

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

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LONNA NIELSEN AND  
MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION

Doc. No. 01 SEM 10413

Complainants

Against

DSD LABORATORIES, INC.

Respondent

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Appearances: E. John Anastasi, Esq. and Michael P. Patnaude, Esq. for Complainant  
Philip B. Benjamin, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On October 29, 2001, Lonna Nielsen (“Complainant”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD”) charging DSD Laboratories, Inc. (“Respondent”) with disparate treatment and gender harassment in violation of M.G.L. c.151B, sec. 4 (1). Complainant alleged that Respondent’s General Manager/Senior Vice President, Michael Sicuranza, placed his arms around her and other

female employees and referred to her and other female employees as “girl.”

The MCAD issued a probable cause finding. On March 31, 2006, the Commission certified the case to public hearing on the issues of sexual harassment and constructive discharge. A public hearing was conducted on November 7, 2006, November 9, 2006, and December 19, 2006.

To the extent that the parties’ proposed findings are not in accord with or not relevant to the findings herein, they are rejected. To the extent the testimony of the various witnesses is not in accord with or not relevant to my findings, the testimony is disregarded. Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

## II. FINDINGS OF FACT

1. Complainant Lonna Nielsen was hired by Respondent in November of 1989 as office secretary. As office secretary, she typed, answered phones, and ordered supplies. She delegated work to other members of the clerical staff. At the time of hire, her direct supervisors were DSD Chairman/President Bart Guerreri and Senior Vice President Elmer Fuller. Complainant eventually became the office manager.
2. Respondent DSD Laboratories, Inc. is a defense contractor, with its corporate office in Sudbury, MA. Respondent employed approximately sixty to seventy employees in 1999-2000, with twenty of its employees located at the corporate office.
3. Complainant testified that she had a wonderful working relationship Elmer Fuller. Transcript, Vol. 1 at 69-70. Fuller died in July of 1999. After Fuller’s death,

- Michael Sicuranza was promoted to Senior Vice President. As Senior Vice President, Sicuranza assigned Complainant more work than Fuller had.
4. Complainant testified that on one occasion in late 1999 or 2000, Sicuranza walked up to her, put his arms around her, and gave her a “bear hug” in response to learning that she had cancelled an airplane ticket issued to him at the direction of Bart Guerreri. Transcript, Vol. 1 at 30-31. Complainant testified that she “froze” and did not say or do anything in response. Id. at 32. Sicuranza credibly denied that he ever gave Complainant a bear hug. Transcript, Vol. 1 at 225. I do not find Complainant’s testimony to be truthful.
  5. Complainant testified that “quite often” Sicuranza would come up behind her at her desk and put his arms on her shoulders or on the back of her chair and “lean in” while he gave her instructions. Id. at 32-33. Complainant testified that Sicuranza called her “honey” and “good girl” when she made coffee. Id. at 32. Complainant testified that she froze in response. I credit Complainant’s testimony that Sicuranza may have touched her shoulder and called her “honey” and “good girl” on occasion but otherwise find her testimony not to be credible.
  6. Complainant testified that on or about August 24, 2000, she confronted another employee, Eric Smith, about turning down the air conditioning. Sicuranza was not present at the Sudbury office at the time of the incident. He returned to the office the following day and conducted an investigation into the incident. Sicuranza made a report about his investigation. Respondent Exhibit 14. Sicuranza determined in his report that Complainant had overreacted and that both she and Smith had behaved in an unprofessional manner. Respondent’s

Exhibit 14; Transcript, Vol. 1 at 217. Complainant was upset about the way that Sicuranza handled the incident, specifically that he did not fire Smith.

Complainant's relationship with Sicuranza went downhill after the air-conditioning incident. Id. at 72; 219. Sicuranza described their relationship as "very cold" thereafter. Transcript, Vol. 1 at 219.

7. Complainant testified that she met with Guerreri in November of 2000 in order to complain about Sicuranza referring to her and other female members of the office staff as "girls," "honey," and "sweetie." Complainant testified that Patty Gogan, Sicuranza, and Bill Shea were present at the meeting. Both Guerreri and Sicuranza denied that such a meeting took place in November of 2000.

