

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION &
ANDREW CETLIN
Complainant

v.

DOCKET NO. 06-BEM-00519

COSTCO WHOLESALE CORPORATION
Respondent

Appearances: William M. Zall, Esq. for Complainant
Lynn A. Kappelman, Esq. & Anthony S. Califano, Esq. for Respondents

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On March 26, 2006, Complainant, Andrew Cetlin, filed a charge of discrimination with the Commission against Respondent, Costco Wholesale Corporation, alleging discrimination in employment on account of his disability in violation of M.G.L. c. 151B §4(16) and the Americans With Disabilities Act. Complainant specifically charged that he was terminated from his position as a Front End Assistant at Respondent after a mere five weeks of employment, because his disability precluded him from operating a cash register. On August 10, 2006, Complainant amended his charge to add manager Rob Rankins as a party Respondent and to add a claim of failure to accommodate his disability. The failure to accommodate claim alleges that to the extent Respondent terminated his employment because he could not operate a cash register, such a

requirement constituted a failure to accommodate his disability. The Investigating Commissioner found probable cause to credit the allegations of the complaint and efforts at conciliation were unsuccessful. The complaint was certified for a hearing in March of 2008. On September 9, 2008, Complainant withdrew his charge against Rob Rankins. A hearing was held before the undersigned hearing officer on September 10, 11, & 12, 2008.

Having reviewed the record in this matter and the post-hearing submissions of the parties, I make the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

1. Complainant, Andrew Cetlin, is disabled as a result of a brain tumor that caused him to suffer seizures and to undergo surgery in 1989 to remove the tumor. Complainant thereafter developed epilepsy and suffered from further debilitating seizures causing him to have additional brain surgeries in 1989 and 1995. The surgeries left Complainant with cognitive deficiencies including but not limited to, difficulty with spatial relations, inability to retain and recognize facial features, long term memory loss, difficulties with concentration, an inability to process complex information, and seizures which are controlled by medication. (Tr. I, pp. 25-31) Complainant also exhibits a slowness of gait, and in addition to normal corrective lenses, has a prism attached to his glasses, which channels vision from the upper left quadrant. (Tr. 1, p. 97) Complainant is not otherwise limited in his physical activities and he works out regularly and has continued to run marathons. (Tr. I, p. 26, 27) He drives regularly and drove himself to work at Respondent. (Tr. I, p. 40)

2. Prior to suffering a brain tumor and his 1989 surgery, Complainant worked as an attorney in his own law practice focusing on real estate law. He sought to continue his law practice after his 1989 surgery, but was unable to do so, and some years later closed his practice. (Tr. I, pp. 24-26)

3. After his brain surgery, Complainant worked as a sales associate at a Brookstone Store on the North Shore of Massachusetts. He resigned from this position after only a few months because it required too much travel. Complainant then worked part-time at a law firm for a short period of time performing mostly clerical and administrative work, but after suffering another seizure, perceived that he was no longer wanted there and resigned. (Tr. I, pp. 31-33) Complainant worked for another law firm representing clients in real estate closings, but stated he resigned from this position after a short time because he was “uncomfortable with their way of practicing” and believed the firm was not “particularly competent.” (Tr. I, p. 35)

4. Sometime after 1995 but before 2005, Complainant applied for a job with a company called Gym Source. He filed a charge of disability discrimination against Gym Source when it rescinded his employment offer, claiming it was rescinded upon the company learning he suffered from epilepsy. This claim was ultimately dismissed by the MCAD. (Tr. I, pp.76-79)

5. In early 2005, Complainant was hired by Wal-Mart to greet customers at the front door. Wal-Mart terminated his employment during his 90 day probationary period. Complainant testified that he suspected his disability played some part in the decision to terminate his employment but he did not pursue legal action against Wal-Mart arising out of his termination. (Tr. I, pp.37-39)

6. Respondent, Costco, operates a membership warehouse club that sells a wide variety of goods and services. The goal of the business is to provide quality goods and services at the lowest possible prices. This goal is achieved in part by the sheer volume of members served through a fast paced operation designed to move as many members as possible through its warehouse on a given day. Costco refers to its customers as “members.” The Costco warehouse at issue in this case is located in Waltham, Massachusetts and is warehouse number 308. (Tr. II, pp. 354-56, 363-66)

