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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

BAHMAN REZAIPOUR,

Plaintiff and Appellant,

v.

LOS ANGELES COUNTY CIVIL
SERVICE COMMISSION,

Defendant and Respondent.

B281589

(Los Angeles County
Super. Ct. No. BS149575)

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Bahman Rezaipour, in pro. per., for Plaintiff and Appellant.

McCune & Harber, Heather M. Bean, Grace H. Kang and
Dominic A. Quiller for Defendant and Respondent.

Bahman Rezaipour (Rezaipour) was previously employed by Los Angeles County as a clinical psychologist with the Department of Mental Health (DMH). DMH terminated Rezaipour from his employment effective March 22, 2011, after it investigated and substantiated charges of sexual harassment, tampering with county property and insubordination.

Rezaipour appealed his termination to the Los Angeles County Civil Service Commission (the Commission). The Commission assigned a hearing officer to conduct an evidentiary hearing in the matter. The evidentiary hearing lasted from September 2011 to June 2013, including at least 38 days of testimony. The hearing officer then prepared a written decision finding that Rezaipour was properly discharged from his position and recommending that the action taken against Rezaipour be sustained.

In April 2014, the Commission adopted the hearing officer's decision and accepted the recommendation to sustain Rezaipour's termination. Rezaipour then sought a writ of mandate from the superior court to compel the Commission to set aside its decision upholding his termination. In his petition, Rezaipour claimed that the Commission's decision was invalid under Code of Civil Procedure section 1094.5 because the findings of misconduct were not supported by the weight of admissible evidence; that the Commission did not proceed in a manner required by law; and that the penalty imposed was excessive as a matter of law.

The trial court denied the writ petition. The trial court also denied Rezaipour's subsequent motion for reconsideration, motion to vacate judgment, and motion for new trial.

The trial's court judgment was supported by substantial evidence. Consequently, we affirm.

BACKGROUND¹

I. Los Angeles County's investigation

A. COMPLAINTS BY FEMALE EMPLOYEES

In May 2008, Yu Enomoto (Enomoto) began working for DMH at Camp David Gonzales, a juvenile offender facility. After two months on the job, she filed a sexual harassment complaint against Rezaipour. Enomoto resigned from her job in August 2008. DMH's Human Resources Bureau investigated Enomoto's allegations. Enomoto told investigators that Rezaipour subjected her to an uncomfortable and intimidating work environment by making unwanted advances. Rezaipour continually asked Enomoto to spend time with him outside of work, including repeatedly asking her to dinner, to go to a garage sale, and to go on a cruise with him. Enomoto always declined his invitations. When she firmly told Rezaipour that she was not interested in doing anything with him outside of work, he repeatedly asked her why and appeared to get upset and annoyed. Rezaipour also made Enomoto wait in his office while he finished work on the one computer allocated to DMH at the camp, which took valuable time away from her own work.

Rezaipour denied asking Enomoto to dinner or to accompany him to a garage sale. Rezaipour said he had planned a cruise for all staff at the camp and their families as a way of using continuing education funding. He said he told Enomoto about the cruise because she was a staff member and that the cruise did not happen due to lack of sufficient interest and financial resources. Shortly after investigators interviewed

¹ The following account has been taken from the thorough opinion issued by Superior Court Judge James C. Chalfant when denying Rezaipour's writ petition.

Rezaipour, Elizabeth Mateo (Mateo), another employee, provided a written statement corroborating Rezaipour's statements about the cruise. Mateo was interviewed six months later when investigators were examining a different allegation against Rezaipour. Mateo said that Rezaipour had dictated her previous written statement about the cruise. According to Mateo, she knew nothing about a cruise and Rezaipour did not tell her about one.

Mateo said that Rezaipour also had forced her to remain for hours in his office while she waited for him to give her needed information for her patient charts. As a result, Mateo avoided going into Rezaipour's office and used doors far away from his office in order to avoid interacting with him. Mateo confirmed that Enomoto also spent long periods of time—sometimes two to three hours—in Rezaipour's office. Enomoto told Mateo that Rezaipour had texted and called her on the weekends and invited her to go to Starbucks with him.

Social worker Krista Akmon (Akmon) began working at the camp in August 2008. Like Enomoto and Mateo, Akmon said she too was forced to spend long periods of time in Rezaipour's office. She told Mateo she disliked it. Mateo also overheard Rezaipour ask Akmon if she would like to travel to Hawaii. When she said she could not afford such a trip, Rezaipour replied, "You don't have to worry about paying." On another occasion, Mateo's supervisor told Mateo that her agency would not pay for a training trip in Las Vegas. Rezaipour told Mateo she could stay with him at his timeshare.

Investigators found that although no one had witnessed Enomoto's specific allegations, her version of events was more credible than Rezaipour's denials because it was corroborated by

a pattern of behavior consistent with her allegation.

Furthermore, Rezaipour's attempt to influence Mateo to provide a false statement indicated consciousness of guilt.

Esmerelda Aguilera (Aguilera), a deputy probation officer assigned to the camp, filed a complaint against Rezaipour in January 2009. According to Aguilera, Rezaipour, who was not her supervisor, called her into his office and said her gestures and posture were inappropriate because they were causing the minors she worked with to conjure up sexual thoughts.² Aguilera said she was humiliated by the conversation. Akmon was present during the conversation. She said that Rezaipour had ordered Aguilera into a chair and confronted her over her " 'sexually suggestive standing positions.' " Lorraine Gray (Gray) was also present during this conversation. She stated that Rezaipour repeated over and over again how sexually attractive Aguilera was and that the " 'kids' " probably thought she was sexually attractive as well. Gray said the conversation made her feel sick and uncomfortable.³ Rezaipour admitted that the

² Aguilera later testified that she was wearing her standard uniform that day—long pants, a long-sleeved shirt, and a probation shirt. She had not rolled up her pants or shirt in any way. Her shirt was not low cut. Her hair was in a bun and she wore little makeup. She also demonstrated the stance Rezaipour took issue with by raising one leg and resting her elbow on it.

³ Gray also stated that on January 3, 2009, Rezaipour forced her to go Starbucks with him. While there, he grabbed her hand and put it on his chest. Rezaipour kept her there for an hour after she got off work. When Gray asked what was going on with him, Rezaipour asked if she liked him. Gray responded, "I like you as my boss and you seem to be a fair boss." Rezaipour stated, "Don't be surprised if I kiss you one day." Disgusted,

conversation took place and said he had wanted to discuss his concerns about the minor.

Investigators found that although Rezaipour had subjected Aguilera to unwelcome comments based on her sex, no tangible job action had occurred as a result of his comments and the conversation alone was insufficient to create a hostile work environment. Thus, in this instance, Rezaipour's conduct did not violate the Los Angeles County's (the county) Equal Employment Opportunity Commission (EEOC) policy. When the county's Office of Affirmative Action Compliance (OAAC) formally notified Rezaipour of this particular determination, it also informed Rezaipour that this finding would not influence any decisions about his continued employment with the county.

