

THE COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

---

MASSACHUSETTS COMMISSION	)	
AGAINST DISCRIMINATION and	)	
SHANNON GEER	)	
Complainant	)	
	)	
v.	)	Docket No. 97-BEM-4796
	)	
	)	
WAL-MART STORES, INC.	)	
Respondent	)	

---

Appearances:

Michael M. Kramer, Esq., for Complainant  
Chauncey D. Steele, IV, Esq., for Wal-Mart Stores, Inc.

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On December 29, 1997, Complainant Shannon Geer filed a complaint with the Massachusetts Commission Against Discrimination (hereafter: the Commission).<sup>1</sup> The complaint charged Wal-Mart Stores, Inc. (hereafter: Respondent or "Wal-Mart") with discrimination based on Complainant's sex (female) in violation of Massachusetts General Laws, Chapter 151B, §4, paragraph 1. Complainant alleged that Wal-Mart discriminated against her when it failed to take corrective action against a male co-worker who harassed her from June 1997 until September

---

<sup>1</sup>Edward Geer, Complainant's father, also signed the instant complaint on December 23, 1997.

1997 when she quit her cashier position. (Complaint, dated December 23, 1997).

Attempts to conciliate this matter were unsuccessful. On February 27, 2002, Investigating Commissioner Dorca I. Gomez, certified this case for a public hearing.

I held a public hearing in this case on January 20 and 21, 2004. On March 15, 2004, Wal-Mart filed a post-hearing memorandum with proposed findings of fact and conclusions of law. Complainant filed her proposed findings of fact and conclusions of law on March 18, 2004.

I have carefully reviewed and considered the entire record before me, including the testimony, all exhibits, proposed findings of fact, conclusions of law and supporting argument. To the extent the proposed findings and conclusions of law are not in accord with my findings and conclusions, they are rejected. I have omitted certain proposed findings and conclusions of law as not relevant or unnecessary to a proper determination of the material issues presented. I have modified other findings and conclusions of law to render them acceptable. Based on the credible evidence in the public hearing record and reasonable inferences drawn therefrom, I make the following findings of fact, conclusions of law and order.

## II. Findings of Fact

1. Complainant Shannon Geer is a female who currently lives with her spouse, Larry Quiet (hereafter: Quiet), in Taunton,

Massachusetts.<sup>2</sup> At all times relevant to this complaint, Complainant lived with her parents, Edward and Cheryl Geer, and her brother in East Taunton, Massachusetts. Complainant graduated from Taunton High School in June 1999.

2. From February 1997 to September 1997, Complainant worked as a part-time cashier for Wal-Mart in its retail store located at 36 Paramount Drive, Raynham, Massachusetts (hereafter Raynham Wal-Mart). Raynham Wal-Mart is located on Route 44 and is approximately two and one half miles from Complainant's home.

3. During her employment at Raynham Wal-Mart, Complainant worked five or six days each week for approximately 20-25 hours. Complainant's work shift was 5:00 p.m. to 10 p.m. When initially hired at Raynham Wal-Mart, Complainant earned \$5.25 per hour.

4. Complainant was 16 years old and a sophomore at Taunton High School when she began working at Raynham Wal-Mart. Based on Complainant's demeanor and testimony, I find that she was a relatively unsophisticated witness at the public hearing.

5. Wal-Mart Stores, Inc. is a Delaware corporation whose headquarters are located in Bentonville, Arkansas. At all times relevant to the instant complaint, Wal-Mart operated Raynham Wal-Mart and was an employer within the meaning of Massachusetts General Laws, Chapter 151B, §1, paragraph 5.

6. Mark D. Lothson has worked as a manager for Wal-Mart for approximately 15 years. Lothson worked as the store manager at

---

<sup>2</sup>During the public hearing, Complainant was also referred to by her married name, Shannon Geer-Quiet.

Raynham Wal-Mart from the fall of 1995 until the fall of 1998.

7. Peter Ryan worked for Wal-Mart from 1983 until June 1998. Ryan began working as an assistant manager at Raynham Wal-Mart in February 1997. Ryan worked five days a week: 7:00 a.m. to 5:00 p.m. on three days and 10:00 a.m. to closing on two days. Ryan supervised the domestics, furniture and fabrics departments and the front end of store where the cash registers were located.

8. In October 1995, Charles E. Fisher began working as a sales associate in the food department at Raynham Wal-Mart. Fisher's duties included stocking shelves and cleaning. Fisher graduated from Bristol Plymouth Technical School in 1994. During the period relevant to this complaint, Fisher was 21 years old.

9. In 1996, Fisher moved from the food department to the hardware department at Raynham Wal-Mart. In February 1997, Fisher moved to the front end of Raynham Wal-Mart to work as a cashier. In August 1997, Fisher returned to the food department that was located approximately 100 feet from the cash registers where Complainant worked.

10. In 1997, Nancy G. Johnson worked as a customer service manager (CSM) at Raynham Wal-Mart. Among her duties, Johnson was responsible for supervising the front end of the store, including the cashiers and "people" greeters. Johnson worked from 11:00 a.m. to 8:00 p.m. or 2:00 p.m. to 10:00 p.m. She reported directly to the Head CSM.

11. Johnson testified that she directly supervised Complainant in 1997. Johnson also directly supervised Fisher in 1997 until he

transferred to the food department.

12. On or about May 25, 1997, Ryan and Lothson gave a three-month performance evaluation to Complainant. Her evaluation stated, in part, that she was a "very honest associate" and "works well with all associates." (Complainant's Exhibit No. 1).

Complainant testified that she did not have problems performing her work during her first 90 days of employment at Raynham Wal-Mart.

13. Beginning in March or April 1997, Complainant began to date Fisher about once a week. When Complainant began dating Fisher, she believed that he was 22 or 23 years old. During their dates, Complainant and Fisher went to the movies and shopping malls and went out with groups of friends. Complainant dated Fisher during a period when she had broken up with Quiet who was then her high school boyfriend.

14. At the end of May or early June 1997, Complainant called Fisher and told him that she did not want to date him anymore because she felt that it "wasn't going to work between them." Complainant felt that Fisher was "just too much older" than her and that "he wanted more of a relationship than she wanted," including a sexual relationship. Complainant testified that Fisher yelled and screamed at her and hung up when she "broke up" with him over the telephone. I credit Complainant's testimony.