7. Respondent’s business model relies on its employees performing well in a fast-paced environment. Employees are evaluated for both the quality and timeliness of their performance, and minimum performance requirements are set for each cashier and check-out line. Front End Assistants help ensure the efficient flow of members through the check-out lines. (Tr. II, 363-366)

8. On September 9, 2005, Complainant applied to Respondent’s Waltham warehouse for “any position available.” Complainant had two interviews at the Waltham warehouse. The first was with Front End Supervisor, Santos DeLeon. (Ex. C-4; Tr. I, pp.188-190.) Mr. DeLeon reviewed all the essential job functions of a Front End Assistant with Complainant and gave him a job description. He informed Complainant it was a job which required the ability to multi-task. (Tr. I, p.188; 195; 214-215) Complainant testified that he discussed his medical condition and disclosed his inability to operate a cash register and difficulty with spatial relations. Complainant also spoke with Respondent’s Assistant General Manager, Ken La Chance, who also discussed the job functions of a Front End Assistant and told him he did not have to be a cashier. (Tr. I, p.44; Tr. II, p.362-363) Complainant assured Mr. La Chance that he could perform the

requirements of the Front End Assistant position, and that the fast-paced environment would not be a problem for him because he was a marathon runner. (Tr. I, p. 121, Tr. II, p.366-67)

9. The duties of a Front End Assistant include the following: provide prompt and courteous service; assist cashiers and members by placing items on the conveyor belt and packaging items into boxes for members; run to retrieve items for members; retrieve boxes for packaging items; clean the front end; retrieve carts and flat beds; and return items that members choose to not buy to their proper locations in the warehouse. Costco employees refer to this last task as “go backs.” While operating a cash register is not one of the essential functions of a Front End Assistant position, some front end assistants have been trained to run a cash register if there is a rush and the warehouse is understaffed. (Ex. R-1; Tr. II, pp. 362-63, 369-70, 394-95)

10. Complainant was offered a position as Front End Assistant by Mr. LaChance and began working on October 4, 2005. (Tr. I, p.121; Ex C-4) He attended the new hire orientation program, which he described as perfunctory, and was given a copy of Respondent’s employee handbook which contains a policy prohibiting disability discrimination and which provides procedures for reporting discrimination and complaint procedures. (Exs. R-8; R-9; R-24) Complainant testified that someone named McMahon gave him a tour of the physical plant and showed him where he would be working, but that he received no training in how to perform his duties. (Tr. I, p. 46, 47) Complainant worked part-time in the evenings for approximately 20 hours per week. (Tr. I, p. 45)

11. Robert Rankins, the Front End Manager at the Waltham warehouse was on vacation when Complainant was interviewed and hired. Mr. Rankins oversaw the front

end operation and supervised the eight or nine Front End Supervisors who, in turn, supervised the day-to-day work of the Cashiers and Front End Assistants, including Complainant. Rankins was responsible for managing approximately eighty to eighty-five employees. (Tr. I, pp. 250-52)

12. Approximately one week into the job, Complainant met Rob Rankins who according to Complainant, approached him and introduced himself. Complainant testified that Rankins pulled him aside and told Complainant that he had heard about him, and never would have hired him if he'd known that he had a disability. According to Complainant, Rankins then pointed to the general direction of the parking lot and stated there was another employee with a disability who would never progress and he never would have hired him either. Rankins indicated they were stuck with that employee because he was past his 90 day probationary period. Complainant stated that was the extent of their conversation. (Tr. I, 47, 48) I find it unlikely that Rankins made such blatantly discriminatory statements to Complainant.

13. Rankins testified that he had worked for Costco for 24 years in various supervisory positions. During his career he has never had a complaint of discrimination leveled against him and he has never been a party to a discrimination complaint of any kind. He attends training approximately every year on issues relating to discrimination. (Tr. II, pp. 247, 248, 253, 254) Rankins denied making any comment to Complainant regarding not hiring him because he was disabled. According to Rankins, in one of his first discussions with Complainant, possibly their first meeting, Complainant told Rankins he would not be able to operate a cash register, because he had had surgery which caused him some difficulty concentrating. Rankins testified that he had not asked

Complainant to be a cashier at the time of this conversation, nor did he ever ask him to perform this duty. After Complainant raised this issue, Rankins did ask LaChance if Complainant had indicated this in his interview. He testified that he asked La Chance about this because he thought it was odd that Complainant had approached him about it. LaChance confirmed that Complainant had stated in his interview that he could not run a cash register, and that this was not a necessary part of his job. Rankins stated he accepted this decision by his boss. (Tr. I, pp. 260-262) While I find it plausible that Rankins may have asked Complainant about performing cashier duties, I do not believe that he subsequently harbored discriminatory animus toward Complainant because he could not perform this duty.