In February 2009, Akmon submitted a written complaint alleging that Rezaipour continually sexually harassed her from the beginning of her employment at the camp. According to Akmon, Rezaipour made inappropriate comments on her appearance, hugged her, demanded that she go on outings with him, and frequently called and texted her during nonwork hours. Rezaipour, while in front of minors, repeatedly referred to Akmon as "the cute social worker," asked her to go on trips with him to Las Vegas, Disneyland, Hawaii and Solvang, hugged her on four or five occasions and, after seeing her hug a female friend, said to Akmon, "[Y]ou never hug me that way and I write your

Gray replied, "That will never happen." This incident took place after Rezaipour took Gray to a Christmas party in December 2008, which she felt compelled to attend because Rezaipour was her boss.

evaluation.”⁴ Akmon said Rezaipour also made her watch a movie with sexual content, sent her text messages after work hours, and made her attend a dinner with pharmaceutical representatives. Although Rezaipour’s behavior made her feel uncomfortable, Akmon said that she did not complain because she was still on probation and worried that doing so could jeopardize her job.

Rezaipour denied most of Akmon’s allegations. He denied inviting Akmon to travel anywhere or sending her texts and emails outside of work hours and produced six months worth of phone records in his defense. According to Rezaipour, he invited, rather than forced, Akmon to attend the dinner with pharmaceutical representatives. Rezaipour admitted that he knew the movie he had Akmon watch contained sexual content but claimed he told Akmon she did not have to watch those parts.

Crediting Akmon’s version of events and finding that Rezaipour’s denials were not credible, investigators found that Rezaipour had engaged in inappropriate conduct of a sexual nature. Investigators also determined that Rezaipour’s conduct violated the county’s EEOC policy.

The OAAC also performed a pattern and practice assessment regarding Rezaipour’s conduct. The assessment concluded that Rezaipour had engaged in inappropriate conduct of a sexual nature with several female DMH employees and that none of the women had a motive to submit false affidavits or

⁴ According to Akmon, the Solvang trip was not presented as an invitation but as a demand. Furthermore, although Rezaipour told Akmon that another male employee would accompany them on the trip, that employee later testified that he had received no such invitation from Rezaipour.

falsely accuse Rezaipour of sexual harassment. Thus, it was more likely than not that the employees' allegations were true and that Rezaipour's denials were not believable.

B. REASSIGNMENT AND ALLEGED RETALIATION

During the sexual harassment investigation, Rezaipour was reassigned from the camp to DMH headquarters. Rezaipour contacted DMH and claimed that his reassignment constituted retaliation for his previous complaints about probation officer Carmen Yepez (Yepez) and for alleging unsafe working conditions at Camp Gonzales.⁵

On April 28, 2009, the county reassigned Rezaipour with pay to his home after DMH found he was interfering with the agency's ongoing investigation. The county directed that Rezaipour, while reassigned to his home, should remain reachable at home by phone on Tuesday, Wednesday, Thursday and Saturday from 8:00 a.m. to 6:30 p.m., excluding lunch from 1:00 p.m. to 1:30 p.m. Rezaipour was prohibited from entering any county facility unless otherwise notified. The county also informed Rezaipour that failure to follow these instructions would constitute insubordination.

On August 18, 2009, DMH found that Rezaipour had been reassigned due to the investigation into Yepez's sexual harassment claim—as well as other pending harassment investigations—and not because Rezaipour had complained about probation officers providing false information in court hearings. Thus, DMH concluded that Rezaipour's unsubstantiated

⁵ Rezaipour alleged that Yepez had presented false information about a minor in a court hearing. Within a few days, Yepez filed a sexual harassment claim against Rezaipour.

allegations did not meet the elements of retaliation as established by the EEOC.

C. DISCIPLINE

On September 28, 2010, the OAAC notified Rezaipour that the pattern and practice assessment had substantiated the allegations against him.⁶ This time, the OAAC did not state that its findings would not influence any decisions about Rezaipour's continued employment with the county.

The county held *Skelly* hearings on November 17, 2010, and February 10, 2011.⁷ On March 22, 2011, DMH discharged Rezaipour from his position. DMH's discharge letter stated that although Rezaipour's responses in both *Skelly* hearings were carefully considered, they did not ultimately affect the county's decision to fire him. The basis for the discharge was Rezaipour's inappropriate action toward a female probation department employee as well as unwelcome sexual conduct and retaliation against several female DMH employees and interference with the investigation.⁸

⁶ On September 29, 2010, Akmon filed an ex parte application for a restraining order against Rezaipour, which was granted. Akmon did not appear at the next court date, at which time the court said the temporary restraining order should not have been granted given the age of the complaint.

⁷ A *Skelly* hearing is an administrative hearing that gives the employee an opportunity to present his or her version of the relevant events before termination. (*Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194.) Rezaipour's *Skelly* hearings were separate proceedings from the evidentiary hearing and are not at issue here.

⁸ Rezaipour was also discharged due to his misuse of a county computer, including his replacement of the hard drive,

II. Appeal to the Commission

Rezaipour appealed his termination to the Commission. The Commission defined the issues on appeal as: (1) whether the allegations contained in the March 22, 2011, discharge letter were true, and (2) if the allegations were true, whether the discipline was appropriate. The Commission assigned a hearing officer to conduct an evidentiary hearing in the matter. The evidentiary hearing lasted two years, including approximately 38 days of trial testimony, and generated a 14,241-page administrative record.

During the evidentiary hearing, the complaining witnesses verified the truth of their previous investigative interviews. Their testimony also provided additional context and details regarding Rezaipour's conduct. For example, Mateo said she was unable to meet with her minor clients because Rezaipour made her sit in his office for hours. When she would ask Rezaipour if she could leave his office and work, he would tell her to relax "because she was too antsy." Rezaipour would make tea, surf the

which rendered the computer unsecured. Although the district attorney's office filed charges against Rezaipour based on this conduct, the case was later dropped. Rezaipour was also discharged based on his failure to remain available and reachable at home as previously directed. A DMH representative had called Rezaipour on September 28, 2010, and told him to be home and available by phone the next day between 2:00 p.m. and 5:00 p.m. in order to accept letters of determination. Another DMH representative called Rezaipour on September 29, 2010, asking him to return home to accept the letter. Instead of complying, Rezaipour yelled expletives at the caller. DMH's counsel concluded that Rezaipour's conduct amounted to insubordination.

internet, and make phone calls while Mateo waited for Rezaipour to gather information she needed from him. Rezaipour invited Mateo to travel to Santa Barbara with him and asked her to accompany him to Universal Studios. Rezaipour came into Mateo's office after Enomoto had complained about his conduct and ordered Mateo to write a statement for the Enomoto investigation. Rezaipour dictated the statement he wanted Mateo to write. He wanted her to say that he had organized a cruise to Hawaii for the entire probation department staff. Mateo testified the statement was inaccurate because she had no part in planning such a trip and was not aware of its purpose.

