

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and PHILLIP  
LAMONTAGNE,  
Complainants

v.

DOCKET NO. 01-SEM-0290

MASSACHUSETTS DEPARTMENT OF  
YOUTH SERVICES & MARIA CORDERO  
Respondents

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Judith E. Kaplan in favor of Respondents Massachusetts Department of Youth Services (“DYS”) and Maria Cordero, the Director of Human Resources/HR liaison for DYS. Following an evidentiary hearing, the Hearing Officer concluded that Respondent was not liable for discrimination on the basis of handicap and retaliation in violation of M.G.L. c. 151B, § 4(16). Complainant appealed to the Full Commission.

The responsibilities of the Full Commission are outlined by statute, the Commission’s Rules of Procedure (804 CMR 1.00 et. seq.), and relevant case law. It is the duty of the Full Commission to review the record of proceedings before the Hearing Officer. M.G.L. c. 151B, § 5. The Hearing Officer’s findings of fact must be supported by substantial evidence, which is defined as “...such evidence as a reasonable mind might accept as adequate to support a finding...” Katz v. MCAD, 365 Mass. 357, 365 (1974); M.G.L. c. 30A.

It is the Hearing Officer's responsibility to evaluate the credibility of witnesses or to weigh the evidence when deciding disputed issues of fact. The Full Commission defers to these determinations of the Hearing Officer. See e.g., School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonade Hotel, 4 MDLR 1007, 1011 (1982). The Full Commission's role is to determine whether the decision under appeal was rendered in accordance with the law, or whether the decision was arbitrary or capricious, an abuse of discretion or was otherwise not in accordance with the law. See 804 CMR 1.23.

Complainant's counsel has appealed the decision on the ground that the Hearing Officer findings were erroneous and that she erroneously failed to consider additional evidence of Complainant's functional limitations.

We have carefully reviewed the Complainant's Petition and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review articulated therein. As a result of our review, we find no material errors of fact or law and conclude that there is substantial evidence in the record to support the findings of fact made by the Hearing Officer with regard to Respondent's obligation to accommodate Complainant given the evidence presented at hearing. Nor did Complainant demonstrate that the Hearing Officer erred in failing to consider additional evidence. There was no showing that the evidence was not available to the Complainant at the time of the public hearing or, that even if such evidence had been proffered, that it would have altered the outcome of the Hearing Officer's decision. We therefore, deny the appeal and affirm the decision below in its entirety.

## **ORDER**

This Order represents the final action of the Commission for purposes of M.G.L. c. 30A. Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint in superior court seeking judicial review within 30 days of receipt of this decision in accordance with M.G.L. c. 30A, c. 151B, § 6, and the 1996 Superior Court Standing Order on Judicial Review of Agency Actions. The filing of a petition pursuant to M.G.L. c. 30A does not automatically stay enforcement of this Order. Failure to file a petition in court within 30 days of receipt of this Order will constitute a waiver of the aggrieved party's right to appeal pursuant to M.G.L. c. 151B, § 6.

SO ORDERED this 13<sup>th</sup> day of November, 2007.

---

Walter J. Sullivan, Jr.  
Chairman

---

Martin S. Ebel  
Commissioner