



Following the hearing the parties submitted proposed findings of fact and rulings of law. To the extent any proposed findings comport with my findings, I adopt them. Having reviewed the entire record in this matter and the briefs of the parties, I make the following findings of fact and conclusions of law.

## II. FINDINGS OF FACT

1. Complainant, Pamela Magill, began her employment with Respondent, Massachusetts State Police in 1988 after graduating from the State Police Academy. She was first assigned to the State Police Barracks in Newbury (SP Newbury) in Troop A. In 1990, Complainant was transferred to Troop C and stationed at SP Brookfield. Complainant began at SP Brookfield working the midnight shift, but after 1993, when she returned from a maternity leave, she began working the evening shift from 3:00 p.m. to 11:00 p.m. Respondent, Trooper Robert Benoit ("Benoit") also worked the evening shift at SP Brookfield, and from 1994 to 1996, Complainant and Benoit worked together on the evening shift. [Complainant]

2. Complainant's supervisors at SP Brookfield were Lieutenant William Welch ("Welch"), Lieutenant Aldo D'Angelo ("D'Angelo"), and Respondent, Lieutenant William Fogarty ("Fogarty"). Lt. Welch was the station commander at SP Brookfield

from 1988 to 1995 and Lt. D'Angelo was a Sgt. at SP Brookfield from July 1995 to November of 1996. Complainant reported to Sgt. Gary Mason on the evening shift. Complainant's duties as a state trooper included conducting investigations, making arrests, and conducting patrols. In addition, she was frequently asked by the supervisors to do administrative duties. Complainant testified that male troopers in the barracks were not specially asked to do the same amount of administrative duties. D'Angelo testified that the administrative duties were actually more work than patrols and most of the male troopers would not have wanted to do it.

3. During 1994 through 1996, Complainant's record of arrests, investigations, protective custodies, and motor vehicle stops was on par with the other male troopers at SP Brookfield on the evening shift. [R11] Complainant also has been commended for outstanding performance throughout her career with the State Police. [C27 and C30]

4. Complainant's supervisors testified that she had an excellent work ethic, was a good officer, and had adequate productivity. [Fogarty, Welch, D'Angelo] Fogarty specifically stated that Complainant got along with everybody. [Fogarty]

5. At the time of the public hearing there were 2300 men and 200 women employed by the Massachusetts State Police. [Trapasso, Hibbard] Lieutenant Colonel Bradley G. Hibbard ("Hibbard") confirmed that in 1996, no woman held a rank above Lieutenant.

[Hibbard] There was testimony that in such a male dominated law-enforcement arena, female troopers could encounter difficulties on account of their gender and would have to work harder to prove themselves. [Stefani, D'Angelo]

6. Respondent Benoit has been a trooper for twenty-seven (27) years and has been assigned to SP Brookfield 19 years. He worked 15 of those years on the night shift and never sought a promotion during that time. [Benoit] There was testimony that during the years relevant to this complaint the commanding officers at SP Brookfield allowed Benoit to focus on those tasks which he preferred to do and that he was relieved of certain duties that he found unpleasant or did not enjoy. There was also testimony that Benoit could be gruff and crude, and that he frequently used profanity in the barracks. He was also a man of strong opinions, who was out-spoken in his views and passionate about his job and the State Police. He could at times be a mean-spirited bully, who held a grudge, if you offended him, and there was testimony that he treated SP Brookfield very much like his personal fiefdom. Trooper Ramos described Benoit as a "lone sheriff, who came and went as he pleased with the station commander's blessing." [Ramos]

7. In addition to the Sgt. on duty, the other troopers who worked on the evening shift, Troopers Ronald Ramos ("Ramos") and David Gould ("Gould"), testified that Complainant was a competent

and aggressive trooper who did high quality administrative and investigative work. [Ramos, Gould]

8. There were five other female troopers assigned to SP Brookfield when Complainant arrived in 1990. This number steadily decreased, and by 1994, Complainant was the only female trooper at SP Brookfield on the evening shift. Although other women rotated in and out of SP Brookfield, Complainant was always the only female on the evening shift. Complainant was also the only woman who worked on the evening shift for a two year period. At the time of the public hearing, there were no female troopers assigned to SP Brookfield. [Complainant]

9. Complainant testified that when she began her tenure at SP Brookfield in 1990, Benoit referred disparagingly to the length of female troopers' hair. [Complainant] Benoit did not deny making the comment. Complainant was not working the same shift with Benoit at that time and I do not believe that she was offended by this comment.

10. Benoit would sometimes refer to female troopers as "troopettes" and would refer to women in general as "broads" and "bimbos." [Benoit, Complainant] He also commented that the worst thing the State Police ever did was put "broads" on the force. [Complainant] Complainant noted that Benoit sometimes referred to female troopers as "salty" a derogatory term implying that one is "cocky" or "too big for her britches." Complainant testified that

he did not use this term in referring to male troopers.

[Complainant]. The term "salty" is generally used to chastise a trooper [O'Grady]. I believe that Complainant found some of these comments offensive.

11. Trooper Karen DeMasi ("DeMasi"), who worked at SP Brookfield for six months in 1990 before being transferred to Holden, worked with Benoit on the evening shift. During her time at SP Brookfield, DeMasi observed that Benoit refused to greet female troopers or say anything to them at all. He did, however, speak to and greet the male troopers. [DeMasi]

12. In 1990, Benoit co-founded the Brookfield Bombers, a social group that met outside of work, in response to a practical joke involving a fake bomb. He posted sign up sheets for the group's events and wrote "NO WOMEN ALLOWED" across them. These signs were posted two or three times a year until 1996. Benoit admitted that he put up these signs with "NO WOMEN ALLOWED" written on them. [Benoit, Complainant] Complainant did not lodge a complaint about this and I do not believe that she was upset or offended by this.

13. Benoit, who was a former professional boxer, founded the State Police boxing team in 1976 and he was very proud of the team and its successes. [Benoit] In the April 1991 newsletter, Benoit listed the names of troopers who were in attendance at a boxing match and specifically noted that "none of the five women

troopers" from SP Brookfield were at the match. [C1] The male troopers who did not attend were not singled out in the newsletter. [C1, Complainant] I do not believe that Complainant was offended by this.

14. Although Complainant had special training to handle rape cases, when she worked on a rape investigation with Benoit in 1993, Benoit assigned her as his subordinate, took over the investigation, signed the face sheet, and failed to inform the District Attorney assigned to the case that Complainant had special training in rape cases. [Complainant] This caused Complainant to be omitted from the witness list for trial. Complainant testified that the District Attorneys prefer police officers who have had special training to testify at trial. [Complainant]

15. Benoit authored a newsletter in which he would write commentary on various State Police events. In one issue, he referred to Complainant and her then boyfriend as "Pam and Jeff Magill." Complainant testified that she viewed this as an attempt to emasculate her boyfriend, Jeffrey Lavallee ("Lavallee")but this was meant to be a joke and I do not believe Complainant found this offensive. [Complainant] Lavallee testified that Benoit would say things like that "just to get his goat," that he was not offended by this comment and he took it as a joke. He also testified that Complainant never complained to him about sexual harassment in the

three years they were together, but did often express her dislike of Benoit. [Lavallee]

16. In 1993, Complainant became pregnant with Jeffrey Lavallee's child. Lavellee was a local police officer in the town of West Brookfield. [Lavallee] After notifying the State Police of her pregnancy, Complainant was immediately assigned to the day shift and put on light duty, which consisted of administrative work and desk duty. As a result Complainant was assigned to work out of uniform, without her cruiser, and had to forfeit her mileage allowance, her night pay differential, court time, overtime, and details.<sup>1</sup> Complainant testified that male troopers who were put on light duty did not have those same restrictions. [Complainant]