According to Mateo, once Akmon began working for Rezaipour, Akmon became the one he kept in his office for hours. Akmon confirmed that Rezaipour would frequently prevent Akmon from seeing minors by forcing her to sit in his office while he did work. Akmon also testified that Rezaipour had forced her to attend a pharmaceutical representative dinner. Rezaipour told Akmon at the beginning of the work day that she should call her family and tell them she would be home late but refused to tell her why. Later in the day, Rezaipour told Akmon to stop working and leave with him. He still would not tell her where they were going. Akmon was concerned and insisted on driving her own car and following Rezaipour. She followed him to a shopping plaza, where he finally told her about the dinner. Akmon did not think she could refuse Rezaipour's insistence that she attend the dinner, especially since he was responsible for writing her performance evaluations. Although Akmon filled out a survey in January 2009 stating positive things about Rezaipour's supervision, she had to deliver the survey to Rezaipour after she had completed it. Rezaipour had previously told Akmon that she

had filled out a survey incorrectly so she completed this one the way Rezaipour wanted.

With respect to Rezaipour's county-issued laptop, a computer expert from DMH testified that Rezaipour had replaced the laptop's hard drive. Rezaipour's personally-installed hard drive lacked the safeguards required for a county computer, such as password complexity and a password encryption timer. The hard drive also did not have the required encryption software. Furthermore, when an unprotected hard drive accesses the internet, it potentially opens the county network to a security breach. The lack of encryption also meant that the computer did not comply with the Health Insurance Portability and Accountability Act (HIPAA) and violated county and department policies. There was no reason why an employee would need to use a personal hard drive to access the internet or the county network. The laptop also contained unauthorized applications. One application allowed the user to upload documents to a remote location, which would be a HIPPA violation. An examiner also found protected health information on the laptop.

Rezaipour testified during the evidentiary hearing as well. Rezaipour confirmed some of the allegations. For example, Rezaipour admitted he had admonished Aguilera that her stance had caused a minor to believe Aguilera wanted to have an intimate relationship and that Aguilera was in love with him. Rezaipour said he advised Aguilera that he had a legal duty to inform Aguilera of the minor's words. However, Rezaipour denied calling Akmon the " 'cute social worker' " and denied that he had asked Akmon to accompany him to Solvang, Hawaii, Disneyland or Las Vegas. Rezaipour also claimed that Akmon asked to be included in any invitations he received from

pharmaceutical companies. Indeed, Rezaipour testified, Akmon was enthusiastic for days after he invited her to the pharmaceutical representative dinner. He denied sending her texts or emails outside of work hours.

Rezaipour also denied telling Gray that he wanted to kiss her. Instead, Rezaipour claimed that when he told Gray she had been hired, Gray told Rezaipour she wanted to kiss him.

Rezaipour also claimed that Mateo had a motivation to lie about his conduct. According to Rezaipour, Mateo had improperly billed the county for services that she had not performed.

Rezaipour brought this to the attention of Mateo's supervisor and Mateo's bills were then adjusted downward, costing her money.

As for his work computer, Rezaipour testified that he had the permission of his program head, as well as the district chief, to install his own hard drive into the laptop. Although Rezaipour acknowledged he had been instructed on September 28, 2010, to be available by phone between 2:00 p.m. and 5:00 p.m. on September 29, 2010, Rezaipour said he was not told he needed to be physically present at his house on that day. On September 29, 2010, at an unknown time, Rezaipour received a phone call from someone who said he was with DMH. This unknown person told Rezaipour that he had been fired and to check his post office box for the termination papers. While on his way back from the post office, another DMH employee called to determine Rezaipour's location.

The hearing officer issued his report on October 11, 2013. The officer determined that Rezaipour had a pattern and practice of inappropriate conduct toward female employees. Rezaipour also had a pattern and practice of creating an uncomfortable and intimidating work environment for female employees, including

inviting them on unwanted trips and meals, requiring them to sit in his office and not do work, and making unwelcome comments about their looks and age.

The hearing officer also concluded that the complainants were more credible than Rezaipour and this was dispositive of his guilt. The women all alleged similar acts that corroborated each other and all but one alleged multiple acts of misconduct. Most of the women did not know each other and their work dates did not overlap. Indeed, some of the women were no longer employed by the county at all. Furthermore, there was no evidence that the women had crafted their complaints together or that they had received anything of value for their testimony. Moreover, the hearing officer did not believe Rezaipour's claim that two of the women had lodged allegations against him in retaliation for his work performance complaints about them. There was no evidence that the two women even knew about his complaints. In short, the hearing officer found, Rezaipour's chief evidence was his own unpersuasive and uncorroborated testimony.

Based on the evidence, the hearing officer concluded that Rezaipour used his supervisory position to dominate, control, intimidate and harass his female employees, thereby creating a hostile work environment. The hearing officer also determined that Rezaipour's conduct violated several state, county and departmental statutes, rules and policies and was thus inappropriate as charged.

With respect to the insubordination charge, the hearing officer found that Rezaipour understood his instructions to remain home while assigned there and further understood the order to be at home on September 29, 2010. Rezaipour's refusal to comply with that order constituted insubordination and his

claims that DMH employees were conspiring against him were not credible or supported by the evidence.⁹ With respect to his alleged misuse of a county computer, Rezaipour admitted he had replaced the hard drive on his county-issued computer. The hearing officer found that this misuse violated several county rules and policies.

The hearing officer concluded that based on Rezaipour's serious violations of statutes, rules and policies, discharge was well within the county's guidelines and a lesser penalty or progressive discipline was not appropriate. Indeed, retaining Rezaipour as a county employee would expose the county to liability. Therefore, the hearing officer recommended that Rezaipour be discharged. On April 9, 2014, the Commission overruled Rezaipour's objections to the hearing officer's proposed decision and approved the officer's findings.

III. Writ petition

Rezaipour sought a writ of mandate from the Superior Court compelling the Commission to set aside its decision upholding his termination. The trial court denied the petition. Applying the independent judgment test, the trial court held that Rezaipour committed a pattern and practice of sexual harassment and used his supervisory position to dominate, intimidate and harass his female employees, thus creating a hostile work environment for his employees.¹⁰

⁹ Rezaipour had also refused to return office keys and patient files and had disobeyed orders to pick up personal belongings.

¹⁰ "In reviewing the evidentiary sufficiency of an administrative agency's decision—if the decision affects a fundamental vested right—the trial court must exercise its

The trial court first addressed Rezaipour's retaliation claim. According to Rezaipour, all of the charges against him were pretextual because the employees making the accusations were targeting Rezaipour for reporting wrongdoing. First, the trial court noted, retaliation and pretext were not within the scope of Rezaipour's evidentiary hearing. The only issues were whether the allegations were true and, if so, the appropriate discipline. Secondly, Rezaipour was precluded from making a retaliation claim given that he had made the same claim in a federal lawsuit and lost on summary judgment.¹¹ Issue

independent judgment on the evidence; the trial court must weigh the evidence and determine whether the administrative findings are supported by the weight of the evidence. This is the independent judgment test." (*Amerco Real Estate Co. v. City of West Sacramento* (2014) 224 Cal.App.4th 778, 782–783.) In short, the trial court substitutes its judgment for the agency's regarding the basic facts of what happened, when, why, and the credibility of the witnesses. (*Guymon v. Board of Accountancy* (1976) 55 Cal.App.3d 1010, 1016.)