15. Immediately after Complainant ended her relationship with Fisher, she testified that he began to give her looks that scared her while she was working as a cashier at Raynham Wal-Mart. Complainant testified that Fisher repeatedly made

intimidating gestures toward her, during which he looked very angry, bared his teeth like a dog and rolled his eyes while he worked at the cash register directly in front of or next to her.

16. Complainant testified that Fisher's intimidating gestures made her nervous and caused her to sometimes scan customer items two or three times and shut her register door without giving the correct amount of change to her customers. Complainant also testified that Fisher waited for her immediately outside Raynham Wal-Mart, walked in behind her and attempted to follow her whenever she took her breaks or went to the bathroom. Complainant testified that Fisher's conduct continued in this manner between 10-20 times over the next three months. I credit Complainant's testimony.

17. In the end of May or beginning of June 1997, Complainant told her father that Fisher was following her, making unwelcome comments and bothering her. Geer told Complainant to talk to her "boss" and let Wal-Mart know "what was going on."

18. In the beginning of June 1997, Complainant told Cheryl Burnham, a CSM, that she was having trouble working with Fisher and felt "very nervous, very scared." Complainant testified that Burnham told her to call Valerie Sentiger, another Wal-Mart manager who supervised the cashier locations on that day.

19. Complainant called Sentiger who told her that she was "too busy for this right now" and hung up. Complainant returned to Burnham and explained what happened during her telephone call to Sentiger. Burnham immediately took Complainant to meet with Ryan in the employee break or stock room. Complainant told Ryan that she felt very nervous and was scared working around Fisher.

Complainant testified that she told Ryan that Fisher gave her intimidating looks and that she wanted to ensure that he did not work around her anymore. Complainant also testified that Ryan appeared distracted, did not ask her any questions and did not take notes. Complainant testified that Ryan told her that he "would take care of the problem." I credit Complainant's testimony.

20. After her meeting with Ryan, Complainant and Burnham returned to the front of the store where Burnham assigned Complainant to a different register near the front doors. Complainant testified that Fisher "wasn't around" her and she did not experience any other problems with him during the remainder of her shift.

21. About three or four days after meeting with Burnham, Complainant told her parents that she was continuing to have problems with Fisher.

22. Geer testified that he and Complainant's mother met with Ryan sometime during the first week in June 1997. During the meeting, Geer described Complainant's problems with Fisher and asked Ryan to tell Fisher to leave Complainant alone. Geer testified that Ryan told them that he would "take care of the matter." Ryan also told Complainant's parents to make sure that Complainant stayed away from Fisher and to let management know if Fisher bothered her again. I credit Geer's testimony.

23. On June 24, 1997, Complainant left work at night and found a "love letter" from Fisher that he placed under a windshield wiper on her car in the store's parking lot. The letter was marked "to Shannon only." In his letter, Fisher wrote that he

felt "hurt and disappointed." He wrote that it was hard for him when he "face[d]" Complainant while he worked at the cash register next to her and that he was in a "pissy mode" (sic). Fisher also wrote that he was mad at Complainant, that it was "too" hard for him to see or hear about her with someone else and that he still loved her. (Complainant's Exhibit No. 2).

24. Sometime in July 1997, Complainant left work at night and found another "love letter" from Fisher that he also placed under a windshield wiper on her car in the store's parking lot. In this letter, Fisher wrote that he was "sorry about all the times [he] got mad at [her] when [they] weren't going out." Fisher apologized for how he had acted when he called Complainant. Fisher also wrote that he felt as if Complainant had led him on and that he did not want Complainant to continue to ignore him because it hurt him. (Complainant's Exhibit No. 3).

25. Complainant testified that Fisher's two "love letters" scared her. I credit her testimony.

26. Several days after meeting with Ryan, Geer testified that he returned to the store with Mrs. Geer and met with Lothson. Geer testified that he told Lothson that Fisher had stalked Complainant, followed her to the female restroom, made sexual gestures and left personal notes. Lothson told Geer that Walmart did not tolerate such behavior and that he "would take care of it immediately." Lothson also told Geer that he would talk directly with Fisher and any problems were "going to be straightened out." I credit Geer's testimony.

27. Complainant testified that, sometime in June or July 1997,

Fisher called her a "bitch" and a "whore" in front of his friends while he stood next to a cash register at Raynham Wal-Mart and stared directly at her. Complainant testified that this incident occurred when Fisher came into Raynham Wal-Mart on his day off. Fisher testified that he came into the store on his days off to pick up his paycheck or buy items. Fisher denied spreading any rumors about Complainant or calling her a "whore" while in the store. I credit Complainant's testimony.

28. Sometime later in July 1997, Fisher left a bouquet of mixed flowers and a self-authored poem entitled "Will I Cry" under a windshield wiper on Complainant's car in Raynham Wal-Mart's parking lot. In his poem, Fisher lamented about his love for Complainant. (Complainant's Exhibit No. 4).

29. Complainant testified that she did not discuss Fisher's love letters or poem with a store manager or supervisor when she received them because she hoped that Fisher would stop leaving them on her car and that he would finally leave her alone.

30. Fisher admitted that he wrote the "love letters" and poem over the summer of 1997 but denied that he left flowers on Complainant's car. Fisher testified that he was in love with Complainant and gave the love letters to her because he was "just kind of sorting out [his] feelings."

31. Fisher testified that he felt that he and Complainant remained friends until the end of August 1997. Fisher testified that, in the middle of August 1997, he saw Complainant in the store's parking lot. Fisher testified that Complainant gave him a hug when he told her about his grandmother's illness, told him that she was sorry and that he could call her if he wanted to

talk about it. Fisher also testified that he gave Complainant a bouquet of flowers for her birthday on August 19, 1997. I do not credit Fisher's testimony.

32. Complainant testified that she saw Fisher park in front of her house and sit in his car on two or three instances in July 1997. On one occasion, Complainant told her father who went outside but Fisher drove away.