17. Complainant alleged Benoit became more hostile toward her once she became pregnant. On one occasion while Complainant was pregnant and on light duty working at the desk, Benoit asked her numerous times for index cards. Each time, Complainant informed him that she did not know where they were. Finally, Benoit asked in a loud and hostile manner how she could not know where the index cards were when all she did was "sit on your ass all day." Complainant responded, "I'm not your fucking secretary." The next

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<sup>1</sup> I take judicial notice of the fact that the State Police policy banning pregnant troopers from wearing uniforms, interacting with the public, working overtime and driving police cruisers was the subject of a law suit filed in 1998 by four female troopers. A Suffolk Superior court jury recently awarded them \$1million in punitive damages, plus damages of \$300,000 for emotional distress and \$47,000 for other economic losses. The State Police has since changed its policy. (Boston Globe 10/5/02)

day the word "secretary" was written in large red letters over her name-tag. Benoit denied that he put up this sign and said he does nothing anonymously. [Benoit] I find that anyone of the troopers could have posted this sign as a joke, as Complainant admitted that some of the other troopers kidded about the incident and thought it was funny.

18. Complainant's daughter was born in August of 1993. She took a ten-week maternity leave, returning to work on the evening shift in October of 1993. Complainant's relationship with Lavallee also ended acrimoniously in October of 1993 and caused a rift between the State Police and the local West Brookfield officers which Benoit viewed as unprofessional. Complainant is alleged to have told her fellow troopers not to "back up" West Brookfield officers if they called for help and a sign was put up in the barracks by Sgt. Mason stating not to back up the Brookfield Police.

19. In 1993, Complainant made a complaint about Benoit to her supervisor, Sergeant Gary N. Mason ("Mason") who brought Complainant's problem to the attention of the barrack's supervisor, Lieutenant William Welch("Welch") informing him that Complainant was feeling "left out" and that Benoit was treating her differently from the male troopers. [Welch] Mason and Welch met with Captain Duke ("Duke") to discuss the issue in Holden in late 1993. At the meeting, they discussed the potential problems

with Complainant and Benoit working together, and Duke suggested transferring Complainant to another barracks. There was no discussion about a possible transfer for Benoit, and there was no definitive course of action determined at the meeting. Duke asked that Welch and Mason keep him appraised. Welch asked Mason to keep him appraised. [Welch] Welch and Mason approached Complainant and asked if she wanted to transfer out of SP Brookfield because of Benoit in late 1993 or early 1994. Complainant rejected this idea telling them that she thought she could handle it, because even though Benoit was hostile to her and ordered her around, the situation was not "unbearable." [Complainant] No further action was taken. [Welch]

20. The State Police sexual harassment policy in effect at the time set forth a complaint and investigative procedure to be followed upon notice of a complaint of sexual harassment. Pursuant to that policy, supervisors were responsible for aiding in the prevention of harassment and discrimination by monitoring the work environment and resolving complaints of harassment and/or discrimination. [C7]

21. In June, 1994, Lieutenant Rosemary Murphy ("Lt. Murphy") observed a sign over Complainant's name on the SP Brookfield cruiser board which stated "If it has tits or wheels, it'll

give you problems." [Lt. Murphy] This sign caused her concern that Complainant was being harassed due to her gender, and she became upset and removed it. She then went to the Troop Commander and her lieutenant to address it. She stated that the Troop Commander was "not real thrilled that I brought it to their attention." [Lt. Murphy]

22. Lt. Murphy arranged a meeting with Complainant and Lieutenant Alfred Puller("Puller") at a local Dunkin' Donuts. [Lt. Murphy] Complainant informed Lt. Murphy that she had put the sign up herself and that things were fine in the barracks; however, Lt. Murphy thought Complainant was lying because Complainant's reasons for putting it up did not sound plausible and "didn't feel right". [Lt. Murphy] Complainant testified that she lied to Lt. Murphy, but stated she did not file a complaint at that time because she feared being blacklisted and known as a "feminazi." [Complainant] Murphy believed and there was evidence to suggest that another trooper actually posted the sign and that Complainant was protecting him. Complainant testified the sign did not offend her because it was a joke from a friend. Neither Lt. Murphy nor Puller filed a report regarding this incident. [Lt. Murphy] Complainant did not complain specifically of sexual harassment or Benoit at this meeting.

23. Complainant and others alleged that Benoit was more hostile toward Complainant than he was to the other male troopers.

[Complainant, Ramos, Gould] There was testimony that Benoit, a former professional boxer, with an intimidating physical presence, would stand near Complainant, his arms crossed with an upright stance, and just glare at her. [D'Angelo, Welch, Gould] Welch described Benoit's glare as "like looking at the face of a bear in a cage." [Welch] D'Angelo corroborated the fierceness of Benoit's dislike of Complainant. [D'Angelo] Several State Police employees testified that in his relations with Complainant, Benoit demonstrated that he "hated her guts" and had a great disdain for Complainant. [D'Angelo, Welch, Gould] Ramos testified, "he'd just be...mean to her, you know?" [Ramos]

24. Benoit admitted that he does glare at times and was "sure he did this" to Complainant but stated he was known to treat male troopers he disliked in a similar fashion. [Benoit] However it was clear that the male troopers were better equipped to deal with this sort of behavior and were not intimidated by Benoit. O'Grady recalled an incident when Complainant was polishing her boots, and Benoit stood seven to eight feet away and glared at Complainant with a "look of hatred". O'Grady felt compelled to get up and stand between them and said, "Hey Bob [Benoit], come on." Based upon his experience with Benoit, O'Grady thought Benoit did not like women working at the State Police. [O'Grady]

25. Lt. D'Angelo testified that he had a great deal of respect for Benoit as a trooper and had conversations with Benoit

regarding the friction between him and Complainant. He observed that one could "cut the tension with a knife" at SP Brookfield when the two were on duty. D'Angelo made serious attempts to get Benoit to moderate his behavior toward Complainant and also notified Lt. Fogarty of the problem. [D'Angelo]

26. Complainant testified that she felt like she "had a bulls eye" painted on her chest during this period. [Complainant] Benoit refused to speak with her and she heard from the other troopers that Benoit routinely referred to her as a "bag of shit" and questioned her dedication to the job. [Complainant, Gould, Ramos, O'Grady] Benoit admitted on cross-examination that he referred to Complainant as a "bag of shit," but stated that this was in reference to her "slacking off" on the job. No one heard him use this term in reference to male troopers although he believed some of them were "slackers" also. On one occasion, Benoit, without any provocation, also referred to another female trooper, Joan Trecarten ("Trecarten") as a "bag of shit" when she visited SP Brookfield to assist O'Grady with a personal matter. [O'Grady] Complainant admitted that she frequently used profanity and was not offended by it. She admitted referring to Benoit as a "fucking asshole" to the other troopers. She said it was not the name-calling per se that upset her, but that Benoit questioned everything she did.

27. When Gould, Ramos, and O'Grady supported Complainant, Benoit also refused to speak to them. [Complainant, Gould, Ramos, O'Grady] O'Grady testified that you could "cut the air with a knife" during the evening shift. Benoit testified that the bad feelings went both ways and that his fellow troopers ostracized him and often refused to speak to him. There was also evidence that Benoit was critical of the performance and work ethic of the other troopers on the shift and that he believed they were lazy, took no pride in the job, and he openly called them "slackers". Benoit testified that SP Brookfield has a reputation as "Disneyland for loafers," and he would often criticize the other troopers on the night shift for hanging around and watching too much television.