¹¹ Rezaipour's federal lawsuit alleged five claims for relief: "(1) discrimination based on national origin, in violation of the Fair Employment and Housing Act ('FEHA'), Cal. Gov't Code § 12940(a); (2) failure to take all reasonable steps to prevent discrimination, in violation of FEHA, Cal. Gov't Code § 12940(k); (3) retaliation for whistleblowing, in violation of California Labor Code §§ 98.6, 1102.5; (4) retaliation for exercise of First Amendment rights, pursuant to 42 U.S.C. § 1983; and (5) retaliation for making complaints about workplace safety, in violation of California Labor Code § 6310." (*Rezaipour v. County of Los Angeles* (C.D.Cal. July 10, 2014, CV-12-05005-MWF (VBKx) 2014 WL 12674923, *1) [nonpub. opn.]) Rezaipour later stated he was only pursuing his third claim for retaliation for whistleblowing and his fourth claim for retaliation for exercising

preclusion thus prevented Rezaipour from relitigating the issue, which had been argued and decided in that prior proceeding.

Regarding the insubordination claim, Rezaipour argued that the home reassignment order was no longer in effect when he refused to return home on September 29, 2010, because the investigation against him had been completed by that time. According to the trial court, however, Rezaipour remained subject to the order until he had been assigned elsewhere. Even if Rezaipour was informally told that the investigation was complete or that he had been fired, Rezaipour was not entitled to disregard the terms of his home assignment.¹² By Rezaipour's own testimony, he was not told that he was excused from leaving his house or from being available in person. If Rezaipour had any doubt, the direction he received on September 28, 2010, that he be home and available between 2:00 p.m. and 5:00 p.m. the next day was more than sufficient to compel him to be at home. Thus,

his First Amendment rights. (*Ibid.*) The court rejected Rezaipour's whistleblower retaliation claim because he had not created a triable issue of fact as to causation. (*Id.* at *9.) As to his First Amendment retaliation claim, the court found Rezaipour failed to create a triable issue of fact that his speech was a substantial or motivating factor in the adverse employment actions. (*Id.* at *13.) In an unpublished opinion, the Ninth Circuit Court of Appeals affirmed the district court's grant of summary judgment. (*Rezaipour v. County of Los Angeles* (9th Cir. 2016) 655 Fed.Appx. 552.)

¹² Indeed, as Rezaipour himself admitted, he was not actually fired on September 29, 2010. The documents served on Rezaipour on that date only notified Rezaipour that DMH intended to discharge him. Rezaipour was not actually terminated until March 22, 2011.

the weight of the evidence supported the insubordination charge. However, the trial court did not find that the weight of the evidence supported the computer tampering charges. The county provided no evidence to counter Rezaipour's claim that county policy allowed personal equipment to be used for business purposes with approval from a project manager or a district chief, which Rezaipour had obtained.

As to the sexual harassment allegations, the trial court concluded that the weight of the evidence supported the allegations made by Enomoto, Aguilera, Akmon and Gray. Although Enomoto did not testify at the evidentiary hearing, the hearing officer had not erred in considering her out-of-court statements to investigators, according to the trial court. While Enomoto's hearsay statements were inadmissible to prove she was sexually harassed, the trial court found they could be used to corroborate the other complainants' accounts.

The trial court also found meritless Rezaipour's claim that Enomoto filed her harassment complaint in retaliation for his complaint that she had inconsistent work hours. Indeed, there was no evidence that Enomoto was even aware of an email Rezaipour sent to her supervisor—an email which appeared innocuous regardless. The trial court also rejected Rezaipour's contention that investigators found Enomoto's claims to be unsubstantiated. Although a draft version of the investigation report found that Enomoto's allegations were uncorroborated, the final investigation report substantiated the allegations because Mateo came forward later to corroborate the allegations and to reveal that Rezaipour had dictated Mateo's previous false statement.

In addition, Akmon corroborated Aguilera's account and confirmed that Rezaipour confronted Aguilera over her allegedly sexually suggestive standing positions. Gray also corroborated Aguilera's account and said Rezaipour repeated over and over that Aguilera was sexually attractive to the minors and they might think she was sexually attracted to them. Gray said the conversation made her feel sick and uncomfortable. Aguilera's supervisor said Aguilera came to her after the conversation with Rezaipour and was in tears.

Rezaipour did not dispute that he confronted Aguilera in Akmon's and Gray's presence but said he had a duty to do so under *Tarasoff v. Regents of University of California* (1976) 17 Cal.3d 425, 431 (therapist had duty to warn victim where patient posed a danger to her). The trial court noted that although *Tarasoff* creates a duty to warn when a patient presents a serious risk of violence, Rezaipour presented no evidence that the minor was a potential danger to Aguilera. The trial court observed that even if the minor was a danger to Aguilera, Rezaipour's *Tarasoff* duty would have been to advise both Aguilera and her supervisor and to identify the minor to them, which he did not do. Moreover, the trial court observed, Rezaipour's version of the incident was simply not credible. Finally, although the initial investigation determined that Rezaipour's conduct in this instance was insufficient to create a hostile work environment under one particular county policy, this did not mean Rezaipour had not violated any other county or DMH policies. Furthermore, this finding did not bar the county from considering Aguilera's accusation.

When reviewing Akmon's allegations, the trial court determined Akmon to be more credible than Rezaipour. Most of

the women who complained about Rezaipour's alleged similar acts did not know each other, their work dates did not necessarily overlap—indeed, some no longer even worked for the county—and there was no evidence that the women had conspired against Rezaipour. Rezaipour's dictation to Mateo of a false witness statement further diminished his credibility.

The trial court also found that Gray's allegations were credible. Her testimony regarding Aguilera's allegations proved consistent with both Aguilera's and Akmon's accounts. Furthermore, Rezaipour admitted showing a movie containing sexual content to Gray and Akmon. He also admitted taking Gray to Starbucks. Gray's description of what happened at Starbucks jibed with descriptions of Rezaipour's conduct with other female employees. The trial court rejected Rezaipour's claim that Gray might have been motivated to lie because he told her not to stay beyond normal working hours. The contention lacked evidentiary support that Gray was dissatisfied with this directive. Although Gray subsequently sent Rezaipour positive text messages, this fact did not impact the veracity of her account. Rather, it supported the conclusion that Gray's testimony overstated the impact of Rezaipour's harassment. Although Gray had entered into a settlement agreement in exchange for dismissing her EEOC claim, by that point, she had already provided a statement regarding Rezaipour's conduct. Thus, there was no reason to believe the settlement agreement had any effect on Gray's testimony, which was consistent with her prior accusations as well as accounts from other female employees.

