

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

ALICIA RUIDIAZ AND
MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION
Complainants

Against

Docket No. 03 BEM 02616

CITY CAR RENTAL and
MICHAEL PALMER
Respondents

Appearances: Geoffrey Dubosque, Esq., for Complainant Ruidiaz

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On or about October 14, 2003, Alicia Ruidiaz (“Complainant”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD”) alleging that Respondents discriminated against her on the basis of sex and discharged her in retaliation for reporting Respondent Palmer’s sexual harassment.

The MCAD issued a probable cause finding on March 28, 2006, and certified the case for public hearing on December 8, 2006. A public hearing was held on February 2, 2007.

Respondents did not appear for the public hearing, resulting in the Entry of

Default against them on February 2, 2007 pursuant to 804 CMR 1.21(8)(a). The defaulting Respondents failed to move to vacate the entry of default for good cause shown and, consequently, remain in default.

The Complainant testified at the public hearing. Counsel for Complainant submitted a post-hearing brief.

Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

II. FINDINGS OF FACT

1. At the time of public hearing, Complainant, Alicia Ruidiaz, was twenty-five years old. In late July or early August of 2003, she learned of an opening for a job at Respondent City Car Rental Company.
2. Respondent City Car Rental Company was a place of business located at 756 N. Main Street, Brockton MA 02301. Its billing address was: PO Box 260397, Boston, MA 02126. Complainant's Exhibit 2. On October 21, 2002, the Company registered as a Massachusetts corporation. Complainant's Exhibit 4. Its president/treasurer was listed as Michelle Peterson, its secretary/clerk was listed as Shelly Hamilton, and its director was listed as Michael Palmer. Complainants Exhibits 4 and 5. On information and belief, Respondent City Car Rental employed more than six individuals in July/August of 2003.
3. Complainant faxed her resume to Respondent City Car Rental. She was asked to come in for an interview a day or two later. Complainant filled out an application at her interview.
4. Michael Palmer interviewed Complainant. Complainant testified credibly that

during the interview, Palmer told her that she sounded mature but looked young.

He asked her if she partied a lot and if she were married or had a boyfriend.

Complainant testified that she felt uncomfortable about the questions.

5. Complainant testified credibly that Palmer notified her on a Friday or Saturday in early August of 2003 that he wanted to hire her. She was to commence employment on Wednesday, August 6, 2003. Complainant was to earn \$7.00 per hour and work various shifts on weekdays and on the weekends.
6. Complainant began training on Monday, August 4, 2003. Palmer showed Complainant and other trainees how to clean and prepare cars for rental. Complainant noticed a nice car in the garage and commented on it. According to Complainant's credible testimony, Palmer identified the car as his and said, "If you want a ride in my car you have to be with me."
7. Complainant testified credibly that while Palmer was instructing the trainees about how to use the office computer, he offered to "take care of [her]" to which Complainant responded that she could take care of herself.
8. On or about Thursday, August 7, 2003, Complainant asked Palmer for a verification of employment letter which she needed for her son's daycare facility. Palmer dictated a letter to Complainant which he signed and dated. Complainant's Exhibit 1.
9. Complainant testified credibly that after she started working for Respondent, Palmer would look at her chest when she asked him questions.
10. According to Complainant's credible testimony, Palmer told Complainant that her boyfriend was a lucky man and that he should take Complainant away from her

boyfriend.

11. A few days after she started working for Respondent, Complainant told a fellow employee at work that she might be pregnant. According to Complainant's credible testimony, Palmer overheard and said, "You're supposed to have sex, not babies." Complainant testified that she felt insulted and embarrassed by this comment.
12. Complainant testified credibly that she told company clerk Shelly Hamilton that Palmer said things which made her uncomfortable. Hamilton told her to ignore Palmer because he wouldn't be there long.
13. According to Complainant, one day shortly after she began working, Palmer came up behind her and started rubbing her shoulders. After Complainant tried to shrug him off, Palmer asked if she were "green," started chuckling, and walked away. I credit Complainant's testimony.
14. Palmer was supposed to contact Complainant on Saturday or Sunday, August 16 or 17, 2003 regarding the following week's schedule but never did. Complainant testified credibly that when she contacted Palmer to find out why he hadn't called her, Palmer said that a woman had criticized Complainant's "attitude." Complainant denied that she had a bad attitude and testified that she got along with everyone.
15. Complainant tried repeatedly to call Palmer after he told her about the alleged customer complaint, but he never returned her calls or put her on the schedule after that.
16. Complainant was not paid by Respondent for her work at City Car Rental until

