 (1994).

¶ 52

A. Count I Dismissal

¶ 53 Petitioner contends that the commission erred by dismissing count I of his complaint because it solely alleged a cause of action rooted in unlawful terms and conditions of employment, and did not encompass a cause of action for failure to promote on the grounds of race discrimination. Specifically, the ALJ observed that petitioner abandoned his race discrimination claim, leading to the dismissal of that count. The ALJ noted that count I alleged unequal terms and conditions of employment attributable to race; however, instead of advancing this claim independently, petitioner conflated it with a claim that IDOC failed to promote him due to his race. The ALJ concluded that petitioner had not amended his complaint to include a failure-to-promote-by-race allegation, thereby leaving only his claim concerning unequal terms and conditions of employment, and that he cannot convert this latter into the former. Furthermore, the ALJ stated that the petitioner failed to pursue his race-based claim regarding unequal terms, resulting in

abandonment and the dismissal of that count. Whether petitioner’s charge and complaint encompassed a race-based failure-to-promote claim, and whether that claim was abandoned, present questions of law that we review *de novo*. *Sola*, 316 Ill. App. 3d at 535-36.

¶ 54 Here, the original charge to the Commission outlined two allegations: one concerning differential treatment during his interview purportedly due to his race, and another alleging that he was denied the CSS position on account of his gender. The two-count complaint thereafter encompassed these identical claims. Because the charge did not include the allegation that he was denied the CSS position because of his race, the complaint was also “substantially as alleged in the charge previously filed,” and did not include it either. It was this complaint and the allegations contained therein that were presented to the ALJ during the three-day hearing. Consequently, the ALJ was not on notice that a failure to promote based on racial grounds was even a pertinent issue.

¶ 55 Petitioner could have rectified the situation, as the Act provides a limited mechanism for expanding the scope of a complaint after it is filed with the Commission. Section 8A-102(C)(1) of the Act permits a complaint to be amended by leave of the presiding ALJ, for good cause shown, upon timely written motion and reasonable notice to all interested parties, at any time prior to the issuance of the ALJ’s recommended order. 775 ILCS 5/8A-102(C)(1) (West 2018).

¶ 56 The final hearing date was August 25, 2023, and the ALJ rendered the decision approximately nine months later, in May 2024. During that period, petitioner had the opportunity to request leave to amend the complaint but chose not to. Petitioner cannot now allege error, as he, or someone on his behalf, drafted the original charge and the subsequent complaint and chose not to seek an amendment. Furthermore, petitioner failed to actively pursue the claim outlined in the first count, specifically his claim concerning unequal terms and conditions of employment based on race. Indeed, his posttrial brief and reply brief, filed after the hearing, contain no argument

supporting this claim. As such, we find no error in the ruling of the ALJ, nor in the subsequent adoption by the Commission, which concluded that petitioner abandoned the claim of unequal terms and conditions of employment based on race, thereby dismissing it. Further, since there was no amendment of the complaint, petitioner's theory of failure to promote based on race was not properly advanced.

¶ 57

B. Judicial Admission

¶ 58 Petitioner asserts that the Commission's handling of paragraph 50 in his complaint as a judicial admission constitutes an error. Paragraph 50 states "[t]hat Butler was selected to fill the CSS position because her score was higher than Complainant's, based on her performance at the interview." "Judicial admissions are formal admissions in the pleadings that have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." *Serrano v. Rotman*, 406 Ill. App. 3d 900, 907 (2011). He contends that it was not a judicial admission, but rather an advancement of his theory of pretext, and that he was asserting that the justification—interview scoring—was not the real reason for the decision. Petitioner asserts that this was not an admission, but rather an allegation of discrimination. Whether a statement in a pleading constitutes a judicial admission is a question of law that we review *de novo*. *Sola*, 316 Ill. App. 3d at 535-36.

¶ 59 When paragraph 50 is read in conjunction with paragraphs 49, 51, and 52, it becomes evident that it is intended as part of petitioner's narrative, implying that IDOC's justification for promoting Butler was merely a pretext for sexual discrimination. Read together, the four paragraphs read:

"That Respondent maintains that Butler met the education requirement for the CSS position[.] That Butler was selected to fill the CSS position because her score was higher than Complainant's, based on her performance at the interview[.] That Respondent's denial

of wrongdoing, and stated reasons for its actions, are pretext for unlawful discrimination[.]

That Respondent failed to select Complainant for the CIS position, Bid Identification Number 1D0C29-62-11-0139, due to his sex, male[.]”