33. Several weeks after his meeting with Lothson, Geer testified that the telephone at his house began to ring "off the hook" at all hours of the night. On one instance, Geer received a telephone call around midnight. Geer testified that he identified the calling telephone number by hitting \*69. He recognized the calling number as a pay station that he often used for his landscaping business at a gas station that was located approximately one-half mile from his house. Geer also testified that he and his son immediately drove to the gas station and saw Fisher "peeling out" in his car.

34. After this incident, Complainant and Geer went to Raynham Wal-Mart and met with an unidentified Wal-Mart investigator from its Arkansas office who was conducting a financial audit. Geer testified that they met with the investigator for over one hour but did not recall his name. Geer testified that he told the investigator about Complainant's problems with Fisher that began at the end of May or beginning of June 1997. Geer also testified that the investigator told him that he would talk to Lothson and "get it straightened out" or fire Fisher.

35. Complainant testified that, sometime at the end of July or beginning of August 1997, Fisher saw her "punch out" from work

on a Sunday afternoon and followed her out of the store into the parking lot. She testified that Fisher then sat on the top of his car in the parking lot while Complainant sat for a few minutes in Quiet's car and discussed their dinner plans. Complainant also testified that when she and Quiet pulled out of the parking lot, Fisher came "flying behind [them], screeching his tires." Complainant also testified that Fisher followed them onto the public street, stopped directly behind them at a traffic light and "revved" his engine. When Complainant and Quiet attempted to drive onto Route 44, Complainant testified that Fisher tried to "run [them] off the road" and caused them to go up on the curb. Complainant testified that she was very scared during this incident because she thought they could have gone "right off the bridge" if Fisher pushed a little more. I credit Complainant's testimony.

36. After this incident, Complainant and Quiet immediately returned to the store where Complainant paged Ryan. Complainant testified that she and Quiet went to the baby department where Ryan was working and told him about the car incident with Fisher. Complainant testified that Ryan told them to write down what had happened, that he would give it to an unspecified Wal-Mart employee and that he would make sure that appropriate action was taken. Complainant testified that Ryan never told her that he had spoken to Fisher about her concerns and that he did not ask her to stay away from Fisher. I credit Complainant's testimony.

37. On the next day, Complainant and her parents met with Ryan. Complainant testified that she gave a written statement about the driving incident on the prior day and Fisher's "love" letters and poem to Ryan. During this meeting, Complainant also

told Ryan that Fisher was working right next to her or in the food department that was approximately 20 to 30 feet away from her and that he was continuing to stare at her. Complainant asked Ryan to move her to another department and allow her to take her breaks at different times.

38. Johnson testified that Complainant complained to her at the end of August 1997 that she was having problems with Fisher. Johnson testified that she told Complainant to go to "management."

39. Ryan testified that he met with Complainant and Burnham or Sentiger in late August or early September 1997. The meeting took place in the training room in the back corner of the Raynham Wal-Mart. During the meeting, Complainant told him that she was having problems with Fisher making faces, calling her inappropriate names and making her feel uncomfortable. Ryan testified that he told that he would talk to Fisher and that he would get back to her. Ryan also testified that he told Complainant not to go near Fisher. Ryan testified that he did not make any notes of the meeting.

40. Ryan testified that he met with Fisher immediately after his meeting with Complainant and told him what Complainant had reported. Ryan also testified that Fisher told him that Complainant was making him uncomfortable although he did not recall the specific comments that Fisher reported. Ryan testified that he told Fisher that he "should not be near" Complainant and that "there would be consequences" if Ryan found out that he was "near" Complainant.

41. Ryan testified that he also told Complainant that she could

not go near Fisher and that she should report to him immediately if there was any problem. Fisher testified that he told Complainant that he would take action if he found out that Fisher was getting near her or causing problems. Ryan testified that he talked with the CSMS after meeting with Complainant and told them to watch Complainant in the front end of the store to make sure that she did not have any problems with Fisher.

42. Lothson, Ryan and Johnson testified that they never saw Fisher harass Complainant by making faces or gestures at her or calling her a "whore." Lothson and Johnson also testified that they never heard Fisher spread rumors about Complainant.

43. Ryan testified that he could not determine whether Complainant's allegations about Fisher were true because he did not have sufficient proof.

44. Ryan testified that he told Lothson about his discussion with Complainant within a few days of his meeting with Complainant. Lothson testified that Ryan also told him about "rumors of what was going on involving Complainant and Fisher outside of work."

45. Ryan testified that he completed a computer-based learning (CBL) session and attended a seminar on workplace harassment. Ryan testified that, under Wal-Mart's sexual harassment policy, Wal-Mart supervisors were expected to quickly investigate a complaint by talking to the parties and informing the store manager.

46. Ryan testified that, in early September 1997, he saw Fisher go to the front end of the store where Complainant was working as a cashier. Ryan also testified that he watched Fisher "very,

very closely" as he stocked shelves in the food department and observed that Fisher did not harass Complainant. Ryan testified that he immediately went to Complainant after Fisher left and she told him that Fisher had not bothered her.

47. Ryan did not recall ever talking with Geer.

48. Complainant testified that, a couple of times each week in July and August 1997, she received hang up telephone calls from unidentified callers at her parents' home. She testified that these calls continued until her parents changed their telephone number. Complainant testified that she never received hang up calls before her break-up with Fisher and her parents' telephone number was always unlisted. Complainant also testified that she gave her parents' telephone number to Fisher while they were dating.

49. Fisher denied that he called Complainant at her parents' home and deliberately hung up or that he called her from a pay telephone at a nearby gas station. Fisher testified that he drove by Complainant's house "all the time" because it was the most direct route to work.

50. Fisher testified that Ryan met with him near the end of August or beginning of September 1997 and told him that Complainant had alleged that he was harassing her. Fisher also testified that Ryan told him to "stay clear" of Complainant.

51. In September 1997, Complainant returned to Taunton High School for her senior year. Within two weeks of returning to high school, Complainant testified that she saw Fisher sitting in his car in one of the school parking lots. Complainant went

inside the high school and told her mother who worked there. Complainant never told a Wal-Mart manager or supervisor about seeing Fisher in her high school's parking lot.

