

THE COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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MCAD &  
DONALD A. LAGASSE, EXECUTOR OF THE  
ESTATE OF MARGARET A. LITTLE,<sup>1</sup>  
Complainants

v.

DOCKET NO. 03-BEM-01395

SOUTH SHORE HOSPITAL,  
Respondent

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Appearances:

Jeffrey R. Mazer, Esquire for Donald Lagasse  
Stephen T. Paterniti, Esquire for the Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On June 5, 2003, Donald Lagasse, Executor of the Estate of Margaret A. Little, filed a complaint with this Commission alleging Respondent South Shore Hospital discriminated against Margaret A. Little on the basis of handicap. Complainant alleges that Respondent constructively discharged Little because of an ankle injury, and that Respondent failed to accommodate Complainant's request for a reasonable accommodation of a pelvic impairment. The Investigating Commissioner issued a probable cause determination. Attempts to conciliate the matter failed, and following a certification conference, the complaint was certified for public hearing. A public hearing was held before me on March 12-14, 2007. After careful consideration of the entire

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<sup>1</sup> Margaret Little died on April 4, 2003. Donald Lagasse is the Executor of Little's will and has filed this complaint on behalf of her estate.

record before me, as well as the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law, and order.

## II. FINDINGS OF FACT

1. Respondent South Shore Hospital is located in Weymouth, Massachusetts and is an employer within the meaning of M.G.L.c.151B§ (1).

2. On or about November 25, 2002 Margaret Little began working for Respondent as a mammography technician in its Mammography Department. At the time, Little was an experienced mammography technician.

3. Donald Lagasse was Little's long-time fiancé. The two met in 1988 and became engaged in 1990. They resided together in Virginia until moving to Wareham, Massachusetts in 2002 to live with Lagasse's father.

4. In August 2001, while residing in Virginia, and prior to moving to Massachusetts with Lagasse, Little underwent pelvic reconstructive surgery. According to Lagasse, Complainant quit her job as a mammographer at Washington Radiology in part because she would likely require a lengthy recuperation and did not want to have a record of having been terminated. There was also evidence that Little had interpersonal difficulties at Washington Radiology. According to Lagasse's testimony and Little's medical records, following the surgery, Little continued to suffer from pelvic pain and in October 2002 was seen by a pain specialist who performed a nerve blocker procedure in order to relieve the pain. At that time, Little told a physician that she was limited in driving, standing, bending and lifting. Nonetheless, in the same month, October 2002, she obtained employment at Sterling Dulles Radiology in Virginia.

5. Risa Asaro is Respondent's Mammography Coordinator and was Little's direct supervisor. Dan Cheney was Administrative Director of Imaging Services and Asaro's supervisor. In 2002, Jennifer O'Rourke was a Human Resources Liaison and Donna Bonkowski was an Employee Relations Manager for Respondent.

6. Little applied for the mammography technician position by telephone from Virginia and was hired sight unseen. During Little's pre-hire interviews, Asaro and O'Rourke told her that the hours of work were 8:30 a.m. to 5:00 p. m. and that she would be required to work one Saturday per month (Tr. II, pp15-16, Tr. III, p.8) 7. Asaro testified that during the interview, she asked Little why she wanted to work at South Shore Medical when there were hospitals closer to her residence in Wareham where she could have obtained employment. According to Asaro, Little responded that she wanted to work for Respondent because of Lagasse's connection to the hospital and Little questioned whether Asaro was attempting to discourage her from working at Respondent. Asaro responded that her sole intent was to make sure Little was aware of the long distance between Wareham and Weymouth. The usual commuting time from Wareham to Weymouth is approximately 50 minutes.

7. Upon accepting the job at Respondent, Little and Lagasse moved from Virginia to Wareham, Massachusetts. Lagasse obtained employment as a security guard within walking distance of their home, working the 3:00 p.m. to 11:00 p.m. shift.

