

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MICHAEL D'AMBROSIO, JR.,
Complainant

v.

DOCKET NO. 89-BEM-0982

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY,
Respondent

DECISION OF THE FULL COMMISSION

This matter came before us following a decision of Hearing Officer Eugenia Guastaferrri in favor of Complainant. Following an evidentiary hearing, the Hearing Officer concluded that Respondent subjected Complainant to discrimination on the basis of disability in violation of M.G.L. c. 151B, § 4 (16). Respondent 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. M.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 1.23(1)(h).

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. 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.

In particular, we reject Respondent's argument that the Hearing Officer erred in finding that Respondent had failed to make a reasonable accommodation, which would have resulted in the violation of the seniority-based provisions of the collective bargaining agreement. See US Airways, Inc. v. Barnett, 535 U.S. 391 (2002).

In the decision, the Hearing Officer specifically found that "Although Respondent argued that it was administratively impossible to switch Complainant's schedule because of seniority restrictions, there was no evidence that the collective bargaining agreement barred Respondent from accommodating Complainant. There was no showing that the provision of a remedy provided for by state law, which is independent of a collective bargaining agreement, was in any way prohibited by the terms of such agreement, or that

the provision of such remedy required construing any provision of such agreement. Thus, the collective bargaining agreement did not displace Complainant's statutory right to have his handicap accommodated, so long as the accommodation sought was reasonable.”

Based on the findings made by the Hearing Officer, we find no error. We therefore deny Respondent’s appeal and affirm the decision below in its entirety.

Having affirmed the Decision of the Hearing Officer, we conclude that Complainant has prevailed in this matter and is therefore entitled to an award of reasonable attorneys’ fees and costs. See, e.g., Texas State Teachers Assn. v. Garland Independent School Dist., 489 U.S. 782 (1989). In rendering a determination of what is a reasonable fee, the Commission has adopted the lodestar methodology for fee computation. See Fontaine v. EBTEC Corp., 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 successful 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 will adjust it either upward or downward or not at all depending on several factors.

Calculation of hours reasonably expended involves the following. First, specifying and appropriately accounting for who has done the work (e.g., senior partner, junior associates, paralegal). Second, eliminating billed-for-time that is

beyond that consistent with a standard of reasonable efficiency and productivity. Third, subtraction of hours which appear to be duplicative, unproductive, excessive, or otherwise unnecessary to prosecution of that portion of the claim which was successful. Fourth, elimination of 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); and, Brown v. Salem, 14 MDLR 1365 (1992).

In support of his petition for attorneys' fees and costs, Complainant submitted an affidavit of counsel and an itemized record of billing hours and costs. Complainant submitted a petition seeking \$10,491.50 in fees and costs. Based on our review, and since Respondent did not file an Opposition to Complainant's Petition, we find the request reasonable and therefore allow Complainant's petition.

ORDER

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

- (1) We affirm and incorporate herein all aspects of the order of the Hearing Officer;
- (2) Within sixty (60) days of receipt of this Order, Respondent shall pay Complainant \$75,000.00 in emotional distress damages;
- (3) Respondent shall pay to Complainant lost wages as ordered by the Hearing Officer;

- (4) Respondent shall embark upon a comprehensive training program of its supervisors, managers, and medical personnel focusing on the issue of reasonable accommodation and the interactive process required to determine the needs and feasibility of handicapped employees who are qualified handicapped individuals. A plan for such program shall be submitted to the Commission within 90 days of the receipt of this Order; and
- (5) Within sixty (60) days of receipt of this Order, Respondent shall pay attorneys' fees and costs to Complainant in the amount of \$10,491.50.

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. 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 19th day of June, 2003.

Cynthia A. Tucker, Commissioner

Walter J. Sullivan, Jr., Commissioner