

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
NANCY BOUTIN,
Complainant

v.

DOCKET NO. 97-BEM-2917

UNIVERSITY OF MASSACHUSETTS-
DARTMOUTH,
Respondent.

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Edward R. Mitnick in favor of Respondent University of Massachusetts/Dartmouth. Following an evidentiary hearing, the Hearing Officer concluded that Respondent was not liable for unlawful gender discrimination or retaliation in violation of M.G.L. c. 151B, sections 4(1) and (4). Complainant filed an appeal 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); 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 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. 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 1.23.

I. COMPLAINANT'S PETITION FOR REVIEW

Complainant does not identify in her appeal any claimed errors of procedure or law by the Hearing Officer in this matter. Rather, Complainant's request for review rests solely on her challenges to the Hearing Officer's factual findings. Specifically, Complainant challenges the Hearing Officer's findings that Complainant was not intentionally denied user support fieldwork based upon her gender and that she was terminated due to rude and insubordinate conduct. Complainant variously characterizes the Hearing Officer's findings as arbitrary, capricious, inaccurate and disingenuous. Complainant's chief arguments are that the Hearing Officer erred by crediting the testimony of Respondent's witnesses and failing to credit that of Complainant, and that the Hearing Officer ignored evidence favorable to Complainant.

We have carefully reviewed Complainant's contentions on appeal and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review herein. We conclude that there was substantial evidence to support the Hearing Officer's findings that Complainant was not denied the opportunity to perform user support fieldwork based upon her gender and that Complainant was not the victim of retaliatory discharge. We also conclude that the Hearing Officer did not abuse his discretion in crediting certain testimony and/or discrediting others. As a result of our review, we find no material errors of fact or law with respect to the Hearing

Officer's findings and conclusions of law.

On the above grounds, we deny the appeal and affirm the Hearing Officer's decision in its entirety.

ORDER

The Complainant's appeal to the Full Commission is hereby dismissed and the decision of the Hearing Officer is affirmed in its entirety.

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 21st day of September, 2004.

Walter J. Sullivan, Jr.
Commissioner

Cynthia A. Tucker
Commissioner