

**COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION**

GAIL SLEEPER,  
Complainant

v.

DOCKET NO. 93-BEM-1262

NEW ENGLAND MUTUAL LIFE INSURANCE  
Respondent

**DECISION OF THE FULL COMMISSION**

This matter came before us following a decision of Hearing Officer Eugenia Guastaferrri in favor of Complainant. Following an evidentiary hearing, the Hearing Officer concluded that Respondent subjected Complainant to discrimination on the basis of disability in violation of M.G.L. c. 151B, § 4(16). Respondent filed a timely Petition for Review, arguing *inter alia* that the Decision is in error since the complaint was not timely filed pursuant to the provisions of M.G.L.c. 151B.<sup>1</sup> Based on our review of this matter, we agree with the Respondent, and hereby reverse.

At the outset, it should be noted that 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 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 responsibility of the Hearing Officer to evaluate the

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<sup>1</sup> At the time of Complainant's filing, M.G.L.c.151B s.5, stated that "(A)ny complaint filed pursuant to this section must be so filed within six months after the alleged act of discrimination."

credibility of witnesses and 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 1.23(1)(h).

The procedural facts in this matter indicate that on August 6, 1993, the Complainant filed a complaint with the Massachusetts Commission Against Discrimination alleging that she was discriminated against on account of her disability, cervical radiculitis and nerve injuries, in violation of M.G.L.c. 151B, s.4(16) and the Americans with Disabilities Act of 1990. Specifically, Complainant alleged that her supervisor (Sullivan) subjected her to harassment when she requested accommodations, and that she was terminated after a medical leave of absence.

In her Decision, the Hearing Officer found the following:

*“While there is some indication that Ms. Sullivan was difficult to work for and that other employees complained about her being unfair, I conclude that but for Complainant’s handicap, she would not have been subjected to persistent monitoring and repeated documentation of performance expectations by Sullivan. I also conclude that the harassment by Sullivan caused her to suffer stress and anxiety, which further exacerbated her physical condition. I conclude that Sullivan’s actions, of which Respondent was aware, were a violation of M.G.L.c. 151B.*

*Complainant was granted a six-month leave of absence during which time she received short-term disability insurance payments. Respondent hired a replacement for her after four months and only after determining that temporary employees were not working out. Notwithstanding the fact that Respondent was required to fill her position, she was not terminated from the company and she was assured that the company would continue to assist her to find another position when she was able to return to work. At any time up until March of 1993, she could have returned to her job which remained open. Given these facts, I conclude that the decision to hire a permanent replacement for Complainant was based on legitimate business considerations and was not retaliation for her having complained about handicap discrimination. Nor do I believe that it was part of a continuing pattern of harassment on account of her handicap.”*  
(Decision of the Hearing Officer)

In addition, the Hearing Officer concluded that:

*“Complainant knew at the time she went on leave that her relationship with Ms. Sullivan was irreconcilable and that no hope existed that that situation would improve. However, shortly thereafter she began dealing with Mr. Brady who became the supervisor of the EPS department in Ms. Sullivan's absence. While Complainant was informed by Brady in mid-January, 1993, that her job would be filled, she was told that Respondent would continue to actively seek a position for her when she was ready to return to work. This was not an unequivocal notice that she would not be returning to work at Respondent. See, *Wheatley v. A.T. & T.*, 418 Mass 394, 398 (1994). Complainant thereafter stayed in contact with the Human Resources department in the hope of returning to a position in early summer. I conclude that once she began dealing with Mr. Brady and Ms. McManus, Complainant was hopeful of returning to a productive and happy work situation at Respondent. Complainant filed her complaint within six months of knowing unequivocally that this would not occur. Therefore, I decline to conclude that the allegations of harassment are untimely and will not dismiss on these grounds.”* (Decision of the Hearing Officer)

Based on these factual determinations, the Hearing Officer concluded that the complainant had established a “*continuing violation*” of unlawful conduct, and a basis to equitably toll the statute of limitations. See *Cuddy v. Stop and Shop Supermarket Co.*, 434 Mass. 521, 539 (2001). In doing so, the Hearing Officer relied on Complainant’s termination, the only act within six months of her filing, as the “anchoring” incident to render Complainant’s harassment claim timely.

In *Cuddy*, the Supreme Judicial Court held that in order to invoke the continuing violation doctrine, a complainant must show that “the alleged events are part of an ongoing pattern of discrimination, and there is a discrete violation within the six-month limitations period to anchor the earlier claims.” *Id.* at 531-32. In order to be considered an anchoring violation, the conduct must “substantially relate to earlier incidents of abuse, and substantially contribute to the continuation of a hostile work environment, such that the incident anchors all related incidents, thereby making the entirety of the claim for discriminatory conduct timely.” *Id.* at 533.

We conclude that the Hearing Officer erred when she ruled that Complainant's termination constituted an anchoring violation, since there is insufficient evidence in the record to suggest that the termination was substantially related to the alleged harassment.

However, even if we were to find that the harassment and termination claims were sufficiently interrelated, we do not believe that Complainant has met her burden under the reasonableness prong of Cuddyer to recover for alleged conduct outside the statute of limitations. In Cuddyer, the Court stated: "a plaintiff who demonstrates a pattern of sexual harassment<sup>2</sup> that creates a hostile work environment and that includes conduct within the six-month statute of limitations, may claim benefit of the continuing violation doctrine and seek damages for conduct that occurred outside the limitations period, *unless the plaintiff knew or reasonably should have known that her work situation was pervasively hostile and unlikely to improve, and, thus, a reasonable person in her position would have filed a claim with the MCAD before the statute ran on that conduct.*" The Court went on to add that "*This standard focuses not on when a plaintiff has notice of an actionable claim, but on the plaintiff's knowledge of the hopelessness of her work environment, and allows her to litigate alleged, otherwise time-barred, acts of sexual harassment unless her delay in initiating the lawsuit, considered under an objective standard, was **unreasonable.***" Id (emphasis added)

If, as the Hearing Officer finds, the Complainant knew at the time she went on leave that her relationship with Ms. Sullivan was irreconcilable and that no hope existed that the situation would improve, then the Cuddyer standard required a timely filing within the statute of limitations period. We are not persuaded that this standard is met by virtue of the fact that she began dealing with Mr. Brady, a replacement supervisor. Nor do we think that Mr. Brady's failure to give unequivocal notice that she would not be returning to work at

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<sup>2</sup> We agree with the Decision of the Hearing Officer and do not reverse her decision, insofar as it extends the principles articulated in Cuddyer to other forms of discrimination in addition to sexual harassment, prohibited under M.G.L. c. 151B.

Respondent is sufficient to overcome her burden of establishing the *reasonableness* of her conduct.

Therefore, and for the aforesaid reasons, we find that the Hearing Officer's ruling with respect to the timeliness of the disability harassment claim constitutes error and must be vacated. Given that Complainant's disability harassment claim is the only one upon which the Hearing Officer found liability, the complaint is hereby dismissed.

**ORDER**

For the reasons set forth above, we hereby issue the following order of the Full Commission:

(1) We vacate and reverse the Hearing Officer's finding that Complainant's disability harassment claim was timely filed. We dismiss the complaint 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 6<sup>th</sup> day of December, 2002.

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Cynthia A. Tucker, Commissioner

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Walter J. Sullivan, Jr., Commissioner