

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

Bibiane Baptiste and Massachusetts
Commission Against Discrimination,
Complainants

v.

Docket No. 96-BEM-2625

Massachusetts General Hospital,
Respondent

Appearances: John F. Drewry, Esquire, for Complainant
Patti A. Halloran, Esquire and James J. Horgan, Esquire, for
Respondent

DECISION OF THE HEARING COMMISSIONER

I. INTRODUCTION

This case concerns an individual who claims that she was subjected to discrimination on the basis of her race, color and national origin. Her complaint alleges unlawful discrimination and retaliation in violation of M.G.L. chapter 151B, Section 4, paragraphs (1), (4) and (4A).

II. PROCEDURAL HISTORY

On October 3, 1996, Complainant filed a charge of discrimination against Respondent Massachusetts General Hospital. The Investigating Commissioner issued a

finding of Probable Cause. After conciliation efforts failed, the matter was certified for Public Hearing. Prior to the hearing, Respondent filed two motions.¹ A Public Hearing was held on August 19, 20 and 21, 2002. Post-Hearing findings of fact and conclusions of law were submitted by the parties.

I have considered the entire record of the proceedings, including all proposed findings of fact, conclusions of law, and supporting arguments of the parties. To the extent the proposed findings and conclusions are not in accord with the findings herein, they are rejected. Certain proposed findings and conclusions have been omitted as not relevant or as unnecessary to a proper determination of the material issues presented; others have been modified to accord with my findings. To the extent the testimony of various witnesses is not in accord with the findings herein, such testimony is not credited. Having duly considered the record before me, I make the following Findings of Fact and Conclusions of Law and Order.

III. FINDINGS OF FACT

1. Respondent is an employer within the meaning of M.G.L. c.151B. Respondent is a hospital located in Boston, Massachusetts.
2. Complainant is a black female, originally from Haiti, who resides in Concord, New Hampshire. She commenced her employment as a Registration Specialist in

¹ I allowed Respondent's Motion to preclude evidence of acts barred by the statute of limitations and issues not certified for public hearing and denied Respondent's Motion in limine to preclude reference to unsupported allegations of disparate treatment.

Respondent's Outpatient Registration department ("department") in July 1994, after previously working in the Employee Health department. (Tr. I, pp. 66-68)

3. Complainant was interviewed and hired for a Registration Specialist position by Diane Hanscom, the department's manager from late 1993 until January 1996. At the time she was hired, Complainant's supervisor was Henry Buszkiewicz, the team leader of outpatient registration. He had previously supervised Complainant in the Employee Health department and suggested that she apply for a Registration Specialist position. Hanscom was Buszkiewicz's supervisor. (Tr. I, pp. 68-71; Tr. II, pp. 248-250, 289)

4. As a Registration Specialist, Complainant's job responsibilities included registering patients for outpatient appointments and treatment, and obtaining their insurance and demographic information. (Tr. I, p. 166; Tr. III, pp. 326-330)

5. Patient interaction and productivity (the number of patients registered) were important skills for the Registration Specialist position. Hanscom stated that a Registration Specialist's productivity was measured by a computer generated report. She testified that although Complainant's accuracy was high, her productivity was among the lowest in the department. On November 4, 1994, Buszkiewicz discussed Complainant's productivity with her; a memorandum drafted by him on that date to Hanscom stated that he informed Complainant that her productivity was consistently low and she agreed to improve. A February 6, 1995 memorandum from Buszkiewicz to Hanscom stated that he had met with Complainant on January 30, 1995 and had requested she be more

aggressive in registering patients. It also noted he had questioned her concerning a time period of low productivity and she had explained she was helping a patient on the telephone and had then gone to the ladies room. A February 7, 1995 memorandum from Hanscom stated that she had spoken to Complainant regarding her productivity, noting that Complainant was processing 40 to 45 patients a day but was expected to be registering over 50 patients. Complainant mentioned at that time that she would prefer to work in a smaller office and Hanscom informed her she would see what she could do. A February 28, 1995 memorandum from Hanscom notes Complainant's production had increased. Complainant testified that some of the information in the memorandum was inaccurate and she requested that Hanscom provide her with specific numbers regarding her productivity but he never did. (Tr. III, pp.556-570; Ex. 15)