14. According to the testimony of Respondent's employees, most Front End Assistants do not operate a cash register, and Respondent regularly hires and employs successful long term employees who never perform this duty. (Tr. II pp. 374-75, 395, Tr. III pp. 447-48, 459-60) Respondent hired Complainant knowing that he was unable to operate a cash register and it is undisputed that neither Rankins nor any other employee of Respondent ever asked or required Complainant to perform the duties of cashier. (Tr. 120-121)

15. Soon after Complainant was hired, the Front End supervisors who directly managed Complainant's work observed problems with his performance. They noted that he frequently "disappeared" on the job and took unauthorized smoking breaks when he should have been retrieving carts from the parking lot or returning merchandise that was not purchased, called "go backs." Front End Supervisors testified that they frequently

would have to send someone to go find Complainant because he would disappear or take too long to perform a simple task. (Tr. I pp. 214-22, Tr. II pp. 396-401, 440-48, 460-65)

16. Front End Supervisor Santos DeLeon, who had been employed by Respondent for eleven years, testified that Complainant had problems properly packaging items and that he observed him placing heavy items on top of fragile items such as bread and eggs or fresh produce. Mr. DeLeon testified that even after Complainant received more training on how to properly package items, there continued to be complaints from members and cashiers about his improperly packing items. (Tr. I, pp. 215-218) DeLeon testified that Complainant performed “go backs” poorly because “he would take off with the carriage with merchandise and come back with the same merchandise, I would say, 30 minutes later, 20 minutes later.” (Tr. I, p. 217) DeLeon also witnessed Complainant collecting carts from the lot while smoking and pushing only three carts instead of the usual six or seven. He advised Complainant not to smoke while pushing carts, but to ask for an additional break if he needed one. He discussed these problems with other Front End Supervisors and Mr. Rankins. (Tr. I, p. 218-219) I found Mr. DeLeon to be a very credible witness and I credit his testimony.

17. Donna Igoe, who has worked at Respondent since 2002 and is currently a Front End Supervisor, testified that Respondent received numerous complaints from members and from cashiers about the haphazard way Complainant would pack items and because he was slow. She testified that he would get into conversations with members, not pay attention to what he was doing, and hold up the cashiers. (Tr. II, 391, 396-397) She also testified that while he was supposed to be out retrieving carts in the parking lot, Complainant would be found smoking cigarettes while others were looking all over for

him. (Tr. II, 397-398) She testified that the supervisors tried to place Complainant with more experienced cashiers or front end assistants who could help him do the job better. Ms. Igoe stated that it was common to give feed back to the supervisor about the performance of new employees. She stated, "...we gave Rob Rankins a lot of feedback." She discussed her concerns about Complainant's performance with at least two other Front End Supervisors. (Tr. II, pp. 399-400) I credit Ms. Igoe's testimony about Complainant's performance.

18. Stacey Glynn has worked at Respondent for seven years and was a Front End Supervisor who supervised and observed Complainant's performance in 2005. She testified that Complainant packaged goods poorly and that there were instances when members complained about his crushing fragile items like bakery goods with heavier items. She testified that the cashiers and supervisors attempted to coach Complainant on how to do this properly. (Tr. III pp. 439-442) Ms. Glynn testified that Complainant performed his front end cleaning duties very slowly and that when he was out collecting carts he would frequently use this as an opportunity to take an unauthorized smoking break. She relayed her observations about Complainant's performance to Mr. Rankins on at least two or three occasions stating that he was not performing up to expectations, seemed careless about the job, and had an attitude when you asked him to do something. (Tr. III, pp. 445-447, 454) I credit Ms. Glynn's testimony about Complainant's performance.

19. Corrine Young has been employed by Respondent at the Waltham location for five years and has been a Front End Supervisor there since 2005. She testified that she received complaints about the manner in which Complainant packaged merchandise and

that she and other supervisors and cashiers had to coach Complainant regarding placing heavier items on the bottom. She stated that his performance doing “go backs” was very slow and he could not finish the number of carriages assigned to him. She also observed that he could not keep up collecting carriages in the parking lot and that she often observed him outside smoking when he was supposed to be “doing carts.” (Tr. III, pp. 458-462) She testified that she discussed these problems with other front end supervisors because there were one or two occasions when they were looking for him when he was supposed to be with his cashier. (Tr. III, p. 466) She also observed that Complainant took a long time to do “go backs” and stated that she reported her observations about his performance to Mr. Rankins. (Tr. III, pp. 464-65) I credit Ms. Young’s testimony.

