

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

PATRICIA A. COPPENRATH and
MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION

Complainants

Against

Docket No. 02-SEM-01609

MICHAEL S. CASEY,

Respondent

Appearances: James O'Brien, Esq. for Complainant Coppenrath;
Patricia M. Rapinchuk, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On February 15, 2002, the Complainant, Patricia A. Coppenrath ("Complainant"), filed a complaint with the Massachusetts Commission Against Discrimination charging that she was a victim of sexual discrimination while she worked as office manager for Respondent. Complainant alleges that Respondent physically and emotionally abused her. Probable cause issued in regard to Complainant's claims and the case was certified to public hearing on May 31, 2005. The Commission Complaint and Order of Certification to Public Hearing directed that a public hearing

be conducted to resolve whether: 1) Complainant's claim of gender discrimination and sexual harassment were time-barred; 2) Respondent engaged in gender and sexual harassment; 3) Complainant was constructively discharged; 4) to what extent, if any, Complainant suffered damages as a result of the alleged discriminatory conduct.

On September 2, 2005, Respondent submitted a Motion to Dismiss on the basis that shortly before filing this suit, Complainant filed a Bankruptcy Petition with the United States Bankruptcy Court for the District of Massachusetts and did not list this action among her assets. Respondent's motion was denied without prejudice on September 2, 2005.

A public hearing was conducted on September 7, 2005, September 8, 2005, September 28, 2005, and October 18, 2005. The parties submitted seven (7) joint exhibits. Complainant submitted three (3) additional exhibits and Respondent submitted eleven (11) additional exhibits. The Complainant and Respondent submitted post-hearing briefs on April 25, 2006 and May 1, 2006, respectively.

To the extent the parties' proposed findings are not in accord with or irrelevant to my findings herein, they are rejected. To the extent the testimony of the witnesses is not in accord with or irrelevant to my findings, it is rejected. Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

II. FINDINGS OF FACT

1. Dr. Michael Casey ("Respondent") is a dentist who owns a dental practice located

at 71 Central Street in West Boylston, Massachusetts. He is married with four daughters. He purchased his dental practice from another dentist in 1986.

2. Complainant, Patricia Coppenrath, worked for the practice prior to 1986 and remained an employee of the practice after it was purchased by Respondent. She worked for Respondent for fifteen (15) years until she left her job in August of 2001.
3. Another employee, Eva Stellato, also worked for the dental practice prior to 1986 and, as of the public hearing date, still worked for Respondent. At the time of the public hearing, she had been his employee for nineteen (19) years. Christine Gallupe had worked for Respondent for eighteen (18) years, and Linda Messier had worked for Respondent for seventeen (17) years. Except for brief intervals during which Respondent has had a male dental associate, his office has generally consisted of an all-female staff.
4. The atmosphere in the office during the first ten years after Respondent purchased the practice was a close knit, family-like environment. Respondent treated his employees to dinner and theatre in Boston during the holidays. He took several of his employees on trips to dental conventions. Spouses and other family members were often included in these plans.
5. Complainant was the full-time office manager of Respondent's dental practice. Her job included answering the phone, scheduling appointments, accepting payments from patients and insurance companies, and keeping track of patient charts. An important part of Complainant's job was making sure that the schedule was always as full as possible. Complainant was effective in keeping the

- schedule full because of her close and long-term relationship with many of the patients.
6. During the first ten years of her employment with Respondent, Complainant was very effective in performing her job. Her co-workers described Complainant as fun, outgoing, and possessing a good sense of humor. She was a close personal friend of Respondent.
 7. Messier described the relationship between Complainant and Respondent as a brother/sister relationship. Stellato testified that Complainant brought out Respondent's personality because of her outgoing nature. In the first ten years of her employment, Complainant and Respondent frequently went to lunch together and took walks together. Respondent was closer to Complainant than he was to anyone else in the office. He confided in her and she confided in him. They discussed both business and personal matters.
 8. During the approximately ten years when Complainant and Respondent were getting along, everybody in the office had fun. There was a lot of horsing around and joking. Much of this behavior was initiated by Complainant who often tried to make people laugh with her antics.
 9. Complainant would swear in the office, although not in front of patients. She sometimes used the "F" word when engaging in good humored banter with Respondent, such as telling him to "get the fuck out." Respondent was not offended by this language although he did not generally swear in the workplace. Complainant often called Respondent "peckerhead" or "dickhead." She generally used these terms in a kidding fashion. Respondent was not offended by these

