

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION
and GERTRUDE PARENTEAU,

Complainants

v.

Docket No. 98- SEM-0195

SPRINGFIELD GIRLS' CLUB
FAMILY CENTER, INC.,

Respondent

DECISION OF THE HEARING COMMISSIONER

I. Procedural History

On March 2, 1998, Complainant Gertrude Parenteau (hereinafter “ Ms. Parenteau” or “Complainant”) filed a handicap discrimination complaint with the Massachusetts Commission Against Discrimination (hereinafter “MCAD” or “the Commission”) against her employer Springfield Girls’ Club Family Center (hereinafter “Respondent” or “Girls’ Club”). Complainant alleges that Respondent failed to accommodate her disabilities (hearing impairment, back injuries and stress disorder), harassed her, and terminated her employment on the basis of her disabilities in violation of G.L. c. 151B.

The Investigating Commissioner issued a finding of probable cause in this matter. After conciliation efforts failed, the case was certified to public hearing on May 24, 2001. A public hearing was held before me on this matter on July 23 and 24, 2001. After careful consideration of the entire record and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law, and order.

II. Findings of Fact

1. Complainant, Gertrude Parenteau, resides in Westfield, Massachusetts.

(Complaint; Tape 2)

2. Ms. Parenteau testified that she suffers from a hearing impairment. She testified that at age 17, she noticed significant hearing loss in her right ear and sought treatment from a physician. She testified that her physician confirmed that she suffered from a hearing impairment caused by a childhood disease. Her physician further informed her that her hearing loss could not be corrected with surgery. (Tape 2) I credit her testimony.

3. Respondent, Springfield Girls' Club Family Center, Inc. ("Girls' Club"), is a non-profit community service organization which provides services to inner city clients, including: child care, health services, athletic activities, camp, and referrals to social service agencies. It is an employer within the meaning of G.L. c. 151B. (Tape 8)

4. In 1991, the Girls' Club hired Ms. Parenteau as an Administrative Assistant. She was promoted to Chief Fiscal Officer in 1992 and to Director of Administration and Finance in 1996. Ms. Parenteau's duties and responsibilities as the Director of Administration and Finance included the oversight of all agency clerical affairs, all agency fiscal affairs, and the supervision of assigned staff. She supervised Marilyn Alexander, Office Manager, and Ella Cook, Administrative Assistant. (Tape 2; Exh. C-4)

5. The Girls' Club is subject to overall direction by its Board of Directors. The Board's Personnel Committee oversees staffing issues, hears grievances and develops and reviews policy for the staff. The Treasurer is responsible for the overall finances of Respondent. Marvin Kennedy served as the Treasurer of the Girls' Club during Ms. Parenteau's employment. The Executive Director exercises daily management of the Girls' Club. During the relevant time period, Ms. Carol Rawson was the Executive Director of the Girls' Club and Ms. Parenteau's supervisor. Henry Dawson preceded Ms. Rawson as the Executive Director of the Girls' Club, during which time Ms. Rawson served as his assistant. (Tape 2, 8)

6. Ms. Parenteau testified that during her employment with the Girls' Club, she could not hear from a distance or if there was any background noise, and that she communicated with staff by lip reading. She testified that she did not utilize a hearing aid at that time, because she could not afford one. She testified that she watched close-captioned television and used hearing devices when available. Ms.

Parenteau testified that she was able to communicate so long as people faced her when speaking to her, and more than one person did not speak at a time. She testified that she currently uses a hearing aid. I credit Ms. Parenteau's testimony and conclude, based upon her testimony, that she was substantially impaired in her ability to hear. (Tape 2)

7. Ms. Parenteau testified that she was very open about her hearing impairment with the staff at the Girls' Club. She testified that she told her supervisor, Ms. Rawson, and her staff that she suffered from a hearing impairment. (Tape 2) There is conflicting testimony regarding this issue. Both Marilyn Alexander and Alfred Geoffrian, a member of the Board of Directors, testified credibly that Ms. Parenteau informed them that she had difficulty hearing. (Tapes 8, 11) Both Ms. Rawson and Ms. Cook testified credibly that Ms. Parenteau did not inform them of a hearing impairment, although they suspected that she had one. (Tapes 6,7,9, 10) Ms. Rawson testified that she perceived Ms. Parenteau to be hard of hearing, and that she tried to be responsive to that fact when communicating with her. She also testified that she was careful about asking Ms. Parenteau about her hearing, because Ms. Parenteau never declared herself to have a disability. (Tapes 9, 10) I credit Ms. Rawson's testimony on this point, and found her generally to be an extremely credible witness. I credit Ms. Parenteau's testimony that she sometimes asked people she worked with to face her and speak clearly when addressing her, and that she told some individuals that she had difficulty hearing. (Tape 2) I do not conclude, however, that she informed her supervisor or led her to believe she had a "hearing impairment" or a