28. There was evidence that at some point in 1994 Complainant began dating Sgt. Gary Mason who was the supervising officer on the evening shift. Complainant denied this, but her testimony about this matter was not credible. Others testified about this relationship and it was no secret around the barracks. Benoit testified that he had been very friendly with Mason who would come by his house frequently. He testified that Mason and Complainant joined him and his wife for dinner and for a weekend at their time-share in Newport. Complainant admitted that she'd gone to Benoit's son's wedding as Mason's guest in August of 1994,

and had previously invited Benoit's wife to her daughter's christening.

29. At some point after 1994, the atmosphere in the barracks and relationships on the evening shift changed dramatically for the worse. Benoit testified that his personal friendship with Mason became strained and Mason stopped coming to his home. Benoit felt completely alienated from his colleagues, who stopped speaking to him and excluded him from barrack's activities. Complainant would cook dinner for the troopers on the evening shift and deliberately exclude Benoit. He stated the high point of the day would be the "meal and bull shit T.V. afterwards," and he was vocal in his criticism of these activities.[Benoit] He also claimed that Complainant did next to nothing and just hung around the barracks, was routinely allowed to arrive late for her shift and leave early, and was given more advantageous assignments. Benoit began to complain to Lt. Fogarty and Sgt. Mason about favoritism toward Complainant. At one point when Benoit complained to Mason about such favoritism, Mason responded, "What can I say, she feeds me, she fucks me." [Benoit]

30. While Complaint would have me find that all the personnel problems on the evening shift stemmed from Benoit's discriminatory treatment of her, this conclusion would be much too simplistic and one-sided. I find that some of the animosity and tension between Benoit and other troopers in the barracks was

related to Benoit's criticism of their work ethic and performance and their view that he was the subject of favoritism.

31. Beginning in 1996, Lt. William Fogarty became the station commander at the Brookfield barracks. The problems between Complainant and Benoit continued to escalate during this time. During desk duty one day in 1996, Complainant took a large number of messages for Benoit while she performed other administrative tasks. When Benoit returned from his patrol, he stormed past her, went to his mailbox, retrieved the messages she had taken, and stomped back to the desk. At the desk, Benoit came right up to Complainant, threw the messages in front of her, scattering her paperwork, and yelled, with veins bulging and a red face, "When the fuck were you going to tell me about these messages?"

[Complainant] Complainant testified that she was frightened by his demeanor, yelling, and use of profanity in that manner and thought he was going to snap. [Complainant] Benoit corroborates this incident, but states he was justifiably angry at Complainant and asserts there was evidence that he could be just as angry or confrontational with the male troopers. [Benoit]

32. In June of 1996, Complainant was assigning overtime shifts as part of administrative duties. The State Police has a sixteen (16) hour rule which generally holds that troopers cannot work more than sixteen hours in a row. [Complainant, O'Grady] The trooper assigning overtime must determine who is eligible and

contact the officer on the list to offer the overtime shift. Complainant knew that Benoit had been in court that day from 9:00 a.m. to 2:30 p.m. and then worked his regular evening shift. Offering him overtime meant he would be working twenty-one hours straight. Prior to deciding whether to assign overtime to Benoit, Complainant conferred with O'Grady, the union representative at SP Brookfield, and with D'Angelo after which she determined that she should not offer the overtime to Benoit and offered it to the next officer on the list, Sgt. Mason, with whom she was in a relationship at the time. [Complainant]

33. Since Complainant had invoked a little used rule to deny Benoit overtime, he was justifiably upset. The next day, Benoit left a note in Lt. Fogarty's mailbox complaining about the incident and accusing Complainant of favoring Mason. In his note, Benoit referred to "getting fucked" by Complainant and referred to everyone by title except for Complainant and signed his name "Trooper Benoit". [C-2; Complainant] For one trooper to refer to another trooper by name rather than by rank is a slight. [Complainant, O'Grady, Welch] Benoit testified that he meant no slight or insult by this.[Benoit]

34. The mailboxes at SP Brookfield are open slots which allow anyone at the barracks to remove or view the contents of another's mail box. Benoit did not put his note in a sealed envelope and other troopers on the evening shift went into his

mailbox and read the note. While O'Grady, Gould, Ramos, and Complainant, all testified that there was no expectation of privacy for open notes in mailboxes, Fogarty testified that he did have such an expectation and was angry that Benoit's note was read and copied. It is clear the note was not meant for all to see. [Complainant, Ramos, O'Grady, Gould] When Fogarty received the note, rather than deal with it, he passed it on to Mason to handle.

35. In June 1996, Benoit wrote a second note to Lt. Fogarty complaining that Complainant was receiving preferential treatment with respect to certain patrol assignments. He left this note in Fogarty's mailbox, in which he again referred to all officers in the note by their title except Complainant. She believed this was not an oversight but a deliberate act of disrespect. [Complainant]

36. Fellow troopers Ramos, Gould, and O'Grady, all testified that they were unaware of any preferential treatment given to Complainant. [Ramos, Gould, O'Grady] O'Grady testified that, as the barracks representative for the union, he received complaints from other troopers on the evening shift about favoritism shown to Benoit by Lt. Fogarty, particularly that Benoit was excused from guest patrols on Route 290. [O'Grady] O'Grady took this issue to Fogarty over two dozen times, but Fogarty took no action. [O'Grady] There was evidence that Fogarty was lax in his duties as a manager. He had been placed at SP Brookfield for his last tour

of duty, was about to retire and testified he was absent much of his last few months using up vacation time, before he retired.

37. There was testimony that Fogarty also favored Benoit by rarely assigning him to the desk and Benoit corroborated that he received this preferential treatment. [Fogarty, Benoit] The State Police allowed Benoit to park his personal vehicle in spaces set aside for official vehicles and to have boxing meetings while on duty. [Complainant] While, I find that Benoit was excused from certain duties, and that this caused some dissention among the ranks, I also find that Complainant received favorable treatment from Mason because of their personal relationship.

38. Ramos testified that Fogarty condoned Benoit's treatment of Complainant. [Ramos] While I do not believe this to be true, I do find that Fogarty was an ineffective manager who did not wish to be bothered with the personnel problems at the barracks and took no affirmative steps to take control of them.

39. Complainant made a written complaint to Lt. Fogarty on July 15, 1996 complaining of Benoit's treatment of her and of his behavior and in response Fogarty met with Complainant. [C 6] During this meeting, Complainant broke down in tears because of Benoit's actions. Fogarty offered her a transfer and suggested Complainant change her "line." [C6, Complainant] This change would not have taken her off the shift with Benoit; she would have continued to work with him, but with a Sergeant present.[Fogarty,

Benoit, Complainant] Fogarty offered no other remedy to Complainant. [Fogarty]

40. Fogarty met with Benoit for approximately one half hour for the limited purpose of showing him the State Police sexual harassment policy. He never gave Benoit a directive or counseled him to comply with the policy and did not suggest a transfer to Benoit. [Fogarty]

41. The sexual harassment policy in effect in 1996 made it incumbent upon supervisors to immediately report all complaints of sexual harassment, whether formal or informal, to the Director of Human Resources and to take aggressive steps to ensure that the conduct of employees under his supervision did not sexually harass any other employee. [C22]

42. In June or July, 1996, a fellow trooper reported to Complainant that Benoit spent an entire eight hour shift complaining about her, calling her a "bag of shit" who came in late and left early. [Complainant]

43. Complainant testified that on her birthday that year, August 1, 1996, she spent the day in her cruiser in order to avoid Benoit and to make the environment easier for her co-workers. [Complainant]

44. On another occasion in 1996, as Complainant was going up the stairs at SP Brookfield, she passed Benoit, who was coming downstairs and he bumped into her as he passed. Complainant

perceived this to be a deliberate act of intimidation. Benoit corroborated the occurrence of the incident but denied that it was deliberate. [Benoit]

45. In October 1996, a list of new State Police Academy graduates who would be stationed at SP Brookfield for their "break in" period was posted at the barracks. The list had two males and one female, Rachel Routhier ("Routhier") on it. Gould testified that Benoit went through the list and when he got to Routhier's name, stated, "Oh, great. Another cunt on the job. Well, I'm not going to break in any bitch." [Gould] Complainant claimed to be in an adjoining room and to have overheard this comment.[Complainant] Benoit categorically denied making this statement and said "Gould is a liar." Even though there was ample evidence that Benoit could be crude at times, I credit his testimony that he did not make this statement.

