



**City of Chicago**  
**COMMISSION ON HUMAN RELATIONS**  
740 N. Sedgwick, 4<sup>th</sup> Floor, Chicago, IL 60654  
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**IN THE MATTER OF:**

Beatris DeHoyos  
**Complainants,**  
v.

La Rabida Children's Hospital and Dennis  
Caldwell  
**Respondents.**

**Case No.:** 10-E-102

**Date Mailed:** July 31, 2014

**TO:**

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**FINAL ORDER**

YOU ARE HEREBY NOTIFIED that, on June 18, 2014, the Chicago Commission on Human Relations issued a ruling in favor of Respondent in the above-captioned matter. The findings of fact and specific terms of the ruling are enclosed. Based on the ruling, this case is hereby DISMISSED.

Pursuant to Commission Regulations 100(15) and 250.150, Complainant may seek a review of this Order by filing a petition for a common law *writ of certiorari* with the Chancery Division of the Circuit Court of Cook County according to applicable law.

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**FINAL RULING ON LIABILITY**

**I. PROCEDURAL HISTORY**

On September 29, 2010, Complainant Beatris DeHoyos filed a complaint with the Commission alleging that Respondents La Rabida Children's Hospital and Dennis Caldwell subjected her to sexual harassment in violation of the Chicago Human Rights Ordinance ("CHRO"). She subsequently filed two amended complaints on May 2, 2011 and May 9, 2011, alleging that she was discharged on November 19, 2010, in retaliation for filing complaints with the Commission. Respondents filed their response to the original complaint on November 3, 2010, and their response to the amended complaints on June 6, 2011, denying all allegations.

On December 13, 2012, the Commission entered an Order Finding Substantial Evidence of sex discrimination and retaliation. The administrative hearing in this matter was held on June 27-28, 2013. The hearing officer allowed the parties to file written closing arguments by August 22, 2013.<sup>1</sup> Respondents were also given leave to file an Amended Motion to Preclude Complainant's Punitive Damages Claim by August 22, 2013. Complainant's response was due by September 12, 2013. The due date for the parties' closing argument briefs and the Motion was extended to September 25, 2013. Complainant's response was due on October 16, 2013. Yet, she chose not to file a response. On January 13, 2014, the hearing officer issued her Recommended Ruling on Liability and Damages.

The parties made several further submissions after issuance of the recommended ruling. On February 10, 2014, Complainant filed objections to the recommended ruling

<sup>1</sup> The hearing officer limited the closing argument briefs to 20 double spaced pages. On September 25, 2013, Respondents filed a motion *instanter* to file a forty-five paged closing argument brief. The Complainant did not file an objection. The motion was granted.

and a request for review of an interlocutory decision denying Complainant's Motion *in Limine*. On March 14, 2014, Respondents filed their Response to Complainant's Objections and Response in Objection to Complainant's Request for Review. After seeking leave from the hearing officer, on April 18, 2014, Complainant filed a reply to Respondents' response.

## II. FINDINGS OF FACT

### A. DeHoyos' Professional Background and Employment History with La Rabida

1. DeHoyos earned an Associate's Degree from Olive Harvey College in 1996 and a Bachelor's degree, with honors, in Criminal Justice from Westwood College in 2006. (Resp. Ex. 2). She has received training and certifications in property management, crime scene investigation, and armed and unarmed security officer training. (*Id.*).

2. DeHoyos was also licensed to carry a weapon. By the time she applied for a position with La Rabida, she had already worked as an executive administrative assistant, a legal secretary, a loan officer, and a security officer. (*Id.*) DeHoyos also volunteered as a rape victim advocate and received training to do such work. (Tr.1 p. 123-124).<sup>2</sup>

3. DeHoyos began her employment with La Rabida on December 1, 2006, as a receptionist operator. (Tr. 1 p. 25). Her job duties included sitting at the front desk, answering the phone and greeting visitors. (Tr. 1 p. 27). At that time, Respondent Caldwell was a security driver in the Telecommunication, Security and Transportation Department (TST) at La Rabida. (Tr. 2 p. 214, 216). They were co-workers and initially friendly toward each other.

4. Caldwell described DeHoyos as a caring and concerned mother who often brought her child to La Rabida for asthma treatments. DeHoyos shared pictures of her daughter with Caldwell. She would cook and bring him lunch from her home. Caldwell shared videos with DeHoyos. They also commuted home from work together. (*Id.* at p. 220- 221).

5. Caldwell testified that during those rides home, he never made any comments of a sexual nature to DeHoyos and never made any sexual advances. (*Id.* at 222). Caldwell expressly denied having a romantic relationship with DeHoyos or even desiring to do so. (*Id.* at 221).

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<sup>2</sup> The hearing took place over two days. However, the page numbers on the transcripts are not in sequential order. The transcript on the second hearing day starts at page one. To eliminate confusion, the transcript is cited herein as Tr. 1 p. \_\_\_ for the first day of the hearing and Tr. 2 p. \_\_ for the second day of the hearing.

6. Caldwell became DeHoyos' supervisor in 2007. (Tr. 2 p. 195-197). At that point, he stopped commuting home with DeHoyos because he purchased a car and did not think it would be appropriate to accept rides from DeHoyos as her supervisor. (*Id.* at 223).

7. Regarding her work performance, Caldwell testified that DeHoyos was initially an excellent typist, but over time, she required constant supervision. She gossiped. She had attendance problems and failed to follow directions. (Tr. 2 p. 224).

8. DeHoyos' four year work history with La Rabida included multiple disciplinary actions. In 2007, she was suspended for making false or malicious statements. (Tr.1 p.198). She also received two notations for unsatisfactory work performance. (Resp. Ex. 12). In 2008, she received a Breach of Agreement Notice and Termination Warning for making false statements and was suspended for five days. (Tr.1 p.199-200). In 2009, she received another formal notice of unsatisfactory work performance for two incidents involving La Rabida's PA system. (Resp. Ex. 27). During each occurrence, DeHoyos blamed her errors on system malfunctions; however, later tests revealed no such problems. (*Id.*). DeHoyos also received warnings in 2009 for attendance problems. (Resp. Ex. 28).

9. Caldwell also informally disciplined DeHoyos on several occasions for dressing inappropriately at work, using her cellphone, and reading at the front desk. (Tr.1 p. 203-206).

10. As early as January 2008, DeHoyos began to look for another job within and outside of La Rabida. (Resp. Ex. 35, Tr. 1 p. 208-209). At least one of these positions would have required her to continue reporting to Caldwell. (*Id.* at 221).