disabling condition for which she needed assistance or accommodation. I make this conclusion in part based on the credible testimony of the witnesses, and, in part, based upon Complainant's own testimony during the hearing.¹ I believe Ms. Parenteau was concerned that staff at the Girls' Club, particularly her supervisor, would think her hearing impairment interfered with her ability to do her job. For this reason, I conclude that Ms. Parenteau de-emphasized her hearing impairment at work and was careful not to attribute any performance issues to her hearing impairment. (Tapes 2, 3, 4)

8. Ms. Parenteau was in an automobile accident on March 10, 1997 and suffered neck and back injuries, which she claims resulted in numerous physical disabilities and required a leave of absence from work. She also alleges that she suffered from a stress disorder. Ms. Parenteau did not elaborate sufficiently on the nature or symptoms of these impairments to permit a conclusion that these impairments caused her to be substantially limited in any major life activities. (Tape 3)

9. Ms. Rawson, the Executive Director of the Girls' Club, testified that, as a non-profit organization, the Girls' Club relies on public and private funding in order to maintain its programs. She testified that in order to continue receiving state and federal funding, and to maintain its "501c(3)" tax-exempt status, the Girls' Club is required to have accurate financial records for its annual audit and to comply with certain record-keeping procedures. (Tape 10) She testified that the Girls' Club

Ms. Parenteau testified emphatically that her hearing impairment did not interfere with her ability to perform her job, that she did not want anyone at the Girls' Club to believe it did, and that she did not request an accommodation for her disability because she didn't need one.

historically experienced difficulty keeping its financial records in compliance with the auditors' requirements. She testified that she was aware that these problems existed even before she became Executive Director, and that they dated at least as far back as 1991. (Tapes 8, 11). I credit her testimony.

10. Ms. Rawson recalled that the auditors from the Girls' Club's 1994 and 1995 audits expressed concern that there were chronic erroneous or missing entries in the books, requiring the auditors themselves to undertake completion of a substantial portion of the bookkeeping before they could begin the audit. Ms. Rawson testified that, as a result, the Girls' Club had to pay additional monies externally for a task that should have been completed in-house. I credit her testimony. (Tape 8)

11. Ms. Rawson testified that in early 1996, when she became Executive Director, she informed the Board of Directors of the problems with the audits and the financial record keeping. She alleges that the Personnel Committee indicated they were already aware of the problems, because in 1995 her predecessor, Mr. Dawson, had twice recommended Ms. Parenteau's termination for failing to do what was necessary to maintain a "clean audit". (Tape 8) I credit her testimony.

12. Ms. Rawson testified that Mr. Dawson did not terminate Ms. Parenteau's employment and had decided to allow his replacement to make decisions regarding personnel changes. Ms. Rawson testified that she did not follow Mr. Dawson's recommendation to terminate Ms. Parenteau's employment. She testified that she

was concerned that Ms. Parenteau had not received any formal evaluations during her tenure with the Girls' Club, and felt she should evaluate Ms. Parenteau for herself before terminating her. To this end, Ms. Rawson testified that she asked Mr. Dawson to create performance criteria for Ms. Parenteau prior to his departure, which he did. (Tape 8) I credit her testimony.

13. Ms. Rawson testified that in 1996, she asked the auditors for an extension of time to bring the Girls' Club's financial records into compliance with the auditors' requirements. Ms. Rawson testified that she discussed the auditors' recommendations for improvement with the Treasurer and with Ms. Parenteau, and directed Ms. Parenteau to accomplish the recommendations. (Tape 8) To further improve the process, Ms. Rawson testified that she reorganized the clerical and administrative functions, and placed Ms. Parenteau in charge of both functions. Ms. Rawson further testified that she told Ms. Parenteau that she was dependent upon her to manage the finances correctly, because she (Ms. Rawson) did not have a background in finance. (Tape 8) Ms. Rawson testified that, despite this, the auditors for the next audit found the same deficiencies as they had the prior year. (Tape 8) I credit her testimony.