- her attorney arranged for her to be paid.
17. Complainant received a check dated September 4, 2003 from City Car Rental Corp. in the amount of \$259.00. Complainant's Exhibit 2.
18. Complainant testified that her interactions with Palmer made her feel like "less of a person" and as if she had done something wrong. She stated that her experience working for Respondent made her distrustful of people.
19. Following the loss of her job, Complainant obtained a position as a secretary at an MRI facility. Complainant testified that she loves the job.

III. CONCLUSIONS OF LAW

A. Sexual Harassment

M.G.L. C. 151B, sec. 4, paragraph 1 prohibits workplace discrimination, including sexual harassment. See Ramsdell v. Western Bus Lines., Inc., 415 Mass. 673, 676-77 (1993); College-Town, Division of Interco, Inc. v. MCAD, 400 Mass. 156, 162 (1987). Chapter 151B, sec. 4, paragraph 16A also prohibits sexual harassment in the workplace. See Doucimo v. S & S Corporation, 22 MDLR 82 (2000). Sexual harassment is defined as "sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) submission to or rejection of such advances is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, or sexually offensive work environment. M.G. L. c. 151B, sec. 1, para. 18. Complainant asserts that she was subjected to a sexually-hostile work environment.

In order to establish a “hostile work environment” sexual harassment claim, Complainant must prove by credible evidence that: (1) she was subjected to conduct of a sexual nature; (2) the conduct was unwelcome; (3) the conduct had the effect of creating an intimidating, hostile, humiliating or sexually offensive work environment; and (4) the conduct was sufficiently severe or pervasive as to interfere with Complainant’s work performance or alter the conditions of employment. See MCAD Sexual Harassment in the Workplace Guidelines, II.C. (2002) (“Sexual Harassment Guidelines”).

Sexual harassment must be objectively and subjectively offensive. See Sexual Harassment Guidelines II.C.3; Ramsdell v. Western Bus Lines, Inc., 415 Mass. 673, 677-78 (1993). The objective standard means that the evidence of sexual harassment must be considered from the perspective “of a reasonable person in the plaintiff’s position.” Id. at 678. The reasonable woman inquiry requires an examination into all the circumstances, including the frequency of the conduct, its severity, whether it was physically threatening or humiliating, whether it unreasonably interfered with the worker’s performance, and what psychological harm, if any, resulted. See Scionti v. Eurest Dining Services, 23 MDLR 234, 240 (2001) *citing* Harris v. Forklift Systems, Inc., 510 U.S.17 (1993); Lazure v. Transit Express, Inc., 22 MDLR 16, 18 (2000).

The subjective standard of sexual harassment means that an employee must personally experience the behavior to be unwelcome. An employee who does not personally experience the behavior to be intimidating, humiliating or offensive is not a victim within the meaning of the law, even if other individuals might consider the same behavior to be hostile. See MCAD Sexual Harassment in the Workplace Guidelines, II. C. 3 (2002); Ramsdell v. Western Bus Lines, Inc., 415 Mass. at 678-679.

The credible, unrebutted evidence in this case establishes that Palmer told Complainant: 1) “if you want a ride in my car you have to be with me;” 2) he would “take care of [her];” 3) her “boyfriend was a lucky man” and he [Palmer] “should take [Complainant] away from her boyfriend,” and 4) that, “you’re supposed to have sex, not babies” in response to overhearing Complainant say she might be pregnant. The unrebutted evidence also establishes that Palmer looked at Complainant’s chest when she asked him questions and that one day shortly after Complainant began working for Respondent, Palmer came up behind her and started rubbing her shoulders. Palmer’s words and actions of a sexual nature were objectively and subjectively offensive and sufficiently pervasive to establish a hostile work environment.

B. Retaliation

To prove a prima facie case for retaliation, Complainant must demonstrate that she: (1) engaged in a protected activity; (2) Respondents were aware that she had engaged in protected activity; (3) Respondents subjected Complainant to an adverse employment action; and (4) a causal connection existed between the protected activity, known by the retaliators, and the adverse employment action. See Morris v. Boston Edison Company, 924 F. Supp. 65, 68-69 (D. Mass. 1996); Kelley v. Plymouth County Sheriff’s Department, 22 MDLR 208, 215 (2000).