11. In the first half of 2008, DeHoyos began to see a psychiatrist at Chicago Family Health Center. (Resp. Ex. 43). She complained of depression and anxiety arising from job-related stress. Specifically, DeHoyos complained of conflict at work with her African American supervisor and other African American co-workers. (*Id.*). She claimed they were scapegoating her because she is a Latina and that the office environment was "comical for its high-school-like nature in which adults behave much like adolescents." (*Id.*). None of the doctor's notes in 2008 include any complaints by DeHoyos of sexual harassment, inappropriate touching or improper sexual comments by Caldwell. (*Id.*).

12. Despite prior disciplinary actions and complaints of scapegoating by Caldwell, in January 2009, DeHoyos asked him to write a recommendation letter for her so that she could get another job. Caldwell agreed and DeHoyos prepared the letter for his signature. (Resp. Ex. 19). On January 15, 2009, Caldwell sent the draft letter to his immediate supervisor, Joyce Williams (Williams), so that it could be printed on the hospital's letterhead. (Resp. Ex. 20 Tr. 1 at p. 208-209). Williams informed Caldwell that signing such a letter was against hospital policy, which he relayed to DeHoyos. (*Id.*).

13. DeHoyos became upset that Caldwell sent the draft recommendation letter to Williams. In an e-mail to Caldwell, dated January 21, 2009, she complained, "You sent my recommendation letter to Joyce [Williams] and now you got her started picking on me again for any little reason." (*Id.* at Resp. Ex. 20).

14. In February 2010, DeHoyos received a Formal Notice of Problem and Agreement to Correct, which was the result of attendance problems. (Resp. Ex. 28). At the end of July 2010, Williams sent DeHoyos an e-mail with an attachment that listed attendance problems dating back to 2009. She asked to meet with DeHoyos about it. (Resp. Ex. 33, Tr. 1 p. 214-215). Apparently, the meeting never took place, but on August 24, 2010, DeHoyos forwarded Williams' e-mail along with the attachment, to her personal e-mail address. (Resp. Ex. 33).

15. When incidents occurred concerning attendance, interactions with other employees or even interactions with her immediate supervisor Caldwell, DeHoyos was quick to defend herself, challenge La Rabida policies and even the authority of Caldwell.

16. For example, on March 10, 2008, DeHoyos sent an e-mail confronting Caldwell about purportedly having another employee keep personnel records about her. DeHoyos wrote, "Keep[ing] tabs on me is not her responsibility since she is not my direct employer. If there was a problem with my conduct, we do have a coaching policy...." DeHoyos went on to cite that policy, along with other sections of La Rabida's employee handbook. (Resp. Ex. 14).

17. In July 2008, DeHoyos questioned Caldwell's failure to have certain visitors sign in when they entered the building and told him that failing to do so made it look as if she was not doing her job. (Resp. Ex. 18).

18. In January of 2009, after Caldwell pulled DeHoyos' coat away because she was not allowed to wear or have it while sitting at the front desk, she sent him an e-mail stating, "I don't know what your problem is but you have no right to take it out on me. You need to learn how to respect me.... Go ahead Dennis threaten me all you want and fire me. I don't care.. I do have rights you know." (Resp. Ex. 21). Caldwell responded, "You are right and wrong on this one. I am sorry if you feel that I have disrespect." (*Id.*).

19. In an e-mail, dated April 7, 2009, DeHoyos raised questions with Caldwell about when and whether she should wear a security uniform and stated, "I want to get a real understanding since the rules are now changing after two years that I have been accustomed to..." (Resp. Ex. 22).

20. In an e-mail to Caldwell regarding her attendance record, dated June 4, 2009, DeHoyos explained the nature of one specific absence, cited a lengthy section of La Rabida's attendance policy and concluded, "I feel that I am not being treated fairly." (Resp. Ex. 25). She refused to sign a related disciplinary document entitled Supervisor's Record of Discussion. (Resp. Ex. 24).

21. On March 1, 2010, DeHoyos submitted handwritten notes to the human resources department about an incident in which Caldwell confronted DeHoyos about telling a La Rabida volunteer that she “hated having a black manager and supervisor.” In the notes, DeHoyos disputed making such a statement and asked that her note be placed in her employee file. (Resp. Ex. 29).

**B. DeHoyos’ Allegations of Sexual Harassment Before August 26, 2010**

22. During the hearing, DeHoyos testified about a series of comments and events between her and Caldwell that purportedly took place between 2008 and 2010.

23. DeHoyos testified that she stopped giving Caldwell rides from work because he would often complain about La Rabida employees and threaten to get them fired. (Tr. 1 p. 32-33). She stated these conversations made her uncomfortable and she became concerned that if she ever did anything to go against Caldwell, she too would be terminated. (*Id.*)

24. DeHoyos also testified that Caldwell did other things to make her feel uncomfortable, including hovering over her while she typed; smelling her hair (*Id.* at 35); calling her on her cell phone after work (*Id.* at 37); and kissing her on the forehead. (*Id.* at 37-38).

25. She testified that on two occasions Caldwell told her he had sexually explicit dreams about her. (*Id.* at 39). On another occasion when she wore high-heel boots, Caldwell purportedly made a joke about her dancing on a pole. (*Id.* at 40- 41).

26. DeHoyos also testified about the January 2009 incident in which Caldwell grabbed her coat. (*Id.* at 41-42). She asserted that in doing so, he also grabbed her arm hard. This incident prompted DeHoyos to write an e-mail to Caldwell on January 21, 2009, confronting him about his actions. (Resp. Ex. 21). DeHoyos also testified that Caldwell apologized.

27. DeHoyos testified that these comments and events were gradual and sporadic. (Tr. 1 p. 40). Yet, they made her feel uncomfortable, upset and scared. She testified initially that she did not report any of these incidents because she was afraid that Caldwell would get her fired. (*Id.* at 43). She later changed this testimony and stated that she was not afraid of Caldwell firing her. DeHoyos stated “[h]e wasn’t going to fire me. He wouldn’t have fired me. He had total control over me. That’s what he wanted. He wanted control.” (Tr. 2 p. 61).

28. By contrast, Caldwell testified that he never kissed DeHoyos, smelled her hair, or made comments about her boots, dancing on a pole or told her that he had explicit sex dreams about her. (Tr. 2 p. 248-251). He did state that he would sometimes stand behind DeHoyos and look over her shoulder when she typed for him to make sure that her work was accurate. (*Id.* at 249). But, he did not touch her. (*Id.* at 250).

29. No other testimony or documentation was presented at the hearing corroborating that Caldwell: (1) told DeHoyos he had sexual dreams about her; (2) made comments about her boots or dancing on a pole; or (3) kissed DeHoyos on her forehead.