Rezaipour also contended he was denied a fair evidentiary hearing because the hearing officer failed to consider Rezaipour's

testimony in making his decision. The trial court deemed this claim spurious. As noted by the trial court, the hearing officer carefully set forth all the testimony in his proposed decision and discussed the evidence presented extensively. Although the hearing officer determined that Rezaipour's account was less credible than the complainants, this did not mean his account was not considered.¹³

Rezaipour further claimed that McCune and Harber, the law firm representing the county, had an impermissible dual role of representing the county while advising the Commission. In support of this contention, Rezaipour claimed he saw an attorney from the firm speaking with members of the county counsel's office as well as the Commission.¹⁴ The trial court observed that Rezaipour appeared confused about the nature of the law firm's representation. It would be perfectly appropriate for the attorney to speak with county counsel if they represented the DMH. Furthermore, there was no evidence of concurrent representation by members of the law firm and no need for an ethical wall. Nor was there any evidence that an attorney from the firm had an ex parte communication with the Commission about Rezaipour's case. Thus, Rezaipour failed to demonstrate there was an impermissible relationship between the law firm and the Commission.

¹³ Although the hearing officer misstated a witnesses' name two times within his decision, the trial court found that the misattributed quotations were not prejudicial in any way.

¹⁴ Rezaipour asserted but presented no evidence that an attorney from the firm spoke to the Commission's legal advisor.

Lastly, Rezaipour claimed that the hearing officer was impermissibly biased because he had an undisclosed financial relationship with the county due to his employment with the Assessment Appeal Board (AAB) in addition to his work for the Commission. While the AAB and the Commission were administratively supported by the county's executive office, which pays the hearing officers for their work, the AAB had no demonstrated interest in the results of Rezaipour's evidentiary hearing. Indeed, the trial noted, no evidence came forth that the AAB knew about or considered Commission hearings when assigning AAB hearings to individual hearing officers. Nor was there any evidence that the executive office had any influence over which hearing officers were employed by the AAB or the Commission. Thus, Rezaipour failed to demonstrate a connection between the decisions of the two entities or that the hearing officer was biased in any way.¹⁵

STANDARD OF REVIEW

Following a superior court's independent review of the record, the scope of review on appeal is limited. (*Pasadena Unified Sch. Dist. v. Commission on Professional Competence* (1977) 20 Cal.3d 309, 314.) "On appeal from a decision of a trial court applying its independent judgment, we review the trial court's findings rather than those of the administrative agency. [Citation.] Specifically, we review the trial court's factual findings for substantial evidence. In doing so, we must resolve all conflicts in favor of . . . the party prevailing [before the trial

¹⁵ Following the trial court's denial of Rezaipour's writ petition, Rezaipour filed a motion for reconsideration, a motion to vacate the judgment and a motion for a new trial. The trial court denied all three motions, again issuing detailed opinions.

court]. Further, we cannot reweigh the evidence. Thus, we do not determine whether substantial evidence would have supported a contrary judgment, but only whether substantial evidence supports the judgment actually made by the trial court.” (*Norasingh v. Lightbourne* (2014) 229 Cal.App.4th 740, 753.) Thus, the question is whether any substantial evidence, contradicted or uncontradicted, supports the trial court’s conclusion that the weight of the evidence supported the hearing officer’s findings of fact. (*Ibid.*) “We uphold the trial court’s findings unless they so lack evidentiary support that they are unreasonable.” (*Ibid.*) We review the trial court’s legal conclusions de novo. (*Coastal Environmental Rights Foundation v. California Regional Water Quality Control Bd.* (2017) 12 Cal.App.5th 178, 190.)

DISCUSSION

I. The hearing officer’s alleged bias

On appeal to this court, Rezaipour raises issues exhaustively and repeatedly examined below. First, Rezaipour contends that the hearing officer’s alleged undisclosed financial relationship with the county denied him a fair evidentiary hearing, a violation of his due process rights. As noted above, the hearing officer was employed by the AAB and the Commission. Both the AAB and the Commission are administratively supported by the county’s executive office, which pays the hearing officers for their work.

Our Supreme Court has observed that “[c]ounties that appoint temporary administrative hearing officers must do so in a way that does not create the risk that favorable decisions will be rewarded with future remunerative work.” (*Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1020 (*Haas*).) “[D]ue

process does not forbid the government to pay an adjudicator when it must provide someone with a hearing before taking away a protected liberty or property interest.” (*Id.* at p. 1031.) “Indeed, the government must ordinarily pay the adjudicator in such cases to avoid burdening the affected person’s right to a hearing.” (*Ibid.*) In *Haas*, however, the county unilaterally selected and paid the hearing officer on an ad hoc basis and the officer’s income from future adjudicative work “depended entirely on the government’s goodwill.” (*Id.* at p. 1024.) This particular system did not satisfy the requirements of due process. (*Id.* at p. 1037.)

Here, Rezaipour presented no evidence that the county’s executive office had any influence over which hearing officers are employed by either the AAB or the Commission. Rezaipour later suggested that the AAB unilaterally selected hearing officers and paid them on a fee-based system.¹⁶ According to Rezaipour, the county’s executive office controlled the AAB. Thus, by

¹⁶ Rezaipour’s claim that the county has since admitted the AAB uses this selection method is patently false. Moreover, even if the AAB *does* select its hearing officers in this manner, the Commission does not. Indeed, the hearing officer selected in this case was not a temporary officer selected on an ad hoc basis but instead was part of the regular rotation of hearing officers selected by the parties in accordance with Civil Service Commission Procedural Rule 5.01. (See <civilservice.lacounty.gov/Rules/Procedural-Rules> [as of March 13, 2018].) This method expressly complies with the recommendations set out in *Haas, supra*, 27 Cal.4th 1017. (See *id.* at p. 1037, fn. 22 [to eliminate risk of bias, public entities may appoint panel of attorneys to hear cases under preestablished system of rotation].)

Rezaipour's logic, the hearing officer had incentive to favor the Commission. However, as noted by the trial court, Rezaipour failed to show any connection between the hearing officer's work for the AAB and his work for the Commission. Furthermore, the AAB had no demonstrated interest in Rezaipour's evidentiary hearing and there was no evidence that the AAB knew about or considered Commission hearings when assigning AAB hearings to individual hearing officers.