6. In May 1995, Complainant received a score of 84 out of 100 points on her annual performance evaluation. On the evaluation, Hanscom and Buszkiewicz indicated that Complainant needed to improve her productivity and customer relations skills. At this time, Complainant and Hanscom agreed that the Registration Specialist position did not seem to be a "good fit" for Complainant and that she would remain in her present position but look for a new job. (Tr. II, pp. 259-266, 293-304; Ex. 1)

7. A January 1996 memorandum from Hanscom to the file noted that Complainant was continuing to look for a new position. Hanscom wrote that she informed Complainant that the quality of her work was superb but her performance with regard to customer service and productivity had not improved much, that corrective action might be

necessary if the situation continued, and that Complainant would be transferred to an opening in a slower paced office the following week. Complainant testified that she was moved to the slower office only on a temporary basis. (Tr. III, p. 569; Ex. 15)

8. Eileen McNamara DiMarino (“McNamara”) became manager of the department and Complainant’s supervisor in January 1996. On or around this time, Ellen Zabransky replaced Buszkiewicz as the team leader for outpatient registration. Three team leaders, including Zabransky, reported to McNamara. Julia Sinclair, Director of Admitting Services, which included Outpatient Registration, supervised McNamara. (Tr. I, p. 85; Tr. III, pp. 314-315, 324-328, 428-429)

9. Complainant testified that during the time period that McNamara was her supervisor, her telephone calls and bathroom breaks were monitored, resulting in an embarrassing incident when she was prevented from taking a break to use the bathroom. Complainant further stated that she was constantly “bounced around” and instructed by Zabransky to go to another department to provide coverage, only to be told that the employee she was sent to cover did not need to be relieved, and that she complained to McNamara about these assignments. Complainant also testified that Respondent denied her accrued time off. She testified that Respondent did not monitor the telephone calls or breaks of white Registration Specialists and claims she was treated differently with respect to coverage assignments and taking time off. (Tr. I, pp. 75-78, 103-130; Tr. III, pp. 379-380)

10. Sinclair stated that employees could use the restroom when they needed to do so as long as they informed someone in their group. (Tr. III, p. 434) Although I credit Complainant's testimony regarding the embarrassment she experienced concerning the bathroom incident, I find that Respondent did not prohibit her from taking breaks to use the bathroom.

11. McNamara and Buszkiewicz testified that team leaders, rather than McNamara, were involved in handling day to day coverage assignments, scheduling breaks, and approving time off. Susan Gormley, Manager of Employee Relations in Human Resources in 1996, testified that Respondent's time off policy allowed each department to set its own guidelines for employees taking breaks and for granting time off. Employees working a full day were entitled to a fifteen minute break in the morning and a half hour break for lunch; sometimes they would combine the morning break with the half hour break in order to take a 45 minute lunch break. McNamara testified that a team leader had the authority to grant time off, but if scheduling issues arose both she and the team leader would be involved. ((Tr. I, pp. 69-71, 103-130; Tr. III, pp. 328, 336-342, 432-435, 516, 520; Ex. 5)

12. Registration Specialists performed their jobs in several locations throughout the hospital, including the ACC lobby, ACC-6, Cox lobby, POB and Wang-2. Complainant was assigned primarily to the ACC lobby which was the busiest location in terms of number of patients checking in. Only one Registration Specialist worked in Cox lobby. McNamara testified that employees rotated covering Cox and if an employee needed a

break from Cox, she could call the ACC lobby and ask for coverage. That employee or the team leader would schedule coverage. McNamara testified that two white Registration Specialists worked at Cox. (Tr. I, pp. 104-107; Tr. II, p. 292; Tr. III, pp. 328, 332, 342-343, 376-380) I credit McNamara's testimony.

13. McNamara and Sinclair testified that Complainant never complained about assignments, about being denied a day off or a break or that Respondent was monitoring her telephone calls. (Tr. III, pp. 339-344, 435, 446-449) I credit their testimony. Although Complainant charged McNamara with disparate treatment in regard to location of coverage assignments, breaks and time off, I find that team leaders played a more operational role in the department than McNamara and were primarily responsible for scheduling breaks, coverage and time off.