14. Ms. Parenteau received no performance evaluations until 1997. In 1997, she received her first performance evaluation. Her overall evaluation score was a 77², which translated into a rating of "Good". Her general evaluation identified several areas of weakness. Specifically, Ms. Parenteau received an unsatisfactory rating in

² All ratings indicate scores out of 100

the areas of interpersonal relationships with her staff, and reliability in terms of task completion and follow up. She received a rating of “Needs Improvement” in the areas of quality, and adherence to policy (i.e. failure to adhere to fiscal policy).

(Exh. C-4)

15. Along with a general evaluation, Ms. Parenteau received a specific evaluation. She was rated in three categories: overseeing all agency clerical affairs, for which she was rated an overall score of 79 (good); overseeing all agency fiscal affairs, for which she was rated an overall score of 64 (needs improvement); and providing supervision for assigned staff, for which she was rated an overall score of 69 (needs improvement). In the area of overseeing clerical affairs, Ms. Parenteau received a score of 50 in maintaining accurate attendance and a score of 0 in maintenance of accurate payroll regarding the status of employees’ sick, vacation and personal time. In the area of staff supervision, she received a score of 40 for providing supervision to assigned staff. In the area of overseeing fiscal affairs, Ms. Parenteau received a series of low scores. She received a score of 59 for handling accounting duties in compliance with accepted accounting principles and agency policies. She received a score of 0 for ensuring that the annual audits were free of major errors. She received a score of 20 for not completing a manual of cash control and accounting procedures to make available for staff. She also received low scores in assisting in the preparation of the annual report and annual budgets, although Ms. Rawson noted that she had little participation in either of those functions. (Exh.C-4)

16. Despite these performance criticisms, Ms. Parenteau's overall score in her specific evaluation averaged out to a 71 (good). (Exh.C-4) Ms. Rawson testified that she did not weigh each of these categories equally and, notwithstanding Ms. Parenteau's overall score, she did not believe Ms. Parenteau's overall performance was acceptable. (Tape 9) I credit her testimony.

17. Ms. Parenteau testified that she disagreed with her evaluation, because her substantive work was excellent (as was acknowledged in her evaluation), and the financial problems in the audit were primarily caused by her staff's poor performance. Ms. Parenteau testified that she understood the financial record-keeping procedures necessary for a non-profit organization to maintain its tax exempt status, as she had successfully worked in bookkeeping and accounting for two other non-profit organizations. (Tape 2) Ms. Parenteau testified that Ms. Cook and Ms. Alexander performed their job functions poorly, disregarded her instructions and were disrespectful of her. She alleges that Ms. Cook changed the password on the computer so that no one else could access important information, and deleted essential records in the Girls' Club computer system. (Tapes 3, 4, 5; Exh. C-4)

I do not credit Ms. Parenteau's testimony that the financial problems in the office and the performance deficiencies outlined in her evaluation were attributable entirely to her staff, as such testimony fails to recognize that, as Director of Administration and Finance, Ms. Parenteau is ultimately accountable for all deficiencies in the overall management of the financial office, including those of her staff. I conclude

that while Ms. Rawson agreed that Ms. Cook was a sub-standard employee, she genuinely believed Ms. Parenteau provided inadequate staff supervision and was, in part, responsible for the negative interpersonal relationships with her staff. I conclude that Ms. Rawson genuinely believed Ms. Parenteau to have performance deficiencies that extended beyond those of her staff, particularly in terms of staff supervision, oversight and management of fiscal affairs, and task completion and follow up. (Exh. C-4; Tapes 8, 9, 10)

18. On October 31, 1996, Ms. Parenteau issued Ms. Cook a negative performance evaluation. Ms. Cook's submitted a written response to her evaluation that indicated that Ms. Parenteau was overly critical, hostile, intimidating, discriminatory and harassing. Ms. Cook testified that she believed she was being scapegoated for Ms. Parenteau's shortcomings. She alleged that Ms. Parenteau would insult her intelligence on many occasions, and that Ms. Parenteau would sometimes blame her for things that were Ms. Parenteau's fault. She testified that Ms. Parenteau often forgot things that she brought to her attention. (Exh. C-7) Ms. Cook indicated that she often felt as though Ms. Parenteau did not understand her, and did not know if it was a language problem, a communication problem, or a hearing problem. (Tape 6)