8. Respondent's mammography technicians spend the majority of their work day with patients, conducting breast examinations. (Tr. II, p.136-137) Patient examinations are scheduled every 30 to 45 minutes for each mammography technician. Due to the high

demand for such examinations, patient appointments are scheduled several months in advance.

9. Mammography technicians are allowed one-half hour for lunch and two 15 minute breaks during the day, or may combine the two breaks with the lunch break to create a one hour lunch break. (Tr. II, 6-8-11)

10. Pursuant to Respondent's policies, employees undergo a 90-day "introductory period" during which they are not accorded all the benefits granted to permanent employees, including the advantage of progressive discipline. During the introductory period, employees are generally not permitted to take leaves of absence.

11. Asaro testified that Little began to have attendance problems shortly after her employment began. She arrived at work late and left work early on a number of occasions. On some of these occasions, Little was either tardy or left early because of her concerns about driving in snow. On other occasions Little left early because of medical appointments. On one occasion Little was late for work because her alarm did not go off. Asaro acknowledged that on those occasions when Little left early she had Asaro's permission to do so. I credit her testimony.

12. According to Asaro, in addition to tardiness problems, on a number of occasions, Little disappeared from the floor during her shift without permission and without telling anyone where she was going. Asaro testified that Little spent a lot of work time both making and receiving personal calls. (Tr. II, P. 19-20) I credit her testimony.

13. Asaro testified that at times Little sat with a notebook at the end of the day, writing down her observations the work place, which made her co-workers uneasy. (Tr. II, 33) (Tr. II, pp. 19-20) I credit her testimony.

14. Asaro testified that on one occasion, Little asked to leave early because she was not feeling well and stated that she did not think she would be in the following day. The following day, Asaro noticed from the previous day's schedule that Little had not left early the previous afternoon, yet she did not handle any of her scheduled patients for the last 90 minutes of her work day. (Tr. II, pp. 19-20) I credit her testimony.

15. On another occasion Asaro learned that Little had left the Mammography Department during her shift, without permission, in an attempt to obtain an unscheduled breast examination at Respondent's Breast Care Center. (Tr. II, pp.24-25) I credit her testimony.

16. Asaro testified that sometime around December 2002, Little asked to speak with her in Asaro's office. Asaro described this meeting as non-adversarial and stated that Little was simply "unloading" a lot of her feelings. Little started out by saying, "Things are not working out," and began to cry. Asaro asked her if the problems were at work or at home, and Little replied, "both." There ensued a lengthy conversation wherein Little tearfully told Asaro she was unhappy with her living situation. Because of Lagasse's schedule, she did not see him when she got home from work and was left alone with his father. In addition, Little told Asaro that high prices had caused her and Lagasse to postpone their plans to purchase a home in the area. (Tr. II, pp.25-26) I credit Asaro's testimony.

17. Asaro testified that during this conversation Little told her that she would never have taken the position if she had known she had to work Saturdays. In addition, Little criticized the manner in which Asaro scheduled part-time mammographers. She told Asaro that the part-timers did not pull their weight and should assume more of the workload. Little told Asaro that her work should be winding down when the part-timers came on between 4:00 p.m. and 5:00 p.m. I credit Asaro's testimony.

18. Asaro stated that during this conversation, Little also told her that she was tired by the end of the work day, and believed that she would be less fatigued if she could begin and end her day earlier and asked Asaro if she could begin and end her day earlier. Asaro said she would consider this request. However, she informed Little that shifts were assigned by seniority and that at the time of Little's request, there were no other shifts available. (Tr. II, 27-28) I credit Asaro's testimony.

19. Asaro testified that during this same conversation she suggested to Little that if working one Saturday per month required her to work too many consecutive days, she would switch her day off to the weekday of Little's choice. However, Little rejected this suggestion as she shared the same day off as Lagasse and did not want to change. Asaro also recommended that Little take two fifteen minute breaks and a one-half hour lunch instead of a one-hour lunch to ease her fatigue. Little rejected this suggestion as well. I credit Asaro's testimony.