20. Kenneth LaChance, the Assistant Warehouse Manager at Respondent in 2005 is an 18 year employee of Respondent. He testified that he learned from talking with supervisors that Complainant was having some performance issues as a Front End Assistant. He remembered one incident where Mr. Santos indicated he was looking for Complainant and Mr. LaChance then observed him outside smoking, when he was not supposed to be on a break. He also observed Complainant sweeping some trash right in the middle of the exit area of the front end at a very slow pace and in the way of people trying to get by. (Tr. II, pp. 367-68, 371) Rankins also testified that he observed Complainant cleaning and sweeping the front end after hearing from Santos that Complainant had difficulty with this task and had left a broom and dust pan in the middle of the floor. Rankins personally observed that Complainant was very slow and on one occasion he approached Complainant and asked him for the dust pan and broom to show

him how to perform the task more quickly and efficiently. (Tr. I, p. 270-72)

Complainant testified that Rankins treated him in an abusive and embarrassing manner on this occasion grabbing him by the shoulder and ripping the broom out of his hand. (Tr. I, p. 48) Rankins denied touching Complainant or raising his voice, but I do believe Complainant perceived his taking the broom from him to show him how to sweep more quickly as insulting and embarrassing.

21. Complainant worked at Respondent for a total of five weeks, from October 4, 2005 until November 12, 2005. Sometime around the beginning of November 2005, Mr. Rankins met with Complainant to review his performance. Rankins informed Complainant that if he were to continue working at Respondent, he would have to improve his performance, including his overall pace, effort, and performance doing “go backs,” packaging items, collecting carts, and cleaning. (Tr. I, pp. 275-77) Mr. Rankins testified that Complainant’s performance did not improve after that meeting and that his biggest issues with Complainant were the slow pace of his work and the fact that he seemed to be making no effort to improve. (Tr. I, pp. 277-78)

22. Mr. Rankin’s testified that decisions about whether to keep or let go new employees must be made by mid-November, because any new hiring must be done prior to the holiday shopping rush. La Chance confirmed this practice. (Tr. II, pp. 383-84) Rankins stated that he and the supervisors reached the decision that things were not going to work out with Complainant and he then had a conversation with Mr. LaChance about Complainant and a couple of other employees who, in his words, were not going to make it. LaChance gave him the go ahead to terminate these employees. (Tr. I, pp. 279-280)

23. La Chance confirmed that prior to Complainant's termination, Rankins came to him and said that he had a few employees who weren't working out, and who despite coaching were not being very responsive. Complainant was one of those employees. (Tr. II, p. 371-72) Respondent terminated a least two other non-disabled employees, John Albin and Abema Pomah, at the same time Complainant was terminated, based on their poor performance, including their inability to work at an acceptable pace. (Tr. I, pp. 284-85, 289, Tr. II, pp. 422-24; Exs. R-17-20)

24. Complainant was terminated from his employment with Respondent on November 12, 2005, in a meeting with Mr. Rankins and a witness, the Night Floor Supervisor, Josh Francis. (Tr. I, 281; Ex. C-1) In that meeting, Mr. Rankins informed Complainant that it was not working out and that he was being terminated. According to Rankins, Complainant became agitated and asked what the real reason was for his termination and Rankins told him it was purely because of his job performance and that Complainant was not demonstrating by his actions and his effort that he wanted to work at Respondent. (Tr. I, pp. 280-81) Complainant did not raise the matter of discrimination or his disability at that time, nor did he claim that Respondent had failed to accommodate his disability. (Tr. I, p. 282)

25. Complainant denied all allegations that he was not performing his job properly, denied that members and cashiers complained about his packing or coached him on how to pack properly. He called such allegations absurd and preposterous. (Tr. I, pp. 52-53, 138-139) He also denied that he was told he took too long to do "go backs" or that he was offered assistance with this task. (Tr. I, p.139) I find these assertions implausible given the credible observations of a number of supervisors regarding his performance

problems and their attempts to assist him. There was testimony that whenever his performance was called into question, Complainant's attitude was that he was doing things properly (Tr. III, pp 454-56), and he never sought any accommodation to perform the essential functions of the job. Most, if not all of the supervisors testified that they were unaware of the exact nature of Complainant's disability or how it might impact his ability to perform the essential functions of the job. Some knew that he had had brain surgery because Complainant told them; some knew and had some difficulty with his vision, but they were otherwise unaware that Complainant suffered from limitations that impacted his ability to do the job. (Tr. I, pp. 191-193; Tr. III, pp. 455-456) They all testified that they attempted to coach Complainant and assist him in any way they could to improve his performance. I credit their testimony.