19. Ms. Parenteau testified that she had complained of Ms. Cook's performance deficiencies and attitude repeatedly for years, but nothing was done about her complaints. Complainant asserts that Ms. Rawson just told her to watch Ms. Cook and supervise her carefully and aggressively. (Tapes 3, 4, 5; Exh. C-4) After Ms.

Parenteau gave Ms. Cook an unsatisfactory performance evaluation, she issued a warning for insubordination to Ms. Cook on December 11, 1996 and complained about her in writing on September 12, 1996 and January 3, 1997. (Exh. C-7; Exh. R-2, Exh. R-3, Exh. R-4) On January 9, 1997, Ms. Parenteau informed Ms. Cook that she was recommending her termination to the personnel committee for Ms. Cook's continued insubordination and failure to follow directives. (Exh. C-6) I credit Ms. Parenteau's testimony that she complained frequently about Ms. Cook's performance to Ms. Rawson, but I do not credit her testimony that Ms. Rawson did nothing about her complaints.

20. Ms. Rawson testified that she did not ignore Ms. Parenteau's complaints about Ms. Cook's performance but could not act on them immediately, because it was necessary to follow a proper protocol before terminating an employee's employment. (Tape 9) The evidence reveals that Ms. Rawson responded to Ms. Parenteau's complaints about Ms. Cook's performance in writing in March and June of 1996 by instructing her to "develop some very objective, specific job performance standards, make sure Ella is in agreement with them, and then state that you have concerns about her performance and that you will be evaluating her in three to six months using these standards...Until such time, Ella has specific written job responsibilities, it will be very difficult to identify just what she is or is not doing. I think this should be a priority, and I will be glad to work with you to develop these standards." (Exh. R-1). Ms. Rawson testified that after Ms. Cook's poor review, Ms. Cook wrote a written response for the Personnel Committee's review and filed a grievance. Ms. Rawson

testified that Mr. Kennedy indicated that he credited some of Ms. Cook's concerns, but did not specify which concerns he found valid. (Tape 9; Exh. C-11)

Ms. Rawson testified the Girls' Club could not terminate Ms. Cook's employment until her comments were reviewed, her grievance was heard, and she had an opportunity to correct her performance deficiencies after a period of probation. (Tape 9) Ms. Rawson testified that, as a result of Ms. Parenteau's evaluation and recommendation, Ms. Rawson placed Ms. Cook on probation on January 30, 1997. (Tape 9; Exh. R-8) On May 30, 1997, the Girls' Club followed Ms. Parenteau's recommendation and terminated Ms. Cook for untimely completion of work, poor quality of work, deletion of data from the computer system and other issues regarding the computer. (Tape 9; Exh. C-12) I credit Ms. Rawson's testimony in its entirety.

21. Ms. Parenteau also gave Ms. Alexander an unfavorable performance evaluation with respect to productivity, job knowledge, reliability, independence, initiative and adherence to policy. (Exh. R-11) Ms. Alexander also submitted a written response to her evaluation. Her written response to the evaluation stated that Ms. Parenteau failed to acknowledge the many projects she accomplished over that year, and noted her disagreement with many of the negative aspects of her evaluation. Ms. Alexander indicated that she found conversations with Ms. Parenteau to be confusing and indicated that Ms. Parenteau's statements did not always make sense. She further indicated that she was "unsure" if their communication issues had anything to do with Ms. Parenteau's hearing. (Exh. C-8). Ms. Alexander requested to meet with Ms.

Parenteau to determine how to improve her scores, but Ms. Parenteau refused, indicating that she had too much work. (Exh. R-12).