Transcript, Vol. 1 at 172; 219. I credit their testimony that no such meeting took place.

8. Complainant testified that prior to April of 2001, Sicuranza would hug her at least once a month, would tell her he loved her like a daughter, would follow her to the bathroom and wait for her in the hallway until she was finished, and would refer to her as "dear," "honey," or "sweetie." Transcript, Vol. 1 at 36. Complainant testified that she would walk away from Sicuranza when this behavior occurred. I do not credit these allegations except for Sicuranza's use of the terms "dear," "honey," or "sweetie" which I find that he may have used on occasion.

9. Complainant testified that in January of 2001, she again met with Guerreri to make another complaint about Sicuranza's verbal and physical behavior towards her but that Guerreri refused to listen. Guerreri testified that he did meet with Complainant in January of 2001, but that the subject of the meeting was

- Complainant's request for status equal to that of the Senior Vice President on the basis that both she and Sicuranza reported to Guerreri. Guerreri testified that he refused Complainant's request. I credit Guerreri's version of the January, 2001 meeting over Complainant's.
10. In January of 2001, Complainant received a three percent pay raise, which was less than the eight percent pay raise she received the previous year. According to Guerreri, a three percent raise was below average and sent a message that Guerreri thought her work was "under par." Transcript, Vol. 1 at 181.
  11. Complainant testified that on or about April 20, 2001, she encountered Sicuranza in the coffee/copy room. According to Complainant, Sicuranza put his arm around her and said, "good girl." Complainant testified that she hit his arm off of her and said, "My name is Lonna" before she walked out of the room. Transcript, Vol. 1 at 35. Sicuranza testified that he saw Complainant making coffee and said, "Atta girl" to which Complainant responded, "Lonna is the name." Sicuranza testified that he apologized to Complainant later that day. Transcript, Vol. 1 at 223. I credit Sicuranza's version of the incident over that of Complainant's.
  12. Following the April 20, 2001 incident, Sicuranza never again referred to Complainant as "girl" or "gal" and never touched her. Transcript, Vol. 1 at 36, 78-79.
  13. Sicuranza admitted that from time to time he would refer to men in the office as "boys" or "guys" and women as "girls" or "gals." Transcript, Vol. 2 at 305; Vol. 3 at 335. He would occasionally touch or pat both females and males on the shoulder or put his hand on their shoulders to guide them into meetings.

- Transcript, Vol. 1 at 225, 247; Vol. 2 at 305-306, 317; Vol. 3 at 336. Several female employees of Respondent testified that Sicuranza, who was close to retirement age in 2001, conducted himself in a fatherly, friendly, and non-sexual manner rather than offensive or degrading manner. Transcript, Vol. 2 at 306; Vol. 3 at 336.
14. Guerreri testified that Complainant's overall job performance was "adequate" but that it could range from good to poor. Transcript, Vol. 1 at 175-176. Guerreri testified that Complainant left him with the impression that she only wanted to work for him and did not want to report to other managers. Transcript, Vol. 1 at 181.
15. Respondent produced a series of emails at the hearing. Respondent Exhibits 4-13. All of the emails indicate that they were sent by Complainant to other employees of DSD Labs. The emails contain sexual content, profanity, and/or jokes. Some of the emails contain pictures or cartoons with sexual content. Daniel Thompson, Respondent's network engineer, testified that he retrieved the emails from Respondent's computer network and that the emails came from Complainant's computer. Transcript, Vol. 2 at 284. I credit Thompson's testimony.
16. David Hubbard was employed by Respondent from 1997 through 2003. He testified that in the 1999 time frame, he regularly received emails from Complainant and that some had sexual content or innuendo. Transcript, Vol. 2 at 323. He testified that Respondent's Exhibits 3-10 were some of the emails that he received from Complainant. I credit Hubbard's testimony.
17. Complainant testified that she had no memory of the emails identified as

Respondent Exhibits 3-13. I do not credit this testimony.