14. In the spring of 1996, Complainant met with Kenneth Smith, Respondent's diversity staffing specialist from 1994 until 1997. She complained that McNamara was treating her unfairly as compared to non-minority employees with respect to breaks, earned vacation time, and location assignments. She also complained that her telephone calls and bathroom breaks were monitored, and that her performance was unfairly criticized. Smith testified that Complainant felt she was being racially harassed by McNamara, was very upset and requested his assistance in transferring out of the department. (Tr. I, pp. 22-27, 100)

15. Respondent's non-harassment policy states that when a complaint is reported, the Employee Relations Office must be notified. Smith testified that in the spring of 1996 the Employee Relations department had been abolished and he therefore contacted Angela Hardie, the generalist responsible for Complainant's department, and informed her that he would conduct an initial investigation into Complainant's allegations. Gormley, the Employee Relations Manager, testified that complaints were to be reported to Human Resources. Smith testified that no representative from Human Resources participated in the investigation. (Tr. I, pp. 39-52; Tr. III, pp. 513-516, Ex. 3

16. Smith stated that he investigated Complainant's allegations of harassment and disparate treatment by speaking with the three other minority employees in Complainant's department and with McNamara, but did not speak with non-minority employees. He stated these employees were angry over their perception of unfair treatment by management and that he concluded that Complainant and other African American employees were being treated differently than employees not in their protected class with respect to being granted breaks during the workday and vacation time. Smith testified that he wrote up "some sort of document" on the results of his investigation, but did not know where it was. He stated that in 1996 he had submitted the results to Hardie as well as informing Barbara Holland, Director of Diversity in the Human Resources Department, and Sinclair, Director of Admitting Services, of his findings of disparate treatment and the seriousness of the situation. McNamara testified that Smith did not contact her concerning Complainant's allegations of unfair treatment and Sinclair testified that she did not recall speaking with Smith. (Tr. I, pp. 29-65; Tr. III, pp. 366,

427-429) I credit McNamara and Sinclair's testimony and find that Smith did not contact them concerning Complainant's discrimination allegations. Further, I find that no documentation relating to Smith's investigation was submitted at the hearing.

17. Smith testified that prior to Complainant's bringing a complaint to him, he had met with some of the managers in the department, including McNamara and Sinclair, regarding the encouragement of diversity. He stated that he did not find that the managers were supportive of the diversity initiative and thought that McNamara interviewed African American applicants, but did not offer them employment opportunities. (Tr. I, pp. 28-31; Tr. III, pp. 366, 427-429)

18. On April 23, 1996, Complainant was offered a Senior Admissions Representative position in the admitting department at Spaulding Rehabilitation Hospital ("Spaulding"). She accepted the position with a start date of May 13, 1996. (Tr. I, p. 78; Ex 11)

19. Upon accepting the job offer from Spaulding, Complainant immediately called McNamara, leaving her a voice mail message on her telephone on April 23 that her last day of work would be May 7, 1996. Complainant testified that she left a letter of resignation on McNamara's desk the following day, April 24, 1996. However, Complainant's memorandum of November 1, 1996, clarifying her resignation date, states she typed her resignation letter on April 24, but presented McNamara with the letter at their April 25 meeting. McNamara stated that Complainant's resignation letter was

submitted to her on April 25. (Tr. I, pp. 80-83; Exs. 10, 13) I find that Complainant's resignation letter was submitted to McNamara on April 25.

20. Respondent's resignation policy states employees are expected to give two weeks notice to their supervisors, that earned time off is not included in the resignation time frame and that resignation does not have to be in writing in order to be considered valid notice. Sinclair stated that oral notice was sufficient, but had to be given directly to a supervisor. (Tr. III, pp. 452-453, 529-531; Ex. 7)

21. Complainant and McNamara met on April 25 to review Complainant's annual performance evaluation, on which she received 92 out of 100 points, a higher score than she had received under Hanscom. McNamara and Complainant also discussed Complainant's final day of work. McNamara stated that Complainant agreed to change her final date of employment from May 7 until May 10, 1996, but Complainant testified that she did not agree to work on May 10. McNamara wrote on Complainant's resignation letter that, "We discussed changing the date until May 10th as we have other staffing issues and this is short notice." She testified that she had already denied another employee's request for a vacation day on May 10, because the department would be short staffed. Sinclair stated that factors in granting time off included whether other employees had requested the day off and the department's anticipated volume for that day. (Tr. I, pp. 83-; Tr. II, pp. 143, 179-189; Tr. III, pp. 330-331, 347, 370-374; Exs. 2, 10, 13)

22. Complainant called in sick twice between April 23 and May 6. She testified that she worked on May 8th and 9th in order to complete her two weeks notice period. (Tr. I, p. 86)