22. Ms. Parenteau asserts that Ms. Cook and Ms. Alexander harassed her on the basis of her hearing impairment. Ms. Parenteau alleges that her staff refused to face her when speaking and yelled and belittled her on the basis of her hearing impairment. Specifically, she alleges that Ms. Alexander “hollered” at her when Ms. Parenteau asked her to repeat herself. She further alleges that their memos in response to her poor performance evaluations were harassing, in that they blamed Ms. Parenteau’s hearing impairment for their communication problems and otherwise poor performance. Ms. Parenteau alleges that she informed Ms. Rawson that her staff were harassing her on the basis of her hearing impairment, and that Ms. Rawson failed to take any corrective action in response to Ms. Parenteau’s complaints. Ms. Parenteau further alleges that this behavior contributed to the performance deficiencies described in her evaluation. (Tapes 3, 4, 5)

I did not find Ms. Parenteau’s testimony to be credible with respect to her allegations of disability-based harassment. Her testimony on this issue was vague, confused, and often contradictory. Moreover, although there is evidence of many written documents evidencing complaints by Ms. Parenteau against the company and about her staff, there is no documentary evidence whatsoever indicating that she believed that she was being subjected to harassment based upon her disability, and that her performance was being adversely affected due to the harassment. (See Exhs. R-1-10; Tapes 3, 4, 5) I do not conclude that Ms. Parenteau’s staff’s written comments evidencing their frustration with her communication style amounts to

disability-based harassment. I do not credit Ms. Parenteau's testimony that she was subjected to harassment on the basis of her disability, that she complained to her supervisor of harassment based upon her disability, that she sought to discipline her staff for such harassment, or that disability-based harassment by her staff caused Ms. Parenteau's performance deficiencies.

Ms. Alexander testified that she had no animus towards Ms. Parenteau and that she was not rude to her and did not yell at her. She testified that she often spoke up while speaking to her so that she could make herself understood. When Ms. Parenteau asked her to repeat herself, she did, and she did not ever try to degrade or humiliate her. Ms. Alexander testified that she never saw anyone else degrade or humiliate Ms. Parenteau. Ms. Alexander testified that she knew Ms. Parenteau was hard of hearing, but that she did not know if their communication problems were necessarily attributable to Ms. Parenteau's hearing. (Tape 8) I credit her testimony on this issue.

Ms. Cook testified that Ms. Parenteau never told her of a hearing impairment, but that she believed there were times when Ms. Parenteau could not hear her and would not admit it. Ms. Cook further testified that she has a brother who is deaf and she is very sensitive to that issue. She testified that she only raised her voice when she thought Ms. Parenteau could not hear her. She alleged that she did not turn away from Ms. Parenteau or otherwise intentionally interfere with Ms. Parenteau's ability to communicate with her. (Tape 6) I credit her testimony.

Ms. Rawson denied that Ms. Parenteau complained that she was being harassed on the basis of her hearing impairment, or that she ever witnessed any harassment by

staff towards Ms. Parenteau. She further asserts that she would have disciplined any employee who subjected Ms. Parenteau to disability-based harassment. (Tapes 9, 10)

I credit her testimony.

23. Ms. Parenteau testified that the Girls' Club failed to reasonably accommodate her disability. She alleges that her staff interfered with her ability to lip-read by refusing to face her. I do not credit this testimony. She alleges she requested that Board of Directors meetings be tape recorded for her, but Ms. Rawson refused such request. She alleges that she objected to Ms. Rawson when Ms. Cook moved her desk to face away from Ms. Parenteau, and that Ms. Rawson failed to rectify the situation. (Tapes 3, 4, 5) I credit Ms. Parenteau's testimony that she complained about her subordinates and other issues, but I do not credit her testimony that she ever linked her complaints to her hearing impairment. I do not credit her testimony that her performance deficiencies were caused by the Girls' Club's failure to accommodate her disability. Ms. Parenteau's own testimony is that she did not request accommodations for her disability, because she did not need them. (Tape 4)

Ms. Rawson testified that Ms. Parenteau never informed her of a disability, nor did she ever request a disability-related accommodation. She further testified that Ms. Parenteau's hearing impairment did not interfere with her ability to interact and communicate with her, and that she did not view Ms. Parenteau's hearing impairment as an issue that related to her performance. Ms. Rawson testified that Ms. Parenteau never linked her complaints regarding Ms. Cook's desk placement to her disability,

and that she (Ms. Rawson) never understood the complaint to have anything to do with a disability-related accommodation. Ms. Rawson denies that Ms. Parenteau complained that she was unable to hear at a Board of Directors meeting or at any other time. (Tape 9) Moreover, Ms. Rawson insisted that Ms. Parenteau never indicated that any of her performance difficulties were in any way related to a failure to accommodate her disability, harassment based upon her disability, or her disability generally. (Tapes 9, 10) I credit her testimony.