20. During this conversation, Little told Asaro that, in the past she had had a "GYN" problem that caused her to be fatigued. She also told Asaro that she had once suffered from a bout of depression where she could not get out of bed for weeks. (Tr. II, 27) Little made no request to Asaro in connection with the "GYN" issue and never

mentioned it again. (Tr. II, 30) Asaro stated that she did not remember reading in Little's job application that Little had left a position because of the pelvic reconstruction surgery. According to Asaro, Little did not appear to have any problems walking or standing at any time during her employment and never mentioned any such problems. She informed Asaro that she had joined a gym and also exercised at home. I credit Asaro's testimony.

21. Asaro testified that at the end of the meeting, Little hugged her and thanked her for listening. Asaro was struck by the difference in Little's demeanor from the time they first spoke by phone when Little sounded so excited about coming to Massachusetts and Little's tearful demeanor during the meeting. According to Asaro, Little never mentioned the "GYN" issue again. (Tr. II, 28) I credit Asaro's testimony.

22. Asaro stated that notwithstanding Little's above average technical skills, as Little neared the end of her 90-day "introductory period" in February 2003, Asaro advised her human resources Liaison, Jennifer O'Rourke, that she wanted to terminate Little's employment. While Asaro had no authority to terminate employees, she recommended Little be terminated because of Little's complaints about her working conditions, dissatisfaction with how Asaro ran the department, her attendance and punctuality problems, her distractions during the work day and her excessive personal telephone calls and leaving the floor during her shift. I credit Asaro's testimony.

23. In an email message to O'Rourke dated January 24, 2003, regarding Little's Performance, Asaro wrote, in part, that since her hire Little:

"2...has complained that she doesn't like working 8:30-5. she states she is an early morning person and moving her shift down to 8-4:30 would help her feel less tired. I have nothing available at this time. 3. She has complained that her commute is contributing to her exhaustion. She claims she is in chronic pain from a pre-existing condition and the long commute in the car after working all day is very bad for her."

Asaro also wrote in the email that Little complained about working on Saturday, asked to leave early because of the snow, and complained about the amount of work causing her to be tired. (Exh. C-16)

24. O'Rourke advised Asaro that rather than terminating Little's employment, she meet with Little to focus on her attendance and tardiness issues and to extend her introductory period for 30-days in order to provide her with a chance to correct these deficiencies. O'Rourke prepared a "verbal" warning for Asaro to deliver to Little to inform her of Respondent's concerns about her attendance and to assist her in improving her attendance. According to O'Rourke, Little did not seem to think it was a big deal to leave work an hour or two early or to arrive at work a little bit late. Asaro and O'Rourke were concerned that Little did not take the situation seriously. (TR III, 14) I credit their testimony.

25. Asaro "verbally counseled" Little on or about January 30, 2003, and on February 11, 2003, provided her with the "verbal" warning and informed her that her introductory period would be extended for a period of 30 days. (Exh. C-12) Little was shocked and angry about the warning and refused to sign it and made written comments on the form. Little told Asaro that Respondent was not sympathetic to her needs and wrote in response to the verbal warning that she should not be penalized for unforeseen events, such as "being ill or inclement weather." Little complained to Asaro's supervisor, Dan Cheney.

26. On or about March 10, 2003, Little's right ankle became extremely swollen. and she sought treatment at the emergency room at Tobey Hospital in Attleboro. There, Dr. Lawrence Spencer recommended Little remain out of work for two days and stay off

her right foot. Spencer told Little that if her ankle did not improve she should return for a re-evaluation. (Tr. II, 40, 92) (Jt. Exh. 2)

27. Little informed Asaro about her ankle injury and provided Asaro with a note from Dr. Spencer dated March 10, 2003 stating that Little was unable to bear any weight on her right leg. (Jt. Exh. 2)

28. Asaro testified that after learning about Little's ankle injury, she consulted with O'Rourke, who told her that if Little was out for three days she would need a Dr.'s note before returning to work, and that if she were out for more than five days, she would need to apply for a leave of absence. Asaro relayed this information to Little. Asaro did not speak to Little again until March 17, 2003.

