

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION & MARY
ANN HELMUTH,
Complainants

v.

DOCKET NO. 00-BEM-0421

HARVARD VANGUARD MEDICAL
ASSOCIATES, INC.,
Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Eugenia M. Guastaferrri in favor of Complainant Mary Ann Helmuth. Following an evidentiary hearing, the Hearing Officer concluded that Complainant had been subjected to unlawful age and disability discrimination in violation of M.G.L. c. 151B and awarded the Complainant \$119,333.92 in back pay and \$350, 000 in damages for emotional distress, with interest on those awards. She also issued assessed a civil penalty against Respondent and ordered training. Respondent has appealed to the Full Commission.

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 Officer. G.L. c. 151B, Section 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); G.L. c. 30A.

It is the Hearing Officer's responsibility to evaluate the credibility of witnesses or to weigh the evidence when deciding disputed issues of fact. The Full Commission defers to these determinations of the Hearing Officer. See e.g., School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonade 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 1.23.

Respondent has appealed the decision on the grounds that the Hearing Officer misapplied the law regarding reasonable accommodations, hostile work environment, and constructive discharge, that Complainant's age discrimination claim is barred by the statute of limitations, that Respondent was unduly prejudiced by the inclusion of evidence, that the Hearing Officer relied upon inappropriate comparators, and that the emotional damages award was excessive and should be reduced.

We have carefully reviewed Respondent's petition and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review articulated therein. As a result of our 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. Specifically, we find that the Hearing Officer did not err in her application of the law regarding accommodations, hostile work environment, or constructive discharge. Nor do we find that Complainant's age discrimination claim was untimely, that Respondent was prejudiced by the introduction of background evidence, that the Hearing Officer relied upon inappropriate

comparators or that her award of emotional distress damages was excessive. We, therefore, deny the appeal and affirm the decision below in its entirety.

COMPLAINANT’S PETITION FOR ATTORNEYS’ FEES AND COSTS

Having affirmed the Hearing Officer’s decision in favor of the Complainant, we conclude that the Complainant has prevailed in this matter and is entitled to an award of reasonable attorney fees and costs. See M.G.L. c. 151B, Section 5.

The determination of what is a reasonable fee is one that the Commission approaches utilizing its discretion and its understanding of the time and resources required to litigate a claim of discrimination in this administrative forum. In reaching a determination of what is a reasonable fee, the Commission has adopted the lodestar method for fee computation. Baker v. Winchester School Committee, 14 MDLR 1097(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 then examine the resulting figure, known as the “lodestar”, and adjust it either upward or downward or not at all depending on various factors.

The Commission’s efforts to determine the number of hours reasonably expended will involve more than simply adding the 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, 616 F. Supp. 6 (D. Mass, 1984). Hours that appear to be duplicative, unproductive, excessive, or otherwise unnecessary to prosecution of the claim are subtracted, as are hours that are

insufficiently documented. Grendel's Den v. Larkin, 749 F.2d 945 (1st Cir.); Miles v. Samson, 675 F. 2d5 (1st Cir. 1982); Brown v. City of Salem, 14 MDLR 1365 (1992).

Only those hours that are reasonably expended are subject to compensation under G.L. c. 151B. In determining whether hours are compensable, the Commission will consider contemporaneous time records maintained by counsel and will review both the hours expended and tasks involved. Id. At 1099.

Complainant's counsel has filed a petition seeking attorneys' fees of \$90,875.00 and costs of \$2,865.57. His petition is supported by an affidavit and contemporaneous time records. He seeks compensation at the rate of \$250 per hour for 363.5 hours of work. Respondent has submitted an opposition to the fee petition arguing that the rate charged for the hours expended after mediation would practically amount to a rate of \$350 per hour, well above the customary rate charged by employment attorneys practicing in the Worcester area. This is based on the assertion that in 1993, at mediation, Complainant's counsel claimed fees in the amount \$15,000 for 156 hours which would assume an hourly rate closer to \$100 per hour. Moreover, Respondent asserts that certain entries in the time records vaguely define work performed and are without sufficient detail.

We reject Respondent's argument that the rate charged by Complainant's counsel is excessive. We note that positions taken with respect to fees for purposes of settling a matter during mediation are confidential and that attorneys will often discount their fees for purposes of settlement. We conclude that \$250 per hour is not an excessive rate for an attorney of Mr. Mulhearn's experience.

Having reviewed the contemporaneous time records submitted in support of the petition, and considering similar matters before the Commission, we conclude that certain hours spent in preparation of this claim are excessive given the experience of Complainant's counsel. Specifically we point to the number of hours spent on the following: 19.9 hours related to the certification conference and preparing a motion to compel discovery; 25.5 hours related to the preparation of an opposition to a Motion for Summary Judgment; 5.1 hours to draft changes to a pre-hearing memo; and 43.1 hours related to preparing a post-hearing brief. This amounts to 93.5 hours of work which we determine should be discounted by 20% for a total of 74.8 hours. In light of this we find it appropriate to reduce Complainant's fee request by the amount of \$4, 675 and award the amount of \$86,200.

Finally we determine that the amount sought for costs is reasonable and should be granted as requested.

ORDER

For the reasons set forth above, we hereby affirm the findings of fact, conclusions of law and Order of the Hearing Officer and issue the following order of the Full Commission:

1. Respondent shall pay Complainant damages as set forth in the Hearing Officer's decision, with interest at the rate of 12% per annum from the date of filing of the complaint, until such time as payment is made or pursuant to a Court Order, post-judgment interest begins to accrue.

2. Respondent shall pay Complainant emotional distress damages as set forth in the Hearing Officer's decision with interest thereon at the rate of 12% per annum from the date of filing of the complaint until such time as payment is made or pursuant to a Court Order, post judgment interest begins to accrue.

3. Respondent shall pay to Complainant's counsel the amount of \$86,200.00 for attorneys' fees, and \$2,865.57 for costs.

4. Respondent shall comply with all other orders of the Hearing Officer as outlined in her decision.

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 within 30 days of receipt of this decision 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, §6.

SO ORDERED this 8th day of May , 2006.

Walter J. Sullivan, Jr.¹
Commissioner

Cynthia A. Tucker
Commissioner

¹ Investigating Commissioner sitting by necessity to establish a quorum. *See* M.G.L. c .6, § 56, M.G.L. c.151B, § 5.