Accordingly, it was not a judicial admission, but an inaptly placed sentence explaining petitioner’s allegation. As discussed below, whether or not this allegation was a judicial admission has no impact on the Commission’s finding that IDOC articulated a nondiscriminatory reason for selecting Butler.

¶ 60 C. Substitute ALJ

¶ 61 Petitioner next asserts that he was denied due process on the grounds that the recommended order and decision were issued by an ALJ different from the one who heard the testimony. Petitioner’s due-process challenge and the proper construction of section 8A-102(I)(4) of the Act (775 ILCS 5/8A-102(I)(4) (West 2018)) present questions of law, which we review *de novo*. *Sola*, 316 Ill. App. 3d at 535-36.

¶ 62 The initial ALJ responsible for hearing the evidence unexpectedly passed away after the hearings concluded. On April 29, 2024, the parties filed a “Joint Motion for Appointment of Substitute Administrative Law Judge,” which acknowledged the passing of the ALJ and requested that a substitute ALJ be appointed “to render a finding and recommended order *** based on the record.” Since petitioner himself requested that a new ALJ issue a finding and order, we regard this argument as disingenuous.

¶ 63 In any event, the appointment of a substitute ALJ is permissible by statute. Section 8A-102(I)(4) of the Act provides as follows:

“(4) The findings and recommended order of the hearing officer shall be filed with the Commission. The findings and recommended order may be authored by a hearing officer other than the hearing officer who presides at the public hearing if:

(a) the hearing officer who presides at the public hearing is unable to author the findings and recommended order by reason of death, disability, or separation from employment; and

(b) all parties to a complaint file a joint motion agreeing to have the findings and recommended order written by a hearing officer who did not preside at the public hearing.” 775 ILCS 5/8A-102(I)(4) (West 2018).

Both requirements are clearly present in this matter. Accordingly, we find no error in having a substitute ALJ draft the order and recommendation.

¶ 64

D. Denial of Sex-Based Claim

¶ 65 Petitioner next argues that, given his higher qualifications and possession of a master’s degree, the Commission erred in determining that Butler was equally qualified. Furthermore, petitioner contends that his failure to receive the promotion was attributable to his gender. The Act, codified at 775 ILCS 5/1-101 *et seq.*, is the primary Illinois statute prohibiting sex-based employment discrimination. Section 2-102(A) makes it a civil rights violation for any employer to act with respect to promotion on the basis of unlawful discrimination. 775 ILCS 5/2-102(A) (West 2018). The Act defines “unlawful discrimination” to expressly include discrimination because of a person’s actual or perceived sex and defines “sex” as the status of being male or female. *Id.* § 1-103(Q), (O). The Illinois Constitution independently guarantees that all persons have the right to be free from discrimination on the basis of sex in the promotion practices of any employer. Ill.

Const. 1970, art. I, § 17. These provisions collectively establish the substantive right at issue when a claimant alleges a sex-based failure to promote.

¶ 66 Illinois courts and the Commission apply the three-step burden-shifting framework from *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), as refined by *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248 (1981), to sex-based failure-to-promote claims under the Act. The Illinois Supreme Court formally adopted this framework in *Zaderaka*, holding that Illinois courts would follow the Title VII framework in deciding employment discrimination cases under the Act. *Zaderaka v. Illinois Human Rights Comm’n*, 131 Ill. 2d 172, 178 (1989).

¶ 67 The complainant bears the initial burden of establishing a *prima facie* case of unlawful discrimination by a preponderance of the evidence. *Id.* “ ‘To establish a *prima facie* case of employment discrimination, a petitioner must show: (1) he is a member of a protected class; (2) he applied and was qualified for the position; (3) he was rejected despite his qualifications; and (4) the position remained open and the employer sought other applicants from persons of petitioner’s qualifications.’ ” *Champaign-Urbana Public Health District v. Illinois Human Rights Comm’n*, 2022 IL App (4th) 200357, ¶ 204 (quoting *In re C.R.M.*, 372 Ill. App. 3d 730, 733 (2007)). On appeal, IDOC does not contest the Commission’s conclusion that petitioner established his *prima facie* case.