29. By March 12, 2003, Little's ankle had not improved and she visited her primary care physician, Dr. Weinberg, who thought she might have a stress fracture and should avoid weight-bearing. (Jt. Exh. 4) Weinberg excused Complainant from work until March 17, 2003 and referred her to an orthopedic specialist, Dr. Arthur Bowman.

30. On March 13, 2003, on the advice of Dr. Bowman, Little scheduled a bone scan for March 19, 2003 and remained out of work pending the results of a bone scan scheduled for March 19, 2003. (Jt. Exh.5) Little informed Asaro about Dr. Bowman's recommendation.

31. On March 13, 2003, Little called O'Rourke to inquire about Respondent's leave of absence policy. O'Rourke testified that she informed Little that she was not eligible for a leave of absence because she was still in her "introductory period." O'Rourke also informed Little that she had missed too much time already and her poor attendance was having a negative impact on patients. I credit her testimony.

32. According to O'Rourke, during this conversation, Little expressed concerned about her employment status. O'Rourke informed Little that if she were out for more than three days, she would need to obtain clearance from Respondent's employee health department in order to return to work. She also told Little that if she were to be out for more than five days, she would have to apply for a leave of absence but she also told Little that she would not be eligible for a leave of absence during her introductory period. O'Rourke told Little that she did not make decisions regarding eligibility for leaves of absence and that such determination would be made by Donna Bonkowski. O'Rourke denied telling Complainant that she would be fired if she did not return to work by Monday March 17<sup>th</sup>. O'Rourke testified that in this conversation, Little expressed her displeasure with both the verbal warning and Respondent's policies, which she believed to be unfair. She told O'Rourke that the hospital employed enough mammography technicians to cover for her while she was out. Little asked O'Rourke for the telephone numbers of Bonkowski and Respondent's president, Richard Aubut. O'Rourke did not speak with Little again about the leave of absence issue. I credit her testimony.

33. Lagasse testified that on March 14<sup>th</sup>, he was present with Complainant when she discussed her work situation on the telephone someone from Respondent's human resources office whom he could not identify. He claimed that Little repeated to him everything that the human resources person said so that Lagasse knew the contents of the entire conversation. According to Lagasse, Little relayed to him that Little was told that if she did not return to work on Monday, March 17, 2003, she would lose her job. According to Lagasse, Little responded that she was medically unable to report to work on Monday, March 17, 2003 and did not want to lose her job. I accord little weight to

Lagasse's testimony regarding this telephone call. While he may have been present when Complainant spoke to O'Rourke, there is a discrepancy as to the date of the telephone call. Moreover, Lagasse could not identify the person on the other end of the telephone and could not hear what she said. Thus, he heard Little's interpretation of the responses of an unknown person, and his version of the content is less likely to be creditable.

34. According to Lagasse, sometime that weekend, Little decided to resign from her position rather than have a record of having been terminated from her position. On Monday, March 17, she drafted a resignation letter.

35. Donna Bonkowski testified that she first became aware of Little's situation in February 2003 when O'Rourke called her to discuss extending Little's introductory period.

36. Bonkowski had no further contact with O'Rourke regarding Little until mid-March 2003, when O'Rourke called her to tell her Little was out with an injury. O'Rourke wanted to review Respondent's policies with Bonkowski in order to determine whether Little was eligible for a leave of absence and to inform Bonkowski that Little wanted to talk with her about the leave of absence issue. (Tr. II, 134-5)

37. Bonkowski testified that on March 13 or 14, 2003, she spoke to Little by telephone. Little told Bonkowski that O'Rourke told her she would be terminated if she did not report to work on March 17<sup>th</sup> and she was concerned because she had been told that she wasn't eligible for a leave of absence.