52. In the beginning of September, Geer and Complainant's brother met with Lothson, Furtado and an unidentified woman. Lothson testified that this meeting took place within three days of Complainant's last day of work. Geer testified that Lothson told him that he thought Complainant's problems with Fisher were "straightened out." Geer testified that he told Furtado that Complainant's problems with Fisher were not corrected and that Furtado laughed and said, "there's nothing going" and that "it's all in your head." Geer also testified that he told Lothson that he was likely to seek legal advice because of Wal-Mart's failure to resolve her complaints and that Lothson replied, "Do what you have to do." I credit Geer's testimony.

53. Complainant's last day of work was September 6, 1997, on which she met with Lothson and quit. (Complaint, dated December 22, 1997). During this meeting, Complainant did not request that Wal-Mart take action against Fisher nor did Lothson propose to take any action against Fisher.

54. On or about September 9, 1997, Lothson completed an exit interview form for Complainant that indicated she "quit without notice" but he did not recall the reasons Complainant gave him for leaving. (Complainant's Exhibit No. 5). On the exit form, Lothson noted that Complainant was a "rehire."

55. When Complainant resigned her cashier position at Raynham Wal-Mart, her pay rate was \$5.72 an hour.

56. Lothson testified that he and Furtado met with Fisher on or about September 9, 1997, and told him that Wal-Mart would terminate him if Complainant's harassment allegations were true. Fisher testified that Lothson told him, sometime in the beginning of September 1997, that Complainant alleged he had followed her and Quiet out of the Wal-Mart parking lot. Fisher admitted that he followed their car out of the parking lot but denied that his car touched Quiet's car or that they drove off the road as he passed them. Fisher testified that he went through a traffic stoplight when it turned green and noticed that Complainant and Quiet made a u-turn.

57. Fisher testified that Lothson told him to stay away or "clear of" Complainant and told him that he planned to monitor the situation. Fisher testified that he understood Lothson to mean that he could not talk to Complainant on the job and to stay away from her completely.

58. Lothson testified that he did not discuss Complainant's concerns about Fisher with any CSMs or managers other than Ryan. Lothson also testified that he did not talk again with Complainant or Geer following his meeting with Geer.

59. Fisher testified that he and his mother met with Lothson on or about September 12, 1997. Fisher testified that he asked to meet with Lothson because he was concerned about being falsely accused and felt that he was at risk of losing his job especially if Complainant obtained a restraining order against him.

60. Fisher testified that, prior to the incidents at issue in this case, one or two Wal-Mart managers had criticized him for

being "too social." Fisher also testified that he dated another Wal-Mart employee in February 1997 prior to dating Complainant. Lothson testified that he did not know about Fisher dating another Wal-Mart employee or that Wal-Mart managers had criticized Fisher for "socializing."

61. In 1997, Wal-Mart's policy prohibited workplace harassment and inappropriate conduct.<sup>3</sup> (Respondent's Exhibit No. 1). Lothson testified that the policy was designed to ensure that Wal-Mart's work environment was free from all forms of harassment. Lothson also testified that it was the responsibility of Wal-Mart management to conduct a thorough and timely investigation after the filing of a sexual harassment complaint and take appropriate corrective action, as necessary.

62. Under its sexual harassment policy, Wal-Mart designated a facility manager, district manager, operations manager or regional personnel manager to conduct an investigation into an employee's sexual harassment allegations. (Respondent's Exhibit No. 1). Lothson testified that he was a "facility manager" under Wal-Mart's sexual harassment policy. Lothson also testified that he did not complete his investigation before Complainant resigned.

63. Lothson testified that there was no Wal-Mart policy that prohibited dating between sales associates at the same level.

64. In or about February 1998, Lothson prepared a written statement about Complainant's allegations and inserted it into an investigative file. (Complainant's Exhibit No. 8). Lothson

---

<sup>3</sup> The policy was revised in November 1996 and reprinted in May 1998. (Respondent's Exhibit No. 1).

also took written statements from Fisher, Ryan and Furtado and placed them into his investigative file sometime in February 1998. (Complainant's Exhibit No. 9 and Respondent's Exhibit Nos. 2 and 3). Lothson did not recall reviewing Fisher's personnel file as part of this investigation.

65. Lothson did not take any disciplinary action against Fisher based on complaints filed by Complainant or her father.

66. During the period relevant to this complaint, Complainant had headaches and difficulty sleeping at night. Complainant did not want to go to work and felt sick to her stomach when she prepared to go to work and while she was at work. Dr. Kelly Hoye, Complainant's physician, prescribed Imitrex for her headaches but Complainant was unable to continue the prescription because she did not have health insurance coverage after she left Raynham Wal-Mart.

67. When Complainant began working at Raynham Wal-Mart, she drove to the store. Complainant testified that, after she received Fisher's "love letters" in June or July 1997, she refused to drive to work. Complainant testified that she was scared that Fisher would follow her home or that he would wait for her when she arrived and she did not know what he was going to do. Complainant also testified that she was afraid of being home alone at night or in the dark and that she was scared to drive at night. I credit Complainant's testimony.

68. Geer testified that Complainant was upset and crying "a lot" in the end of May or beginning of June 1997. He also testified that Complainant did not want to drive her car and did not want to go anywhere. Geer testified that he and Mrs. Geer had to

take Complainant everywhere because she was crying and wouldn't leave the house. I credit Geer's testimony.

69. After she resigned from Raynham Wal-Mart, Complainant testified that she felt better because she did not see Fisher anymore. Complainant testified that she is still scared to drive at night because she continues to believe that Fisher is behind her or is following her. Complainant also testified that she remains scared to be at home alone and turns on every light in her house at night. Complainant testified that she continued to have headaches although she does not get them as often as she did while working at Raynham Wal-Mart. Complainant testified that she continues to have difficulty sleeping at night, including nightmares once or twice a month. I credit Complainant's testimony.

70. Geer testified that he did not have any problems with Complainant and that she did not have any medical difficulties prior to her employment at Wal-Mart in 1997.

71. Complainant moved in with Quiet in 2000 and they married in 2002.

72. Dr. Jane Boyd, a licensed and board certified psychiatrist, met with and evaluated Complainant on June 23 and July 9 and 14, 2003. (Complainant's Exhibit No. 7). Dr. Boyd diagnosed Complainant with post-traumatic stress disorder (PTSD) including intermittent insomnia, panic and anxiety features. Dr. Boyd prescribed Zoloft and advised Complainant to continue her medication and begin treatment sessions with Steven Smith, LICSW. Complainant testified that she did not continue her medication or Dr. Smith's treatment because she could not afford

it. (Complainant's Exhibit No. 6 and Respondent's Exhibit Nos. 6 and 6A).