30. DeHoyos' friend Tracy Gonzalez, who also works at La Rabida, testified at the hearing. She did not personally observe any of the misconduct alleged by DeHoyos. (Tr.1 p. 247). She also testified that Caldwell "has always been very helpful, courteous and professional to her." (*Id.*).

31. DeHoyos' friend Ludivina Lujtn, who worked at La Rabida from March 1998, until she was terminated in November of 2012, did testify that she thought the relationship between DeHoyos and Caldwell was "too personal" at times; that Caldwell would ask DeHoyos if she had brought him lunch or would "reach over and smell her hair." (Tr. 2 p. 7-10). Lujtn testified that she thought these things "crossed the line sometimes," and that DeHoyos should have "check[ed] him." (*Id.* at 10).

32. Lujtn never reported these purported incidents to anyone. She also testified that her interactions with Caldwell were professional and that "he was very professional when it came down to his job." (*Id.* at 25-26).

33. Sylvia Bailey worked at La Rabida from 2008 until 2010 or 2011, and reported to Caldwell. She testified that Caldwell "played favoritism" with some of the employees he supervised and sometimes made inappropriate comments to her such as "girl, you don't know what I would do to you if I was your age." (Tr. 1 p. 105). Bailey testified that while unprofessional, the comment did not make her uncomfortable or prevent her from doing her job. She stated "he flirted with everybody around there...so, it was like, why get him in trouble. He didn't appear no harm to me at the time." She also stated that she felt that Caldwell did not mean any harm. (*Id.* at 115).

34. Regarding DeHoyos, Bailey testified that she saw Caldwell bump into DeHoyos once, but that it could have been an accident. (Tr. 1 p. 109). She did not witness any of the misconduct alleged by DeHoyos.

35. Bailey was ultimately fired from La Rabida for job abandonment. She blamed Caldwell for her termination. (*Id.* at 110-111).

### **C. The Alleged Incident on August 26, 2010**

36. DeHoyos testified that on the morning of August 26, 2010, she was sitting at the front desk with Thomas Thorpe, another La Rabida employee. Thorpe told DeHoyos that Caldwell wanted her to go to the security office and type a memo for him. (Tr.1 p. 45).

37. The security office was located in a hallway behind the front desk that was heavily traveled by staff. The President's office is located diagonally across from the security office. (Tr. 1. 140-141).

38. DeHoyos went to the security office and Caldwell joined her. He explained what he needed her to type and then left. (*Id.* at 47). Caldwell was in and out of the security office several times because La Rabida was having its holiday party that day. (*Id.*).

39. DeHoyos had finished the assignment by the time Caldwell finally returned. He reviewed it and told her to print it out. DeHoyos testified that Caldwell then sat down, put his hands behind his head and pulled the chair back. He asked her to do him a favor.

40. DeHoyos testified:

I didn't know what he wanted. And I'm like well, what do you want? And then he goes I need you to sit on my lap. And I looked at him. And I was like what? And he goes I need you to sit on my lap. And I'm like no. And at that time when I said no, I proceeded to walk in front of him because I couldn't walk behind the chair because he was leaning against the wall.... That's when he grabbed my jacket and he sat me on his lap...I felt his crection...He just held me and I got up, I jotted up. [I felt] violated, scared. Because I didn't know what I was going to do.... I was walking out and he said 'I guess I don't have ED. And I'm thinking what the hell is ED....So I just kept on walking out and I went to go sit at the front desk.

(Tr.1 p. 50-52).

41. DeHoyos testified that she tried to compose herself at the front desk. She was trying to think of what to do and whether anyone would believe her. She decided to stay quiet because she did not want to lose her job. (*Id.* at 52-53).

42. Respondents' put into evidence a video taken on August 26, 2010, around the time of the alleged incident. (Resp. Ex. 70).

43. While the video has no sound, it shows DeHoyos exiting a doorway and walking toward the front desk at approximately 10:40 a.m. (*Id.*, Tr. p. 137-138). Caldwell walked through the doorway behind DeHoyos and then moved outside of the videoed front desk area. (*Id.*) DeHoyos sits down at the front desk and pulls out what appears to be a magazine or newspaper and reads for several minutes. (*Id.*) DeHoyos then interacts with and speaks to several La Rabida visitors. (*Id.*).

44. On the video, DeHoyos does not appear to be upset, angry or crying.

45. DeHoyos testified that she was at the front desk until noon. (Tr. 1 p. 53). She then went outside to the office party, grabbed her lunch and sat with several co-workers. She did not eat her food. Her co-worker Gonzalez asked what was wrong. DeHoyos testified that she did not respond. Instead, she got up, went into the locker room area and started to cry. (*Id.*).



46. Caldwell testified that he saw DeHoyos at the picnic sitting with her friends. She was eating her food, was not crying and did not look distraught. (Tr. 2 p. 238).

47. DeHoyos later went back to the front desk and spoke to Gonzalez. DeHoyos testified that she told her what happened with Caldwell in the security office. (Tr. 1. P. 53-54). Gonzalez advised her to go to human resources but DeHoyos said she was afraid she would get fired. (*Id.*).

48. Ultimately, Gonzalez suggested that DeHoyos type a memo to human resources that included details on the incident with Caldwell. Because DeHoyos did not have access to a printer at the front desk, Gonzalez typed the memo for DeHoyos. (*Id.*).

49. The memo reads that Caldwell “tried to make [DeHoyos] sit on his lap saying he thought he has ED (Erectile Dysfunction) and wanted to make sure if he did or didn’t.” (Resp. Ex. 37). The memo does not state that Caldwell actually pulled DeHoyos on his lap or that she felt his erection. (*Id.*).

50. At 4 p.m., DeHoyos took the memo to Tim Meline, Employment Manager, in the human resources department. DeHoyos testified that she told Meline about the incident that happened earlier that day, and other encounters, including being kissed on the forehead by Caldwell, and him smelling her hair. (Tr. 1 p. 55). Yet, Meline testified that DeHoyos only discussed the August 26<sup>th</sup> incident at his initial meeting with her. (Tr. 2 p. 94-95, 149). Meline’s notes from his interview with DeHoyos on August 26, 2010, do not include any additional incidents of alleged sexual harassment by Caldwell prior to 2010. (Comp. Ex. 11).

51. Meline also testified that DeHoyos did not tell him that Caldwell forced her onto his lap; that she felt his erect penis; that Caldwell told her that he had sexual dreams about her; or that he made comments about her boots or dancing on a pole. (Tr. 2 p. 151-152). Meline testified that DeHoyos never made these allegations during his investigation of her harassment claim, despite the fact that he spoke with her several times. (Tr. 2 p. 154-155).