Once a prima facie case is established, the burden shifts to the Respondent at the second stage of proof to articulate a legitimate, nondiscriminatory reason for its action supported by credible evidence. See Blare v. Huskey Injection Molding Systems Boston Inc., 419 Mass. 437, 441-442 (1995) *citing* McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). If Respondent succeeds in offering such a reason, the burden then shifts

back to Complainant at stage three to persuade the fact finder, by a preponderance of evidence, that the articulated justification is not the real reason, but a pretext for discrimination. See Lipchitz v. Raytheon Co., 434 Mass. 493, 501 (2001); Abramian v. President and Fellows of Harvard College, 432 Mass. at 117-118.

Complainant asserts that she reported Palmer's sexually offensive actions to Shelly Hamilton. Complainant testified that she told Hamilton that Palmer said things to her which made her uncomfortable and that Hamilton advised her to ignore Palmer because he wouldn't be there long. Such a report constitutes protected activity, even in the absence of a formal discrimination charge. See Auborg v. American Drug Stores, 21, MDLR 238, 242 (1999).

Company records indicate that Shelly Hamilton was the registered agent/clerk/secretary of City Car Rental. Complainant's Exhibits 4 and 5. In an organization consisting of only three managerial employees -- Michelle Peterson, Shelley Hamilton, and Michael Palmer --such notification is sufficient to establish that the Company was aware that Complainant had engaged in protected activity. In a matter of days after Complainant reported Palmer's harassing behavior, Complainant was terminated. The temporal proximity of the termination to the report supports a finding of causation in regard to the retaliation claim.

At stage two, Respondent bears the burden of articulating a legitimate, nondiscriminatory reason for its action supported by credible evidence. Respondents have failed to offer any evidence of a non-retaliatory reason for termination. Accordingly, I conclude that Complainant was terminated in retaliation for complaining about Palmer's sexually harassing conduct.

C. Lost Wages

Upon a finding of unlawful discrimination, the Commission is authorized, where appropriate, to award: 1) remedies to effectuate the purposes of G.L. c. 151B; 2) damages for lost wages and benefits; and 3) damages for the emotional distress Complainant has suffered as a direct result of Respondent's discriminatory actions. See Stonehill College v. MCAD, 441 Mass. 549 (2004); College-Town, 400 Mass. at 169; Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988).

Insofar as lost wages are concerned, Complainant did not specify how long she was unemployed after her termination by Respondent and the amount of lost wages, if any, resulting from her termination. Accordingly, there is insufficient evidence in the record from which to make an award of back pay.

D. Emotional Distress Damages

Complainant's entitlement to an award of monetary damages for emotional distress does not need to be based on expert testimony; it can be based solely on her testimony as to the cause of the distress. See Stonehill College v. MCAD, 441 Mass. 549 (2004); College-Town, 400 Mass. at 169; Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172, 182-183 (1988). Proof of physical injury or psychiatric consultation is not necessary to sustain an award for emotional distress. See Stonehill, 441 at 576. An award must rest on substantial evidence that is causally-connected to the unlawful act of discrimination and take into consideration the nature and character of the alleged harm, the severity of the harm, the length of time Complainant has or expects to suffer, and whether Complainant has attempted to mitigate the harm. Id.

Complainant testified that her interactions with Palmer made her feel like "less of a

person” and as if she had done something wrong. She stated that her experience working for Respondent made her distrustful of people. This sentiment is easily understood given that Complainant lost her job after asserting her rights and that this happened only weeks into her new employment. Complainant was clearly distressed as she testified. Her emotional distress appeared to be genuine and I found her testimony to be credible. I conclude that Complainant is entitled to \$7,500.00 in emotional distress damages.

IV. ORDER

This decision represents the final order of the Hearing Officer. Respondent is hereby ORDERED to:

- (1). Cease and desist from engaging in discrimination based on sex and in retaliatory conduct.
- (2). Pay to Complainant, within sixty (60) days of receipt of this decision, the sum of \$7,500.00 in emotional distress damages, plus interest at the statutory rate of 12% per annum from the date of the filing of the complaint, until paid, or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

So ordered this 27th day of September, 2007.

Betty E. Waxman, Esq., Hearing Officer