¶ 68 Once the complainant establishes a *prima facie* case, the burden shifts to the employer to articulate—not prove—a legitimate, nondiscriminatory reason for the failure to promote. *Zaderaka* 131 Ill. 2d at 180. The employer bears only a burden of production at this stage, not a burden of persuasion. *Champaign-Urbana Public Health District*, 2022 IL App (4th) 200357, ¶ 189. Employers in failure-to-promote cases have articulated a variety of legitimate reasons, including poor job performance or behavioral issues of the complainant (*In the Matter of the Request for*

Review By: Joshua McCann, Petitioner, 2019 WL 1121669) and compliance with a collective bargaining agreement's reclassification procedures (*In the Matter of: Yakov Michael Fox, Complainant and Cook County Public Defender, Respondent*, 2024 WL 2845060). Once the employer articulates such a reason, the presumption of discrimination disappears. *Champaign-Urbana Public Health District*, 2022 IL App (4th) 200357, ¶ 183.

¶ 69 Here, IDOC provided legitimate, nondiscriminatory reasons for promoting Butler over petitioner. First, she offered more articulate and detailed responses during her interview. Peyton testified that Butler provided an answer that was directly pertinent to the work involved. She discussed a scenario with an inmate in which she had to assess and evaluate the inmate's treatment and educational requirements to determine his capacity to complete the program. This was significant to Peyton because it directly related to the responsibilities and required her to rely on her own knowledge and experience to effectively counsel and guide an individual through the system. Regarding leadership and interpersonal relationships, she discussed a hostage situation in which she was involved. She outlined her plans for the following day and described fostering teamwork among her colleagues. Petitioner, by contrast, stated only that he "compiled a lot of info" for the attorney general's office and maintained a positive rapport, but did not describe a specific incident. Peyton testified that the distinction between their answers was that Butler emphasized her interactions with her staff and efforts to unify them into an effective team, whereas petitioner did not detail a specific situation. In essence, Butler's responses were more explicitly aligned with the questions posed.

¶ 70 Second, she achieved higher overall scores than petitioner. Butler received a score of 3.117, whereas the petitioner scored 2.817. These were the two highest scores among all applicants, and based on these scores, Butler was recommended for the position. Accordingly,

citing both Butler's interview performance and her higher score, IDOC provided legitimate, nondiscriminatory reasons for her promotion.

¶ 71 If the employer articulates a legitimate reason, the complainant must prove by a preponderance of the evidence that the employer's stated reason was not its true reason but was instead a pretext for sex discrimination. *Zaderaka*, 131 Ill. 2d at 179. Pretext may be established by showing that the articulated reason (1) has no basis in fact, (2) did not actually motivate the employer's decision, or (3) was insufficient to motivate the employer's decision. *Champaign-Urbana Public Health District*, 2022 IL App (4th) 200357, ¶ 205. Evidence of pretext may be either direct or indirect: either by persuading the trier of fact that a discriminatory reason more likely motivated the employer, or by showing that the employer's proffered explanation is unworthy of credence. *Irick v. Human Rights Comm'n*, 311 Ill. App. 3d 929, 936 (2000) (citing *Burdine*, 450 U.S. at 256). Importantly, a finding of pretext does not automatically compel judgment for the complainant. The complainant must still present sufficient evidence to permit a finding that the employer's proffered reasons masked intentional discrimination rather than some other legitimate, though not necessarily commendable, motive. *Christ Hospital & Medical Center v. Illinois Human Rights Comm'n*, 293 Ill. App. 3d 105, 111 (1997). In essence, petitioner "was required to show [he] was the most qualified applicant in order to prove" his sex discrimination claim. *Champaign-Urbana Public Health District*, 2022 IL App (4th) 200357, ¶ 210. Here, he failed to do so.

¶ 72 Petitioner contends that he was the sole individual holding a master's degree, that the employment vacancy stipulated a master's degree qualification, that Butler did not possess such a credential, and therefore he was more qualified. However, the job posting explicitly states that the candidate must have "knowledge, skill, and mental development equivalent to completion of 4

years of college supplemented by a Master's Degree.” There was no unequivocal requirement for the applicant to hold a master's degree, provided they demonstrated knowledge and experience equivalent to one. In this instance, Butler's application submitted the requisite experience to be considered equivalent to a master's degree, thereby qualifying her for an interview for the position. After reviewing her application and acknowledging her experience, the interviewers undoubtedly concluded that her knowledge and experience surpassed the master's degree held by petitioner.

¶ 73 Petitioner contends that he possessed greater qualifications than Butler for the position, thereby suggesting that such a disparity was sufficient to establish pretext. However, the interviewers evaluated all candidates using identical questions. The candidates' responses were scored and tallied, and Butler received the highest score. The record extensively documents the candidates' answers and the interviewers' ratings. Although petitioner may dispute his lower score, such disagreement alone does not constitute evidence of sexual discrimination. “ ‘An employer need not hire an applicant just because she is in a protected class if she is only equally or less qualified than an applicant who is hired.’ ” *Champaign-Urbana Public Health District*, 2022 IL App (4th) 200357, ¶ 204 (quoting *Stone v. Department of Human Rights*, 299 Ill. App. 3d 306, 315 (1998)).