52. During the August 26<sup>th</sup> meeting with Meline, DeHoyos requested a transfer from the TST department. (*Id.*). She also told Meline that she had not spoken to Gonzalez about the incident. (Tr. 2 pg. 104) Meline told DeHoyos he would investigate her allegations and he approved her request to take time off from work. (Tr.1, 55-57, Tr. 2, p. 153).

#### **D. La Rabida’s Investigation of the Alleged Incident on August 26, 2010**

53. After speaking to DeHoyos, Meline called Caldwell into his office and told him about DeHoyos’ sexual harassment complaint. (Tr. 2 p. 243). Caldwell testified that he was surprised by the allegations. (*Id.*). He denied engaging in any inappropriate conduct or comments while in the security office with DeHoyos. (Resp. Ex. 38).

Caldwell also informed Meline that he had been falsely accused of harassment by Lashawn Smith, another La Rabida employee, years earlier and that the claim was investigated and unfounded. (*Id.*, Tr. 2 at 243).

54. During his meeting with Meline, Caldwell also told him that he understood the seriousness of sexual harassment and he had educated his staff about inappropriate behavior. (Resp. Ex. 38). Caldwell told Meline and also testified at the hearing that when he became a supervisor in the TST department, he explained La Rabida's sexual harassment policies to the staff, including reporting mechanisms. (Tr. 2 p. 247). He also told his staff that he had been wrongly accused of sexual harassment. (*Id.* at 248).

55. During his investigation, Meline spoke to DeHoyos, Caldwell and Williams multiple times. On August 30, 2010, Meline spoke with DeHoyos by phone. At that time, she mentioned for the first time other incidents of alleged harassment by Caldwell. (Tr. 2 p. 95). Meline's notes from the conversation state, "She informed me that she has other minor things that have happened that she has written down (i.e. sniffing her hair, leaning over her at the computer). She is going to scan the notes she has written down in the past and e-mail them to me." (Resp. Ex. 38). Meline's notes on his conversation with DeHoyos do not include anything about boots, dancing on a pole or sexual dreams.

56. On the same day, DeHoyos forwarded to Meline an e-mail exchange between her and Caldwell in January 2009, regarding grabbing her coat and the e-mail exchange between her and Caldwell about another employee keeping confidential information about DeHoyos in March 2008. (Resp. Ex. 41 and 42). On September 1, 2010, DeHoyos also e-mailed Meline progress notes from her 2008 visits with her therapist at Chicago Family Health Center. (Comp. Ex. 12, Resp. Ex.38). In the e-mail, DeHoyos states, "I still haven't found my written notes as I never expected Dennis to exceed to this type of behavior." (Comp. Ex. 12). No other materials were provided to Meline by DeHoyos regarding her sexual harassment claim.

57. Meline asked Caldwell about DeHoyos' additional allegations of smelling her hair, kissing her on the forehead and hovering over her while she typed. Caldwell told Meline that he has hovered over DeHoyos when she typed documents for him because she had a tendency to change documents without approval. Caldwell told Meline that DeHoyos never told him that doing so made her feel uncomfortable or was inappropriate. (Resp. Ex. 38). He denied all of the other allegations.

58. Between August 26, 2010, and September 2, 2010, Meline interviewed more than a dozen individuals from the TST Department regarding DeHoyos' sexual harassment claim. None of them knew of, had heard of, or witnessed any inappropriate comments or behavior of a sexual nature within the department. (Resp. Ex. 38).

59. DeHoyos told Meline to speak with Diane Rainer-Gray and Gonzalez about Caldwell's behavior toward her. Rainer-Gray informed Meline that while she had

seen Caldwell grab the arm of DeHoyos' coat and talk down to DeHoyos and other employees, she knew of no other issues involving Caldwell, DeHoyos or any other employees in the TST department (*Id.*).

60. Though Gonzalez typed up DeHoyos' harassment complaint against Caldwell, when interviewed by Meline regarding that claim, she told him that she had never witnessed any inappropriate behavior involving DeHoyos and Caldwell. (*Id.*).

61. On September 3, 2010, Meline provided a memorandum to DeHoyos in which he restated her allegation regarding the alleged incident on August 26, 2010, and summarized his investigation, including that he had spoken to several employees identified by DeHoyos. Meline stated that DeHoyos' allegations could not be independently corroborated. Specifically, Meline informed her that they "have been unable to determine exactly what in fact happened and if there has been a violation of the Hospital policy." Meline informed DeHoyos that he advised Caldwell to limit communication with DeHoyos to business only and to avoid any harassing or retaliatory behavior. (Compl. Ex. 13). Meline concluded the memo by asking DeHoyos to return to work on September 7, 2010.

62. In addition to providing the memo, Meline also spoke to DeHoyos by phone regarding the findings from his investigation. (Tr. 2 p. 182).

#### **E. Post-Investigation Events**

63. DeHoyos returned to La Rabida on September 7, 2010, and stayed for half of the day. (Tr. 2 p. 185). She went to Meline's office and complained that Caldwell had come behind the reception desk where she sat several times to show something to another employee, review a log book, and review a chart. (Tr. 1 p. 60-61). She did not allege that Caldwell engaged in any additional sexual harassment. Still, she told Meline she could not handle being near Caldwell. She asked to go home. (Tr. 2 at 186). Meline testified that he told DeHoyos that she could leave.

64. Caldwell testified that he had no interactions with DeHoyos on September 7, 2010, and did not speak to her. (Tr. 2 p. 256). He stated he went behind the front desk one time to check the security log. (*Id.*)

65. Subsequently, DeHoyos requested and was granted leave under the Family and Medical Leave Act ("FMLA"). DeHoyos initially received leave through September 20, 2010. (Resp. 46). La Rabida granted a subsequent request to extend her leave to November 1, 2010. (*Id.*). Meline testified that DeHoyos received the full amount of leave allowed under the Act and was off of work until November 1, 2010. (Tr. 2 at 186).

66. On November 1, 2010, Meline called DeHoyos to inform her that her leave was exhausted and asked if she planned to come back to work. (*Id.* at 187). DeHoyos told him that she was not ready to return to work.

67. On November 2, 2010, Meline e-mailed La Rabida's policies on additional leave, including disability leave, to DeHoyos. (*Id.* at 188, Resp. Ex. 71). In the e-mail, Meline advised DeHoyos that her FMLA leave was exhausted as of November 1, 2010, and that her position with La Rabida would be filled. (*Id.*). He also stated that DeHoyos' short-term disability claim had been denied by La Rabida's insurer and that their workers' compensation carrier had no record of a claim by DeHoyos. Meline sent DeHoyos the forms to file such a claim. (*Id.*).