Rezaipour also argues that he did not have to establish actual bias, but simply the appearance of bias.¹⁷ Rezaipour is correct that evidence of actual prejudice is not required. (See *Yaqub v. Salinas Valley Memorial Healthcare System* (2004) 122 Cal.App.4th 474, 485–486.) Indeed, our Supreme Court “has repeatedly and unambiguously held that courts do not, when faced with a claim of bias arising from financial interest, decide whether the adjudicator was in fact influenced.” (*Haas, supra*, 27 Cal.4th at p. 1026.) Thus, our inquiry is not whether a particular officer has actually succumbed to temptation, but whether economic realities render the design of the fee system susceptible to possible temptation. (*Id.* at p. 1029.) However, we also note that the “appearance of bias that has constitutional significance is not a party's *subjective, unilateral* perception; it is the *objective*

¹⁷ In arguing that the trial court required he show actual bias, Rezaipour cites a section of the trial court opinion where the court noted Rezaipour had failed to demonstrate the hearing officer had an unlawful pecuniary incentive to rule in the county's favor or was actually biased against Rezaipour. The trial court later observed that Rezaipour misunderstood the court on this issue. The trial court did not hold that Rezaipour had failed to show actual bias, but rather that he failed to show a situation in which the hearing officer had a possible temptation.

appearance that arises from financial circumstances that would offer a possible temptation to the average person as adjudicator.” (*Id.* at p. 1034.) Moreover, an objectively high probability of bias, rather than mere appearance, is required for a due process violation. (See *People v. Freeman* (2010) 47 Cal.4th 993, 1006.)

“The paradigmatic examples of adjudicators with pecuniary interests in the outcome are (1) adjudicators serving, in effect, as judges of their own cases, and (2) judges whose compensation depends on the result of adjudication.” (*Haas, supra*, 27 Cal.4th at p. 1027.) Here, there was no evidence that the hearing officer’s compensation depended on the result of this, or any, adjudication. Rezaipour’s sole argument that the AAB and the Commission were both administratively supported by the county’s executive office falls short of the mark of demonstrating a possible temptation.

Rezaipour further maintains that the hearing officer’s membership with the Pacific Palisades Community Council (PPCC) revealed the appearance of bias in this case. As explained by Rezaipour, because the PPCC sought money from the county for its projects, the officer could have been tempted to rule in the county’s favor, hoping that the county would reciprocate by funding future projects. This type of alleged bias is not implied and must be clearly established. (See *Brown v. City of Los Angeles* (2002) 102 Cal.App.4th 155, 177–178, fn. 13.) Here, however, there was no evidence that the hearing officer personally sought to obtain funding from the county or that his position with the PPCC was dependent on his ability to obtain funding. Nor did the officer ever communicate with his county supervisor about this case. Thus, Rezaipour failed to

demonstrate the officer was biased—personally, politically or financially.

Rezaipour also again alleges he observed ex parte communications between the attorney who litigated his case before the Commission and various commissioners. However, as noted by the trial court, there was no evidence that any of these individuals spoke about this case. Thus, Rezaipour failed to demonstrate an impermissible relationship existed between the attorney and the Commission.

II. The trial court’s standard of review

As noted above, the trial court applied the independent judgment test when finding that Rezaipour had sexually harassed the complainants and used his supervisory position to dominate, control and intimidate his female employees. Indeed, the trial court was expressly required to exercise its independent judgment on the evidence, examining the entire administrative record and reviewing evidence both in support of, and in conflict with, the administrative agency’s findings. (*Bixby v. Pierno* (1971) 4 Cal.3d 130, 143–144.) Under this standard of review, the trial court resolved evidentiary conflicts, assessed witnesses’ credibility and arrived at its own independent findings of fact. (See *Barber v. Long Beach Civil Service Com.* (1996) 45 Cal.App.4th 652, 658–659 (*Barber*).)

Nevertheless, Rezaipour contends that the trial court applied the substantial evidence standard of review instead of exercising its independent judgment. In so arguing, Rezaipour points to the trial court’s alleged reliance on the residuum rule, which requires that “the substantial evidence supporting an agency decision must consist of at least ‘a residuum of legally admissible evidence.’” (*The Utility Reform Network v. Public*

Utilities Com. (2014) 223 Cal.App.4th 945, 960–961.) However, the trial court cited the residuum rule only when holding that while Enomoto’s hearsay statements were inadmissible to prove she was sexually harassed, they could be used to corroborate the fact that other women were harassed. Given that “[h]earsay evidence may be used for the purpose of supplementing or explaining other evidence” but is insufficient in itself to support a finding unless it would be admissible over objection in civil actions (Gov. Code, § 11513, subd. (d); see Los Angeles Civil Service Rule 4.10, subd. (b)), the trial court remained within the bounds of controlling administrative law.¹⁸ Furthermore, the trial court’s citation to the residuum rule does not mean the court applied the substantial evidence standard of review rather than exercise its independent judgment. Instead, the court simply described the evidentiary standards under which it functioned. Evidence must be substantial to be considered by the factfinder whatever the standard of review.

Finally, as noted by the trial court, under Code of Civil Procedure section 1094.5, subdivision (c), “[w]here [as here] it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence.” Thus, the trial court was tasked with reweighing the evidence presented during the evidentiary hearing in order to determine whether the findings of the hearing officer were correct. The trial court followed that

¹⁸ The Civil Service Rules can be found at in appendix 1 at https://library.municode.com/ca/los_angeles_county/codes.

mandate in this case, as shown by numerous references by the court to its duty to independently weigh the evidence as well as its thorough and comprehensive opinion.¹⁹

III. The County's alleged failure to follow policy

Rezaipour next contends although DMH removed Rezaipour from his office on February 3, 2009, the agency never investigated the allegations that led to his removal and no record of an investigation was ever produced. According to Rezaipour, this constitutes a violation of county policies and regulations.²⁰ Furthermore, Rezaipour claims he was denied an opportunity to present his side of the story or provide a written response before the imposition of any discipline. Rezaipour also claims that the lead investigator in his case, Shelli Weekes (Weekes), was not an impartial factfinder because she unilaterally found him guilty without giving him a chance to respond. Although the county maintains that Rezaipour is precluded from raising this claim because he failed to raise it during the evidentiary hearing or before the trial court, Rezaipour counters that he did raise the claim, but the trial court failed to address it.

¹⁹ Rezaipour also argues that the trial court refused to correct a factual misstatement in its opinion regarding one of Enomoto's claims and in so doing passed its fact finding responsibility on to this court. However, as noted by the trial court, Enomoto's claims were not a major part of this case. Furthermore, the trial court did in fact modify its tentative opinion to reflect that one of Enomoto's allegations was not corroborated as the court had previously believed.

²⁰ Although we are addressing this claim, we note that Rezaipour's citations to the administrative record and his appendix do not support this contention.

We first note that the county issued multiple reports regarding Rezaipour's conduct, including a detailed examination of Enomoto's and Akmon's claims as well as a pattern and practice assessment addressing all the allegations of harassment lodged against Rezaipour. Moreover, it is clear from these reports that Rezaipour was interviewed during the investigation into his conduct given that the reports incorporated his denials of the complainants' accusations. Although Rezaipour was not re-interviewed by the author of the pattern and practice assessment, this was because the author was not tasked with conducting his own independent investigation into the accusations. Instead, the author of the pattern and practice assessment was simply assigned to review the files and produce an appraisal of the female employees' claims. Indeed, the subsequent credibility determinations made by the hearing officer and trial court are the relevant inquiries here. Thus, Rezaipour's complaints about Weekes' alleged bias are also inapt, especially given that he was in fact given a chance to respond to the allegations after they were first lodged and received no fewer than two *Skelly* hearings prior to his termination.

