

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

CHERYL TAVARES-MERRITT
AND MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION,

Complainants

v.

DOCKET NO. 97-BEM-2980

MASSACHUSETTS DEPARTMENT
OF CORRECTIONS,

Respondent.

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Commissioner Walter J. Sullivan, Jr. in favor of Respondent Massachusetts Department of Corrections. Following an evidentiary hearing, the Hearing Commissioner concluded that Respondent was not liable for unlawful gender discrimination, race discrimination or retaliation in violation of M.G.L. c. 151B, sections 4(1) and (4). Complainant filed an appeal to the Full Commission.

The responsibilities of the Full Commission are outlined by statute, the Commission's Rules of Procedure (804 CMR 1.00 et. seq.), and relevant case law. It is the duty of the Full Commission to review the record of proceedings before the Hearing Commissioner. M.G.L. c. 151B, Section 5. The Hearing Commissioner's findings of fact must be supported by substantial evidence, which is defined as "...such evidence as a reasonable mind might accept as adequate to support a finding...." Katz v. MCAD, 365 Mass. 357, 365 (1974); M.G.L. c. 30A.

It is the Hearing Commissioner's responsibility to evaluate the credibility of witnesses and/or to weigh the evidence when deciding disputed issues of fact. The Full Commission defers to these determinations of the Hearing Officer. See, e.g., School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). The Full Commission's role is to determine whether the decision under appeal was rendered in accordance with the law, or whether the decision was arbitrary or capricious, an abuse of discretion, or was otherwise not in accordance with the law. See 804 CMR 1.23.

I. COMPLAINANT'S PETITION FOR REVIEW

Complainant does not identify any claimed errors of procedure or law by the Hearing Commissioner in this matter. Rather, Complainant's request for review rests solely on her challenges to the Hearing Commissioner's factual findings. Complainant's chief arguments are that the Hearing Commissioner erred by crediting the testimony of Respondent's witnesses and failing to credit that of Complainant, and that the Hearing Officer ignored or "omitted" evidence favorable to Complainant.

Specifically, Complainant contends on appeal that because irregularities occurred during the CPO-III promotion process, the hiring and selection process was tainted to such an extent that it was rendered illegally subjective and discriminatory. In support of her contention, Complainant cites Buckley Nursing Home v. MCAD, 20 Mass. App. Ct. 172 (1985), for the proposition that where there exists a subjective, discriminatory selection process, the mere fact that the candidate selected was more qualified than the complainant does not mean that discrimination cannot be found. However, the record in this matter shows that the Hearing Commissioner fully and carefully considered and weighed the irregularities in the process and concluded that "these irregularities were

minor and the weight of the evidence does not support a finding that these minor irregularities in the selection process were motivated by discriminatory animus against the Complainant.” In concluding that “Complainant has not proven that Respondent’s failure to follow standard practices to the letter was evidence of race or gender discrimination,” the Hearing Commissioner determined that a “subjective, discriminatory selection process” such as is contemplated in the Buckley case did not exist. The weight of the evidence supports the Hearing Commissioner’s conclusion that William Martin was selected for the CPO-III position based upon the panel’s unanimous opinion that his employment qualifications and history far exceeded that of all of the other applicants, including Complainant, and that this opinion was reached without consideration of race or gender.

We have carefully reviewed Complainant’s contentions on appeal and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review herein. We conclude that there was substantial evidence to support the Hearing Commissioner’s findings of fact and conclusion that Complainant was not subjected to discriminatory denial of promotion, disparate treatment, hostile work environment, or retaliation. We also conclude that the Hearing Commissioner did not abuse his discretion in crediting and discrediting certain testimony, especially since the record shows that Complainant failed to produce witness testimony or other evidence to corroborate and support her contentions at the hearing in this matter. As a result of our review, we find no material errors of fact or law with respect to the Hearing Commissioner’s findings.

On the above grounds, we deny the appeal and affirm the Hearing Commissioner’s decision in its entirety.

ORDER

The Complainant's appeal to the Full Commission is hereby dismissed and the decision of the Hearing Commissioner is affirmed in its entirety.

This Order represents the final action of the Commission for purposes of M.G.L. c. 30A. Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint seeking judicial review, together with a copy of the transcript of proceedings before the Hearing Officer (See M.G.L. c. 151B §6) in the Superior Court within thirty (30) days of receipt of this decision.

SO ORDERED this 20th day of September, 2004.

Walter J. Sullivan, Jr.
Commissioner

Cynthia A. Tucker
Commissioner