46. O'Grady recalled a later incident with Routhier when he joked with her about the job at the State Police being a joke. O'Grady asked Routhier if the job was a joke, and Routhier responded, "Yes, Sir." Benoit overheard the remark and later stated to O'Grady "that bitch was salty." [O'Grady] Benoit admitted that the conversation occurred and that he used the term "salty" to refer to Routhier, because he was very offended that a trooper would knock the job. [Benoit] Benoit was described as

someone who "eats, sleeps, and drinks the State Police," who is passionate about the job and hasn't lost his ambition. [Fogarty]

47. On November 14, 1996, Complainant filed a complaint with the State Police Human Resources Department. Captain Phillip Trapasso ("Trapasso") was assigned to investigate her complaint, and he interviewed her on December 4, 1996. [Complainant, Trapasso] During the December 4, 1996 interview, Complainant informed Trapasso that she was afraid of Benoit and how he would react to her complaint. [Complainant]

48. Trapasso recommended that Benoit be removed from SP Brookfield and he was transferred out of SP Brookfield to SP Athol. [Trapasso, Hibbard] Benoit was further ordered to stay away from Complainant. [Trapasso] That order meant that if Complainant was at SP Brookfield, Benoit should not be there for any reason. [Trapasso]

#### Retaliation

49. After filing her complaint, Complainant took a few vacation days to avoid being in the barracks when Benoit found out about the complaint. [Complainant] She returned to work on December 9, 1996, thinking that Benoit would not be there because it was his day off. However, as she was sitting at a table maintaining warrants, Benoit entered the barracks and stomped around Complainant, invading her personal space. He then went over to the table where she was working and slammed his dirty work

boots and clothes on the table, disrupting her work, and staring at her in an intimidating manner. [Complainant]

50. On December 10, 1996, Benoit was supposed to be off, but he came into the barracks and into the room where Complainant was polishing her work boots. He then went to the telephone and called his attorney, stating "it would all come out in the wash." He left after making the telephone call. [Complainant]

51. Although he was ordered to stay away from Complainant, Benoit continued to have his personal mail sent to SP Brookfield and maintained a locker there. Complainant saw him at SP Brookfield on at least two occasions after he was transferred to SP Athol, and she heard from other troopers that he continued to come to the barracks. [Complainant]

52. On March 26, 1997, Complainant heard Benoit yelling in the barracks that it was not right to move his things from his wall locker. [C10] On May 13, 1997, Benoit was sent on guest patrol to Brookfield and came to SP Brookfield. Complainant had to call the shift commanding officer at Holden to inform him that they were not supposed to work together. Complainant hid in the Court Officer's room while he was at SP Brookfield to avoid him, and she still heard him yell that he would not tolerate anyone "fucking" with him. [C10,Complainant] Benoit also assigned himself an investigation for larceny by check through SP Brookfield on May 30, 1997.

53. On June 1, 1997, Complainant sent a memorandum to Hibbard complaining of Benoit's continued presence in the barracks at SP Brookfield. [C10]

54. In late May or early June, 1997, Complainant was in downtown West Brookfield speaking with her friend, Kelly Trzeciak ("Trzeciak"). [Complainant] As the two were speaking on the street, Trzeciak noticed a man staring at Complainant, and she asked Complainant who it was. [Complainant, Trzeciak] Complainant turned around and saw Benoit standing on the corner of the street with his arms folded across his chest, staring at her. When she noticed him, he began to come towards her. Complainant became afraid and left after seeing Benoit because she had never before seen him off-duty in her hometown. [Complainant] She reported this incident to Hibbard. [C11]

55. Prior to the trial board hearing, Complainant was contacted by Captain Donald Baima ("Baima") who informed her that Benoit had been heard stating to a fellow trooper, words to the effect that he would kill her if he lost at the trial board. [Complainant] The officer who reported this comment to Baima believed that it was made in jest and was not a serious threat. Nonetheless, Baima was concerned that Complainant and others were being intimidated because he had observed Benoit display intimidating conduct in the past. [Baima]

56. Benoit's comment was also reported to Hibbard, who contacted Complainant to discuss it with her and offer support. [Hibbard] Complainant testified that she became upset when informed of Benoit's comment and cried over the telephone to Hibbard. [Complainant] According to Hibbard Complainant told him that she was not afraid of Benoit and did not want State Police protection. This does not comport with Complainant's testimony at the hearing that she was terrorized by this threat. [Hibbard] While Hibbard testified that Benoit's actions amounted to insubordination, no action was taken against Benoit for his violations of the stay away order.

Investigation into Complainant's Complaint

57. Trapasso, a State Police officer for thirty-two years, became the State Police sexual harassment officer in November, 1996, after receiving special training on how to handle sexual harassment investigations. He was the first to receive extensive training in sexual harassment issues. [Trapasso, Hibbard]

58. As part of his investigation, Trapasso interviewed Complainant, Lt. Fogarty, Troopers Gould and O'Grady, Lt. D'Angelo, Sgt. Mason, Trooper Ramos, Lt. Murphy, Troopers Roger W. Fleury, Stephen J. Sullivan, Kevin Ford, Sharon Gilhooley, DeMasi, Carolyn White, and Laura Foley. At the request of Benoit, he also interviewed Ruddy, Lavallee, Routhier, and Arthur Zorge. Although he gave Benoit an opportunity to be interviewed and had several

conversations with Benoit's attorney, Benoit, through his attorney, declined to give a statement. [Trapasso] Most of Benoit's witnesses had no information about sexual harassment at SP Brookfield, and some did not want to be interviewed. [Trapasso] Trapasso interviewed at least nineteen witnesses and compiled his findings into a thirty-eight page report supported by exhibits. ("Trapasso Report") He presented his report to the State Police on March 10, 1997. [C9] The report included transcriptions of the interviews Trapasso conducted, exhibits pertinent to the case, a summary of the interviews he conducted, and his findings, conclusions, and recommendations. Based upon his exhaustive three month investigation, Trapasso found that Benoit was responsible for creating a hostile work environment for Complainant because of her gender, and that his actions met the criteria for sexual harassment. [C-9] Trapasso recommended that Benoit be permanently transferred from SP Brookfield, ordered to stay away from Complainant, ordered not to discuss the investigation with anyone, ordered not to slander or libel the reputation of Complainant, and disciplined as the Department deemed necessary. [C9, p. 38]

59. After Trapasso issued his report concluding that Complainant was the victim of sexual and gender harassment, his report was reviewed and formal charges were drafted against Benoit. [Hibbard] Benoit then had a choice to either accept the discipline suggested and waive a trial board or to reject the

suggested punishment and opt for a trial board. If Benoit prevailed at a trial board, then all the charges would "go away." [Hibbard] Benoit opted to have the charges tried before a State Police Trial Board.