18. Kathryn Galluci worked for Respondent and/or a subsidiary business from 1987 to 2000. Between 1998-2000, she observed Complainant participating in office banter. According to Gallucci, Complainant mentioned that she received emails containing sexual content from various acquaintances, including an individual in Alabama. Transcript, Vol. 3 at 341. Gallucci testified that Complainant did not act as though she were offended or demeaned by the emails. Transcript, Vol. 3 at 341-342.

19. Complainant's friend, Gayle Everett, was hired by Respondent as an administrative assistant to Complainant on March 29, 1999. Transcript, Vol. 1 at 141. Everett worked for Respondent approximately six months. She testified that on her first day at work, Sicuranza screamed at her and Complainant in regard to a lost document and said, "You want something done right, you ask a man; you never ask women." Id. at 146. Everett also testified that Sicuranza once came up to her in the coffee room as she made coffee, squeezed her on the shoulder and said, "Oh, good job, good girl." Id. at 147. She testified that on other occasions, Sicuranza would approach her in the coffee room "as close as he could" and brush her shoulders. Id. at 148. Everett testified that in the summer of 1999, Sicuranza followed her to the ladies room on a daily basis. Id. at 148-150. Everett testified that she saw Sicruanza touch Complainant on the shoulders as he leaned over Complainant and that Complainant would cringe in response. Id. at 151. According to Everett, she left the employ of Respondent in September of 1999 after Sicurnaza told her on one occasion that he couldn't be her "sugar daddy" but

that he could, “take care [of her] and give [her] a good position at DSD” because “a woman has to start somewhere.” Id. at 152-153. Everett testified that on a prior occasion he had used the term, “sugar daddy” to her and to Complainant. Id. at 155. Everett acknowledged that she never made a complaint of sexual or gender harassment to anyone at DSD Labs who was in a managerial or supervisory capacity. Id. at 162. I do not credit Everett’s testimony and do not find her to be a convincing witness.

20. On June 8, 2001, Complainant wrote three page letter of resignation and submitted it to Guerreri. Complainant’s letter contains no reference to sexual or gender harassment and does not criticize Sicuranza’s conduct. Joint Exhibit 2. Guererri testified credibly that Complainant made no complaint about sexual harassment at or about the time she submitted her letter of resignation.
21. Complainant’s initial application for unemployment compensation was rejected because her separation from employment was deemed voluntary. Complainant filed an appeal with the Department of Employment and Training (DET). At the DET hearing on her appeal, Complainant first asserted constructive discharge based on allegations of harassment. Transcript, Vol. 1 at 266. Sicuranza was not present at the appeal hearing and Respondent was not prepared to respond to allegations of sexual harassment. Transcript, Vol. 1 at 266-267. Based on her un rebutted allegations of harassment and constructive discharge, Complainant was able to obtain unemployment compensation. Transcript, Vol. 1 at 89-90.
22. Complainant testified that at the time she resigned from Respondent she was earning approximately \$40,000.00 annually. Complainant testified that after

resigning, she sent out “tons” of resumes but was unable to produce documents regarding her job search. Transcript, Vol. 1 at 47, 91-94. Complainant acknowledged that she received an offer of a position within a couple of weeks after leaving Respondent but decided not to accept the position because she was “not ready to sit in an office situation again.” Id. at 94-96; 137.

23. Complainant earned \$22,636.33 from Respondent in 2001. Complainant’s Exhibit 2. In 2002, Complainant received \$16,416.00 in unemployment compensation and \$1,177.00 in earnings from Green Mountain Gate. Complainant’s Exhibits 3 and 4. In 2003, Complainant earned \$5,530.00. In 2004, Complainant earned \$799.34 from Mass Health Care Services. Complainant’s Exhibit 5. In 2005, Complainant earned approximately \$2,876.00. Complainant’s Exhibit 6.
24. Complainant testified that she started seeing Dr. Church in May of 2000 about headaches, dizzy spells, and stomach issues. Complainant did not seek counseling or therapy after resigning from Respondent. Transcript, Vol. 1 at 95. She did not seek any medical treatment as a result of resigning. Id.

