

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).

This matter is before us following a significant procedural history. On May 3, 1988, Complainant, Gloria Salvaneli, filed a complaint with this Commission alleging discrimination in employment on the basis of her sex in violation of M.G.L. c. 151B, Section 4(1) and retaliation in violation of M.G.L. c. 151B, Section 4(4). Specifically, Complainant alleged that she was paid less than other male managers employed by Respondent because of her sex. Following the public hearing, the Hearing Officer in reliance on the burden shifting mechanism articulated in Trustees of Forbes Library v. Labor Relations, 384 Mass. 559 (1981) she concluded that:

the employee bears the over-all burden of persuading the trier of fact that her employer would not have discharged her but for a discriminatory animus. It is clear that Respondent intended to shift the focus of the public relations function in Boston, and that it sought to recruit a skilled in-house writer. It is also clear that Complainant had performance problems with respect to writing, which the Company had once chosen to overlook. In Complainant's management position, a performance deficiency in writing was not fatal, because writing was not the primary focus of her job. However, writing skills appeared to be a vital qualification for Jonathan Robbins' position. Complainant had the burden of showing that the her performance problems with respect to writing were not decisive in Respondent's decision to terminate her. She has not persuaded me that the complaints about her performance were fabricated in retaliation for her sex discrimination claim. In this case, Complainant has not proved by a preponderance of evidence that she would not have been terminated but for her engaging in protected activity. I therefore conclude that the Respondent has not violated G.L. 151B and that this matter should be dismissed.

In an order issued in September 1996, the Full Commission issued a decision affirming the Hearing Officer in all respects. This matter was eventually appealed to the Appeals Court, which in July 2000 issued an order stating:

The appellant, Gloria Salvaneli has filed a petition for rehearing, pursuant to Mass.R.A.P. 27, as amended, 396 Mass. 1218-1219 (1986), requesting reconsideration of our decision in this matter dated May 12, 2000 because of the Supreme Judicial Court's decision in Wynn & Wynn, P.C. v. Massachusetts Comm'n. Against Discrimination, 431 Mass. 655 (2000), which was released subsequent to our decision and which explicitly rejected in cases such as this the "burden of proof" analysis of Trustees of Forbes Library v. Labor Relations Comm'n., 384 Mass. 559, 565-566 (1981), on which our decision had relied, in favor of the Federal approach to proof enunciated in Price Waterhouse v. Hopkins, 490 U.S. 228, 247, 252 (1989).

After consideration of the additional arguments submitted by the parties with respect to the petition, we hereby grant the petition, withdraw our decision dated May 12, 2000, vacate the judgment of the Superior Court from which the petitioner originally appealed, and order a new judgment to enter remanding the matter to the MCAD for further proceedings and reconsideration of the previous findings made herein in light of Wynn & Wynn....

Following the remand to the Commission and the additional review ordered by the Appeals Court, Hearing Officer Guastaferrri issued the following decision in October 2002, in which she found:

In this case Respondent has produced ample credible evidence of legitimate reasons for Complainant's termination and has persuaded me that these legitimate reasons, "standing alone, would have induced the Respondent to make the same decision." Wynn & Wynn supra. at 670. Thus, despite my finding that Complainant satisfied her burden to establish a prima facie case with sufficient evidence from which I could infer at least one improper motive, the Respondent persuaded me that it would have terminated Complainant's employment even absent the impermissible motive, for all the reasons stated above. Given all of the above, I re-affirm my earlier decision that the Complaint in this matter be dismissed.

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 material errors of fact or law and, therefore, conclude that there is substantial evidence in the record to support the findings made by the Hearing Officer. We therefore 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 Officer and incorporate herein the findings of fact, the conclusions of law and the Orders of the Hearing Officer.

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 pursuant to M.G.L. c. 151B §6 in the Superior Court within thirty (30) days of receipt of this decision.

SO ORDERED this 8th day of October, 2003.

Dorca I. Gomez, Chairwoman

Cynthia A Tucker, Commissioner

Walter J. Sullivan Jr., Commissioner