

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

\*\*\*\*\*

RENEE MCFAIL and  
MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION

Complainants

Against

Docket No. 04-BEM-01224

SYLVANIA LIGHTING SERVICES,  
Respondent

\*\*\*\*\*

Appearances: Katherine J. Michon, Esq. and Marc D. Freiburger, Esq. for Complainant;  
Laurie F. Rubin, Esq. and Kristin J. Knuuttila, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On, (“Complainant”) brought an action against for discrimination based on sex in violation of G.L. c. 151B, section 4; G.L. c. 149, section 105D. Complainant claims that

Probable cause issued in regard to Complainant’s claims and on , the case was certified to public hearing. A public hearing was conducted on . The parties submitted) joint exhibits. Respondent submitted two ( exhibits and Complainant submitted exhibit. The Complainant and Respondent submitted post-hearing briefs on or

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, the testimony 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. Complainant Renee McFail ("Complainant") began working at Sylvania Lighting Services in 1993 as a full-time financial analyst.<sup>1</sup>
2. Sylvania Lighting Services ("Respondent")
3. In early January of 2003, Complainant verbally informed her supervisor, Linda McNeely that she was pregnant.
4. In mid-January of 2003, Complainant requested that Respondent allow her to work from home due to complications of her pregnancy.
5. Complainant was out of work from January 16, 2003 through January 31, 2003.
6. During the week of February 3 through February 7, 2003, Complainant worked from home for twenty hours.
7. From February 10, 2003 through February 21, 2003, Complainant was not medically cleared by Respondent to work due to medical reasons related to her pregnancy.
8. Respondent cleared Complainant to return to work on February 24, 2003 subject to certain medical restrictions of working from home and working in a reclined position.

---

<sup>1</sup> Finding of fact #1 and fourteen other findings were stipulated to by the parties and reproduced herein.

9. From February 24, 2003 through May 26, 2003, Complainant worked a twenty-hour schedule.
10. On May 27, 2003, Complainant was unable to work because of medical complications related to her pregnancy.
11. On July 29, 2003, Complainant gave birth to her daughter.
12. Complainant received unemployment compensation benefits totaling \$10,686.
13. As of September 8, 2003, Tim Wiedner assumed Complainant's job responsibilities.
14. Complainant moved to Georgia in 2004.
15. Complainant secured full-time employment in Georgia in November of 2005, earning \$50,000. At the time she stopped working for Respondent, her annual salary was \$44,890.56.

### III. CONCLUSIONS OF LAW

M.G.L. Chapter 151B, sec. 4 para. 1 makes it an unlawful practice to discharge an employee because of her sex. "Pregnancy and childbirth are sex-linked characteristics and any actions of an employer which unduly burden an employee because of her pregnancy or the requirement of a maternity leave are considered sex discrimination." MCAD & Campbell v. Suffolk University Law School, 28 MDLR \_\_\_\_ (2006) *quoting* School Committee of Braintree v. MCAD, 377 Mass. 424, 430 (1979); Massachusetts Electric Co. v. MCAD, 375 Mass. 160, 167 (1978); *see also*, Gowen-Esdaile v. Franklin Publishing Co., 6 MDLR 1258 (1984) (termination of complainant during troubled pregnancy because of fears of further absences deemed unlawful sex discrimination). Further, M.G.L. c. 151B sec. 4 para. 11A makes it unlawful for an employer to refuse to

restore a female employee to employment following a maternity leave under M.G.L. c. 149, sec. 105D.

Complainant alleges that Respondent violated the above-cited provisions by terminating her employment because she was pregnant, but the

In order to establish a prima facie case of pregnancy/maternity leave discrimination in the absence of direct evidence, Complainant must show that: 1) she is a member of a protected class, 2) she was performing her job at an acceptable level, 3) she was terminated and/or her position was eliminated, and 4) Respondent hired a replacement with similar qualifications or there is proof that Complainant's termination occurred in circumstances that would raise a reasonable inference of discrimination. See Weber v. Community Teamwork Inc., 434 Mass. 761 (2001); Sullivan v. Liberty Mutual Ins. Co., 444 Mass. 34 (2005).

Complainant was thus, a member of a protected class. By all accounts Complainant was a good employee. Since there is no evidence that Respondent replaced Complainant with another employee, the central issue in the case is whether there is proof that Complainant's termination occurred in circumstances that would raise a reasonable inference of discrimination. I conclude that such proof is lacking. Moreover, even if Complainant had succeeded in establishing a prima facie case of discrimination, Respondent has articulated and produced credible evidence to support a legitimate, nondiscriminatory reason for its action and Complainant has failed to show that Respondent's reason is a pretext for unlawful discrimination. See McDonnell Douglas Corp. v. Green, 411 U.S. 792; Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 116-117 (2000); Wynn & Wynn v. MCAD, 431 Mass. 655, 665

(2000).

IV. ORDER

This decision represents the final order of the Hearing Officer. Pursuant to 804 CMR 1.23, any party aggrieved by this decision may seek review by the full Commission by filing a notice seeking review within ten (10) days of receipt of this decision, and a petition for review within thirty (30) days of receipt of this decision.

So ordered this day of , 2008.

---

Betty E. Waxman, Esq.