Although, as a matter of constitutional due process, a government agency must comply with its discharge regulations if it has actually established them, (*Amluxen v. Regents of University of California* (1975) 53 Cal.App.3d 27, 36), Rezaipour has neither appropriately cited to the applicable regulations nor demonstrated that the county failed to comply with any of them. While Rezaipour claims the Commission simply rubber-stamped the hearing officer's finding without considering his objections, Rezaipour cites no evidence in the record to support that claim. In fact, the Commission expressly overruled Rezaipour's

objections to the hearing officer's proposed decision. That the results of Commission's review clearly displeased Rezaipour does not mean the Commission failed to consider his objections in the first place. The trial court determined that the Commission had fulfilled this particular duty and so do we.

IV. The trial court's definition of harassment

Rezaipour next contends that the trial court relied upon an overbroad definition of sexual harassment in support of its findings. According to the county, however, a public entity need not find an employee sexually harassed others as defined by the county's official definition of sexual harassment before terminating that employee. In any case, the trial court correctly found sexual harassment.²¹

According to the trial court, Rezaipour failed to make this argument below. Indeed, his defense throughout the entire proceeding was that the complained-of conduct never occurred at all—not that his actions did not constitute sexual harassment.

²¹ Under the county's definition, sexual harassment includes "unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature which meets any one of the following three criteria: [¶] [s]ubmission to such conduct is made either explicitly or implicitly a term of condition of an individual's employment; [¶] [s]ubmission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or [¶] [s]uch conduct has the purpose or effect of unreasonably interfering with the individual's employment or creating an intimidating, hostile, offensive, or abusive working environment." (County of Los Angeles Policy of Equity <<http://employee.hr.lacounty.gov/wp-content/uploads/2015/10/PolicyOfEquity.pdf>> [as of March 13, 2018].)

Moreover, the court did not apply an unlawful definition of sexual harassment in its opinion. Rather, the court stated that Rezaipour had used his power as a supervisor to dominate and control his female employees and intimidate and harass them. This created a hostile work environment for those employees. The trial court's conclusion did not purport to define sexual harassment or modify the county's definition. Furthermore, Rezaipour's conduct clearly fell within the county's definition given that, by all accounts, it constituted unwelcome verbal conduct of a sexual nature that unreasonably interfered with the complainants' employment or created a hostile working environment. We note that investigators found that Rezaipour had subjected Aguilera to unwelcome comments based on her sex but that no tangible job action had occurred as a result and the conversation alone was insufficient to create a hostile work environment—meaning this particular exchange did not violate the county's nondiscrimination policy. Nevertheless, Rezaipour's continued conduct, involving multiple female employees, met the county's harassment definition. Thus, substantial evidence supports the trial court's finding.

V. The appropriateness of Rezaipour's penalty

The hearing officer concluded that based on Rezaipour's serious violations of statutes, rules and policies, Rezaipour should be discharged and that a lesser penalty or progressive discipline was not appropriate. In its opinion, the trial court did not address the penalty imposed below. When subsequently denying Rezaipour's motion for a new trial, the court explained this omission. In a single line, Rezaipour's writ petition alleged that the penalty imposed was excessive as a matter of law; however, the petitioner's opening brief controls the issues the trial court

must decide—and Rezaipour’s opening brief made no argument regarding penalty. When an issue raised in the petition is not properly addressed through argument and citation to evidence in a party’s trial brief, the issue is waived. (*West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 799.)

Furthermore, the failure to raise an issue in the trial court in a writ proceeding waives the issue on appeal. (*Noguchi v. Civil Service Com.* (1986) 187 Cal.App.3d 1521, 1540; *Franz v. Board of Medical Quality Assurance* (1982) 31 Cal.3d 124, 143.)

Nevertheless, Rezaipour argues to this court that he in fact raised the penalty issue in his opening brief to the trial court. Rezaipour’s brief offered that “sexual harassment, even if true, is a progressive discipline.” But Rezaipour used this point to argue that the county’s refusal to impose a lesser penalty was evidence of pretext; that it demonstrated the county had fired Rezaipour in retaliation for his alleged whistleblowing activities. Rezaipour did not argue that the hearing officer had conspired with the county as it embarked upon its alleged pretextual misdeeds or that the hearing officer had erred when determining discharge was appropriate. Thus, the trial court correctly determined that Rezaipour had waived the issue.²² As Rezaipour did not raise the issue before the trial court, it is also waived here.

²² Rezaipour argues that the doctrine of waiver does not apply because this was a “pure question of law which involved the due administration of justice.” However, the issue must involve *undisputed* facts and involve an important question of public policy. (*Fisher v. City of Berkeley* (1984) 37 Cal.3d 644, 654, fn. 3.) The issue of Rezaipour’s appropriate penalty satisfies none of these requirements.

VI. The hearing officer's alleged misquotations

Rezaipour complains that the hearing officer misquoted witness testimony, which requires the reversal of the trial court's decision. In so arguing, Rezaipour cites two examples. In the first example, the hearing officer stated that Rezaipour had invited Mateo to Disneyland while Mateo testified she did not recall this particular invitation.²³ However, Mateo did in fact confirm that Rezaipour had invited her to Disneyland as well as other venues. In the second example, the hearing officer ostensibly cited two portions of Enomoto's hearing testimony, which could not be correct given that Enomoto had not testified at the evidentiary hearing.²⁴ However, according to the county, this misdesignation was clearly a typographical error and the hearing officer was referring to Mateo, not Enomoto. Given the de minimus nature of the hearing officer's alleged error and that, on appeal, we review the trial court's findings rather than the officer's, we reject Rezaipour's contention that reversal is required here.²⁵

²³ Rezaipour's citations to the hearing officer's report and Mateo's testimony within the administrative record are both incorrect. However, even if we assume the accuracy of Rezaipour's claim, it is still unpersuasive.

²⁴ Rezaipour's citation to the record is incorrect.

²⁵ Rezaipour also contends reversal is required because the trial court erroneously relied upon the hearing officer's "capricious and arbitrary" credibility analysis. At trial, "it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts on which that determination depends." (*People v. Jones* (1990) 51 Cal.3d 294, 314.) In exercising its independent judgment, the trial court was required to assess the witnesses' credibility and

VII. Sufficiency of the evidence

In addition to detailing the accounts provided by the complainants, the trial court meticulously reviewed Rezaipour's version of events, thoroughly summarizing his claims within its lengthy opinion. The fact that the trial court determined Rezaipour's version of events was less credible than those of his female employees does not mean that his account was not considered. Nevertheless, on appeal, Rezaipour insists the trial court ignored his claims and maintains that the women were not to be believed. Thus, we must determine whether the trial court's finding to the contrary is supported by substantial evidence. Evidence is substantial if a reasonable trier of fact could conclude that the evidence is reasonable, credible, and of solid value. (*Wilmot v. Commission on Professional Competence* (1998) 64 Cal.App.4th 1130, 1139.) That standard has been satisfied here.