60. Prior to the convening of the trial board, on August 1, 1997, Benoit met with Respondent, Colonel Reed Hillman, the then most senior officer in the State Police. Hillman contacted Benoit about the meeting. Benoit and Hillman were classmates at the Academy, and Benoit testified that the two are friendly and are on a first name basis. Hillman contacted Benoit again after the trial board decision, and he spoke with Benoit directly. [Benoit]

61. The State Police trial board regulations require that "No member of a Trial Board shall sit in a hearing in which a member of his/her own Troop/Section/Unit is either a complainant or defendant; nor shall s/he sit in on any other case in which his/her personal or official relations to either party or to counsel might properly raise a question of impartiality. Said member shall be excused and replaced by an alternate." [emphasis added] [C29]

62. Major Robert J. Mullen ("Mullen"), the State Police Department Commander of the Division of Administrative Services, testified about the process of convening a trial board at the State Police. In his role, Mullen selects a president and two other members for a trial board who are then submitted to the

Colonel (then Hillman) for approval. Although he chooses the members of a trial board, he does not take affirmative steps to assure impartiality and he relies on the members of the trial board to bring a possible conflict to his attention. Mullen testified that he did not have any conversations with Colonel Hillman about the make-up of the trial board. [Mullen]

63. In Benoit's case, Mullen first recommended McLaughlin, Donoghue, and Dill (the only woman on the trial board) to sit as Benoit's trial board. Hillman approved the selection. Because Dill was incapacitated due to a foot injury, she was replaced by Lieutenant Kathleen Stefani ("Stefani"). [Mullen] Stefani had been in a boxing class Benoit taught in 1978. Benoit later sought Stefani out in 1979 for a boxing show. [Benoit] Despite the fact that Benoit had taught boxing to Lt. Stefani some twenty years earlier, she had no personal or official relationship with Benoit. I do not find that she was biased or unable to render a fair decision.

64. On July 28, 1997, Capt. Hibbard was assigned as the prosecutor to present Complainant's case before the trial board. However, the very next day, a different prosecutor, Lt. Alfred Puller, was assigned to her case. Lt. Puller had no specialized training in sexual harassment cases other than a general background in Internal Affairs, and he had no experience trying cases before a trial board. [Mullen]

65. There was ample evidence that Lt. Puller was inexperienced, and Complainant's case was his first before a trial board. [Stefani] Puller spent little to no time preparing witnesses and had difficulty framing questions for witnesses. [Stefani] He met for only ten minutes with O'Grady right before O'Grady gave his trial board testimony, despite O'Grady's attempt to seek him out for a preparation meeting in advance. Puller informed O'Grady that he did not believe in prior preparation. There was a concerted opinion that Puller's lack of preparedness resulted in an ineffective presentation to the trial board.

66. Trapasso also never met with Puller regarding how to proceed and prosecute the case. Trapasso wanted to meet and discuss all the issues with Puller prior to the trial board, but such a meeting never occurred. He had three or four conversations with Puller which totaled one half hour. Trapasso testified at the trial board for fifteen minutes. Trapasso also testified that he did not believe that Puller even read his report. [Trapasso]

67. Lt. Puller was a classmate of Benoit's. [Hibbard] He informed O'Grady that he "didn't want to do this to his classmate." [O'Grady] Puller erroneously told Complainant that she could not have private counsel present at the trial board. [Complainant] It was the universal assessment of witnesses directly involved in the trial board hearing (including Stefani,

one of the trial board members) that Puller's performance as a prosecutor of Complainant's case was poor and ineffective.

[O'Grady, Trapasso, Stefani, Complainant]

68. The trial board found Benoit not guilty of all charges.

[C21] The trial board opined that "it was clear to the Board that the primary reason for this discord was a result of a breakdown of discipline, coupled with a lack of effective command and supervision at the barracks." [C21] While I distinctly concur with the conclusion of the trial board that there was a break-down of management and supervision at the barracks during the time period at issue, this begs the question of whether management's failures allowed there to exist a workplace pervaded with sexism and gender harassment that interfered with Complainant's ability to do her job.

69. Lt. Fogarty, the station commander did not see the written trial board findings and could not recall issuing any directives to address the problems cited by the trial board. Hibbard also testified that no specific actions were taken in reaction to the finding of a breakdown of discipline. [Hibbard, Fogarty]

70. As a result of the Trial Board's finding Benoit grieved the refusal to return him to SP Brookfield. The case was tried before an arbitrator who ruled on May 24, 1999, that the State Police return him to SP Brookfield. As a result of this decision,

Benoit returned to SP Brookfield in May of 1999, and Complainant transferred out to SP Belchertown to avoid having to work with Benoit. SP Belchertown is further from Complainant's home than SP Brookfield. [Complainant]

71. After the trial board, in December 1997, Complainant took her daughter to the annual children's Christmas party hosted by the State Police Association of Massachusetts ("SPAM"), the union. Complainant had attended since 1994, but she never saw Benoit there until 1997 and has not seen him there since. Complainant testified that Benoit followed her around the room at the party and made her uncomfortable and intimidated. She insinuated that he attended this party merely to harass her. Benoit testified that he took his grandchild to the party and ignored Complainant. I do not believe that he attended this party for the purpose of intimidating or harassing Complainant. [Complainant, Benoit]

72. In 1998, Complainant suffered a rash of acts of vandalism at her home. She found the top to her gas tank on her grill glued shut; the tail light on her truck was broken; a dead chipmunk was placed on the top of her car; and a nail was pushed into the tire on her cruiser and truck. [Complainant] While Complainant would have me find that Benoit was responsible for these acts because he held a grudge against her, there is no evidence to support this conclusion and I do not so find.

73. Complainant has attempted to transfer out of SP Belchertown to a different barracks. She has been denied a transfer and told the denial was because of deployment issues. The evidence demonstrated that there were positions open and other officers and junior troopers have been transferred out of her Troop during the same time frame. [Complainant] It is reasonable to draw the inference that Complainant has been branded as a troublemaker and that the State Police refusal to transfer Complainant is retaliatory.

74. Benoit's witnesses fell into three separate categories: State Police employees, local police officers, and civilians. A number of female officers testified that Benoit had treated them well, acted professionally, and stated they had never heard him make negative remarks about female police officers. None of these witnesses had personal knowledge of any of the events that occurred on the evening shift at SP Brookfield during the 1994-1996 time period.

75. Mary Beth Murphy ("Murphy") testified that Benoit was supportive, friendly and encouraging of her when they attended the Academy in 1974. She has not seen Benoit since 1974 except once in 1997 for the Trial Board hearing and then once socially after the Trial Board hearing. She does not know Complainant and has no personal knowledge of what happened at SP Brookfield in the 1994 - 1996 time period. [Murphy]

76. Kimberly Wood ("Wood") another former girlfriend of Lavallee, never met Benoit until one week before the Trial Board hearing at the State Police in 1997, and she has never been to SP Brookfield. [Wood] Wood testified about an argument involving Complainant and Lavallee, at which she was present and where Complainant called her a "cunt" and a "tramp" and was out of control. I found her testimony about this incident to be credible.

77. Cheryl Benoit, Benoit's wife, had been to SP Brookfield only about five times in twenty-seven years. She therefore has no first hand knowledge of what happened at SP Brookfield between 1994 and 1996. She testified primarily to the fact that at one time, she and her husband had a cordial social relationship with Complainant.