68. Meline testified that he did not hear back from DeHoyos after he sent the e-mail and attachments on November 2, 2010. On November 19, 2010, Meline sent DeHoyos a Termination Notice stating that she had exhausted FMLA leave, had stated she would not return to work, and failed to contact La Rabida after they sent the e-mail and attachments on November 2, 2010. (Resp. Ex. 52).

69. At the hearing, DeHoyos testified that she received the November 2, 2010 e-mail from Meline, but could not open the attachments. (Tr. 1 p. 227) Yet, in a February 3, 2011 e-mail to an Anthony Messmer, a former La Rabida employee, DeHoyos told him that La Rabida encouraged her to file a workers' compensation claim, but she did not want to do so because then she could not sue La Rabida. (Resp. 53).

70. DeHoyos testified that as a result of the harassment and her termination, she suffered from anxiety, was on medication and experienced hair loss and weight gain. (Tr. 1, p. 78, 81- 82).

#### **F. Other Legal Actions Filed by DeHoyos against Caldwell**

71. On September 21, 2010, DeHoyos filed an incident report against Caldwell with the Chicago Police Department concerning the alleged incident on August 26, 2010. (Rcsp. Ex. 48). A detective went to La Rabida hospital to interview Caldwell about DeHoyos' allegations. Caldwell testified that he spoke with the officer in the security room and responded to all of the officer's questions. (Tr. 2 p. 261). During the interview, the head of La Rabida's Human Resources Department, Francis Lcfkow, knocked on the door, asked Caldwell if he was okay and told him he did not have to participate in the interview. (*Id.* at 262). Caldwell responded that he was fine and continued to speak to the officer. The officer told him he could either come down to the station to take a polygraph test or she would place him under arrest. (*Id.*). Caldwell agreed to go to the station the following day after speaking to an attorney.

72. The following day, Caldwell went to the police station and took a polygraph. He testified at the hearing that he was interrogated to the point of being disrespected and that the police asked him deeply personal questions. (Tr. 2 p. 262-263). Caldwell passed the polygraph but the State's Attorney still brought charges against him based on the alleged incident on August 26, 2010. (Tr. 2 at 290).

73. On February 10, 2011, DeHoyos filed another incident report with the Chicago Police Department alleging that Caldwell had kissed her on the forehead several times between 2008 and 2010, and grabbed her arm. (Resp. Ex. 54).

74. In the criminal proceeding held in March 2011, Caldwell was prosecuted for battery. (Tr. 292). He was found not guilty by the judge. (Resp. Ex. 56).

75. DeHoyos also filed a Petition for a No Contact Order against Caldwell arising from the August 2010 incident. That matter went to a hearing in February 2012. (Resp. Ex. 57). DeHoyos testified that after she left the security office where the alleged event happened, “[h]er legs were stiff, [she] was having trouble breathing and [she] was crying. (Resp. Ex 57, at p. 34-35). After hearing testimony from DeHoyos, Caldwell, and Gonzalez, the Court ruled that there were inconsistencies in DeHoyos’ testimony and her allegations, which called her credibility into question. (*Id.* at p. 110-112, 115-116). Because DeHoyos failed to prove her case by a preponderance of the evidence, the petition was denied. (*Id.* at p. 117).

76. On June 16 2011, DeHoyos filed a Charge of Discrimination with the Equal Employment Opportunity Commission. In the Charge, she alleged that the earliest date of discrimination was August 26, 2010. (Resp. Ex 62).

77. DeHoyos filed her original complaint with the Chicago Commission on Human Relations on September 29, 2010, alleging sexual harassment. The Commission complaint does not include any allegations that Caldwell said he had sexual dreams about DeHoyos, made comments about her boots or dancing on a pole. DeHoyos filed amended complaints on May 2 and 9, 2011, to include a retaliation claim based on her discharge. (Resp. Ex. 55).

### **III. CONCLUSIONS OF LAW AND ANALYSIS**

#### **A. DeHoyos’ Sexual Harassment Claim**

Section 2-160-040 of the CHRO makes it unlawful for an employer, employee or agent of an employer to engage in sexual harassment. Sexual harassment means any unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment; or (2) submission to or rejection of such conduct by an individual is used as the basis for any employment decision affecting the individual; or (3) such conduct has the purpose or effect of substantially interfering with an individual’s work performance or creates an intimidating, hostile or offensive working environment. Section 2-160-020 (m), Chic. Muni. Code. To determine whether the alleged conduct constitutes sexual harassment, the Commission takes a “totality of the circumstances” approach and reviews the nature of the alleged sexual advances, conduct or statements and the context in which the alleged incidents occurred from the perspective of a reasonable woman. *See* Reg. 340.100; *Williams v. RCJ Inc. et al.*, CCHR No. 10-E-91 (Oct. 19, 2011); *Harper v. Cambridge Systematics, Inc.*, CCHR No. 04-E-86

(Feb. 17, 2010). An employer is responsible for sexual harassment committed by its supervisory employees regardless of whether the specific acts complained of were authorized or forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. Reg. 340.110.

To prevail, the Commission requires a complainant to first present evidence at the hearing to establish a *prima facie* case of discrimination. *Harper*, 04-E-86 at 4. In a sexual harassment case, a complainant must show that: (1) she was subjected to unwelcome conduct of a sexual nature; and (2) the conduct was pervasive enough to render her working environment intimidating, hostile or offensive. *Shores v. Nelson*, CCHR No. 07-E-87 (Feb. 17, 2010) *citing to Barnes v. Page*, CCHR No. 92- E-1 (Sept. 23, 1993). The complainant's burden is to establish by a preponderance of the evidence that sufficient facts exist to imply harassment in the absence of a credible, non-discriminatory explanation for the respondent's actions. *Harper*, 04-E-86 at 4-5; *citing to Bell v. 7-Eleven Conven. Store*, CCHR No. 97-PA-68/70/72 (July 28, 1999). DeHoyos has failed to meet that burden.

### **1. DeHoyos Failed to Prove She Was Sexually Harassed before August 26, 2010.**

DeHoyos' allegations, testimony and other evidence presented at the hearing were rife with inconsistencies, which completely undermined her credibility and the ability to establish a *prima facie* case of harassment.