- terms and sometimes responded by calling Complainant the same names.
10. During the time when their relationship was good, Complainant and Respondent roughhoused with each other. Complainant would sometimes tell Respondent that she was going to scratch his eyes out when she was frustrated with him. She also told Respondent that she was going to kick him when she became frustrated with him. Complainant sometimes grabbed Respondent and held him at arms length, making kicking motions at his shins, and he would do the same thing to her. If Respondent did not want to participate in the kicking game, Complainant would ask if he was in a bad mood. Respondent never initiated the kicking. The kicking game ended several years before Complainant left her employment.
 11. On one occasion during the kicking game, Respondent accidentally made sufficient contact with Complainant's shin to leave a bruise. He apologized after doing so. Complainant also made contact with Respondent on more than one occasion. The kicking games between Complainant and Respondent were viewed by fellow employees Messier and Stellato.
 12. Complainant threw things at Respondent, such as pens and pencils. Complainant and Respondent playfully wrestled over pens and pencils, attempting to take them out of each other's hands. Once, Complainant pulled Respondent's hand toward her and opened her mouth as if to bite him. Respondent then bit Complainant's finger in order to get her to release the pen or pencil. Both parties laughed about the incident.
 13. Complainant alleged that Respondent slapped her on one occasion. Respondent credibly denied ever slapping Complainant, even in a playful manner.

- Complainant did not mention the slap in her charge of discrimination although she mentions a litany of physical acts which she attributes to Respondent.
14. Complainant testified that she was not a “touchy-feely” person and did not like to be touched. Respondent was aware of this and he would sometimes rub her shoulders to annoy her in a playful way. After rubbing Complainant’s shoulders, Respondent would sometimes call for a group hug involving the entire office staff. While the office staff participated in a group hug, they would engage in a yoga chant. These activities were considered humorous by the participants.
 15. Complainant would sometimes put the telephone receiver between her legs or under her armpits to express her annoyance with a patient’s telephone call or with Respondent.
 16. Respondent used the term “moron factor” to explain why mistakes occurred in the office. Stellato testified that Respondent used the term rather than confront individuals about their mistakes.
 17. Approximately twelve years ago, Respondent told an anecdote in the office about a conversation he had with his daughter and her then-college boyfriend. Respondent relayed to his office staff that he told the boyfriend that the secret to a happy relationship was understanding that all women are bitchy but that some are bitchier than others. Respondent’s daughter and Christine Gallupe testified that they have never heard Respondent use the term “bitch” to refer to a specific woman.
 18. Respondent often arrived at the office earlier than anyone else in order to do paperwork. He generally used Complainant’s workstation because it had a

computer. He would take all of the charts from the previous day and review them in order to make sure that the computer entries were accurate. After going through the charts, Respondent would stack them on the floor for Complainant to put away. When Complainant arrived at work, she would sometimes say “woof, woof” in a sarcastic manner to chide Respondent for making her feel like a pet dog who was expected to fetch a newspaper for him every morning. Respondent would sometimes make those sounds himself. Respondent testified that “woof woof” was a running joke between them that lasted for a short period of time and ended years before Complainant left her employment.

19. It was common knowledge in the office that Complainant was in financial trouble on several occasions. Co-workers testified that Complainant’s creditors called her at the office. During the first five years after Respondent purchased the practice, he became aware that Complainant had a large credit card debt with a high interest rate. In order to relieve her anxiety about the situation and because his practice was doing well, Respondent offered to pay off her credit card debt in the amount of \$22,000.00 and allow Complainant to pay him back, interest free, over time. Respondent allowed Complainant the option of working extra hours on Saturdays in order to maintain her level of income and pay off the money she owed to him.
20. On another occasion, Complainant borrowed between \$5,000.00 and \$7,000.00, interest free, from Respondent.
21. At one point, Respondent learned that Complainant and her family could not afford to rent a vacation cottage for their summer vacation while the office was

shut down for a week. Respondent owned a cottage on the beach in Ipswich and offered the cottage to Complainant and her family free of charge. Complainant and her family stayed at the cottage on two separate occasions. Respondent also lent Complainant his car to use during one of her vacations.