73. At Wal-Mart's request, Dr. Stephen Weiner, a licensed and board certified psychiatrist, interviewed Complainant for two hours on November 17, 2003. Respondent's Exhibit No. 4). As part of his assessment, Dr. Wiener also reviewed Complainant's and Dr. Boyd's depositions, office notes and written correspondence to Complainant's attorney. After his interview with Complainant and review of Dr. Boyd's materials, Dr. Wiener prepared a report and assessment of Complainant's condition. (Respondent's Exhibit No. 5).

74. In Dr. Wiener's opinion, Complainant's anxiety after the summer of 1997 probably arose out of the ending of her relationship with Fisher. He testified that Complainant told him that her intermittent fears about being home alone or that Fisher would come by her house stopped once she moved in with Quiet in 2000.<sup>4</sup> Dr. Wiener testified that Complainant experienced significant relief when she stopped working at Raynham Wal-Mart and he found no major ongoing anxiety or emotional trauma after she left Wal-Mart.

75. Dr. Wiener also testified that Complainant did not demonstrate the type and nature of ongoing symptoms that were sufficient to support a PTSD diagnosis such as recurrent intensive memories or dreams, emotional numbing or persistent avoidance symptoms. (Respondent's Exhibit No. 5).

---

<sup>4</sup>In his report, Dr. Weiner noted that Complainant's "fear of running into Mr. Fisher when she was out in public and her fear that Mr. Fisher would park his car outside her house, . . . apparently greatly decreased after she moved in with Mr. Quiet." (Respondent's Exhibit No. 5, page 4).

76. Dr. Wiener recommended to Complainant that she consider treatment in a Brockton clinic that had an income-based fee structure because it was part of Catholic Charities.

77. Complainant did not work for two months after she left Raynham Wal-Mart. Complainant testified that she worked at Benny's, a discount department store, in November and December 1997 (approximately six weeks) where she stocked shelves in the toy department. During this period, Complainant worked 25 hours a week and earned \$5.25 an hour. Complainant left Benny's when it cut her weekly work hours to seven.

78. Complainant testified that she next worked at Stop & Shop where she stocked items in the healthcare and beauty department. Complainant worked 20 to 25 hours a week and earned \$5.25 an hour. Complainant did not testify regarding her length of employment at Stop & Shop.

79. In February 2003, Complainant obtained a permanent job in the Town of Raynham but did not testify regarding her salary, hours or length of employment. (Respondent's Exhibit No. 5).

80. Complainant testified that she began working as a dog groomer at Doggy Boutique in August 2003. Complainant did not testify regarding her hours of work or pay rate.

### III. CONCLUSIONS OF LAW

#### A. Hostile Work Environment

Massachusetts General Laws, Chapter 151B, §4, paragraph 1, prohibits workplace discrimination, including sexual and gender

based harassment. Ramsdell v. Western Bus Lines, Inc., 415 Mass. 673, 677 (1993). Massachusetts General Laws, Chapter 151B, §4, paragraph 16A, also prohibits sexual harassment in employment.<sup>5</sup> Doucimo v. S & S Corporation, 22 MDLR 82 (2000). Here, whether or not the conduct directed at Complainant was "of a sexual nature," it was directed at her because of her sex -- female. See e.g., Melynchenko v. 84 Lumber Co., 424 Mass. 285 (1997)(finding liability under Chapter 151B for vulgar joking despite fact that the harasser's conduct was not sexually motivated); Brown v. Phoenix and Foxwood, 22 MDLR 160 (2000)(repeated derogatory comments regarding the complainant's gender constituted unwelcome conduct of a sexual nature).

To establish liability for harassment based on sex, Complainant must show by a preponderance of evidence that: (1) she is a member of a protected class; (2) she was the target of speech or conduct based on membership in such class; (2) the gender-based harassment was sufficiently severe or pervasive to alter her terms or conditions of employment at Wal-Mart and created an abusive working environment; (3) the harassment was carried out by a Wal-Mart employee with a supervisory relationship to Complainant or Wal-Mart knew or should have known of the harassment and failed to take prompt remedial action. See Fluet v. Harvard University, 23 MDLR 145, 161 (2001); Kelley v. Plymouth County Sheriff's Department, et. al.,

---

<sup>5</sup> Sexual harassment is defined as "sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, or sexually offensive work environment." Collegetown Division of Interco v. Massachusetts Commission Against Discrimination, 400 Mass. 156, 165 (1987). See also Massachusetts Commission Against Discrimination Sexual Harassment in the Workplace Guidelines (hereafter: Sexual Harassment Guidelines), pages 4-6 (October 2, 2002).

22 MDLR 208 (2000); Beldo v. University of Massachusetts, 20 MDLR 111 (1998).

A hostile work environment occurs when unwelcome or offensive conduct is so pervasive that it creates a barrier to Complainant's full and untrammelled participation in Wal-Mart's workplace, alters the terms and conditions of her employment or unreasonably interferes with her work performance. See Ramsdell, 415 Mass. at 678; College-Town, Division of Interco v. Massachusetts Commission of Discrimination, 400 Mass. 156, 162 (1987); Waite v. Associated Heating Oil, 17 MDLR 1412 (1995). The determination of whether a particular work environment is hostile requires a factual inquiry into all the circumstances, including the frequency of discriminatory conduct, its severity and whether it was physically threatening or humiliating or merely an offensive utterance. See Faragher v. Boca Raton, 524 U.S. at 787-788.

The alleged harassing conduct must be both objectively and subjectively offensive from the perspective of a reasonable person. Ramsdell v. Western Bus Lines, Inc., 415 Mass. 673, 677 (1993). The objective standard means that evidence of gender harassment is to be considered from the "view of a reasonable person in plaintiff's position." Muzzy v. Cahillane Motors, Inc., 434 Mass. 409 (2001). There are no quantitative or numerosity requirements on the number of incidents necessary to constitute a harassment claim in the workplace. Gnerre v. Massachusetts Commission Against Discrimination, 402 Mass. 502, 507-508 (1988).