24. On January 7, 1997, Mr. Kennedy, through Ms. Rawson, requested that Ms. Parenteau develop a timetable for completion of the “reconciliation of payroll, payroll taxes, accounts receivable and payable, investments and endowment accounts, depreciation, the trial balance, adjusting entries and closings etc.” The timetable was due by 3 p.m. on January 15, 1997. (Exh. R-6). Ms. Parenteau failed to comply with this directive. (Exh. R-7; Tape 9).

25. On January 29, 1997, Ms. Parenteau was notified that she was going to be placed on probation. She was formally placed on probation by way of letter on February 13, 1997(Exh. C-11). The probation letter indicated that her failure to reconcile accounts in a timely manner and to provide a timetable for completion of assignments despite an explicit directive to do so was the basis for the probation. (Exhs. R-6, R-7, R-9; Tape 9) Ms. Parenteau’s probation was extended as a result of an accident, which caused her to be out of work.

26. In September of 1997, the Girls' Club terminated Ms. Parenteau's employment. Ms. Rawson testified that Mr. Kennedy recommended to the Personnel Committee that Ms. Parenteau be terminated after the results of the 1996 audit came back with deficiencies. Ms. Rawson testified that Ms. Parenteau was terminated due to longstanding problems with record keeping and financial records, and the fact that the audit problem had not been corrected. (Tape 9). Mr. Kennedy's written recommendation for the termination indicated three reasons for his recommendation: 1. Failure to follow suggestions made by auditors for improvement of Respondent's financial management; 2. Lack of responsibility and managerial leadership in the financial office; and 3. Lack of knowledge regarding financial practices that are important to maintaining their 501c 3 status. (Exh. C-10)

27. Alfred Geoffrian, a member of the personnel committee, participated in the decision to terminate Ms. Parenteau. He testified that Ms. Parenteau's hearing was not a factor in her termination, and that he never perceived her hearing impairment to be an issue. He further testified that he was not on notice that Ms. Parenteau believed any of her performance issues were due to discrimination by her staff or by the Girls' Club's failure to accommodate her disability. (Tape 11)

28. Ms. Rawson testified that Marvin Kennedy replaced Ms. Parenteau. Ms. Rawson testified that he was ultimately terminated for failing to correct the problems with the audits and the financial record keeping. (Tape 9)

III. Conclusions of Law

G.L. c. 151B, sec. 4(16) provides that it shall be an unlawful practice for an employer to discharge because of a handicap a person who is a qualified handicapped person capable of performing the essential functions of the job with or without reasonable accommodation.

Individual claims of employment discrimination based upon disparate treatment may be analyzed by a three stage order of proof set forth in Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 116-117 (2000). A complainant has the initial burden of establishing a *prima facie* case of discrimination by establishing that: (1) she is a qualified handicapped person; (2) she performed her job at an acceptable level (3) she was terminated; and (4) similarly situated individuals without a handicap were treated more favorably under the circumstances. Id. at 116. Once the complainant establishes a *prima facie* case of discrimination, a respondent may rebut the presumption created by the complainant's initial showing by articulating a non-discriminatory reason for its actions supported by credible evidence. Id. The complainant is then afforded an opportunity to demonstrate by a preponderance of evidence that the respondent's articulated reason is a pretext for discrimination. Id. at 117.

Ms. Parenteau meets the first prong of a *prima facie* case of discrimination in that she has established that her hearing impairment is a handicap within the meaning of G.L. c. 151B. A handicap is defined as, "(a) a physical or mental impairment which substantially limits one or more major life activities of a person; (b) a record of having such impairment; or (c) being regarded as having such impairment. I

conclude, based upon the testimony, that Ms. Parenteau is substantially limited in the major life activity of hearing. Despite her staff's assertions, I am persuaded by the testimony that Ms. Parenteau's disability did not interfere with her ability to perform the essential functions of her job. Mr. Geoffrian, one of the board members, testified that he never had a problem communicating with Ms. Parenteau and he did not perceive her hearing to be an issue with respect to her performance. Neither Ms. Parenteau, nor her supervisor, Ms. Rawson, asserts that Ms. Parenteau's hearing impairment interfered with her ability to perform the essential functions of her job, and I do not find that it did.