22. In January of 1998, Complainant began to experience panic attacks related to migraine headaches. Respondent's Exhibits 1 and 2. On January 23, 1998, Complainant reported a "constant panic attack" and described feeling like she was "jumping out of [her] skin." Respondent's Exhibit 2. On February 13, 1998, Complainant began treating with Dr. Cutler, a psychiatrist, for severe episodes of panic attacks. Dr. Cutler prescribed Zoloft, an anti-depressant, for anxiety. Joint Exhibit 7.

23. During the last several years of her employment with Respondent, Complainant experienced substantial stress in her personal life. Complainant's mother was diagnosed with breast cancer and in or around 2000, both of her sisters were diagnosed with breast cancer. Complainant began to take Tamoxifen as a prophylactic measure against breast cancer. Joint Exhibit 7.

24. Complainant confided in Respondent about the side effects of Tamoxifen, including a potential increase in her panic attacks and the risk of uterine cancer. Transcript at 636-637. During one of their discussions, Respondent asked Complainant whether her doctors had ever recommended a prophylactic mastectomy. Complainant testified that Respondent then told her that she could meet her Weight Watcher's goal if she had the prophylactic mastectomy. Respondent testified that he does not recall making that comment but does not

deny the possibility that he did make the comment or one like it as a type of “gallows humor.”

25. Beginning in September of 2000, Complainant was out of work approximately six weeks for a hysterectomy. During her recovery, Complainant reported hot flashes and insomnia. She told her psychiatrist, Dr. Cutler, that she missed “exercise and the people at work, [but] not the work itself.” Id.

26. While Complainant was out on medical leave, Respondent hired Linda Baker. When Baker first met Complainant prior to her surgery, Baker found Complainant to be bubbly, friendly, playful, and talkative. When Complainant returned from her surgery, Baker found her to be physically and emotionally drained. Baker observed that Complainant’s grooming and dress had deteriorated. Transcript at 567. Co-worker Linda Messier testified that Complainant appeared lethargic after she returned to work from her surgery and never got back to her pre-surgical condition. Transcript at 371.

27. During the last few years of Complainant’s employment with Respondent, she experienced stress from the medical condition of her family members. Complainant’s daughter had numerous kidney stones in the 2000 period, with one requiring surgical treatment shortly after Complainant returned to work from her surgery. Id. In July of 2001, Complainant’s husband was diagnosed with cardiopathy. Respondent’s Exhibit 11. In a medical record dated July 7, 2001, Complainant reported panic attacks and noted that her husband had been ill and that this was “intensifying” things. Respondent’s Exhibit 10.

28. During the last few years of Complainant’s employment, her attendance

- deteriorated. She came and went as she pleased. Complainant would often leave the office early or come in late and not tell Respondent about it. Respondent did not prevent Complainant taking time off.
29. When Complainant was not at work, no one else could do her job. As a result her work piled up. There were days when hygienists came into work and the patients' charts and schedules were not organized. Respondent became frustrated because the work was not getting done.
30. Over the years, Respondent's practice grew. The office became larger, the number of employees increased, and the number of patients increased. As the office became busier, Complainant's co-workers observed that she became more stressed. Complainant was upset that Respondent held her responsible if the schedule wasn't full and expected her to perform clerical work for the hygienists.
31. During the last year of her employment, Complainant again experienced serious financial difficulties. Her husband had already borrowed the maximum amount that he could from his 401K at work. Complainant and her husband anticipated incurring educational expenses associated with her daughter going to college. Complainant asked Respondent to borrow money again. Respondent told Complainant that he would need to see a good faith effort on her part to eliminate her debt if he was going to lend her money again. He suggested that she sell the car on which she owed money. According to Eva Stellato's credible testimony, Complainant was angry at Respondent for telling her what she should do in her personal life.
32. During the last year of Complainant's employment, there was no longer any

horseplay or joking between Complainant and Respondent. Transcript at 437, 449, 541. The parties were abrupt with each other. Complainant would sometimes use an intermediary to deliver messages to Respondent. Transcript at 373-374, 452-455. According to the credible testimony of co-workers Eva Stellato and Linda Baker, Respondent became more demanding of Complainant, and Complainant became nasty and sarcastic to Respondent. Transcript at 539; 577. Co-worker Christine Gallupe testified credibly that Complainant and Respondent seemed angry at each other and that Complainant was disrespectful to Respondent. Transcript at 463-467.