At the hearing, DeHoyos testified that between 2008 and August 26, 2010, Caldwell kissed her several times on the forehead, hovered over her while she tried to do her work, smelled her hair, told her he had sexual dreams about her, and made comments about her boots and dancing on a pole. She testified that this conduct made her uncomfortable and scared. Yet, notes from the psychiatrist that she saw in 2008 never mentioned any of these events. The initial 2010 complaint against Caldwell that she provided to La Rabida through Tim Meline never mentioned these purported events. (*See Resp. Ex. 37*). The 2010 incident report that she filed with the Chicago Police Department did not include any of these events. Further, the EEOC charge she filed in 2011 did not include comments about sexual dreams, boots or dancing on a pole. Indeed, the hearing was the first time that DeHoyos mentioned the latter allegations. They are not even included in her CCHR complaint, which she amended twice. It is hard to believe that if such inappropriate, sexual comments and misconduct occurred, a reasonable person would fail to include them in discussions with her psychiatrist or in multiple filings alleging sexual harassment.

As a result of DeHoyos' inconsistency, the hearing officer concluded that either the alleged events did not occur, or if they did, DeHoyos did not find them harassing. Prior to August 30, 2010, she never complained about them to La Rabida. Indeed, when she finally mentioned conduct including smelling her hair, hovering over her and kissing her on the forehead to Meline, the evidence shows that she viewed these things as minor. In an e-mail to Meline on September 1, 2010, in which DeHoyos says she would provide

records to support her harassment claim involving the August 26, 2010 incident, she wrote, "I never expected Dennis to exceed to this type of behavior." Such a statement is inconsistent if Caldwell had engaged in the ongoing sexual harassment to which DeHoyos testified at the hearing. Most notably, in January 2009, DeHoyos asked Caldwell to write her a letter of recommendation for a position outside of La Rabida and he agreed. She also applied for at least one other position within La Rabida that would have still reported to Caldwell. Again, it is hard to believe that DeHoyos would make this request of someone or seek a position reporting to someone who had sexually harassed her repeatedly.

Further, no one could credibly corroborate the alleged misconduct. Tracy Gonzalez did not personally witness the misconduct alleged by DeHoyos. Sylvia Bailey did not witness the misconduct alleged by DeHoyos. She stated only that she saw Caldwell bump into her once, but that it could have been an accident. Lujtn testified that she saw Caldwell sniff DeHoyos' hair. But, even if that occurred, it hardly constitutes sexual harassment. Neither she nor DeHoyos reported it to human resources when it allegedly occurred. Notably, Gonzalez and Lujtn both testified that Caldwell behaved professionally at work, further calling into question that he engaged in harassing behavior.

DeHoyos testified at the hearing that she did not report Caldwell's harassing behavior because she was afraid she would be fired. But even this testimony is contradicted by other evidence and DeHoyos' own statements on cross-examination. Documents offered into evidence show that DeHoyos was quick to defend herself when questioned about her attendance and other issues. She challenged La Rabida's policies and even the authority of Caldwell. Indeed, the evidence shows that she was a difficult employee who had been disciplined for making false statements. For example, she sent e-mails to Caldwell in which she confronted him about not following La Rabida procedures. She provided a written memorandum to human resources when an issue arose about a comment she made regarding reporting to a black supervisor. She was suspended for five days for making false statements. She refused to sign at least one employee performance warning because she did not agree with it. In a January 21, 2009 e-mail with the subject line, "There's a problem," she confronted Caldwell about allegedly grabbing her arm and stated, "I don't know what your problem is but you have no right to take it out on me! You need to learn how to respect me... Go ahead Dennis, threaten me all you want and fire me. I don't care... I do have rights you know." (Compl. Ex. 2). Caldwell's response to DeHoyos was simply, "You are right and wrong on this one. I am sorry if you feel that I have disrespect." (*Id.*). This is not the conduct of someone who is afraid of making a complaint or losing her job.

Finally, contradicting her own prior testimony at the hearing, DeHoyos testified that she, in fact, did not think Caldwell would fire her because he wanted to control her instead.

Thus, the hearing officer determined that DeHoyos failed to prove that Caldwell sexually harassed her before August 26, 2010. The evidence was not sufficient to show

that she was subject to unwelcome conduct or that it was severe or pervasive enough to create a hostile work environment. The Board of Commissioners agrees with the hearing officer's conclusion.

## **2. DeHoyos Failed to Prove that She was Sexually Harassed on August 26, 2010.**

DeHoyos' contradictory testimony and evidence continued regarding the alleged harassment on August 26, 2010. She testified:

I proceeded to walk in front of him because I couldn't walk behind the chair because he was leaning against the wall.... That's when he grabbed my jacket and he sat me on his lap...I felt his erection...He just held me and I got up, I jotted up. [I felt] violated, scared. Because I didn't know what I was going to do.... I was walking out and he said 'I guess I don't have ED. And I'm thinking what the hell is ED....So I just kept on walking out and I went to go sit at the front desk.

Yet, DeHoyos' complaints to Melinc, the EEOC and CCHR do not state that Caldwell grabbed her and put her on his lap. In those complaints, DeHoyos alleged that he *tried* to do so, not that it actually occurred. Nor do any of these complaints state that DeHoyos "felt his erection." In fact, DeHoyos testified at the hearing that the first time she ever mentioned an "erect penis" was when she testified before the court at the no contact hearing in February of 2012 – a year and a half after the alleged incident occurred. Again, it is hard to believe that DeHoyos would omit such a significant fact from multiple complaints if it had actually happened.

Further, DeHoyos' testimony at the no contact hearing differed from her testimony at the CCHR hearing. During the no contact proceeding, DeHoyos testified that after the incident with Caldwell, she was upset. She stated, "My legs were stiff, I was having trouble breathing, and I was crying." (Resp. Ex. 57 at p. 34-35). Yet, at the CCHR hearing, DeHoyos testified only that she went back to the front desk to compose herself. She did not testify about her legs being stiff, having trouble breathing or crying. Again, her testimony was inconsistent.

The video presented by the Respondents also undercuts DeHoyos' claim. It shows DeHoyos walking through a door that leads to the information desk. Caldwell walks through the door right behind her. Thomas Thorpe is in the area. DeHoyos sits down at the desk, pulls out a newspaper or magazine and starts to read. She interacts with La Rabida employees and visitors. She does not appear to be upset, angry or concerned. Her demeanor and interactions at the time are completely inconsistent with those of someone who had just been grabbed and sexually harassed. Moreover, Caldwell walks out into the front desk area along with DeHoyos right after the alleged harassment. It is difficult to believe that he would have walked out into a public area if, as DeHoyos alleged, moments earlier he had an erect penis.



In addition, DeHoyos waited more than five hours before making a complaint to human resources about the alleged event. Instead of complaining, she went to the employee picnic and sat with her friends. Again, DeHoyos' conduct on the day of the event is inconsistent with allegations that she endured sexual harassment.

By contrast, Caldwell conducted himself in a manner consistent with someone who had done nothing wrong. When confronted with DeHoyos' allegations by Meline, he was understandably surprised. He informed Meline that he had been wrongly accused by another employee and took such allegations seriously. Caldwell volunteered this information when he had no obligation to do so.