As for Enomoto, Rezaipour maintains that although the trial court found that he had invited her to Hawaii and forced her to sit in his office, these particular findings were not supported by any evidence in the record. During the evidentiary hearing,

arrive at its own independent findings of fact. (*Barber, supra*, 45 Cal.App.4th at pp. 658–659.) However, even when exercising its independent judgment, a trial court must afford a strong presumption of correctness regarding the administrative findings. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 816–817.) Rezaipour bore the burden of convincing the trial court that the hearing officer's findings were contrary to the weight of the evidence. (*Ibid.*) Given this level of deference, as well as the thorough examination the trial court went on to conduct, we reject Rezaipour's contention that reversal is required for this reason as well.

Mateo corroborated Enomoto by testifying that Rezaipour had forced Enomoto to sit in his office for long periods of time and that Enomoto told her that Rezaipour had invited Enomoto on a cruise to Hawaii. Indeed, Rezaipour admitted he had invited Enomoto on a cruise. The trial court later modified its tentative decision to note that Enomoto's hearsay statement regarding the Hawaii cruise was not corroborated and that Rezaipour had invited Enomoto on a cruise, but not to Hawaii. Further, although Rezaipour claims the county's own investigation found that Enomoto allegations were not substantiated, Rezaipour's contention omits an important addendum. The county's final investigation report substantiated the allegations because Mateo later came forward to corroborate the claims and to reveal that Rezaipour had dictated Mateo's previous false statement.

Rezaipour also contends that the trial court should not have considered Enomoto's hearsay statements. It is true that uncorroborated hearsay cannot constitute the substantial evidence necessary to support an administrative agency's findings of fact. (*The Utility Reform Network v. Public Utilities Com.*, *supra*, 223 Cal.App.4th at pp. 960–961.) However, even if the trial court erred in considering Enomoto's statements, any error must be deemed harmless given the quantum of evidence in this case. (See *Pas v. Hill* (1978) 87 Cal.App.3d 521, 524, fn. 2 [“erroneous findings may be disregarded as surplusage if they are not essential to the judgment”]; *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 801 [harmless error not basis for reversal].) Here, the complainants alleged multiple and similar acts by Rezaipour and corroborated each other. There was no evidence that the women's motives were retaliatory in nature or that they had crafted their complaints together or received anything of

value for their testimony. Conversely, Rezaipour's account of his interactions with the women was not credible.

With regard to Aguilera, Rezaipour contends that the county investigated her allegations and found that he was not guilty of sexual harassment. Although the county did not conclude that Rezaipour had harassed Aguilera in this instance, this result derived from the conclusion that the incident was insufficient to create a hostile work environment. Furthermore, despite his claim to the contrary, Rezaipour had no obligation to confront Aguilera about the minor's alleged comments unless there was evidence that the minor was a danger to Aguilera. Thus, the trial court's decision to credit Aguilera is supported by substantial evidence.

With respect to Akmon, Rezaipour challenges the trial court's finding that Akmon was a credible witness, noting that Akmon was paid by the county as part of a settlement agreement and left California after that. However, in contrast with Rezaipour's version of events, Akmon's account was corroborated by the testimony of other witnesses. Indeed, Rezaipour himself confirmed much of Akmon's statements. Even if, as Rezaipour contends, Akmon filled out a survey in which she stated Rezaipour "treated her with care and respect," Akmon later stated she had filled out the survey knowing that Rezaipour would personally review it and did not complain about Rezaipour's conduct because she was worried that doing so could jeopardize her job.²⁶

²⁶ To be clear, Akmon did not actually write that Rezaipour had treated her with care and respect. Rather, the survey asked whether the employee had been treated in this manner and had them check an answer, labeled one through five, indicating the

The trial court also demonstrated fairness and objectivity in its consideration of Rezaipour's claims. The court observed that the county had failed to impeach Rezaipour with the phone records he had adduced when arguing he did not communicate with Akmon outside of work hours. The court also credited Rezaipour's claim that the ostensibly sexually explicit movie he had shown Akmon had been shown in college psychology classes to show the treatment of a delusional disorder. The court recognized that Akmon had reported the hours spent watching the movie as part of her social worker group supervision requirements. Thus, while Rezaipour disagrees with the trial court's evaluation of his evidence and arguments, he cannot show that they were not considered.

Rezaipour claims insufficient evidence supported the trial court's finding that Gray was a credible witness. According to Rezaipour, Gray received a settlement from the county, refused to testify about the settlement at the evidentiary hearing, and falsely denied having any future arrangement to work for the county. Rezaipour notes that although Gray claimed Rezaipour harassed her at a Starbucks, she sent him flattering text messages at the end of that same day. Gray's alleged praise of Rezaipour's supervisory skills consisted of her survey responses—the same survey Akmon had filled out. Gray later testified that Rezaipour had forced her to complete the survey and she believed he had the technical ability to change her answers.

According to Rezaipour, Gray's settlement agreement promised her a full-time position at the location of her choice,

degree to which they agreed with the statement. With each question, the survey would change the location of the numbered answers.

even without completing her education requirements, and gave Gray service credit for noncounty employment, a benefit exclusively reserved for those who served in the military. Even if we credit Rezaipour's description of the settlement agreement, we agree with the trial court that the agreement did not weigh against Gray's credibility. Her account was consistent both before and after the agreement was signed.

Rezaipour maintains that Gray suddenly stood up and left the stand when asked about the settlement agreement, this assertion completely mischaracterizes what actually happened. With a fifteen minute warning, Gray informed the parties and the hearing officer that she needed to leave by noon. Rezaipour's counsel had already asked Gray about all of her complaints and said he did not have much more to ask, seeking to question her only about the movie and "some peripheral documents." It is unclear how much longer Gray stayed on the stand but the evidentiary hearing transcript clearly reveals Rezaipour's attorney was able to ask all of his remaining questions and that Gray was excused subject to recall. Thus, the trial court's findings with respect to all the complainants are supported by substantial evidence.

Finally, Rezaipour contends that insufficient evidence supported the trial court's determination that Rezaipour was insubordinate on September 29, 2010. Rezaipour claims that he was told to be available by phone from 2:00 p.m. to 5:00 p.m. on September 29, 2010, not that he needed to be at home to answer his phone. This claim makes little sense. A DMH representative called Rezaipour on September 28, 2010, and told him to be home and available by phone the next day between 2:00 p.m. and 5:00 p.m. in order to accept letters of determination. When he

failed to comply, Rezaipour received another call on September 29, 2010, asking him to return home to accept the document. Rather than comply with this directive, issued while Rezaipour was still on the county's payroll and subject to its workday supervision, Rezaipour hurled expletives at the caller. Even if he misunderstood the September 28th call, Rezaipour clearly understood, and refused to comply with, the September 29th instructions. Thus, the trial court's insubordination finding is supported by substantial evidence.

DISPOSITION

The judgment is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

CHANNEY, Acting P. J.

BENDIX, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.