Ms. Parenteau suffered injuries from an automobile accident, which she claims resulted in numerous physical disabilities and required a leave of absence from work. She also alleges that she suffered from a stress disorder, which amounted to a disability within the meaning of c. 151B. Ms. Parenteau did not elaborate sufficiently on the nature or symptoms of these impairments to permit a conclusion that these impairments caused her to be substantially limited in any major life activities. Thus, I do not conclude that these impairments amounted to a disability within the meaning of c. 151B.

It is undisputed that Ms. Parenteau meets the third prong of the *prima facie* case, in that she was terminated. However, Ms. Parenteau cannot satisfy the second or fourth prong of the *prima facie* case. She cannot establish that she was performing her job satisfactorily or that similarly situated non-disabled individuals were treated differently than she. The Girls' Club asserts and I find that Ms. Parenteau had a number of performance problems for which she was put on notice

including: failing to ensure that the annual audits were free of major errors, failing to reconcile the accounts or correct other problems with the Girls' Club's record keeping, and failing to exercise managerial leadership. Moreover, Ms. Parenteau failed to comply with an explicit directive to set a timetable for completing a series of assignments designed to reconcile accounts and improve the Girls' Club's record keeping. Ms. Parenteau presented no evidence of other non-disabled employees with similar performance problems who were not terminated or other credible evidence establishing an inference of discrimination. In fact, the record reveals that Ms. Parenteau's replacement, a non-disabled employee, was also terminated for poor performance.

Even if Ms. Parenteau had established a *prima facie* case of discrimination, the Girls' Club's non-discriminatory reasons for terminating her (stated above) are supported by credible evidence.

Ms. Parenteau argues that the Girls' Club's articulated reasons for terminating her are a pretext for discrimination. She alleges that her staff's disability-related harassment and the Girls' Club's failure to accommodate her disability contributed to the performance issues leading to her termination. However, this argument fails, as I do not credit Ms. Parenteau's testimony that she was harassed on the basis of her disability, or that the Girls' Club failed to accommodate her disability.

Ms. Parenteau next alleges that an inference of discriminatory animus should be drawn from the fact that she was terminated soon after her staff complained that her hearing impairment caused them difficulty. She alleges that the Girls' Club relied on this feedback and terminated Ms. Parenteau because of it. There is no

evidence in the record that the Girls' Club credited any of the complaints about Ms. Parenteau's hearing, and it should be noted that the Girls' Club terminated one of the people who complained about Ms. Parenteau. Although Ms. Parenteau presented a memo by Ms. Rawson indicating that Mr. Kennedy found some of her employees' complaints to be fact-based, she concedes that she does not know which of the many complaints he validated. In fact, Ms. Parenteau presented no evidence to suggest that any supervisor or board member believed that her hearing caused any of her performance problems. The Girls' Club submitted un rebutted testimony by a member of the Personnel Committee responsible for the decision to terminate her, Mr. Geoffrian, that Ms. Parenteau's hearing played no role whatsoever in the decision to terminate her. He also testified that he did not perceive her hearing impairment to be an issue with respect to her performance.

Ms. Parenteau alleges that the Girls' Club acknowledged that her personal work was excellent, and was fully aware that her staff was responsible for the problems with the audits and financial record keeping. She asserts that the decision to terminate her in this context must have been motivated by discriminatory animus. By her testimony, it is clear that Ms. Parenteau believes that she was not the cause of the performance deficiencies described in her evaluations, and that she should not be held responsible for the performance deficiencies of her staff. I do not agree. Rather, I conclude that Ms. Parenteau's testimony illustrates a continued unwillingness to acknowledge that, as the Director of Administration and Finance, she was ultimately responsible for ensuring that the fiscal affairs of the Girls' Club were managed properly. It is clear from the record that they were not. There were continued

problems with the audits, financial record keeping, staff supervision and overall management of fiscal affairs. I conclude that Ms. Parenteau was properly held accountable for these deficiencies.

