

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

KAREN ROBINSON,)
Complainant)
v.) 97-BEM-3775
HAFFNER’S SERVICE)
STATIONS, INC.)
Respondent)

DECISION AND ORDER OF THE FULL COMMISSION

This matter has come before us following a decision of Hearing Officer James Lamond in favor of the Complainant. Following an evidentiary hearing, the Hearing Officer concluded that Complainant was subjected to sexual harassment by her supervisor while performing her job as a cashier at a gas station, in violation of M.G.L. c. 151B. Respondent then filed a timely Petition for Review.

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. 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 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 Review 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. As a result of that review, we find no material errors of fact or law and 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 in its entirety.

Having affirmed the decision of the Hearing Officer in favor of the Complainant, we conclude that the Complainant has prevailed in this matter and is therefore entitled to an award of reasonable attorneys' fees and costs.

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 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); Brown v. City of Salem, 14 MDLR 1365 (1992).

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 the 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, Attorney Gary Nolan, counsel for Complainant, submitted an affidavit detailing the hours expended during the course of this matter before the Commission. The expended hours total 198.5 over a period of four years.

We have examined the facts of this case, Attorney Nolan's affidavit, and his itemized bill. Based upon this and similar matters before the Commission, we conclude that these listed hours are reasonable. Furthermore, we find that the hourly rate requested by Attorney Nolan (\$175) is reasonable and well within the range of rates common to the local marketplace. See, e.g., Baker v. Town of Winchester School Committee, 14 MDLR 1097 (1992).

Thus, the lodestar figure here is \$34,737.50 in attorney's fees. However, because Complainant only prevailed on one of her two claims, an examination of the interconnectedness of the claims is required. See Carmichael v. Wynn & Wynn, 18 MDLR 209 (1996). The Commission may exercise its discretion to reduce the amount of fees requested by some factor,

which may reasonably be said to represent time expended in pursuit of Complainant's unsuccessful claims. In making such a determination, we may examine the "degree of interconnectedness" between the claims. See e.g. Rapoza vs. Ocean Spray Cranberries, Inc., 23 MDLR 263 (2001). We conclude that the claims are highly interconnected in their proof and the factual evidence required and, therefore, reduce the award by only 10%. We, therefore, award attorney's fees in the amount of \$31,263.75.

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 issue the following ORDER of the Full Commission:

- (1) Within sixty (60) days of receipt of this Order, Respondent shall pay the Complainant \$30,000 in damages for emotional distress suffered as a result of Respondent's illegal action plus interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until payment is made or the obligation is reduced to a court judgment.
- (2) Within sixty (60) days of receipt of this Order, Respondents shall submit to the Clerk of the Commission a written plan and scheduled date for the discrimination prevention training program for its employees, in accordance with the requirements described by Hearing Officer Lamond in his October 29, 2001 Order.
- (3) Within sixty (60) days of receipt of this Order, Respondent shall pay the Complainant's attorney's fees in the amount of \$31,263.75;
- (4) The parties shall notify the Clerk of the Commission as soon as the ordered payments have been made.

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 non-complying 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 decision by filing a complaint in superior court 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. 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 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 18th day of December, 2002.

Cynthia A. Tucker, Commissioner

Walter J. Sullivan, Jr., Commissioner