78. Officer Forrest Ruddy and Lavallee both worked for the West Brookfield police department and are friends. [Ruddy, Lavallee, Huard] Lavallee's testimony was not related to the events occurring at SP Brookfield during the relevant time period; rather Lavallee testified to his conflicts with Complainant regarding their daughter and the difficulties after they split up and Complainant's unstable emotional behavior during that time. Ruddy believed Complainant was responsible for a deterioration between the relations of the State Police and the local West Brookfield Police Department. [Ruddy, Lavallee] I found their testimony to be credible and I believe that Complainant's personal

relationships inappropriately impacted the professional relationship between the two police departments and caused a rift that could have compromised the safety of some officers.

79. Ann Diemond is a part-time police officer for the Town of Wendell who worked with Benoit after his transfer to SP Athol in 1996. Diemond did not work at SP Athol, and she has no knowledge of the occurrences at SP Brookfield in the 1994-1996 time frame. She testified she had no problems working with Benoit, and that he treated her professionally and no different from the male officers. [Diemond]

80. Officer Christine Paciorek ("Paciorek") is a probation officer at the Orange District Court and worked for the Franklin County Sheriff as a corrections officer when she met Benoit in 1997. She has no knowledge of the occurrences at SP Brookfield in the 1994 - 1996 time frame and only interacted with Benoit after Complainant filed her complaint. Paciorek met Benoit through boxing and did not know him in a professional environment. [Paciorek] She testified that she had no problems working with Benoit.

81. Three State Police female employees testified on Benoit's behalf: Lt. Murphy, Trooper Routhier, and Trooper Paulette Maillet.

82. Lt. Murphy worked at SP Brookfield for approximately eight years, but did not work there during the 1994 - 1996 time

frame. She testified that she did not believe Benoit had a gender bias towards women. She could not recall working with Complainant and Benoit, nor could she recall working on the evening shift while at SP Brookfield. She also did not report to SP Brookfield during the summers from 1990-1992. [Lt. Murphy]

83. Maillet did not work regularly at SP Brookfield, and, other than one guest patrol at SP Brookfield in 1995, she did not work with Benoit until he was transferred to SP Athol in 1996. Maillet testified that she had no interaction with Complainant, nor did she ever observe Benoit working with Complainant or any females. However, Benoit treated her well, and she found him to be supportive and professional toward other female police officers. She stated that he never expressed animosity towards women nor did he treat her differently because she was a woman. [Maillet]

84. Routhier only worked with Benoit for two weeks during her training period. She testified that Benoit taught her a lot, expressed no problem with her being a trooper, but was a tough instructor. Routhier and Benoit were aware of the complaint against him when she arrived at SP Brookfield. [Routhier]

Complainant's Emotional Distress

85. Complainant cried throughout much of her testimony, at times sobbing hysterically, as she recalled the events between 1994 and 1996, before Benoit was transferred to Athol, and the events that occurred after his transfer. She testified that she felt intimidated and at times frightened by Benoit. It was clear that the ongoing conflict with him had worn her down emotionally. [Complainant]

86. Complainant testified that Benoit's treatment of her and the inadequate actions of the State Police caused her to suffer a number of physical manifestations of stress and anxiety including difficulty sleeping, weight gain and grinding her teeth. [Complainant]

87. Complainant stated that the extreme amount of stress she suffered caused her to gain in excess of 60 pounds. The weight gain is illustrated by a photograph taken in 1993 after her daughter was born when she weighed 145 pounds versus her appearance at the public hearing after having gained over sixty pounds. [Complainant, C19, C20]

88. Benoit's hostility towards Complainant was corroborated by Ramos, Gould, O'Grady, and D'Angelo. [Ramos, Gould, O'Grady, D'Angelo] Complainant testified about Benoit's known capacity to hold grudges, which Benoit corroborated. [C17, C18] Benoit's

capacity to hold grudges made Complainant anxious, a feeling that was magnified when Benoit screamed at her. [Complainant]

88. Complainant testified that she also began to fear for her personal safety. [Complainant] Benoit's comment prior to the trial board coupled with his continued visits to SP Brookfield despite having been ordered to stay away from Complainant, and his intimidating manner (particularly, the glares, hostile language, and invasion of her space) all lead me to conclude that Complainant was justified in her anxiety.

89. Complainant testified that both she and her daughter were upset on the evening when she learned of Benoit's threat against her. While it was apparent that this information exacerbated Complainant's stress surrounding her complaint against Benoit, I am convinced she did not believe Benoit would harm her physically. According to Complainant, her daughter also had nightmares after the telephone call and had to sleep with Complainant at night. [Complainant]

90. Complainant alleged that her emotional distress was further exacerbated by a rash of acts of vandalism which occurred at her home in 1998 after the trial board decision; however there is no evidence that these acts are attributable to Benoit or the State Police.

91. Complainant sought treatment with Dr. Berns, a psychotherapist in 1999 for the emotional distress she was

suffering. Although there was some discussion of Benoit in her sessions with Dr. Berns, his records reflect far more discussion of other problems: difficulties being a single parent; feelings towards and issues with Lavallee over their child; a difficult childhood and problems with her relationship with her father. The notes which mention Benoit focus on Complainant's anxiety about testifying and participating in this law suit. Complainant continued to treat with Dr. Berns at the time of the hearing.

### III. CONCLUSIONS OF LAW

#### A. Gender based hostile work environment

It is unlawful for "an employer...because of the ...sex...of any individual...to discriminate against such individual in compensation or in the terms, conditions or privileges of employment." M.G.L. c.151B, s.4 (1). Sex discrimination includes harassment in the workplace that is gender based but not necessarily sexual in nature. Dinsmore & Ford v. Home Security, Inc. 19 MDLR 4 (1997); Baldelli v. Town of Southborough Police Department, 17 MDLR 1541 (1995) (citing College-Town, Division of Interco Inc. v. Massachusetts Commission Against Discrimination, 400 Mass. 156, 508 N.E.2d 587 (1987)).

To establish liability for harassment based on gender, a complainant must establish that (1) she is a member of a protected class; (2) she was the target of speech or conduct based on her

membership in that class; (3) the speech or conduct was sufficiently severe or pervasive to alter her conditions of employment and create an abusive working environment; and (4) the harassment was carried out by an employee with a supervisory relationship to complainant, or respondent knew or should have known of the harassment and failed to take prompt remedial action. Fluet v. Harvard University, 23 MDLR 145, 161 (2001); Lazure v. Transit Express, Inc. 22 MDLR 16, 18 (2000); MCAD Sexual Harassment in the Workplace Guidelines, ft.nt.23 p.30 (October 2, 2002)

The evidence demonstrated that much of Benoit's conduct was directed at Complainant because of her gender. As Complainant testified, from 1994 through 1996, she was the only woman on the evening shift. Benoit routinely subjected her to hostile and menacing looks and comments, and general abusive treatment. He referred to Complainant, and another female trooper, as a "bag of shit" and used other profane and demeaning language in reference to women. Benoit wrote notes to Fogarty, the supervisor, which failed to refer to Complainant by her title "Trooper Magill" although he referred to all others, including himself, by title. On a number of occasions he raised his voice to Complainant and acted in a menacing fashion designed to intimidate her. Both his language and demeanor were hostile and abusive to her. By all accounts Benoit has a commanding presence that can be

intimidating, but particularly so to a female working in a traditionally all-male law enforcement environment. There was ample evidence that Benoit singled Complainant out for harsher treatment and that his intense dislike of her seemed irrational. Complainant testified that she felt she had a "bulls-eye" painted on her chest. Benoit often refused to speak directly to her, and was harsh to those troopers who were friendly with her. This was the cause of much tension in the barracks, a fact corroborated by the other troopers.