23. A May 7, 1996, memorandum from McNamara to Complainant's file states that Complainant called on May 6 to request that she end work on May 9 instead of May 10. McNamara's memorandum states that she denied the request for a day off, and she considered the memorandum an oral warning as Complainant "will not show up for work on Friday, May 10." An undated note from McNamara to Complainant states that her request for May 10 as a vacation day is not approved and if she does not come to work that day, the appropriate actions and notations will be made in her permanent record. (Exs. 17 and 18)

24. When Complainant did not report to work on May 10, Sinclair called her at home. Complainant informed her she had not agreed to work on May 10. (Tr. I, p. 86-87, 91-95)

25. McNamara completed Complainant's Employee Separation Report on May 30, 1996. She gave Complainant an unsatisfactory performance evaluation and did not recommend her for rehire, testifying Complainant's performance was unsatisfactory, because she had not worked until the agreed upon resignation date. The performance evaluation that is completed at the time of an employee's separation relates to a supervisor's perspective on an employee's performance at the time of separation. Respondent's policy regarding resignation, Section II, C, states that, "if an employee resigns without suitable notice, this

action should be documented by the supervisor. An employee who does not give the notice described in this policy should be made aware that she is not eligible for rehire, unless the notice given was approved by the supervisor. Supervisors should clearly indicate if failure to give appropriate notice is the reason for not recommending an employee for rehire.” Gormley and Sinclair testified that McNamara’s not recommending Complainant for rehire was consistent with policy. Gormley testified that it is Respondent’s practice for a supervisor to not recommend an employee for rehire if she does not work until the agreed upon resignation date but that this may not prevent an employee from becoming reemployed by Respondent. (Tr. III, pp. 357-358; 399, 445-446, 523-530; Exs. 7, 14)

26. McNamara testified that she had previously completed a Separation Report for a Caucasian employee who had performed well, but did not provide two weeks notice. She stated that the employee called on a Friday, leaving a voicemail message that he was resigning on Monday. In his Separation Report, McNamara gave him a poor performance evaluation and did not recommend him for rehire. (Tr. III, pp. 362-365; Ex. 16)

27. The completed Separation Report is submitted to the Human Resources department, which takes action respecting an employee’s insurance benefits. (Tr. III, pp. 365-366)

28. Complainant commenced her employment at Spaulding on May 13, 1996. She testified that in October 1996, she became aware that her health and life insurance

benefits had been terminated, but that after contacting Respondent about this, they were reinstated in November. Gormley stated that Spaulding is a separate employer and that generally when an employee moves from Respondent to Spaulding, she is able to bring her date of hire with her but no benefits. (Tr. I, pp.95-100; Tr. III, pp. 522-526)

29. Angela Chandler and Theresa Fowler, African American Registration Specialists supervised by McNamara, testified that they were not treated differently on the basis of their race. Chandler stated that McNamara did not deny her requests for breaks or time off. Chandler's health benefits were cancelled when she was transferred, but this was a mistake made by McNamara that was subsequently corrected. (Tr. III, pp. 466-490)

30. McNamara testified that, in general, twenty percent (20%) of the department's employees were African American. She stated that of the eight employees on the May 1996 schedule, three were African American, one was Asian, and four were Caucasian. (Tr. III, pp. 382, 422; Ex. 12)

IV. CONCLUSIONS OF LAW

Race, Color and National Origin Discrimination

M.G.L. c. 151B, s. 4 (1) prohibits discrimination in the terms and conditions of employment based on race, color and national origin. In order to prevail on a claim of discrimination, absent direct evidence, a Complainant must show that: (1) she is a member of a protected class; (2) she was performing her position adequately; (3) she suffered an adverse employment action; and (4) similarly situated, qualified person(s) not

of the protected class were not treated in a like manner. Abramian v. President & Fellows of Harvard College, 432 Mass. 107(2000); Lipchitz v. Raytheon Company, 434 Mass. 493 (2001); Williams v. New Bedford Free Public Library, 18 MDLR 123 (1996).

If Complainant successfully establishes a prima facie case, the burden then shifts to the second stage of proof whereby the employer must articulate a legitimate, nondiscriminatory reason for its action. See Blare v. Husky Injection Molding Sys. Boston, Inc., 419 Mass. 437, 441-442 (1995), citing McDonnell Douglas Corp v. Green, 411 U.S. 792 (1973).

