

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

\_\_\_\_\_  
LORE CARVALHO,  
Complainant  
v.  
FACTORY PAINT STORES, INC  
Respondent  
\_\_\_\_\_

DOCKET NO. 95-BEM-1676

DECISION OF THE FULL COMMISSION

This matter comes before us on appeal of the Complainant following a decision of Hearing Officer Arthur Sherman in favor of Respondent. After an evidentiary hearing, the Hearing Officer concluded that Respondent had not violated M.G.L. c. 151B by terminating Complainant from her employment while she was pregnant. In addition to denying the allegation of discrimination because of pregnancy, Respondent had further contended that the complaint of discrimination by Complainant was not timely filed under the provisions of M.G.L. c. 151B. Respondent contended it was untimely because it was filed more than six months after Complainant was notified of her termination. The Hearing Officer did not rule on this contention in light of his finding in favor of Respondent on the complaint of discrimination. Complainant filed a timely appeal contesting the conclusion of the Hearing Officer as to discrimination because of pregnancy. Respondent filed an opposition and cross-appealed on the statute of limitations issue.

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. M.G.L. c. 151B, Sec. 5. The Hearing Commissioner'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 Hearing Officer's responsibility to evaluate the credibility of witnesses and/or to weigh the evidence when deciding disputed questions of fact. 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 Full Commission's role 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(f).

While we agree with Complainant that the Hearing Officer's conclusion as to liability was not supported by substantial evidence, we also agree with Respondent's contention that the Hearing Officer erred by not dismissing the complaint as untimely. We, therefore, find that dismissal was appropriate.

The undisputed facts show that Complainant, an interior decorator for Respondent, began employment in June of 1994; was qualified to perform her job; and that she had at all times performed her duties in a satisfactory manner. In October of 1994, Complainant discovered she was pregnant. She told both her fellow employees

and her employer of this fact. Prior to being laid off from her job, Complainant had three conversations with the owner of Respondent about her pregnancy and being laid off from work. In each conversation, the owner told Complainant in various ways that the pregnancy would interfere with her job and she should take a layoff. Complainant denied in each of these conversations that the pregnancy would interfere with her work and there is no evidence that it did so. Finally, in early December, 1994, Respondent informed Complainant that she would be laid off after Christmas and that she could choose a convenient date for herself. She chose January 14, 1995.

Respondent's stated reason for terminating Complainant was for reasons of cost effectiveness in terms of reducing overhead. Respondent submitted no evidence sufficient to support such a reason. Instead, there was evidence that Respondent placed an ad for an interior designer two weeks after Complainant was terminated. The Hearing Officer found that Complainant had established a prima facie case. He further concluded, however, that Respondent had articulated a legitimate non-discriminatory reason for its conduct and that Complainant had failed to show that such reason was pretextual.

There is no evidence in the record to support the decision of the Hearing Officer on this point. It is a conclusion without factual basis in the record under the standards set out in Wheelock College v. Massachusetts Commission Against Discrimination, 365 N.E.2d 309 (1976). In Wheelock the Supreme Judicial Court stated that: "We think that 'articulating' a reason in cases of this kind requires the employer to produce not only evidence of the reason for the action but also underlying facts in support of that reason." Id. at 313. Complainant sustained her burden of persuasion under Wheelock by showing the reasons advanced by the Respondent to be pretextual. In this case, there is direct

evidence from three un rebutted conversations with the owner of Respondent that the primary motive for the lay-off of Complainant was her pregnancy.

Having found the decision of the Hearing Officer to be unsupported by substantial evidence, we reverse his decision as to Complainant's claim of discrimination because of pregnancy. Having so decided, we must therefore address the issue raised by Respondent, but not addressed by the Hearing Officer below concerning the claim of untimeliness in the filing of the complaint.

Complainant's last day of employment was January 14, 1995. She was informed by Respondent in early December that she would be laid off after Christmas and given a choice in the exact date. She filed her complaint of discrimination on July 12, 1995. Under the Supreme Judicial Court's decision in Wheatley v. AT & T, 418 Mass 394, 398 (1994), the time for filing a complaint of discrimination begins to run from the date the complainant has sufficient notice of the specific act of which she complains. Although her last day of work was January 14, 1995, Complainant received unequivocal notice in early December, 1994, and certainly prior to January 12, 1995, that she would be laid off. Accordingly, her complaint is untimely under M.G.L c. 151B because it was filed more than six months after the occurrence of the act forming the basis of the complaint.

Having carefully reviewed the petition for appeal and the full record in this matter and weighed all the objections to the decision in accordance with the standard of review articulated herein, we find the decision of the Hearing Officer to be erroneous as a matter of law and unsupported by substantial evidence. We further find, however, that the complaint in this case was untimely filed. Accordingly, we reverse and vacate the decision of the Hearing Officer as to the finding on the occurrence of discrimination. We

further find, however, that the complaint was untimely filed under M.G.L. c. 151B and dismiss the complaint for that reason.

**ORDER**

The Order of the Hearing Officer is reversed as to the finding of discrimination, but the order of dismissal stands on the basis that the complaint was untimely filed.

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 16<sup>th</sup> day of January, 2003.

---

Cynthia A. Tucker  
Commissioner

---

Walter J. Sullivan, Jr.  
Commissioner