### III. CONCLUSIONS OF LAW

#### A. Sexual Harassment

M.G.L. C. 151B, sec. 4, paragraph 1 prohibits workplace discrimination, including sexual harassment. See Ramsdell v. Western Bus Lines., Inc., 415 Mass. 673, 676-77 (1993); College-Town, Division of Interco, Inc. v. MCAD, 400 Mass. 156, 162 (1987). Chapter 151B, sec. 4, paragraph 16A also prohibits sexual harassment in the workplace. See Doucimo v. S & S Corporation, 22 MDLR 82 (2000). Sexual

harassment is defined as “sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) submission to or rejection of such advances is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual’s work performance by creating an intimidating, hostile, or sexually offensive work environment. M.G. L. c. 151B, sec. 1, para. 18. Complainant asserts that she was subjected to a sexually-hostile work environment.<sup>1</sup>

In order to establish a “hostile work environment” sexual harassment claim, Complainant must prove by credible evidence that: (1) she was subjected to conduct of a sexual nature; (2) the conduct was unwelcome; (3) the conduct had the effect of creating an intimidating, hostile, humiliating or sexually offensive work environment; and (4) the conduct was sufficiently severe or pervasive as to interfere with Complainant’s work performance or alter the conditions of employment. See MCAD Sexual Harassment in the Workplace Guidelines, II.C. (2002) (“Sexual Harassment Guidelines”).

Sexual harassment must be objectively and subjectively offensive. See Sexual Harassment Guidelines II.C.3; Ramsdell v. Western Bus Lines, Inc., 415 Mass. 673, 677-78 (1993). The objective standard means that the evidence of sexual harassment must be considered from the perspective “of a reasonable person in the plaintiff’s position.” Id. at 678. The reasonable woman inquiry requires an examination into all the circumstances, including the frequency of the conduct, its severity, whether it was physically threatening or humiliating, whether it unreasonably interfered with the worker’s performance, and

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<sup>1</sup> The Commission certified this case to public hearing solely on issues of sexual harassment and constructive discharge but my findings of fact would also support dismissal of a gender harassment claim.

what psychological harm, if any, resulted. See Scionti v. Eurest Dining Services, 23 MDLR 234, 240 (2001) *citing* Harris v. Forklift Systems, Inc., 510 U.S.17 (1993); Lazure v. Transit Express, Inc., 22 MDLR 16, 18 (2000).

The subjective standard of sexual harassment means that an employee must personally experience the behavior to be unwelcome. An employee who does not personally experience the behavior to be intimidating, humiliating or offensive is not a victim within the meaning of the law, even if other individuals might consider the same behavior to be hostile. See MCAD Sexual Harassment in the Workplace Guidelines, II. C. 3 (2002); Ramsdell v. Western Bus Lines, Inc., 415 Mass. at 678-679.

The credible evidence in this case establishes that the conduct of Sicuranza towards Complainant was neither objectively nor subjectively offensive. On one occasion he saw Complainant making coffee and said, “Atta girl” to which Complainant responded, “Lonna is the name.” Sicuranza apologized to Complainant later that day and never again referred to Complainant as “girl” or “gal.” There is evidence that Sicuranza continued to refer to men in the office as “boys” or “guys” and other women as “girls” or “gals” but he did so in a friendly, not demeaning, manner. There is also evidence that he, at times, touched both females and males on the shoulder in a non-sexual manner, i.e., to guide them into a meeting or pat them on the shoulder. By all accounts other than the those of the Complainant and Everett, Sicuranza’s behavior was fatherly rather than offensive. “Chapter 151B does not prohibit all physical conduct among employees; rather it prohibits sexual advances or physical conduct of a sexual nature.” Humpel v. Abdow Corp., 18 MDLR 240 (1996); Gnerre v. Massachusetts Commission Against Discrimination, 402 Mass 502, 507 (1988); Ramsdell v. Western Massachusetts Bus

Lines, Inc., 415 Mass. 673, 677 (1993). I conclude that there is no credible basis for the allegation that Sicuranza behaved in an objectively offensive manner.