Finally, if the Respondent has asserted a nondiscriminatory explanation for its employment decision, Complainant bears the burden to persuade the fact-finder, by a fair preponderance of the evidence that the Respondent's articulated justification is not the real reason, but a pretext that permits a finding of unlawful discrimination. Abramian v. President & Fellows of Harvard College, 432 Mass. 107 (2000). Complainant must ultimately prove by a preponderance of the evidence that the Respondent was motivated by discriminatory animus. Lipchitz v. Raytheon Co., 434 Mass. 493 (2001). However, Complainant may meet this burden of proof by circumstantial evidence such as the inference of discriminatory animus that may be drawn from proof that one or more of the reasons advanced by the employer is false. Id. at 504.

The issues to be decided are limited to those certified for Public Hearing. They are: (1) whether Complainant was subjected to disparate treatment in employment on the basis of her race, color and national origin by McNamara²; (2) whether Complainant

² After completion of the hearing, Respondent made an oral Motion for a Directed Verdict. I took the motion under advisement, instructing the parties to file a written motion and opposition. Subsequently, I allowed Respondent's Motion for a Directed Verdict as to national origin and denied the motion as to race and color discrimination and retaliation.

made internal complaints of racial harassment to the Human Resources department and, if so, whether Respondent took adequate steps to remedy the situation; (3) whether the negative Employee Separation Report issued to Complainant was motivated by discrimination or retaliation; and (4) whether Complainant suffered any damages as a result of these actions.

I conclude, based on the record evidence, that Complainant has established a prima facie case of disparate treatment against Respondent with respect to certain terms and conditions of her employment. Complainant is a member of a protected class who was performing her position adequately and alleges she was treated differently. Smith testified that he concluded that Complainant was treated differently than similarly situated employees not of her protected class with respect to the monitoring of telephone calls, taking breaks, coverage assignments of Outpatient Registration offices, and requests for time off. Complainant has also demonstrated that she received a negative Employee Separation Report which recommended that she not be rehired by Respondent.

Respondent asserts that its actions were undertaken for legitimate non-discriminatory reasons and that Complainant was not treated differently than similarly situated Registration Specialists not in her protected class with respect to breaks, coverage or time off. Respondent provided evidence that all employees were rotated in their assignments, that Complainant's treatment was consistent with Respondent's policies, and that she never complained of discrimination to McNamara or Sinclair. The testimony of Registration Specialists Chandler and Fowler supports Respondent's assertion of no disparate treatment. Respondent also argues that Complainant's performance was not unfairly criticized, and supports its argument with documentary and

testimonial evidence indicating that Respondent's concern with Complainant's productivity was merited, and that it was an ongoing concern. Further, Respondent argues that the negative Separation Report recommending Complainant not be rehired was in accordance with hospital policy and was not motivated by discriminatory or retaliatory reasons. I conclude that Respondent has articulated legitimate, nondiscriminatory reasons for its actions that are supported by credible evidence.

Once Respondent has articulated legitimate non-discriminatory reasons for its employment actions, Complainant must prove by a preponderance of the evidence that Respondent's stated reasons for its actions were false and masked a discriminatory motive. Complainant attempted to identify similarly situated non-minority comparators and demonstrate that they were more leniently treated with respect to breaks, coverage and vacation time, with the inference that race was a factor in their different treatment and that a racially hostile environment existed in the department. I find that Complainant's impression that she was subjected to different treatment was not supported by the facts. She failed to provide evidence to substantiate her contention that her rotation to cover other locations was based on her race. Complainant also did not demonstrate that she was prevented from taking breaks or that her telephone calls were monitored. Moreover, Chandler and Fowler, similarly situated African American employees also supervised by McNamara, testified credibly that they were not treated differently on the basis of race.

Finally, Complainant did not demonstrate that she complained of discrimination to anyone in the department. Although she spoke with Smith regarding her alleged unfair treatment by McNamara, Smith's testimony that he conveyed Complainant's charge to

McNamara or reported the results to Sinclair is not credible. The evidence indicated that Smith did not follow Respondent's non-harassment policy. No representative from Human Resources participated in the investigation, there is no documentation of Smith's investigation and its conclusions, and his testimony lacked specificity. These factors detract from the weight of Smith's testimony and from Complainant's allegations that Respondent was aware of her internal complaints of harassment and discrimination.