The Commission has consistently held that sex-based or sexually demeaning comments must be "continuous and pervasive"

to constitute a hostile work environment. Kelley v. Plymouth County Sheriff's Department, et. al., supra. Even if Complainant establishes a series of occasional acts of harassment, there is no liability if the events were limited in number and duration to only a few isolated remarks over a period of time. Pio v. Kinney Shoe Corp., 19 MDLR 127, 131 (1997). See also Clark County School District v. Breeden, 532 U.S. \_\_\_\_ (2001)("simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment"); Kelley v. Plymouth County Sheriff's Department, et. al., supra. (a one-time use of use of sexually charged language in the complainant's presence did not establish a violation under G.L. c. 151B); Prader v. Leading Edge Products, Inc., 39 Mass. App. Ct. 616, 619-20 (1996).

I find that Complainant is a member of a protected class based on her gender, female. Having weighed the credibility of Complainant and all the witnesses who testified in this matter, I conclude that Fisher subjected Complainant to inappropriate and offensive conduct based on her gender from June 1997 through August 1997. During this period, Fisher repeatedly subjected Complainant to intimidating gestures and stares, called her a "bitch" and a "whore," left two unsolicited "love" letters and a poem on three occasions that expressed his unrequited love for Complainant, repeatedly followed Complainant into and out of Raynham Wal-Mart and followed Complainant when she took her breaks or went to the bathroom.<sup>6</sup> As described in the "love

---

<sup>6</sup>Given my findings, I am not required to address whether Fisher's conduct outside Raynham Wal-Mart's workplace is actionable as unlawful harassment. I note, however, that Fisher's off-premises conduct was similar to and consistent with Complainant's credible testimony about his on-premises unwelcome conduct. See e.g., Sanderson v. Town of Wellfleet, 16 MDLR 1341 (1994)(the employer was not liable for conduct that occurred on a business related trip that was not sponsored by the employer but by a

letters, Fisher's harassing conduct arose from his "hurt," anger and feelings of rejection after Complainant "broke off" their dating and resumed her relationship with Quiet.

Based on my observation of Complainant's demeanor and her testimony during the hearing, I believe she was frightened and constantly intimidated by Fisher's conduct during the relevant time period and that it was clearly unwelcome to her. Fisher's conduct made Complainant anxious and upset when she was required to go to work. His conduct also made Complainant fearful while at work and materially interfered with her ability to perform her cashier duties, i.e., it caused her to make errors and made her fearful to drive alone to Raynham Wal-Mart. Complainant also credibly testified that Fisher's conduct caused her to experience recurring episodes of crying and headaches and have an ongoing fear of physical harm, driving and being alone, especially at night.

I conclude that a reasonable person in Complainant's position would have been offended by Fisher's menacing stares, demeaning and profane references to women and unwelcome verbal and physical conduct, including his "stalking." I conclude Fisher's unwelcome conduct was based on Complainant's gender and was sufficiently continuous and pervasive to alter the terms and conditions of her employment at Raynham Wal-Mart and create an abusive work environment. See e.g., Massachusetts Commission

---

professional association); Johnson v. Boston Edison, 19 MDLR 162 (1997)(non-workplace obscene telephone calls will not support a hostile work environment claim without accompanying workplace conduct). The Commission considers the following factors in assessing whether off-premises conduct constitutes harassment: "(1) whether the event at which the conduct occurred is linked to the workplace in any way, such as at an employer-sponsored function; (2) whether the conduct occurred during work hours; (3) the severity of the outside-of-work conduct; (4) the work relationship of the complainant and the harasser; (5) whether the conduct adversely affected the terms and conditions of the complainant's employment or impacted the complainant's work environment." Sexual Harassment Guidelines), Section IIE.

Against Discrimination & Flaherty v. Perini/Kiewit/Cashman, \_\_\_ MDLR \_\_\_ (2003)(the complainant's manager called her a "stupid bitch"); Doucimo v. S & S Corporation, et. al., 22 MDLR 82 (2000)(the complainant was subjected to a hostile work environment when her supervisor repeatedly called her a "'whore, slut and the 'c word'"); McAuliffe v. Suffolk County Sheriff's Department, 21 MDLR 27 (1999)(the complainant's supervisor harassed her when he made intimidating "'smirks' and 'stare[d] her down'" when they passed in the hallway); Town of Southborough v. Massachusetts Commission Against Discrimination & Baldelli, 20 MDLR 190 (1998)(police officers harassed Complainant when they berated her "with derogatory and demeaning comments such as stupid slut, whore and stupid female").

Since Fisher was not a supervisor, Wal-Mart is not strictly liable for his unlawful harassment. An employer is liable for a co-worker's harassment when it knew or should have known of the harassment and failed to take reasonable steps to stop it. College-Town, 400 Mass. at 163. Therefore, Wal-Mart's liability for Fisher's conduct will depend on whether Wal-Mart knew or should have known of Fisher's harassment and, if it did know, whether or not it took appropriate, remedial action. Massachusetts Commission Against Discrimination & Magill v. Massachusetts State Police, et. al., 24 MDLR 355 (2002).

I find that that Fisher's conduct at issue was sufficiently offensive that Complainant sought management's assistance in remedying her situation. During June through August 1997, Complainant and her father repeatedly spoke to Lothson, Ryan and other Wal-Mart managers or supervisors, to inform them that Fisher was engaged in inappropriate behavior and that Complainant was offended by and concerned about such conduct.

Once Wal-Mart managers and supervisors learned about Fisher's alleged harassment, it triggered a duty on their part to investigate and take appropriate action, as necessary, to remedy the situation. Her complaints required Wal-Mart management to immediately conduct a "fair, thorough investigation" of Complainant's allegations and take prompt, effective remedial action. College-Town, 400 Mass. at 167-168. At a minimum, Wal-Mart was required to: (1) interview other witnesses who may have witnessed the offensive or discriminatory conduct; (2) take appropriate remedial action reasonably calculated to end the harassment or discrimination and impose discipline, if appropriate; (3) maintain a well-publicized and enforced anti-harassment policy; (4) produce evidence that it provided adequate training to its managers or supervisors on how to identify and respond to a sexual harassment complaint. Massachusetts Commission Against Discrimination & Apsey v. GKA, Inc. & Kreutzer, supra.