¶ 74 Butler scored higher than petitioner in interviews. The questions were predetermined, and no evidence shows the interviewers exhibited gender-based bias in their evaluation. Notably, of the six interviewees, two were females and four were males. Only Butler scored higher than petitioner; in fact, petitioner scored higher than the other female candidate. That petitioner outscored the other female applicant, while not dispositive, is additional evidence undercutting the inference that the panel's scoring was driven by gender.

¶ 75 Even crediting petitioner’s view of his education-and-training score, the outcome is unchanged. Petitioner and Butler each received the same 2.500 average in that category. Had petitioner instead received the maximum score of 4 from both interviewers in that category, his weighted final score would have risen only to 3.017—still below Butler’s 3.117.

¶ 76 IDOC articulated a legitimate, nondiscriminatory reason for the promotion decision—namely, Butler’s superior interview performance and greater relevant experience—and petitioner simply presented insufficient evidence indicating that this reason was pretextual. The record includes evidence supporting the Commission’s denial of petitioner’s claim, such as the interviewers’ testimony explaining their ratings based on nondiscriminatory grounds and the lack of any evidence of sex-based animus. Under the standard of manifest weight, we are compelled to affirm. “ ‘If the record contains any evidence supporting the Commission’s decision, we must sustain the decision on review.’ ” *Champaign-Urbana Public Health District*, 2022 IL App (4th) 200357, ¶ 181 (quoting *Sangamon County Sheriff’s Department v. Illinois Human Rights Comm’n*, 233 Ill. 2d 125, 142 (2009)).

¶ 77 E. Sanctions

¶ 78 Petitioner asserts that the Commission abused its discretion by failing to sanction IDOC for its discovery violation. Before reaching the merits of the discovery-sanctions ruling, we must determine whether petitioner preserved the issue for review. A party who fails to file exceptions to a recommended order is deemed to have failed to exhaust administrative remedies, waiving any argument that could have been raised before the Commission. 56 Ill. Adm. Code 5300.910 (1996); *Wallace v. Human Rights Comm’n*, 261 Ill. App. 3d 564, 569 (1994).

¶ 79 The Commission cannot entertain interlocutory appeals from rulings by an ALJ, except when the ALJ determines that a specific ruling is of such extraordinary significance that a

Commission decision is required prior to completion of the case. 56 Ill. Adm. Code 5300.740 (1985). Thus, here, following the ALJ's discovery rulings, the petitioner was required to request that the ALJ certify the rulings to the Commission if he wanted to "appeal." This he did not do.

¶ 80 Then, once the ALJ prepares and files a written recommended order, any party seeking to challenge it must submit written exceptions, supported by argument, to the Commission. 775 ILCS 5/8A-103(A) (West 2018). If no timely exceptions are filed, the recommended order automatically becomes the final order of the Commission without further review. *Id.* In other words, prehearing rulings issued by an ALJ, including discovery orders, are not independently appealable to the Commission or the appellate court unless relief is first sought from the ALJ, either through an interlocutory request or by filing an exception. In this case, petitioner did neither.

¶ 81 The Commission's procedural rules make the consequences of inaction explicit: the failure to file exceptions to a recommended order constitutes a waiver of any arguments that could have been made to a Commission panel, and a party who fails to file exceptions is deemed to have failed to exhaust administrative remedies. 56 Ill. Adm. Code 5300.910; see *Wallace*, 261 Ill. App. 3d at 569 (where the appellate court applied the exhaustion doctrine to a pretrial inaction of not providing a notice of default to the claimant). This regulatory provision codifies the exhaustion doctrine directly into the Commission's procedural framework.

¶ 82 In April 2023, the ALJ issued an order denying petitioner's emergency motion concerning attorney fees. Subsequently, in May 2023, the ALJ issued another order denying petitioner's motion to reconsider the same issue. Petitioner never requested from the ALJ an interlocutory appeal concerning the denial of his request for sanctions, nor did he include this issue in his June 7, 2024, exception. By failing to exhaust his available remedies before lodging this appeal, he waived any argument herein.

¶ 83

III. CONCLUSION

¶ 84 For the foregoing reasons, we affirm the Commission's March 4, 2025, order, finding in favor of IDOC.

¶ 85 Affirmed.