Complainant also did not prove that Respondent's treatment of her with respect to her performance was motivated by her race. Her contention that Respondent unfairly singled out her performance for criticism on account of her race is belied by the evidence demonstrating that Respondent scrutinized Complainant's productivity, which was consistently below accepted standards and expectations. A reference in Buszkiewicz's January 30, 1995, memorandum "questioning her concerning a period of time when she explained that she was helping a patient on the telephone and then went to the ladies room" may have been interpreted by Complainant as unfair monitoring of a bathroom break. However, there is no objective evidence to support this subjective impression by Complainant and her bare allegations are not probative of pretext.

I further find that Complainant did not demonstrate that Respondent's request that Complainant work until May 10 and its issuance of a negative Employee Separation Report were motivated by discriminatory animus. Rather, based on McNamara's testimony, I find that Respondent believed that Complainant was required to and had agreed to work until May 10. Based upon this belief, McNamara filled out the Separation Report consistent with Respondent's policy of not recommending Complainant for rehire due to her failure to complete her two week notice period prior to leaving. Even assuming

arguendo that Complainant was not required to work on May 10 under Respondent's two week resignation policy and had not agreed to do so, the evidence does not support Complainant's charge that her race motivated these actions. Furthermore, complainant did not seek to be rehired by Respondent and Gormley testified that the failure to recommend an employee for rehire does not necessarily preclude re-employment by Respondent.

Finally, with regard to Complainant's benefits not being transferred to her new position, the evidence failed to persuade me that the cancellation of Complainant's benefits by the Human Resources department occurred as a result of racial animus.

Based on the above, I conclude that Complainant was not subjected to disparate treatment on the basis of her race or color in violation of M.G.L. c. 151B, s. 4(1).

I also find that the evidence presented, even when viewed in a light most favorable to the Complainant, is inadequate to support a conclusion that McNamara was individually liable for subjecting Complainant to disparate treatment on the basis of her race.³ In order for an individual to be held liable for a violation of Chapter 151B, paragraph 4(4A) she must have "interfered" with another's rights in a manner that was in deliberate disregard of those rights. See Woodason v. Town of Norton School Committee, 25 MDLR 62 (2003). The evidence in this case does not establish the requisite "intent to discriminate" required to impose individual liability on McNamara for unlawful discrimination or retaliation. Although Complainant alleged that McNamara subjected her to disparate treatment, the evidence showed that in regard to coverage assignments, breaks and time off, team leaders' played a more operational role in the

³ While Complainant did not specifically name McNamara as a respondent, the certified issue regarding McNamara's conduct as Complainant's supervisor raised the issue of McNamara's individual liability under section 4(4A). As such, I will address the issue as a claim under section 4(4A).

department than McNamara and were primarily responsible for scheduling breaks, coverage and time off and that McNamara did not interfere in the team leaders roles in order to harass or discriminate against Complainant. Moreover, I have concluded that Complainant has failed to prove that the scheduling and coverage assignments were discriminatory. Accordingly, I dismiss Complainant's claim against McNamara individually.

Retaliation

In order to establish a prima facie case of unlawful retaliation, Complainant must prove that she engaged in protected activity that Respondent was aware of, she was subsequently subjected to an adverse action and that a causal connection existed between the protected activity and the adverse employment action. Langford v. Massachusetts Department of Employment and Training, 17 MDLR 1043, 1059 (1995). In this case, Complainant alleges that she believed McNamara was discriminating against her. She acted upon this belief by complaining to Smith and ultimately obtaining a transfer to another job. However, the evidence does not support a conclusion that McNamara's negative Separation Report was motivated by retaliation. As discussed above, the evidence did not demonstrate that McNamara acted with discriminatory intent or that she was even aware that Complainant had engaged in protected activity. This could not therefore have been a determinative factor in issuing the negative Separation Report. Rather, the evidence demonstrated that McNamara issued the Separation Report in accordance with Respondent's resignation policy, stemming from her belief that Complainant was to work on May 10 and did not adhere to that agreement. Having found that Complainant has not submitted credible evidence to show the required causal

connection between protected activity and an adverse action to support a claim of retaliation, I conclude that Respondent did not violate M.G.L. c. 151B, §4 (4).

V. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, I hereby order that the complaint in this matter shall be dismissed.

This constitutes the final order of the Hearing Commissioner. Pursuant to 804 CMR 1.23, any party aggrieved by this decision may file a Notice of Appeal with the Full Commission within ten days of receipt of this order and a Petition for Review to the Full Commission within thirty days of receipt of this order.

So Ordered this 12th day of December, 2003

Walter J. Sullivan, Jr.
Hearing Commissioner