A number of witnesses testified to Benoit's harboring discriminatory animus towards women. DeMasi, who worked with Benoit on the evening shift, and O'Grady testified about his bias against female troopers.

Although Benoit testified that his harsh treatment of Complainant was due to her lackluster performance, and the fact that she was treated more favorably by Mason, the statistics he, himself, introduced demonstrate that that Complainant did not perform any worse than her male counterparts on the evening shift so as to justify his harsher treatment of her. Despite the fact that in Benoit's words they were all "slackers" who had no pride in their jobs or performance, he seemed to focus his wrath on Complainant. Further, Complainant's supervisors, Welch, Fogarty and D'Angelo, and her co-workers all vouched for the adequacy of her performance.

To constitute actionable harassment, the claimed conduct must be both objectively and subjectively offensive. Messina v. Araserve, Inc., d/b/a ARA Campus Dining Services at Massachusetts Institute of Technology, 906 F.Supp. 34, 36 (1995)[citing Ramsdell v. Western Massachusetts Bus Lines, Inc. 415 Mass. 673, 678, 615 N.E.2d 192 (1993)]. The objective standard means that the evidence of gender harassment is to be considered from the "view of a reasonable person in the plaintiff's position." Muzzy v. Cahillane Motors, Inc., 434 Mass. 409, 749 N.E.2d 691, 694(2001)[quoting Ramsdell v. Western Massachusetts Bus Lines, Inc. 415 Mass. 673, 678, 615 N.E.2d 192 (1993)].

I conclude that Complainant was subjected to behavior that meets both the objective and subjective standards for a hostile work environment. A reasonable woman in Complainant's position would have been offended by Benoit's bullying behavior, his menacing stares, his demeaning and profane references to women, his failure to address Complainant by her title, and his raising his voice and general intimidation tactics; particularly where the behavior occurred in an otherwise all male environment. Complainant's co-workers, Ramos, Gould, and O'Grady, who were male, found Benoit's behavior to be offensive and felt that he demonstrated a particular contempt for Complainant.

The fact that Complainant found Benoit's behavior hostile and intimidating, established the subjective offensiveness of Benoit's

behavior. While I found that some of his earlier actions in the years 1991-1993 were not sufficiently pervasive or offensive to constitute sexual harassment, at some point after her pregnancy, and while she was dating Sgt. Mason, her relationship with Benoit became more acutely hostile and his harassment of her escalated and became continuous and pervasive. Benoit attributed this change to the fact that Complainant's work ethic deteriorated significantly after her child was born and that she began to receive more favorable treatment from Mason. He complained about this to Mason and Foley. Benoit resented that fact that his friendship with Mason grew strained and that Mason and the other troopers on the night shift ostracized him and excluded him from their activities. I believe that Benoit was resentful, angered and hurt by the behavior of his colleagues and that this exacerbated his abusive treatment of Complainant. However, Benoit's resentment does not justify his abusive treatment of Complainant.

Since Benoit was not a supervisor, the Respondent State Police is not strictly liable for his actions. An employer is liable for the harassment of a co-worker when it knew or should have known of the harassment and failed to take reasonable steps to stop it. College Town, supra.400 Mass. at 163. Therefore, the liability of the State Police for Benoit's conduct will depend on whether the State Police knew or should have known of the harassment and, if it did know, whether or not it took

appropriate, remedial action. Rose v. Baystate Medical Center, Inc. et al, 985 F.Supp. 211, 218(D. Mass 1997).

The evidence suggests that the State Police had ample knowledge and notice of Complainant's grievances against Benoit. She first raised them to Lt. Welch in 1993 and later complained about Benoit's conduct to Lt. Fogarty. The only action taken before Complainant filed a formal complaint with the State Police was a suggestion that she seek a transfer to another barracks and to change her "line", which would not have taken her off the shift with Benoit, but would mean they would work on the same shift with a Sergeant/supervisor. The State Police did not consider transferring Benoit until after Complainant had filed a formal complaint, and Complainant expressed fear of his reaction. Lt. Fogarty had shown Benoit the sexual harassment policy, but did nothing more in terms of a directive to Benoit. I conclude that over a period of many years the State Police failed to take effective remedial action to address Complainant's concerns.

Only after Complainant filed a formal complaint and an investigation commenced, was Benoit transferred to the Athol barracks and ordered to stay away from her. Notwithstanding this directive, Benoit repeatedly violated the stay away order and continued to show up at the Brookfield barracks to collect mail and other belongings and while there, by his actions, continued to harass and intimidate Complainant. Complainant notified the State

Police that Benoit continued to visit the barracks, and despite his flaunting of a directive, conduct tantamount to insubordination, he was not disciplined. The State Police once again failed to take effective action to prevent Benoit's ongoing harassment and intimidation of Complainant. I conclude that by permitting Benoit's abusive conduct to continue unabated, the State Police failed to take adequate steps to remedy the harassment.

In sum I draw the conclusion that much of Benoit's conduct was targeted at Complainant because of her gender and was sufficiently pervasive and severe to alter the conditions of her employment and create an abusive work environment. Gnerre v. MCAD, 402 Mass. 502 (1988). His conduct was offensive and demeaning to Complainant and had the effect of creating a hostile and humiliating work environment. The fact that Benoit's discriminatory conduct was known to management and was permitted to continue unabated for a period of years, further adversely impacted Complainant's ability to perform her job.

Comment [E1]:

#### B. Retaliation

Complainant has alleged retaliation against the State Police. Chapter 151B, s.4 (4) prohibits retaliation against persons who have opposed practices forbidden under Chapter 151B or who have filed a complaint of discrimination. To prove a prima facie case

for retaliation, Complainant must demonstrate that she (1) engaged in a protected activity; (2) Respondents were aware that she had engaged in protected activity; (3) Respondents subjected her to an adverse employment action; and (4) a causal connection existed between the protected activity and the adverse employment action. Morris v. Boston Edison Company, 924 F. Supp. 65, 68-69 (D. Mass. 1996); Kelley v. Plymouth County Sheriff's Department, 22 MDLR 208, 215 (2000).

Complainant asserts that the refusal of the State Police to grant her a transfer is retaliation for her having lodged her complaints. After Benoit was returned to SP Brookfield, in compliance with an arbitrator's ruling, Complainant transferred to SP Belchertown. Thereafter, she made attempts to transfer to a different unit, but her requests to transfer were denied ostensibly because of deployment issues. However, the evidence suggests that other officers and junior troopers were transferred out of SP Belchertown during the same time frame. The refusal of the State Police to transfer Complainant from SP Belchertown constitutes an adverse action. Coming after the decision of the trial board, these denials could reasonably be deemed to be in retaliation for Complainant having brought discrimination charges against Benoit. The State Police offered no counter explanation for its failure to grant the transfer Complainant requested and

has thus not met its burden of production. Thus, it is liable for retaliation in violation of G.L. c. 151B s.4(4).

C. Threats, Coercion, Interference with Protected Rights

Complainant has alleged that Benoit threatened her and interfered with her rights pursuant to General Laws c. 151B s. 4(A). This section of G.L. c. 151B makes it an unlawful practice to "coerce, intimidate, threaten, or interfere with another person in the exercise or enjoyment of any right granted or protected by this chapter." When Complainant filed an internal complaint with the State Police on November 14, 1996, she exercised a right granted or protected by this chapter.