33. At some point in 2001 towards the end of her employment with Respondent, Complainant received a job offer for a position as an officer manager with another dentist. She told her co-workers that she did not want to take the job because it required her to work in the evening. Transcript at 259-261; 550. Complainant's interest in another job coincided with her effort to withdraw funds from her 401K. Complainant learned that the only way to withdraw her 401K funds was if she were no longer employed by Respondent. Complainant advised Respondent that she would be quitting in the near future. Transcript at 671.
34. On August 16, 2001, Complainant informed Respondent that she was quitting. Transcript at 673. Co-worker Linda Baker overheard Complainant tell Respondent that she was quitting and saw her walk out of the office. Transcript at 580.
35. The following day, Complainant returned to the office with a doctor's note. She tearfully accused Respondent of not caring if she ever came back. Respondent

told her that he did not care if she came back. Transcript at 673-674.

36. Complainant left and never returned to work after that day. She applied for and collected workers' compensation benefits based on her claim of work-related stress injuries. At the time of public hearing, Complainant collected \$634.00 per week in benefits.

37. On October 4, 2001, approximately six weeks after Complainant stopped working for Respondent, she and her husband filed for bankruptcy. Joint Exhibit 5. At the time of the bankruptcy filing, Complainant and her husband owed \$6,500.00 on a car loan, \$3,800.00 to the IRS, and \$36,000.00 in credit card debt to various creditors. Id.

III. CONCLUSIONS OF LAW

A. Hostile Work Environment

Complainant asserts gender discrimination on the basis of a hostile work environment, i.e., gender harassment.¹ See Magill v. Massachusetts State Police, 24 MDLR 355 (2002) (gender harassment where supervisor subjected complainant to profane and demeaning language in reference to women, refused to use her professional title, raised his voice to intimidate her and singled her out for harsh treatment); Brown v. Phoenix and Foxwood, 22 MDLR 160 (2000) (repeated derogatory comments regarding complainant's gender constituted actionable conduct). Harassment in the workplace that is gender-based but not necessarily sexual in nature, is a recognized form of discrimination. See Dinsmore & Ford v. Home Security, Inc., 19 MDLR 4 (1997);

¹ The Certification Order in this case directed that a public hearing to be held to determine whether Respondent engaged in gender and sexual harassment. Because the standards for evaluating gender and sexual harassment are the same and because most, if not all, of the claims asserted may be characterized as allegations of gender harassment, I shall analyze Complainant's discrimination claim under the rubric for a hostile work environment based on gender.

Baldelli v. Town of Southboro Police Department, 17 MDLR 1541 (1995). To establish a prima facie case of gender harassment, Complainant must show that: 1) she is a member of a protected class; 2) she was the target of speech or conduct based on membership in the class; 3) the gender-based harassment was sufficiently severe or pervasive to alter the terms or conditions of employment and create an abusive working environment; and 4) the harassment was carried out by a supervisor or by an employee in a situation where the employer knew or should have known of the harassment and failed to take prompt remedial action. See MCAD Sexual Harassment in the Workplace Guidelines, p. 30, n. 23 (October 2, 2002); citing Fluet v. Harvard University, 23 MDLR 145, 161 (2001); Lazure v. Transit Express, Inc., 22 MDLR 16, 18 (2000). Whether an environment is "hostile" or "abusive" can only be determined by looking at all of the circumstances, including the frequency of the offensive conduct, its severity, whether it was physically threatening or humiliating, or a mere offensive utterance, and whether it interfered with the employee's work performance. See Scionti v. Eurest Dining Services, 23 MDLR at 240 citing Harris v. Forklift Systems, Inc., 510 U.S.17 (1993).

As with a claim of sexual harassment, gender-based harassment must be objectively and subjectively offensive. See Ramsdell v. Western Bus Lines, Inc., 415 Mass. 673, 678 (1993). The objective standard means that the evidence of gender harassment must be considered from the perspective "of a reasonable person in the plaintiff's position." Id. at 678. The reasonable woman inquiry requires an examination into all the circumstances, including the frequency of the conduct, its severity, whether it was physically threatening or humiliating, whether it unreasonably interfered with the

worker's performance and what psychological harm, if any, resulted. See Lazure v. Transit Express, Inc., 22 MDLR 16, 18 (2000).

