

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION
and FREDERICK TOWNES,
Complainant

v.

DOCKET NOS. 01-BEM-1663
01-BEM-10839
02-BEM-03328

CompUSA, INC.
Respondent.

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Judith E. Kaplan in favor of Respondent, CompUSA, Inc. Following an evidentiary hearing, the Hearing Officer concluded that Complainant failed to make a prima facie case of race discrimination, retaliation, harassment or constructive discharge. Complainant has appealed to the Full Commission essentially challenging the facts found by the Hearing Officer and the inferences drawn from those facts.

The Hearing Officer found that Complainant was not subjected to a hostile work environment based on his race, and that he was demoted because of chronic tardiness and performance issues including inability to properly process paperwork, poor organizational skills, mistakes counting cash, losing a check and defacing company property. While the Complainant was demoted after filing an MCAD complaint, the Hearing Officer found that Respondent had documented performance problems before Complainant filed his complaint, Respondent had not received notice of the MCAD complaint at the time of his demotion, and that Respondent filled his prior position with

an African American female. Finally the Hearing Officer found on Complainant's third complaint of discrimination that he was not terminated but resigned after he was suspended for responding to his supervisor in an insubordinate manner.

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 Officer. M.G.L. c. 151B, § 5. The Hearing Officer'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 Officer's responsibility to evaluate the credibility of witnesses 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. Colonade 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.

We have carefully reviewed the Complainant's Petition and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review articulated therein. As a result of our review, we find that there was substantial evidence to support the Hearing Officer's findings that Complainant was not adequately performing his job. The record is replete with evidence of Complainant's inadequate job

performance and of a series of warnings and efforts by Respondent to improve his performance. There is no evidence that Complainant was singled out for discipline because of his protected class. With respect to ongoing discipline that occurred after Complainant was demoted and after he filed his retaliation Complaint, the Hearing Officer found no evidence of retaliatory motive, and refused to draw an inference of retaliation where there was sufficient evidence of Complainant's continuing poor performance. As to the claim of hostile work environment, the Hearing Officer found that Complainant offered insufficient evidence that he was subjected to pervasive and continuous insults that interfered with his ability to do his job. There was no evidence of the extent, severity or timing of the purported nickname.¹ As to the constructive discharge claim, we find that the Hearing Officer properly found that Complainant resigned his job after he was suspended for insubordinate conduct because he was angry over Respondent's refusal to grant him a day off.² There was no evidence to support a finding that Complainant's work environment was so intolerable that he was forced to resign. Finally, there was no evidence to support an inference that Complainant's discrimination complaint motivated retaliatory post-resignation conduct by Respondent. The Hearing officer found that the initial challenge to Complainant's unemployment compensation claim, which had been

¹ Complainant testified that CompUSA's Operations Manager called him "Buckwheat" a few times as well as "tulip" and "buttercup." The Hearing Officer recognized that the name "Buckwheat" referred to an African-American character in "Our Gang" movies of the 1930s that is "surely offensive" to African Americans and inappropriate in the workplace. The Hearing Officer also found, based on the testimony of a co-employee from whom the Complainant had obtained a written statement, that the Operations Manager used the term with various employees, regardless of their race. The co-employee was unable to confirm that the comment had been directed at the Complainant and the Complainant himself provided no evidence regarding the circumstances, timing or severity of the remarks, which is necessary in order to show the conduct created a racially abusive working environment.

² The Complainant opted to transfer to Brighton, following closure of the Cambridge store, and the events leading up to his resignation involved none of the persons from his prior complaints. Moreover, the Complainant tendered his resignation to the African American General Manager of the Brighton store, who, the Hearing Officer found, intended to suspend, not fire, Complainant for insubordinate conduct which had taken place under his watch.

outsourced to another company for processing, was withdrawn when it came to the Respondent's attention. Also, the Hearing Officer found that CompUSA promptly investigated and paid the Complainant his unused vacation pay following receipt of the Massachusetts Attorney General's letter on this issue. In sum, a review of the Hearing Officer's decision and Complainant's challenges point to no material errors of fact or law and we conclude that there is substantial evidence in the record to support the findings of fact made by the Hearing Officer. We therefore deny the appeal and affirm the decision below to dismiss the Complaint.

ORDER

We hereby affirm the findings of fact, conclusions of law and Order of the Hearing Commissioner. Complainant's appeal to the Full Commission is hereby dismissed. 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. Such action must be filed within 30 days of receipt of this decision and must be filed in accordance with M.G.L. c. 30A, c. 151B, § 6, and the 1996 Superior Court Standing Order on Judicial Review of Agency Actions. Failure to file a petition in court within 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, § 6.

SO ORDERED this 28th day of May, 2009.

Malcolm Medley
Chairman

Martin S. Ebel
Commissioner

Sunila Thomas-George
Commissioner