When the police arrived at La Rabida in response to the incident report filed by DeHoyos, Caldwell willingly spoke to the officer without counsel present and over the objection raised by Francis Leftkowitz, the head of La Rabida's Human Resources Department. He went down to the police station the following day and took a polygraph test, which he passed. At the criminal proceeding, the no contact hearing and the CCHR hearing, his testimony was consistent and clear.

Cases involving sexual harassment are often "her word versus his." Thus, the credibility of the complaining witness is vitally important and a claim typically rises or falls based on the complainant's perceived veracity. *See, e.g. Williams, supra.* (finding sexual harassment where complainant credibly testified that the respondent made inappropriate sexual comments toward her and her daughter); *Manning v. AQ Pizza LLC*, CCHR No. 06-E-17 (Sept. 19, 2007) (finding sexual harassment in violation of the CHRO where the complainant credibly testified that the respondent repeatedly propositioned her for sex, exposed himself, tried to kiss her on the mouth and touched her inappropriately); *and Hawkins v. Ward*, CCHR No. 03-E-114 (May 21, 2008) (violation of the CHRO found where testimony established that the respondent repeatedly made unwanted sexual advances toward the complainant). By contrast, violations of the CHRO for sexual harassment were not found where the complainant's testimony lacked credibility. *See, e.g. Harper*, CCHR No. 04-E-86 (Feb. 17, 2010) (based on hearing officer's assessment of witness credibility, the Commission found no violation of the CHRO for sexual harassment where the respondents were deemed more credible than the complainant); *Little v. Tommy Gun's Garage Inc.*, CCHR No. 99-E-11 (Jan. 23, 2002) (based on the credibility of the parties and witnesses, the Commission found that the complainant did not prove sexual harassment or that she was terminated due to race or sex).

It is well established that the hearing officer and then the Board of Commissioners must weigh the credibility of the witnesses, choose among conflicting factual inferences, and weigh the evidence. *Bray v. Sandpiper Too et al.*, CCHR No. 94-E-43 at 8 (Jan. 10, 1996); *see also Sanders v. Onnezi*, CCHR No. 93-H-32 (March 16, 1994); *Tyson v. Jones and Laughlin Steel Corp.*, 958 F.2d 756 (7th Cir. 1992). Moreover, the Commission can disregard the testimony of any witness if it is determined that the witness is not telling the truth. *Bray and Sanders, supra.*; *see also Little v. Tommy Gun's Garage, Inc.*, CCHR No. 99-E-22 (Jan. 23, 2002).

As to liability decisions, the Board of Commissioners is required to adopt the final recommendation of the hearing officer if it is not contrary to the evidence presented at the administrative hearing. Reg. 240.620(a). In particular, the Board of Commissioners will not re-weigh the hearing officer's recommendation as to witness credibility unless it is against the manifest weight of the evidence. *Stovall v. Metroplex et al.*, CCHR No. 94-H-87 (Oct. 16, 1996). This means the Board will not re-weigh credibility or set aside proposed findings of fact merely because another interpretation is possible. *Wiles v. The Woodlawn Org. & McNeal*, CCHR No. 96-H-1 (Mar. 17, 1999). The hearing officer, who was present when testimony was taken, is often in the best position to assess the demeanor of witnesses, one of the factors to be considered in assessing credibility. See *McGee v. Cichon*, CCHR No. 96-H-26 (Dec. 30, 1997).

Regarding Complainant, the hearing officer determined that she was not a credible witness at the administrative hearing before the Commission regarding any of her claims. She contradicted herself many times on cross-examination and in documents admitted into evidence at the hearing. By contrast, Caldwell was a credible witness. He was consistent and his denials of any wrongdoing were believable.

Thus, for all of the reasons set forth above, the hearing officer concluded, and the Commission agrees, that Complainant failed to establish a *prima facie* case of sexual harassment arising from the alleged August 2010 incident because she could not show that she was subjected to unwelcome conduct of a sexual nature or that the conduct was pervasive enough to render her working environment intimidating, hostile or offensive.

### **B. DeHoyos' Retaliation Claim**

Section 2-160-100 of the CHRO provides:

No person shall retaliate against any individual because that individual in good faith has made a charge, testified, assisted or participated in an investigation, proceeding or hearing before the Commission. To prevail on a claim of retaliation, a complainant must show that she engaged in a protected activity, suffered an adverse action by her employer and that there is a causal link between the protected activity and the adverse action. See *Diaz v. Prairie Builders*, CCHR No 91-E-204 (Oct. 21, 1992). This claim also fails.

DeHoyos alleged that La Rabida discharged her on November 19, 2010, in retaliation for filing her harassment complaint with the CCHR. Yet, DeHoyos cannot show a link between her termination and filing the CCHR claim. Rather, the evidence shows that DeHoyos refused to return to work.

La Rabida allowed DeHoyos to take a leave of absence after the alleged incident on August 26, 2010, through September 7, 2010. Meline allowed DeHoyos to take additional time off after she complained on September 7, 2010, that she could not handle being around Caldwell. DeHoyos then requested and received leave under FMLA

through September 20, 2010. Meline testified, and the documents presented at the hearing show, that when DeHoyos was about the exhaust that leave, Meline contacted her to discuss options. Ultimately, La Rabida extended the FMLA leave through November 1, 2010. In an e-mail dated September 28, 2010, Meline advised DeHoyos that her request to extend leave to November had been granted, but she was expected to return to work on November 2, 2010. DeHoyos failed to do so.

On November 2, 2010, Meline e-mailed La Rabida's policies on additional leave, including disability leave, to DeHoyos. He advised DeHoyos again that her FMLA leave was exhausted as of November 1, 2010, and that her position with La Rabida would be filled if she did not return to work. Meline also sent DeHoyos forms to file a workers' compensation claim, if she wanted to do so, and La Rabida's policies on taking additional leave. DeHoyos stated that she received the e-mail but could not open the attachments. Yet, the evidence shows that DeHoyos never filed a claim because she was concerned it would prevent her from suing La Rabida.

Meline testified that he did not hear back from DeHoyos after he sent the e-mail and attachments. On November 19, 2010, more than two weeks later, Meline sent DeHoyos a Termination Notice in which he informed her that she had exhausted her FMLA leave; had told him she would not return to work; and failed to contact La Rabida after the November 2, 2010 e-mail with the attachments. (Resp. Ex. 52).