III. CONCLUSIONS OF LAW

Massachusetts General Laws c.151B §4 (16) prohibits discrimination in employment on account of disability. In order to establish a prima facie case of discrimination based on disability, Complainant must prove (1) that he was disabled within the meaning of M.G.L. c. 151B; (2) he was able to perform the essential functions of the job with or without a reasonable accommodation; (3) he suffered an adverse employment action; and (4) the adverse employment action occurred under circumstances that suggest it was based on his disability. *Tate v. Department of Mental Health*, 419 Mass. 356, 361 (1995); *Dart v. Browning-Ferris Industries, Inc.*, 427 Mass. 1, (1998).

The Complainant alleges that he was treated in a disparate fashion and terminated because of his disability and because he was unable to perform the duties of a cashier.

Complainant does not allege that he was denied a reasonable accommodation to help him perform the essential functions of the job of Front End Assistant. In fact, Complainant asserts that he was at all times, able to perform the essential functions of the job of Front End Assistant and denies that his performance was a problem. He contends that Respondent's assertions to the contrary are unfounded and preposterous and that he was demeaned and humiliated by Front End Manager, Rankins because of his disability.

In a disparate treatment case, the Commission employs a three-stage burden of proof. *Abramian v. Pres. & Fellows of Harvard College*, 432 Mass. 107, 116 (2000). Once the Complainant articulates a prima facie case, Respondent must then articulate a legitimate non-discriminatory reason for its actions, supported by credible evidence. *Id.* at 116-117. The employer's burden is one of production and not proof and the burden of proof on the ultimate issue of discrimination remains with the Complainant. *Wheelock College v. MCAD*, 371 Mass. 130, 139 (1976).

Once the employer has articulated a legitimate non-discriminatory reason for its actions, the Complainant must prove that the employer's stated reason or reasons are a pretext for discrimination. *Abramian*, 432 Mass. at 117. The employee may meet this burden by proving that the employer acted with discriminatory intent, motive or state of mind. *Lipchitz v. Raytheon Co.*, 434 Mass 493, 504 (2001). An inference of discriminatory animus may be drawn from proof that one or more of the reasons advanced by the employer is false. *Id.*

Complainant has demonstrated that he is a handicapped person within the meaning of the law. There is no dispute that the limitations he suffers on account of a brain tumor and subsequent surgeries impact major life activities. He experiences

cognitive deficiencies, including difficulty with spatial relations, inability to retain and recognize facial features, long term memory loss, difficulties with concentration, an inability to process complex information, and seizures which are controlled by medication. Complainant also exhibits a slowness of gait, and in addition to normal corrective lenses, has a prism attached to his glasses, which channels vision from the upper left quadrant.

Having established that he is a handicapped person, Complainant must prove that he was able to perform the essential functions of the job in question with or without a reasonable accommodation and that he was treated adversely and terminated on account of his disability. Complainant has not persuaded me that he was able to acceptably perform the essential functions of Front End Assistant's job. Notwithstanding his assertions to the contrary, six of Complainant's former supervisors and managers testified that he had difficulty performing essential duties of the Front End Assistant such as packaging merchandise, returning merchandise to its proper place in the warehouse in a timely fashion, and retrieving carriages from the parking lot in a timely and efficient manner. Four of these supervisors were Complainant's front line supervisors who oversaw the performance of all Front End Assistants on a daily basis. All of these witnesses testified that Complainant did not follow verbal instructions, did not maintain the requisite work pace, did not adhere to work rules, and failed to perform simple or repetitive tasks. They all testified that Complainant frequently "disappeared" on the job and was observed taking unauthorized smoking breaks. When asked to do "go backs" or retrieve carts, Complainant would wander around the warehouse and take an inordinately long time to return. There was ample testimony of complaints made to the Front End

Supervisors from both members and cashiers that Complainant failed to properly package merchandise. There was also testimony that Complainant was unable to keep up with the pace required for packaging merchandise causing some back-up at the register and inhibiting Respondent's ability to service the requisite members per hour thereby thwarting efforts to meet sales objectives. I found the Front End Supervisors to be credible and sincere in their assessment of Complainant's performance. Furthermore, I detected no evidence of ill will or discriminatory animus directed at Complainant because of his disabilities, but rather a willingness to help him. The supervisors testified that they made attempts to coach and assist Complainant to improve his performance and that Complainant was not responsive to their instruction.