The evidence demonstrates that Benoit engaged in actions adverse to Complainant designed to threaten, intimidate and interfere with her rights after being placed on notice of her complaint of discrimination. With full knowledge of Complainant's internal complaint, Benoit came to SP Brookfield during her shift and intimidated her by invading her personal space, disrupting her work, staring menacingly to intimidate her, and making a telephone call to his union attorney during which he stated that "it would all come out in the wash." After being transferred to Athol, and ordered to stay away from Complainant, he continued to receive personal mail at SP Brookfield, maintained a locker there, and continued to come to the barracks to conduct investigations. Benoit was clearly angry at being transferred from the barracks he

had worked at for 15+ years. Complainant was concerned about this and fearful of his reaction after she filed her complaint. There is no question but that Benoit's intimidation tactics were intended to interfere with her rights to be free of continued harassment. Benoit claimed that he had legitimate reasons for continuing to frequent the Brookfield barracks after his transfer, but I did not find this credible. I believe he was extremely angry at having been transferred and ratcheted-up his abusive conduct toward Complainant because her complaint was the cause of his transfer.

C. Aiding and Abetting

Complainant has also brought an aiding and abetting claim against Lt. Fogarty and Colonel Hillman. M.G.L. c. 151B, s. 4(5) makes it unlawful for "any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter or to attempt to do so." M.G.L. c. 151B, s.4(5). The elements of an aiding and abetting claim were set forth by the Commission in Harmon v. Malden Hospital, 19 MDLR 157 (1997): "[The] wrong must be separate and distinct from the claim in main. . . . Further, the complainant must provide credible evidence that the aider and abettor shared an intent to discriminate not unlike that of the alleged principle offender, and that the aider and abettor knew of his or her supporting role in an enterprise designed to deprive an

individual of a right guaranteed him or her under G.L. c. 151B."

The evidence with respect to aiding and abetting leads me to conclude that Colonel Hillman and Lt. Fogarty did not act in the manner articulated in Harmon. The evidence suggests that while Lt. Fogarty was frequently absent from the barracks during the end of his tour, neglected his management duties and failed to respond in an effective way to Complainant's charges, he did not engage in any independent action to further discrimination, nor did he act with a discriminatory motive or deliberate intent to interfere with Complainant's rights. While Complainant would have me find that Fogarty took deliberate action against her by favoring Benoit and allowing him to avoid certain administrative duties, I reject the notion that this was in furtherance of discrimination against Complainant. I conclude that Fogarty's neglect of his duties does not support a claim of aiding and abetting against him individually.

Similarly, I find that there is no evidence that Colonel Hillman acted in furtherance of a discriminatory enterprise. The fact that Hillman had a meeting with Benoit prior to the trial board proceedings and the fact that Hillman and Benoit were classmates at the Academy, does not prove that Hillman took any action to bias the trial board or that the trial board was unduly influenced by Hillman. There is no evidence that Hillman contacted any members of the trial board to discuss Benoit's case

or that he was involved in any fashion with the trial board proceedings or its decision. Given the above I decline to rule that Hillman aided or abetted the discrimination in this matter.

D. Emotional Distress

The Commission is authorized to order remedies that will make a complainant whole. This includes damages for emotional distress a complainant suffers as a result of the discrimination she experienced. An award of emotional distress damages may be made based on Complainant's testimony alone. See Heraty v. Atlas Oil Co., 15 MDLR 1018, 1027 (1993); Horzesky v. R.& M. Constr. Co., 15 MDLR 1171, 1175, 1178-79 (1993). Indeed, the Massachusetts Appeals Court has stated that a finding of discrimination alone permits the inference of emotional distress. Buckley Nursing Home, Inc. v. Mass. Comm'n Against Disc., 20 Mass. App. Ct. 172, 182 (1985) (quoting Bournewood Hosp., Inc. v. Mass. Comm'n Against Disc., 371 Mass. 303, 317 (1976)).

Complainant testified to experiencing sleepless nights, weight gain, grinding her teeth, anxiety and feeling fearful for her safety once she complained about Benoit. She appeared to be worn down and worn out by the entire ordeal and cried frequently during her testimony. She also testified to intimidation by Benoit and how it impacted her work environment.

While I found Complainant's testimony in this regard to be credible, and do believe she suffered anxiety and emotional distress as a direct result of Benoit's conduct, there was ample evidence to suggest that a number of other unrelated factors in her life contributed significantly to her emotional distress. These included her troubled personal life, unstable relationships, and single motherhood. There was testimony by Complainant that she felt abandoned by her father and other men in her life. Her relationship with Jeffrey Lavallee, the father of her child, ended bitterly and thereafter was plagued by arguments about custody issues. She had angry confrontations with Lavallee, some in public. On one occasion Complainant argued with him loudly in public calling his new girlfriend a "tramp" and a "cunt." During another altercation with him he so feared for his own and Complainant's safety that he forcibly took her weapon from her. [Lavallee] Their personal dispute caused a rift between the SP Brookfield and a local police department. There was testimony that Complainant told her fellow troopers not to back up the local police force, because of her bitter disputes with Lavallee.

Complainant's relationship with Sgt. Mason, also contributed to stress and acrimony in the workplace. Respondent would have me find that Complainant's denial of this relationship substantially destroys her credibility as a witness, but I decline to make this conclusion, because much of Complainant's testimony was credible

and persuasive and I will not question her reasons for refusing to acknowledge this relationship. However, the other significant sources of stress exacerbating Complainant's emotional fragility during this time do significantly diminish her claim that all responsibility for her emotional distress lies with Respondents. I cannot conclude that Benoit's harassment of Complainant and her employer's failure to effectively address it, were the sole cause of the extreme distress she manifested at the hearing.

Nonetheless, this Commission may award Complainant emotional distress damages even if other stressors existed that may have contributed to her emotional state. See Franklin Publishing Co. v. Mass.Comm'n Against Disc., 25 Mass. App. Ct. 974, 974-75 (1988) (Rescript). Complainant produced ample credible evidence that Benoit's behavior and the actions of the State Police caused her to suffer emotional distress. Therefore, I conclude that Complainant is entitled to an award of emotional distress damages in the amount of \$75,000.

Based on the foregoing findings of fact and conclusions of law, I enter the following ORDER:

- 1) Respondents State Police and Robert Benoit shall be jointly and severally liable for payment to the

Complainant the sum of \$75,000 in damages for emotional distress.

- 2) The Complaints against Respondents Fogarty and Hillman are hereby dismissed.
- 3) Respondent State Police shall conduct annual training of all personnel at the Brookfield barracks, including supervisors and managers, on issues of gender discrimination and hostile work environment based on gender for the next five years. These training sessions shall be at least five hours in length and no more than 25 persons shall attend each session.

Within 60 days of receipt of this decision, Respondent shall select a trainer from the list of trainers who have completed the Commission-certified discrimination prevention training program. Respondent shall submit a draft training agenda to the Commission's Director of training at least one month in advance of the initial training session and provide at least one month's notice of the dates and locations of any training sessions.

Documentation of compliance with this Order shall be sent to the Commission's director of training within one month of the completion of each session. It shall be signed by the trainer and shall identify the training topic, the names of those in attendance and the date and time of each

session. For purposes of enforcement the Commission shall retain jurisdiction over these training requirements.

- 4) The parties shall notify the Clerk of the Commission as to whether the ordered payment has been made. The Clerk of the Commission shall be notified of Respondent's failure to comply with the terms of this Order within the specified time periods.

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 of review within thirty (30)days of this Order.

So ordered this        day of November, 2002.

Eugenia M. Guastaferrri  
Hearing Officer