Far from retaliation for filing her CCHR claim, the evidence shows that La Rabida offered DeHoyos multiple opportunities to take leave, including filing a workers compensation claim. DeHoyos took leave through November 1, 2010, but then refused to return to work. As a result, she was discharged. *See Sian v. Rod's Auto & Trans. Ctr.*, CCHR No. 07-E-46 (June 16, 2010) (no retaliation where the Commission found credible the employer's explanation that the employee failed to return to work or call in for two weeks).

The hearing officer further determined that DeHoyos could not show constructive discharge. To prove that claim, DeHoyos would have to establish that her work conditions were so intolerable that a reasonable person would have felt compelled to resign. *Adams v. Chicago Fire Dept.*, CCHR No. 92-E-72 (Sept. 20, 1995). For the reasons set forth above, DeHoyos cannot prove such an intolerable environment based on sexual harassment. The hearing officer found that there was no credible evidence to support DeHoyos' assertion that she was sexually harassed, either prior to August 2010, or on August 26, 2010. Nor can she show that a reasonable person would have felt compelled to resign. As such, the hearing officer found that Complainant did not establish that she was discharged in retaliation for filing a complaint at the Commission. The Commission agrees.

In summary, the Commission finds that the hearing officer's factual findings in this case are not against the manifest weight of the evidence, and the hearing officer's conclusions are consistent with applicable law. Complainant has not proved by a preponderance of the evidence that Respondents violated the Chicago Human Rights

Ordinance by subjecting her to sexual harassment or discharged her in retaliation for filing a discrimination complaint at the Commission.

#### **IV. REQUEST FOR REVIEW OF INTERLOCUTORY ORDER**

Complainant requested a review of the hearing officer's interlocutory decision to allow evidence regarding Complainant's work performance and disciplinary record. Respondents sought to enter evidence regarding Complainant's work history at La Rabida Hospital, asserting that the documents relate to Complainant's credibility. Additionally, the documents related to whether Complainant was subjected to a pattern of harassment and whether Complainant feared retaliation from Caldwell. Complainant filed a Motion *in Limine* arguing that the documents should be excluded because they are irrelevant, collateral and prejudicial. On June 26, 2013, the hearing officer entered an order denying Complainant's motion because the documents were related to Respondents' defenses. The hearing officer further determined that Complainant's objections to the documents related more to their weight than their admissibility.

In her request for review, Complainant argues that the evidence regarding her work performance and disciplinary record should be barred because the documents bore no relation to Complainant's sexual harassment claims and had a prejudicial impact on the hearing officer's credibility determination.

The Commission's regulations state that the "administrative hearing officer shall have the full authority to control the procedure of the hearing, included... to admit or exclude testimony or other evidence." CCHR Reg. 240.307. In Commission hearings, a "hearing officer shall not be bound by the strict rules of evidence applicable in courts of law or equity." CCHR Reg. 240.314

Motions *in Limine* are generally disfavored by the Commission and shall not be granted unless it is clear that the evidence at issue is not admissible for any purpose. See *Greene v. New Life Outreach Ministries et al.*, CCHR No. 93-H-119 (Dec. 12, 1994); and *Williams v. Cingular Wireless et al.*, CCHR NO. 04-P-22 (July 11, 2007). Here, the hearing officer determined that documents regarding Complainant's work performance and disciplinary record were related to Respondents' defenses. Complainant had an opportunity to argue the weight and relevance of the documents at the hearing. Additionally, Complainant has not cited any persuasive case law that makes the admission of the documents improper.

Given the disfavor with which the Commission views motions *in limine*, that the documents in question were related to Respondents' defenses, and the authority of the hearing officer to consider evidence even if it would not meet strict rules of evidence applicable in other courts, the Commission finds that Complainant's motion was properly denied. Therefore, Complainant's request for review is denied.

## V. COMPLAINANT'S OBJECTIONS

On February 10, 2014, Complainant timely filed Objections to the Recommended Ruling ("Objections"). Pursuant to CCHR Reg. 240.610(b), objections to a recommended ruling must include (i) relevant legal analysis for any objections to legal conclusions, (ii) specific grounds for reversal or modification of any findings of fact including specific references to the record and transcript, and (iii) specific grounds for reversal or modification of any recommended relief. Further, as provided in §2-120-510(l) of the Chicago Municipal Code, the Commission must and does adopt the findings of fact recommended by a hearing officer if they are not contrary to the evidence presented at the hearing.

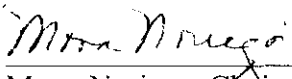
In her Objections, Complainant argues that the hearing officer's findings of fact should be modified because they were not supported by the evidence presented during the hearing. For each finding, Complainant suggests an alternative interpretation of testimony and evidence. As stated above, findings of fact will not be set aside unless they are contrary to the evidence presented at the hearing. The hearing officer's role is to determine which facts are pertinent and which should be disregarded. The hearing officer is not required to include every piece of documentary or testimonial evidence in the recommended ruling. That Complainant would have preferred reliance on some facts and evidence rather than others is not a viable objection or a basis upon which to disregard the hearing officer's recommended ruling. A party cannot use the objections to retry their case or rewrite the facts of that case to suit their version of events. Further, a party objecting to the hearing officer's recommendation cannot meet its burden merely by showing that there is another plausible interpretation of the evidence. *Claudio v. Chicago Baking Co.*, CCHR Case No. 99-E-76 (July 17, 2002), at 9; *Mahaffey v. University of Chicago Hospitals*, CCHR Case No. 93-E-221 (July 22, 1998), at 10.

Complainant also argues that the hearing officer's credibility determinations are against the manifest weight of the evidence. Determining credibility of witnesses and the reliability of their testimony and related evidence is a key function of hearing officers, who have the opportunity to observe the demeanor of those who testify. *Poole v. Perry & Assoc.*, CCHR No. 02-E-161 (Feb. 15, 2006). The hearing officer carefully explained the reasons for her credibility determinations and the Commission does not find them to be against the weight of the evidence. The Commission has reviewed and considered Complainant's objections, and finds nothing to warrant rejection or modification of the hearing officer's recommended ruling. The hearing officer's findings in this case are consistent with the evidence and well-supported in the hearing record. Therefore, Complainant's objections are dismissed.

## VI. CONCLUSION

Accordingly, the Commission finds in favor of Respondents and specifically finds that Complainant Beatris DeHoyos has not established a *prima facie* case of sexual harassment by Respondents La Rabida Children's Hospital and Dennis Caldwell. Additionally, Complainant did not establish that she was discharged in retaliation for filing a complaint at the Commission. Therefore, the Complaint in this matter is hereby DISMISSED.

CHICAGO COMMISSION ON HUMAN RELATIONS

  
By: Mona Noriega, Chair and Commissioner  
Entered: June 18, 2014