Complainant's charge of hostile work environment discrimination derives from her contention that over the years Respondent changed from a compassionate and friendly employer into an offensive and demeaning one. She contends that he referred to her as "peckerhead" or "dickhead" on a continual basis, made the sound of a barking dog when she picked up items from the floor, taunted her about the possibility of a double mastectomy, intruded into her in lunchtime walks without being invited, rubbed her shoulders and involved her in group hugs despite the fact that the contact was disagreeable to her, repeatedly kicked her and, on one occasion, inflicted a bruise, twisted her arm, bit her finger, slapped her in the face, used the term "moron factor" when referring to women in the office, and used the terms "bitch, bitchy, and bitchier" in conversations with her.

Had Respondent's personality changed in the manner described by Complainant, causing him to become an insensitive and physically aggressive boss during the final years of the parties' employment relationship, Complainant's claim of gender discrimination might have merit. The credible evidence, however, does not support such a change. Throughout his career as a dentist, Respondent employed an all-female staff. At least four of his employees, including Complainant, worked for him fifteen years or longer. No other employee corroborated Complainant's charges of gender discrimination. The office atmosphere was, by all accounts, friendly and close-knit during the first ten years after Respondent purchased his practice. There was friendly joking and an atmosphere of camaraderie.

The credible evidence supports Respondent's assertion that it was Complainant who behaved in the early years of the parties' employment relationship as a boisterous and sometimes vulgar officer manager who, after experiencing financial reversals, ill health and family problems, no longer enjoyed the office atmosphere which she had fostered. Complainant, not Respondent, coined the terms "peckerhead" and "dickhead" as a way of addressing Respondent, uttered obscenities in the office, playfully threatened to scratch out Respondent's eyes; and sarcastically said "woof, woof" to imitate a pet dog in response to Respondent putting charts on the floor.

While Respondent used the term "moron factor" in the office, he did so as an alternative to calling specific individuals to task for making mistakes. Eva Stellato testified that she believed that Respondent used the term "moron factor" so that he did not have to confront individuals about mistakes which they made. According to the credible testimony of Respondent's daughter and Christine Gallupe, Respondent never referred to women as "bitches." The parties agree that Respondent may have used the term "bitchy" in an anecdote he shared with his office staff more than a decade prior to Complainant quitting her job, but the reference was neither timely nor directed at Complainant. Likewise, even if Respondent told Complainant that she could meet her Weight Watcher's goal with a prophylactic mastectomy, such a comment represents a lapse of judgment rather than gender-based hostility.

Just as Complainant was the primary user of off-color language, it was she who generally initiated kicking motions and other physical gestures towards Respondent. Respondent credibly denied ever slapping Complainant. Although there were occasions when Respondent reacted in kind to Complainant's kickboxing motions, such interactions

were initiated by Complainant. Thus, even if Respondent accidentally bruised Complainant on one occasion when they were horsing around and/or bit her finger as they engaged in a playful struggle over a pen or pencil, such contact stemmed from consensual play, not sexual assault. In this regard, I credit the testimony of Eva Stellato who testified that Complainant expressed concern about Respondent being in a bad mood on days when he wouldn't engage in their kicking game.

Respondent's generosity towards Complainant is another factor which undermines her claim of gender harassment. On numerous occasions over a long employment relationship, Respondent pulled Complainant out of debt, provided a free vacation cottage for her family vacation, and lent Complainant his car. These are not the actions of an employer bent on demeaning his employee. It was only after Respondent refused to loan Complainant more money that Complainant charged him with gender harassment. This sequence of events suggests that the real reason for the charge of gender harassment was Complainant's frustration over the parties' deteriorating relationship, not Respondent's reaction to her gender. The credible circumstances in the case fail to establish a hostile work environment based on gender.

Furthermore, because Complainant herself participated in and often initiated the conduct she now alleges to be discriminatory, she cannot claim that the conduct was subjectively offensive to her. In order to demonstrate harassment that rises to the level of a statutory violation, Complainant must prove that "her work environment was both subjectively and objectively offensive; one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so." Faragher v. City of Boca Raton, 524 U.S. 775, 787 (1998). Complainant cannot satisfy the subjective element of a

gender harassment case because she injected the very elements of vulgarity into the office that she now claims were offensive to her. It was Complainant who introduced the terms “dickhead” and “peckerhead” into the office lingo, who used the “F” word at work, and who swung the office phone between her legs and under her armpit. These are not the words and actions of a hypersensitive individual unable to deal with Respondent’s reactions to the conduct she, herself, initiated. See Candelieri v. Vanson Leathers, Inc., 24 MDLR 228 (2002) (complainant who told dirty jokes and inserted balloons under her shirt at work was not subjectively offended by alleged activity of her employer).