Similarly, there is also no basis for concluding that Sicuranza's conduct was subjectively offensive to Complainant. It was Complainant, not Sicuranza, who was an active participant in creating a sexually-charged atmosphere by distributing sexually-suggestive email. Credible evidence that she distributed sexually-explicit material undermines her contention that she was disturbed and offended by Sicuranza's conduct. See Candilere v. Vanson Leathers Inc., 24 MDLR 228 (2002) (Complainant found not to be subjectively offended by nude pictures and massages of boss by another employee where Complainant told dirty jokes and inserted balloons under her shirt during an office function); Coppenrath v. Casey, 28 MDLR 119 123 (Complainant cannot claim to be subjectively offended by conduct where she injected elements of vulgarity into workplace).

Respondent argues persuasively that the real issue was not harassment but the fact that Complainant became unhappy with her work situation during her last two years of employment at DSD Labs. Prior to July of 1999, Complainant primarily worked for senior managers with whom she had positive relationships. Sicuranza thereafter became her supervisor and placed more demands on Complainant. He investigated a dispute between Complainant and a co-worker over the office air conditioning and concluded that Complainant had behaved in an unprofessional manner. I conclude that it was these matters, not sexual harassment, which formed the basis of Complainant's hostility towards Sicuranza. As Respondent points out, Complainant's three-page letter of resignation contains a litany of complaints and grievances about office matters, but does

not address sexual harassment. Joint Exhibit 2.

B. Constructive Discharge

In order to establish constructive discharge, Complainant must prove that her working conditions were so intolerable that a reasonable person would have felt compelled to resign. See GTE Products Corp. v. Stewart, [421 Mass. 22](#), 34 (1995) (constructive discharge in sexual harassment context); Choukas v. Ocean Kai Restaurant, 19 MDLR 169, 171 (1997) (same). See generally MCAD Sexual Harassment in the Workplace Guidelines, VIII – Constructive Discharge. A claim of constructive discharge under chapter 151B does not arise when Complainant resigns due to general dissatisfaction with the workplace or fails to support a hostile work environment claim with credible evidence. See GTE Products, 421 Mass. at 35 (citations omitted); Candeliere v Vanson Leathers, Inc. MDLR (2002) (Complainant’s resignation was not compelled if her charges of sexual harassment lack credibility). Adverse working conditions must be unusually “aggravated” or amount to a “continuous pattern” of sexually-hostile conduct in order to be deemed “intolerable.” Id.; see also Robinson v. Hafner’s Service Stations, Inc., 23 MDLR 283 (2001). The standard to prove a constructive discharge claim is an objective one; an employee’s subjective perceptions do not govern. See Lee-Crespo v. Schering-Plough del Caribe, 354 F.3d 34, 45-46 (1<sup>st</sup> Cir. 2003); Coppenrath v Casey, 28 MDLR 119 (2006).

Applying these standards to the case at issue, there is an insufficient basis on which to sustain a constructive discharge claim. Since Complainant has failed to prevail on her hostile work environment claim, she cannot establish that her work environment was so intolerable that she had no other recourse but to walk away from her job.

Complainant states in her letter of resignation that her work environment has become “extremely uncomfortable” but does not cite evidence to support her claim. Elsewhere in her letter, Complainant justifies her resignation on the basis that her job is no longer “fun.” While “fun” is a desirable attribute of any job, the lack of it does not support a constructive discharge claim.

Complainant did not resign until June of 2001, several months after the last incident of alleged sexual harassment in April of 2001. Transcript, Vol. 1 at 36, 78-79, 81. Her letter of resignation cites various office matters which she finds objectionable but nothing about sexual or gender harassment. Complainant attempts to excuse this omission by stating that Guerreri was ill with cancer at the time and she did not want to cause him stress. I do not accept this rationale since it did not prevent Complainant from airing other grievances in her resignation letter and alleging sexual harassment at a DET hearing and in her MCAD complaint.

For the foregoing reasons, I conclude that Complainant’s complaint of discrimination should be dismissed.

## V. ORDER

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of

receipt of this Order.

So ordered this 13<sup>th</sup> day of August , 2007.

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Betty E. Waxman, Esq.  
Hearing Officer