The evidence in the hearing record clearly established that Wal-Mart failed to satisfy these minimal requirements. Although Complainant and her parents contacted Raynham Wal-Mart managers or supervisors at least three times during a three or four-month period, Wal-Mart presented no evidence that its managers or supervisors conducted an adequate investigation, took immediate steps to control Fisher's unlawful behavior or took any disciplinary action against him. Doucimo v. S & S Corporation, supra. There is no evidence in the record that Ryan and Lothson conducted a timely or adequate investigation when they received Complainant's oral complaints, as required under Wal-Mart's harassment policy. Even if I were to find that Ryan or Lothson talked to Fisher and observed him on one occasion while in close proximity to Complainant, which I do not, I find that their

overall responses were wholly ineffective as shown by Fisher's ongoing conduct. In addition, I find that Wal-Mart's management failed to adequately monitor the workplace to determine if their initial responses were appropriate and sufficient to remedy Complainant's concerns, as required by Wal-Mart's policy.<sup>7</sup>

I reject Wal-Mart's contention that Complainant did not give her supervisors a fair opportunity to resolve her complaint before she resigned. Based on the totality of the evidence in the hearing record, I am convinced that Complainant and her father complained to Wal-Mart managers and supervisors at least three times during June through August 1997. I reject Wal-Mart's contention that Complainant did not complain to her supervisors, for the first time, until shortly before she resigned in September 1997. I specifically find that the testimony of Ryan and Lothson about the timing of her complaints was vague, inconsistent and not credible.

Based on the above findings, Complainant has proved that her work environment was "so pervaded by harassment or abuse with the resulting intimidation, humiliation and stigmatization," that it made her employment at Raynham Wal-Mart less desirable to a reasonable person in her position. See Cuddy v. The Stop & Shop Supermarket Co., 434 Mass. 521, 532 (2001); Muzzy v. Cahillane Motors, Inc., supra. I conclude that Fisher's conduct created an objectively hostile or abusive work environment for Complainant at Raynham Wal-Mart when he subjected her to continuous demeaning, hostile and offensive conduct in June 1997 through August 1997. See e.g., Clark

---

<sup>7</sup>I also note that Lothson's and Evan's statements, included as part of Lothson's purported investigative file, did not include any details regarding the timing of her complaints or nature or level of their monitoring activities.

County School District v. Breeden, 532 U.S. 268 (2001) ("simple teasing, off-hand comments, and isolated incidents unless extremely serious will not amount to discriminatory changes in terms and conditions of employment"); Horzesky v. R&M Construction Co., 15 MDLR 1171 (1993) (casual comments or accidental or sporadic conversations are insufficient to constitute a pervasive, hostile work environment). I also conclude that Wal-Mart's managers and supervisors failed to adequately investigate or respond to Complainant's harassment complaints.

B. Constructive Discharge

Complainant alleges that she was constructively discharged from her cashier position at Respondent on or about September 9, 1997 after her supervisors failed to adequately respond to and/or investigate her harassment allegations against Fisher. A constructive discharge occurs when the employer's conduct effectively forces an employee to resign. Morrissey v. Holiday Inn, 23 MDLR 74 (2003). Accordingly, a constructive discharge is "legally regarded as a firing rather than a resignation." Morrissey, Id.; GTE Products Corp. v. Stewart, 421 Mass. 22 (1995), citing Turner v. Anheuser-Busch, Inc., 7 Cal. 4<sup>th</sup> 1238, 1244-1245 (1994).

The test for whether Complainant was constructively discharge is objective, not subjective. GTE Products Corp. v. Stewart, 421 Mass. at 35 (dissatisfaction with the nature of work assignments, inter alia, is insufficient to create a triable question of constructive discharge). To establish a prima facie case of constructive discharge, Complainant must

show that her working conditions were so intolerable at Respondent that a reasonable person in her position would have felt compelled to resign. See Holt v. Minuteman Flames Minor Hockey Association, 22 MDLR 373 (2000); Choukas v. Ocean Kai Restaurant, 19 MDLR 169, 171 (1997); Rosado v. Santiago, 562 F.2d 114, 119 (1<sup>st</sup> Cir. 1977) ("the trier of fact must be satisfied that the new working conditions would have been so difficult or unpleasant that a reasonable person in the employee's shoes would have felt compelled to resign"). A single or isolated act of discrimination will not usually support a constructive discharge claim, even if it involves humiliating and disparate treatment or an act of retaliation. Kelley v. Plymouth County Sheriff's Department et. al., supra. To constitute a constructive discharge, the adverse working conditions must be unusually aggravated or amount to a "continuous pattern." Turner v. Anheuser-Busch, Inc., supra. at 1247.

I conclude that Fisher made Complainant's workplace so intolerable that a reasonable person in her position would have felt compelled to leave her employment. Complainant was the victim of Fisher's unwelcome actions and comments and his harassment interfered with her full participation as a cashier in Respondent's workplace. Holt v. Minuteman Flames Minor Hockey Association, supra. In addition, Fisher's harassment became intolerable causing Complainant distress and harm to her health both at work and outside of work. Jordan v. Prime Laminating, Inc., 23 MDLR 151 (2000).

To prove her constructive discharge claim, Complainant must also establish that she exhausted every reasonable opportunity to continue working as a cashier at Raynham Wal-Mart. See

Massachusetts Commission Against Discrimination & Malone v. City of Boston Public Facilities Department, 26 MDLR 31 (2004).

Alternatively, Complainant must show that such possibilities were untenable and that abandoning her cashier position was her only alternative. See Estate of Douglas McKinley v. Boston Harbor Hotel, supra. at 141 (complainant failed to exhaust the possibility to continue working for the employer, including seeking an accommodation for his stress).