38. According to Bonkowski, Little told her that she would know more about the extent of her injury and possible need for additional leave after the bone scan on March 19. (Tr. II, 140-142). Bonkowski and Little discussed hypothetical circumstances under

which Little might be eligible for a leave of absence. Bonkowski told her that if Little were going to be out for six days, it would not make sense for Respondent to post her job and go through the hiring process with someone else; however, if she were going to be out for six months, circumstances might be different. Bonkowski told Little that she could not give her an answer until they had all the facts. (TR II. 143) They ended the conversation by agreeing to wait until Little learned the results of her bone scan, and then meet or talk by phone on Thursday March 20, along with O'Rourke and Cheney to discuss the possible outcomes, as well as Little's other concerns about the work place. (Tr. II, 144) Bonkowski denied telling Little that she would not be entitled to a leave of absence or that she would lose her job if she did not come back to work by Monday, March 17. I credit her testimony.

39. Asaro testified that on the morning of March 17<sup>th</sup>, Little called her and tendered her resignation. She did not give a reason. Asaro told Little to put her resignation in writing and to mail back her key and hospital badge. Asaro then called O'Rourke, who had received a voice mail message from Little stating she had resigned. O'Rourke then telephoned Little and told her to put her resignation in writing. When O'Rourke asked Little where to send her paycheck and insurance information, Little told O'Rourke that she was moving within the next two weeks and would provide her new address when she had it. O'Rourke's contemporaneous notes of this conversation state that "[Little] is moving within two weeks. Told her to update us with new address." (Exh.C-4) O'Rourke called Little a second time that day to provide her with COBRA information. I credit her testimony.

40. Bonkowski, who did not work on March 17<sup>th</sup>, was surprised to learn of Little's resignation when she came to work on March 18, 2003. She called Little to ask her what happened to cause her to resign before their scheduled meeting and wondered whether Little had already received a diagnosis. Little responded that she had just decided it was time to make some changes and she had decided not to return to work at South Shore Medical. (Tr. II152) I credit Bonkowski's testimony.

41. O'Rourke testified that on March 20, she discussed Little's resignation with Bonkowski and Asaro, either by phone or in person. O'Rourke's notes of this conversation state, in part: "Keep our notes. We will wait to see what happens. She quit before we had a chance to speak with Dan. We never got results. She quit before (we) had the appointment." O'Rourke denied ever telling Little that her job would be filled after five days' absence. Rather, she told Little that her job would not be filled until after it had been posted for five days. However, she acknowledged that Respondent would not post Little's job while she was still employed there.

42. According to Lagasse, following her resignation Little began looking for new positions in Massachusetts. She was also willing to move to New York, where her family resides, if she could not find a position in Massachusetts.

43. On March 19, 2003, Little, accompanied by Lagasse, underwent the bone scan, and was told by a doctor that she would be out of work for a minimum of six weeks. A cast was then placed on Little's ankle.

44. Little died on April 4, 2003 from a pulmonary embolism that developed as a complication of her ankle injury.

### III. CONCLUSIONS OF LAW

#### A. Disparate Treatment

Massachusetts General Laws c. 151B, §4(16) makes it unlawful to dismiss from employment or otherwise discriminate against a qualified handicapped person who is capable of performing the essential functions of the job with or without a reasonable accommodation. A claim of handicap discrimination may be proved by showing that the Complainant (1) is handicapped within the meaning of the statute; (2) is capable of performing the essential functions of the job with or without a reasonable accommodation; (3) was terminated or otherwise subject to an adverse action by her employer; and (4) her position remained unfilled and the employer sought to fill it. Dart v. Browning Ferris Industries, Inc., 427 Mass. 1 (1998).

