

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

Massachusetts Commission
Against Discrimination and
Francis Sonnier
Complainant

v.

97-SEM-1039

Life Care Center of Auburn,
Respondent

DECISION OF THE FULL COMMISSION

This matter came before us following a decision of Hearing Commissioner Cynthia Tucker in favor of the Respondent. Following an evidentiary hearing, the Hearing Commissioner concluded that Complainant was not subjected to discrimination in employment in violation of M.G.L. c. 151B. The Hearing Commissioner did find that Respondent's policy of offering modified duty to employees injured on the job, but not to other disabled individuals needing accommodation, was in violation of c. 151B. The Complainant then filed a timely Petition for Review.¹

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 or officer. M.G.L. c. 151B §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..."

¹ Respondent had originally filed a Notice of Appeal on September 19, 2003, which was later withdrawn on October 3, 2003. Respondent filed an Opposition to Complainant's Request For Attorney's Fees, dated October 1, 2003.

Katz v. MCAD, 365 Mass. 357, 365 (1974); M.G.L. c. 30A. It is the responsibility of the hearing commissioner to evaluate the credibility of witnesses and/or to weigh the evidence when deciding disputed questions of fact, and the Full Commission defers to these determinations. See e.g. School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). The role of the Full Commission 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 1.16(8)(f).

We have carefully reviewed the petition for appeal and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review articulated herein. Specifically, we find no error in the Hearing Commissioner's conclusions that the complainant was not an aggrieved person for purposes of M.G.L.c. 151B. We find that there is substantial evidence in the record to support the findings of fact made by the Hearing Commissioner. Finally, we affirm the Hearing Commissioner's conclusion that Respondent's policy violated the provisions of M.G.L. c. 151B and hereby award Complainant \$2,410.85 in attorneys' fees and \$105.00 in costs.²

² The determination of what is a reasonable fee is one that the Commission approaches utilizing its discretion and its understanding of the litigation of a claim of discrimination in the administrative forum of the Commission Against Discrimination. In rendering a determination of what is a reasonable fee, the Commission has adopted the "lodestar" method for fee computation. See: Fontaine v. EBTEC Corp, 415 Mass. 309, 613 N.E.2d 881, 891 (1993); Baker v. Winchester School Committee, 14 MDLR 1079 (1992); Brown v. City of Salem, 14 MDLR 1365 (1992). This method requires the Commission to undertake a two-step analysis.

First, the Commission will calculate the number of hours reasonably expended to litigate the claim and then multiply that number by an hourly rate considered to be reasonable. Second, the Commission will then examine the resulting figure, known as the "lodestar", and adjust it either upward or downward or not at all depending on various factors.

A calculation of the hours reasonably expended involves separating out work done in relation to the individual doing the work (e.g., senior partner, junior associates, and paralegal). Time beyond that consistent with a standard of reasonable efficiency and productivity is eliminated. Hours that appear to be duplicative, unproductive, excessive, or otherwise unnecessary to prosecution of the claim are subtracted, as are hours insufficiently documented. See generally: Grendel's Den v. Larkin, 749 F.2d 945 (1st Cir. 1984); Miles v. Samson, 675 F.2d 5 (1st Cir.1982); Furtado v. Bishop, 635 F.2d 915 (1st Cir. 1980); Baird v. Belloti, 616 F.Supp. 6 (D.Mass 1984); and Brown v. City of Salem, 14 MDLR 1365 (1992).

Therefore, and for the aforesaid reasons, we deny the appeal and affirm the decision below in its entirety.

ORDER

For the reasons set forth above, we hereby affirm the findings of fact, conclusions of law and the Order of the Hearing Commissioner and issue the following Order of the Full Commission:

- 1) Respondent shall immediately cease and desist from applying its policy of offering modified duty to employees injured on the job, but not to other disabled individuals needing accommodation; and
- 2) Respondent shall pay Complainant \$2,410.85 in attorneys' fees and \$105.00 in costs within forty-five (45) days of receipt of this decision.

This Order represents the final action of the Commission for purposes of M.G.L. c.30A. Failure to comply with this order will result in the Commission's initiation of enforcement proceedings, pursuant to 804 CMR 1.25, which may subject the noncomplying party to both civil and criminal penalties as provided in M.G.L. c.151B, s.8.

Any party aggrieved by this final determination may contest the Commission's

The Commission's efforts to determine the number of hours reasonably expended will involve more than simply adding all hours expended by all personnel. The Commission carefully reviews a complainant's submission and will not simply accept the proffered number of hours as "reasonable". *See e.g., Baird v. Belloti, supra.*

In this matter, counsel for the Complainant has submitted affidavits and attachments thereto detailing the hours expended during the course of this matter before the Commission. Based on our review we find the listed hours, the requested hourly rates, and the costs associated with litigation of this matter are unreasonable. We think that under these circumstances 10% of the total fee should be recoverable. Therefore, we award attorneys' fees to the Complainant in the total amount of \$2,410.85.00 and \$105.00 in costs.

decision by filing a complaint in superior court seeking judicial review within thirty (30) days of receipt of this decision in accordance with M.G.L. c.30A, c.151B, s.6, and the 1996 Standing Order on Judicial Review of Agency Actions. The filing of a petition pursuant to M.G.L. c.30A does not automatically stay enforcement of this order. Failure to file a petition in court within thirty (30) days of receipt of this order will constitute a waiver of the aggrieved party's right to appeal pursuant to M.G.L. c.151B, s.6.

SO ORDERED this 10th day of December, 2003.

Cynthia A Tucker, Commissioner

Walter J. Sullivan, Jr., Commissioner