Finally, the conduct which Complainant asserts to be offensive, such as physical horseplay, neck rubbing, and group hugs, all occurred years prior to Complainant quitting her job. None of this behavior occurred during the last six months of Complainant’s employment, the relevant statute of limitations at the time. By the last six months of Complainant’s employment, the parties were barely speaking. The physical and emotional distance between the parties during the last six months of their employment relationship created a barrier between that period and the friendlier interactions which occurred years earlier. Had Complainant believed that Respondent’s earlier behavior constituted gender harassment, she should have complained in a timely fashion rather than file her claim outside of the statutory limitations period. See Cuddy v. The Stop and Shop Supermarket Company, 434 Mass 521 (2001) (timely claims must part of an ongoing pattern of discrimination and have an anchoring event occur within the statutory limitations period).

B. Constructive Discharge

In order to establish constructive discharge, Complainant must prove that her working conditions were so intolerable that a reasonable person would have felt compelled to resign. See GTE Products Corp. v. Stewart, [421 Mass. 22](#), 34 (1995) (constructive discharge in sexual harassment context); Choukas v. Ocean Kai Restaurant, 19 MDLR 169, 171 (1997) (same); Said v. Northeast Security, 18 MDLR 255, 259 (1996) (constructive discharge in racial discrimination context). See generally MCAD Sexual Harassment in the Workplace Guidelines, VIII - Constructive Discharge. Constructive discharge can occur even if the employer does not act with the specific intent of forcing an individual to resign. See Langford v. Department of Employment and Training, 17 MDLR 1043, 1063 (1995), *aff'd*, 18 MDLR 36 (1996) (Full Comm'n). A claim of constructive discharge under chapter 151B does not arise, however, when Complainant resigns due to general dissatisfaction with the workplace or as a result of other conduct that does not violate chapter 151B. See GTE Products, 421 Mass. at 35 (citations omitted). Adverse working conditions must be unusually “aggravated” or amount to a “continuous pattern” in order to be deemed “intolerable.” Id.; see also Robinson v. Hafner’s Service Stations, Inc., 23 MDLR 283 (2001) (no constructive discharge despite allegations of pornographic material in work area, solicitation that complainant show her breasts and pull up her skirt, and placement near complainant of carved peach in shape of a female sex organ).

An employee is expected to make a reasonable attempt to straighten out any misunderstandings before claiming constructive discharge. See Pio v. Kinney Shoe

Corp., 19 MDLR 127, 131 (1997). An unwillingness to compromise cannot be grounds for a claim of constructive discharge. See GTE Products v. Stewart, 421 Mass. at 34.

The Complainant has not made out a prima facie case of constructive discharge. The standard to prove a constructive discharge is an objective one; an employee's subjective perceptions do not govern. See Lee-Crespo v. Schering-Plough del Caribe, 354 F.3d 34, 45-46 (1st Cir. 2003). From an objective standpoint, the Complainant's work environment was not so intolerable that she had no other recourse but to walk away from her job. While Complainant may have been unhappy with Respondent's expectations of her and the deterioration of their friendship, the situation was not intolerable from an objective standpoint.

The credible evidence establishes that during the last year of Complainant's employment, there was no longer any horseplay or joking between Complainant and Respondent. Respondent became more demanding of Complainant and Complainant became disrespectful and sarcastic to Respondent. She would sometimes use an intermediary to deliver messages to Respondent rather than speak to him directly. Complainant's attendance was poor. Her absences caused her work to pile up, which increased her stress. Thus, Complainant, herself, is responsible for much of the tension in her employment situation. During the first half of 2001, the circumstances in the dental office were not ideal, but they did not constitute an intolerable atmosphere foisted on the Complainant by Respondent. Complainant's decision to quit stemmed from ill health, both mental and physical, and a desire to withdraw funds from her 401K, rather than the Respondent's misconduct.

IV. ORDER

For the reasons set forth in this decision, the Complaint is hereby dismissed.

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 for Review within thirty (30) days of receipt of this Order.

So ordered this 13th day of July, 2006.

Betty E. Waxman
Hearing Officer