M.G.L. c. 151B§1(17) defines a handicapped person as one who has a physical or mental impairment, a record of such impairment, or is regarded as having an impairment, which substantially limits one or more of the individual's major life activities. Complainant will be determined to be substantially limited in the major life activity of working if her impairment “prevents or significantly restricts [her] from performing a class of jobs or a broad range of jobs in various classes.” Massachusetts Commission Against Discrimination Guidelines: Employment Discrimination in the Basis of Handicap-Chapter 151B at 7. Rapoza v. Ocean Spray, 21 MDLR 43(1999).

Complainant first asserts that Little’s pelvic reconstructive surgery and her ankle injury constitute handicaps because there are “residual effects” from both conditions.<sup>2</sup> Complainant next contends that Little was handicapped because she had a record of the

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<sup>2</sup> This case presents obvious obstacles respecting evidentiary matters due to the unfortunate death of Margaret Little.

pelvic condition. Finally, Complainant contends that Respondent perceived Little to be handicapped by both her ankle injury and her pelvic condition.

With respect to the pelvic reconstructive surgery in December 2002, Little told Asaro that she suffered residual discomfort from a past “GYN” condition. This information was imparted to Asaro during a lengthy discussion that touched on a number of other subjects. However, Asaro noted in an email to O’Rourke describing Little’s performance issues that Little asked for a change in her hours because she was a “morning person” and that Little also suffered from chronic pain due to a pre-existing condition that made her commute difficult after a long day. According to Asaro, Little did not relate her fatigue to the change in work hours. In any event, Asaro did not have an opening for an earlier shift. Asaro offered Little other ways to reduce her fatigue, such as changing her day off when she worked a Saturday and taking breaks during the day. According to Asaro’s credible testimony the prior GYN procedure was not the focus of the meeting, during which Little vented her feelings about a variety of matters. While Complainant alleges that the verbal warning received by Little in February 2003 resulted from her disclosure of this prior condition, the evidence does not support such a conclusion. Asaro testified credibly that there were numerous reasons for giving Little the warning, including excessive tardiness, absenteeism, personal telephone calls during work hours and criticism of Asaro’s managerial decisions. I conclude that the verbal warning was unrelated to Little’s residual symptoms from her prior condition. Moreover, although Little wrote in her job application that she had left a previous position because of pelvic reconstructive surgery; Respondent hired Little notwithstanding this notation and therefore I conclude that Respondent did not perceive Little to be handicapped on the

basis of the pelvic reconstructive surgery and likewise, did not discriminate against Little because of her “record” of this surgery.

With respect to Little’s ankle injury, although short-term, temporary restrictions are generally not substantially limiting, an impairment does not necessarily have to be permanent to rise to the level of a disability. See, Dartt v. Browning Ferris Industries, Inc., 427 Mass. 1, 16-17(1998). The Commission has recognized that chronic or episodic disorders that are substantially limiting may be handicaps, while isolated medical problems, such as a broken arm that heals normally and illnesses of short duration, usually are not. Disability Discrimination Guidelines, at 3-4; see, Hallgren v. Integrated Financial Corp., 42 Mass. App. Ct. 686(1996) (temporary disability in which plaintiff fully recovered in one month was not a disability under G.L. c. 151B). In this case, the cause of Little’s ankle injury was unknown and the prognosis uncertain. There was insufficient evidence to determine whether her injury constituted a handicap within the meaning of M.G.L.c.151B. While it cannot be said conclusively that Little’s ankle injury constituted a handicap, I need not make such a determination, as I conclude that Respondent took no adverse action against Little with respect to this injury. While Jennifer O’Rourke initially told Little that her job would be posted after five days’ absence, Bonkowski immediately clarified Respondent’s position in a subsequent telephone call to Little, assuring her that no decision regarding her position or eligibility for a leave of absence would be made until after the results of her bone scan were known. Respondent did not terminate Little’s employment. However, before undergoing the bone scan and before Respondent had any opportunity to make a determination about granting her a leave of absence, Little tendered her resignation. Therefore, I conclude that

Respondent did not unlawfully discriminate against Little on the basis of handicap.  
M.G.L.c.151B.