The evidence also makes clear that Ms. Parenteau's performance deficiencies extended beyond those of her staff. For example, Ms. Parenteau failed to comply with explicit directives by the Treasurer to create a timetable for completion of certain assignments. In addition, she failed to exercise proper supervision over her staff, particularly given their performance deficiencies. For example, she told Ms. Alexander that she was too busy to meet with her regarding ways to improve Ms. Alexander's performance.

To be sure, Ms. Parenteau had a demanding job with many challenges, including at least one difficult employee. This conclusion is evidenced by the fact that her replacement was also terminated for poor performance. Nonetheless, I am persuaded for the reasons stated above that Ms. Parenteau was ultimately terminated for failing to properly manage the fiscal affairs of the Girls' Club. There is insufficient evidence in the record to support the conclusion that the Girls' Club harbored discriminatory animus towards Ms. Parenteau, or that its actions were a pretext for discrimination. I conclude that the Girls' Club's articulated reason for terminating Ms. Parenteau, namely poor performance, was the real reason for its action and was not a pretext for discrimination.

Based on the above, Ms. Parenteau's hostile work environment claim and failure to accommodate claim also fail. Ms. Parenteau alleges that she was subjected to a hostile work environment and treated differently on the basis of her disability.

See Sleeper v. New England Mutual Life Insurance Company, Inc., 24 MDLR 55 (2002)(holding that harassment on the basis of disability is actionable under c. 151B). She alleges that her staff intentionally interfered with her ability to lip read, were disrespectful to her, “hollered” at her, and blamed her hearing for their poor performance and failed to follow her directives. As previously stated, I do not credit these allegations, and do not conclude that anyone at the Girls’ Club subjected Ms. Parenteau to disability-based harassment.

Ms. Parenteau’s assertion that the Girls’ Club failed to accommodate her disability similarly fails. Employers are required to provide reasonable accommodations to disabled employees in order to enable them to perform the essential functions of their jobs. G.L. c. 151B, sec. 4(16). It is the employee’s responsibility to request an accommodation, unless the employer knew or should have known of the Complainant’s need for accommodation. See Massachusetts Commission Against Discrimination Guidelines: Employment Discrimination on the Basis of Handicap; See also Forrest v. Wal-Mart, 23 MDLR 110, 117 (2001). Ms. Parenteau alleges that the Girls’ Club failed to reasonably accommodate her disability by failing to discipline staff who interfered with her ability to lip read, by failing to direct staff to face Ms. Parenteau when speaking, by refusing to allow her to tape record meetings with the Board of Directors, and by refusing to discipline Ms. Cook for moving her desk away from Ms. Parenteau’s. She alleges that Ms. Rawson knew or should have known of her need for these accommodations.

I do not credit Ms. Parenteau’s testimony that her staff interfered with her ability to lip-read or otherwise sabotaged her ability to communicate. I do not credit

her testimony that she requested an accommodation for her disability and was denied, or that she informed Ms. Rawson that her performance issues had anything to do with her hearing impairment and/or a failure to accommodate it. Under these circumstances, there is insufficient evidence to conclude that Ms. Rawson knew or should have known that Ms. Parenteau needed an accommodation and failed to provide one. Ms. Parenteau did not acknowledge having a hearing impairment to Ms. Rawson, and Ms. Rawson did not find Ms. Parenteau's hearing impairment to be a problem in her communications with her. Moreover, Ms. Rawson did not observe Ms. Parenteau's hearing impairment to be an issue in her everyday dealings in the office. Thus, notwithstanding the fact that two disgruntled employees blamed their communication problems with Ms. Parenteau on her hearing impairment, Ms. Rawson had no good reason to believe that Ms. Parenteau's communication issues with her staff were attributable to her hearing impairment or that she needed an accommodation to perform her job functions that she was not getting. I do not believe that Ms. Parenteau's communication problems with her staff were based on her hearing impairment, and I do not credit Ms. Parenteau's testimony that her performance deficiencies were related to a failure by the Girls' Club to accommodate her disability. I credit Ms. Rawson's testimony rebutting these assertions in its entirety.

ORDER

Ms. Parenteau has failed to persuade me that she was discriminated against on the basis of her disability, and I hereby order that her complaint be dismissed.

So Ordered this 30th day of September, 2004.

Cynthia A. Tucker
HEARING COMMISSIONER