Complainant's performance problems were relayed to the Front End Manager, Rob Rankins, and based on the information he received and his own observations of Complainant's performance, Rankins determined that Complainant should be terminated within the 90 day probationary period. He simultaneously recommended the termination for performance reasons of two similarly situated employees who were not disabled. I conclude that Respondent has articulated a legitimate non-discriminatory reason for its decision to terminate Complainant's employment.

Once Respondent articulates a legitimate non-discriminatory reason for Complainant's termination, Complainant must prove that the articulated reason is a pretext for discrimination. Complainant asserts that proof of pretext exists in Rankin's alleged statement to him that he would not have hired him had he known about his disability and Rankin's questioning him about his inability to perform the duties of cashier, both of which statements Rankins denied making. I find it difficult to believe

that a manager as experienced and well trained as Rankins would have made such a blatantly discriminatory comment to Complainant. However, even if Rankins did harbor some concerns about Complainant's ability to be a cashier, I am not persuaded that he discriminated against Complainant because he was unable to perform this duty. There was testimony that several other Front End Assistants were not required to act as cashiers and that this was not a problem for Respondent. Moreover, Complainant fully disclosed his disability and resulting limitations in the job interview and Respondent hired him knowing that he could not operate a cash register. Thus I am unable to conclude that Respondent's articulated reason for the termination is a pretext for discrimination.

Complainant also appears to assert that to the extent Respondent terminated him because he was unable to operate a cash register, the decision represents a failure to accommodate his disability. Given the absence of credible evidence that Respondent terminated Complainant because of his inability to perform the duties of cashier, this claim has no merit. However, if indeed, the only accommodation Complainant ever requested was to be exempt from operating a cash register - a task both parties agree is a non-essential function of the Front End Assistant position - Respondent provided this accommodation.

Complainant consistently maintained that he never requested, or needed, any other accommodations to perform the essential functions of the job. Complainant insisted throughout the hearing that he was able to perform the duties of Front End Assistant, performed these duties properly, was generally not counseled, and required no accommodation. He stated repeatedly that Respondent's assertions to the contrary were preposterous and demeaning. Complainant asserted that Rankins humiliated him on one

occasion when Rankins attempted to assist him with sweeping; however, I conclude that Rankins and other supervisors harbored no discriminatory animus, but merely provided Complainant with more assistance and more training than they provided to other Front End Assistants because he appeared to need the help to improve his performance.

Complainant would have me find that all of the charges of poor performance leveled against him were trumped up after Rankins decided to fire him because he could not be a cashier or because Rankins did not want disabled employees on his team. The credible testimony of the Front End supervisors does not support such a conclusion. Furthermore, there was ample testimony of accommodations readily provided by Respondent to a number of employees who were injured or disabled.

Ultimately, the evidence supports the conclusion that Complainant was terminated because he was unable or unwilling to perform the duties of Front End Assistant in a manner consistent with Respondent's expectations. While the limitations associated with Complainant's disabilities may have impacted his ability to perform the essential functions of the job, Respondent was not required to waive those requirements or disregard his inability to meet them, as an accommodation to Complainant. *Cox v. new England Tel. & Tel. Co.*, 414 Mass. 375 (1993). To his credit, Complainant explored a variety of employment opportunities notwithstanding his disabilities, and his frustration with his situation was palpable; however, I am unable to conclude that Respondent acted in a discriminatory manner that demeaned his abilities or insulted his intellect, and I do not believe his termination was motivated by discrimination.

IV. ORDER

In light of the foregoing, I conclude that Respondent did not violate M.G.L. c. 151B when it terminated Complainant and the complaint in this matter is hereby dismissed. Any party aggrieved by this order may file a Notice of Appeal within ten (10) days of receipt of this order and a Petition for Review within thirty (30) days of receipt of this order.

So Ordered this 30th day of July, 2009

Eugenia M. Guastaferr
Hearing Officer