B. Reasonable Accommodation

To state a prima facie case of discrimination based upon Respondent's failure to accommodate her handicap, Complainant must demonstrate that she is a handicapped person within the meaning of the statute; she is qualified for the position; able to perform the essential functions of the job with reasonable accommodation; she requested a reasonable accommodation; and she was prevented from performing her job because Respondent failed to reasonably accommodate the limitations associated with her handicap. See Dartt v. Browning-Ferris Industries, Inc., 427 Mass 1(1998).

While I concur with Respondent that it is impossible to reasonably accommodate a “perceived handicap” or a “record of handicap,” Little’s request for a change in work hours merits a discussion of whether her symptoms associated with her pelvic reconstructive surgery, as testified to by Asaro, put Respondent on notice of a handicap so as to trigger an obligation to engage in the “interactive process.” Asaro stated that Little mentioned a prior GYN problem as causing fatigue, but also stated that Little’s request for earlier work hours was unrelated to the fatigue. She told Asaro she was a morning person and would do better with an earlier start time.

Where an employee has not specifically identified herself as handicapped and does not use the term “reasonable accommodation, “an employer's duty to offer reasonable accommodation may still be triggered if the employer knows or should know that the employee is handicapped and requires reasonable accommodation. An employer should know that an employee is handicapped and requires reasonable

accommodation if a reasonable person in the employer's position would know the employee was handicapped and required reasonable accommodation.” MCAD Guidelines on Discrimination on the Basis of Handicap VII. A. Based on the evidence before me, I conclude that Asaro could not reasonably have known that Little was potentially handicapped by residual fatigue from her pelvic surgery and might have required a reasonable accommodation. At most, Asaro knew that Little had residual fatigue from the prior condition, and offered her ways to reduce her fatigue. Under the circumstances of this case, I conclude that Respondent did not engage in unlawful discrimination on the basis of handicap.

### C. Constructive Discharge

Complainant has alleged that Margaret Little was constructively discharged. A constructive discharge occurs when an “employer’s conduct effectively forces an employee to resign.” GTE Products Corporation v. Stewart, 421 Mass. 22, 33-34 (1995). A constructive discharge can occur when the employer makes “working conditions so intolerable that the employee feels compelled to quit.” Constructive discharge occurs where, “based on an objective assessment of the conditions under which the employee has asserted [s]he was expected to work, it could be found that they were so difficult as to be intolerable.” GTE Products Co. v. Stewart, at 34 (1995). The standard for constructive discharge “is, and should be, a strict one,” and requires that an employee must demonstrate that “the threat of physical or psychic harm was so great as to preclude ever returning to work.” Complainant must also show that Little exhausted all possibilities to continue working and that resignation proved to be the final and only alternative. Id. at 1241. Complainant has failed to establish constructive discharge.

While Little was upset and distressed by Respondent's policies and may have been concerned that her job was in jeopardy, the test for whether or not constructive discharge occurred is an objective, not subjective one. The credible evidence showed that Respondent intended to continue discussing Little's medical situation with her pending the outcome of her bone scan, which had not yet occurred when Little resigned her employment. I conclude that Little's working environment was not so intolerable so as to compel her to leave her employment. In fact, Little was in the process of obtaining further medical information and had planned to meet with representatives of Respondent in the hopes of securing a leave of absence and had not yet exhausted reasonable alternatives to leaving her employment. Therefore, I conclude that Complainant fails to make out a case of constructive discharge in this matter.

#### IV. ORDER

For the reasons stated above, the complaint in this matter is hereby dismissed. This constitutes the final decision of the hearing officer. Any party aggrieved by this order may file a Notice of Appeal within ten days of receipt of this order and a Petition for Review within 30 days of receipt of this order.

SO ORDERED, this 27th day of November 2007.

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JUDITH E. KAPLAN  
Hearing Officer