

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

DOUGLAS SWEET,
Complainant

v.

Docket No. 99-BEM-0851

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY,
Respondent

AMENDED DECISION OF THE HEARING OFFICER

This matter is before me on a Motion of the Complainant in the above referenced matter seeking reconsideration of that portion of my Decision and Order dated September 20, 2005, denying Complainant damages for emotional distress. The Decision and Order were issued following a public hearing in the case. My comments in the Remedy portion of the Decision that Complainant, “specifically waived a claim for emotional distress on the record at the public hearing,” were factually inaccurate. See Sweet v. MBTA, 27 MDLR 252, 259-260 (2005). Based on this error, I declined to award Complainant damages for emotional distress. Id. at 260. A review of the transcript of the proceedings reveals more accurately that Complainant did not waive his claim for emotional distress damages and neither he nor his counsel made any representations that effect. Consistent with this, Complainant offered the testimony of both himself and his wife relevant to the issue of emotional distress.

However, the undersigned hearing officer declined to accept any evidence with respect to Complainant’s psychiatric treatment as a result of his refusal to produce certain

psychiatric records related to his treatment. The hearing officer's Order was to strike all references in the record to Complainant's seeking psychiatric treatment or taking medication for a psychiatric condition arising from his employment with Respondent. I therefore declined to consider any such evidence in assessing any claim Complainant might assert for emotional distress damages. Given that Complainant did not waive his right to seek such damages and that certain findings of fact were made regarding his distress, (Findings of Fact no. 43& 44) an amended remedy and Order are warranted. This amended Decision incorporates the facts previously found and any additional record evidence supporting a claim of damages for emotional distress.

In light of the forgoing, I make the following additional findings of fact, conclusions and remedy, which supplement my initial decision. (Findings of Fact nos. 43 & 44 at 27 MDLR 256-257)

Findings of Fact

Complainant and his wife testified at length regarding the emotional distress he suffered resulting from his termination. When asked how he felt after he was terminated, Complainant responded that "there are not words to describe the devastation that I felt." He testified he had never been fired from a job before and his termination seemed to come "totally out of the blue with no prior indication whatsoever that there were any problems." He recalled his experiences as an investigator with terminated employees describing how awful it felt to be treated like a thief and escorted from the building and how this "amazingly devastating and debilitating experience" became a reality for him. I found this testimony to be particularly compelling and worthy of credence.

Complainant also recalled being in tears when he spoke to his wife about what had happened and cried many times subsequently and was upset for a long time thereafter. He stated that he was unable to function with everyday functions for a considerable period of time after that. I credit his testimony that his precipitous firing impacted his ability to function in daily routines and “emotionally and physically destroyed [his] ability to cope with a lot of things.” He testified that without the regular activity of going to a job and interacting with co-workers he spent a great deal of time at home alone, feeling very lonely and unable to function in a lot of ways. Complainant testified that he discussed his feelings with his minister.

Complainant’s wife, Doris Ann Sweet, testified that her husband was so upset when he called her after the termination that he could hardly talk. When she returned home that day he was in bed and did not want to get up. She stated that he spent a lot of time in bed in the period following his termination and was completely distraught and could not understand the reason for his termination. He expressed his fears to her about being unemployed as a blind man in his late 50’s and about the future. She testified further that for a period of approximately 6 months, Complainant was reluctant to participate in activities that he had previously enjoyed including going to church, ball room dancing, watching sports, and trading jokes. His mood affected his relationship with his entire family. According to Mrs. Sweet, Complainant grew less confident and more anxious and that these symptoms persist to the present time.

Remedy

G.L. c. 151B has been interpreted to authorize the award of emotional distress damages that are fair and reasonable and proportionate to the distress suffered. Stonehill College v. MCAD, 441 Mass. 549, 576 (2004). Factors to be considered include: “(1) the nature and character of the alleged harm; the severity of the harm; (3) the length of time complainant has suffered and reasonably expects to suffer; and (4) whether the Complainant has attempted to mitigate the harm...” Id. at 576. Evidence in the form of expert testimony is not necessary to obtain such an award. Id. at 576.

Given the evidence offered by Complainant and his wife, I conclude that Complainant was extremely upset by his firing and that he suffered from depression thereafter for a period of several months. I find that the depression affected his self-esteem, his ability to seek other employment and his daily routines. He was also no longer interested in participating in activities he once enjoyed and remained at home frequently and experience loneliness. I also find that his distress was exacerbated by his concerns that someone of his age with his disability would have difficulty ever again finding comparable work. His distress was still apparent at the time of the hearing in this matter.

Based on the above, I conclude that Complainant suffered emotional distress as a direct result of Respondent’s failure to accommodate his disability and its precipitous firing of him in violation of G.L. c. 151B and that he should be awarded damages in the amount of \$35,000 to compensate him for such distress. Consequently that portion of my Order is hereby amended as follows:

Order

In addition to the remedies awarded in my previous decision:

Respondent is hereby ordered to pay the Complainant damages in the amount of \$35,000 for emotional distress with interest thereon at the rate of 12% per annum from the date the complaint was filed until such time as payment is made, or this order is reduced to a court order and post judgment interest begins to accrue.

Any party aggrieved by this Order and Decision and my prior Decision, may file an appeal to the Full Commission within in 10 days of receipt of this Order and a Petition for Review to the Full Commission within 30 days of receipt of this Order. All prior stays of the Appeal period are hereby lifted.

So Ordered this 25th day of January, 2006

Eugenia M. Guastaferrri
Hearing Officer