I am convinced that Complainant had no other option and exhausted every reasonable opportunity to continue working as a cashier at Raynham Wal-Mart. Complainant and her family made multiple complaints over a three-month period to at least three of Respondent's managers, including Lothson and Ryan, in unsuccessful attempts to resolve her harassment complaints against Fisher. Given Respondent's ineffectual actions upon learning of Complainant's harassment allegations, I find that Complainant met her obligation to "hear them out and see what steps they would take to" remedy her situation before she resigned. Rowe v. American Paper Products, Inc., supra. This is a situation in which Wal-Mart management knew about Complainant's harassment complaints and failed to address or take reasonable actions to ensure that the unwelcome conduct did not recur. See e.g., Comeau v. IDEA Lube, Inc. d/b/a/ Sooner Lube, 22 MDLR 5 (2000)(the supervisors failed to take any action to stop and prevent the offensive, vulgar, and profane language by the complainant's co-workers); Choukas v. Ocean Kai Restaurant, 19 MDLR 169, 171 (1997)(the complainant had good reason to believe that the employer would not deal with her sexual harassment complaint based on her supervisor's treatment of the matter as a "joke").

I conclude that Fisher's ongoing harassment and Respondent's failure to take adequate steps to insure that Fisher did not harass Complainant would have caused a reasonable person in Complainant's situation to believe that her situation was so intolerable that she was forced to leave her job. Silver City Dodge v. Massachusetts Commission Against Discrimination, 15 MDLR 1518, 1532 (1993). I conclude that Complainant has shown that she was constructively discharged from her employment at Respondent in violation of G.L. c. 151B, §4, paragraph 4. For the reasons discussed above, I conclude that Complainant reasonably believed that she had no alternative but to resign her cashier position at Respondent.

#### IV. ORDER

Upon a finding of discrimination, the Commission is authorized to impose a remedy that will make Complainant whole and eliminate the discriminatory practice. The Commission's award may include damages for lost wages, lost benefits and for emotional distress Complainant suffered as a direct and probable result of Wal-Mart's unlawful discrimination. G.L. c. 151B, §5. See Stonehill College v. Massachusetts Commission Against Discrimination, 441 Mass. 549 (2004), modifying, in part, Labonte v. Hutchins & Wheeler, 424 Mass. 813, 824 (1997), quoting Buckley Nursing Home, Inc. v. Massachusetts Commission Against Discrimination, 20 Mass. App. Ct. 172, 182 (1985) (reaffirms the Commission's authority to award emotional distress damages proportionate to the distress suffered); Bournewood v. Massachusetts Commission Against Discrimination, 371 Mass. 303, 315-16 (1976). Complainant must prove her damages by more than speculation or surmise. College-Town, Division of Interco, Inc., supra.

### Lost Wages

Massachusetts General Laws, Chapter 151B, §5 authorizes the Commission to award lost wages after a finding of discrimination. Lost wages is a calculation of the money Complainant would have earned had she remained working at Respondent. Lost wages are awarded with interest, calculated at the statutory rate of 12% per annum. Buckley Nursing Home v. Massachusetts Commission Against Discrimination, 20 Mass. App. Ct. 172, 182 (1985). Interest begins to accrue from the date the complaint is filed until full payment is made to the victim of the illegal activity. G.L. c. 231; Buckley Nursing Home, Id. at 180.

Complainant seeks lost wages in an amount that represents the difference between what she would have earned at Wal-Mart from September 7, 1997 until she obtained comparable employment at Benny's discount department store in or about November 1997. Based on the evidence adduced at the public hearing, I find that Complainant is entitled to \$1,144.00 in lost wages, calculated as follows: 8 weeks x 25 hours @ \$5.72 an hour (calculated based on her hourly rate of \$5.72 as of the last day she worked at Raynham Wal-Mart on September 6, 1997).

### Emotional Distress Damages

An award of monetary damages is appropriate to compensate Complainant for the emotional distress she suffered as a victim of Wal-Mart's discrimination. See e.g., Baldelli v. Town of Southboro Police Dept., 17 MDLR 1541 (1995). A finding of discrimination, by itself, does not permit an inference of or a

presumption of emotional distress as a normal adjunct of such discrimination. Stonehill College, supra. While an award of emotional distress damages can be sustained even in the absence of physical injury or psychiatric consultation, it must be based on substantial evidence. Stonehill College, supra.; Franklin Publishing v. Massachusetts Commission Against Discrimination, 25 Mass. App. Ct. 947 (1988).

Permissible factors to measure emotional distress damages include but are not limited to: (1) the nature and character of the alleged harm; (2) the severity of the harm; (3) the length of time the complainant has suffered and reasonably expects to suffer; (4) whether the complainant has attempted to mitigate the harm, e.g., by counseling or taking medication. Stonehill College, supra.; Baldelli v. Town of Southboro Police Dept., 18 MDLR 167, 169 (1996). In addition, Complainant must show a sufficient casual connection between Wal-Mart's unlawful acts and her emotional distress. Emotional distress that arises from circumstances other than Wal-Mart's unlawful actions or from a pre-existing condition is not compensable. Stonehill College, supra.

While I conclude Complainant has not proved by credible evidence that she suffered from PTSD based on Fisher's conduct, I nonetheless find that she is a compelling witness regarding her emotional distress damages. Complainant was a young and unsophisticated woman at the time of Fisher's harassment and testified credibly and convincingly about the fear and emotional harm she sustained because of his unlawful conduct. I believe Complainant's credible testimony that she had frequent headaches, intermittent insomnia and nightmares,

bouts of crying and panic attacks for which her physicians prescribed Imitrex and Zoloft.<sup>8</sup> I also believe Fisher's harassment caused Complainant to be anxious, upset, intimidated, afraid of driving alone to Raynham Wal-Mart and scared to be home alone at night. Complainant's testimony regarding the emotional and physical impact of Fisher's unlawful conduct on her is corroborated by the credible and unrebutted testimony of her father. I also conclude that Complainant's symptoms were significantly reduced, if not eliminated, by 2000 when she moved in with Quiet as shown by her continuous employment since 1998 and her failure to mitigate her conditions through counseling and/or medication during 1998 through 2003.

Accordingly, I conclude that Complainant is entitled to damages for the emotional distress and physical harm she suffered as a direct and probable result of Wal-Mart's unlawful gender discrimination in 1997. Robinson v. Haffner's Service Stations, Inc., 23 MDLR 283 (2001); Sverck v. American Health Care, et. al., 22 MDLR 50 (2000). Given the nature, severity and duration of the harm Complainant suffered and her minimal mitigation efforts, I conclude that she is entitled to an award of damages for emotional distress in the amount of \$35,000.00.

Massachusetts General Laws, Chapter 151B, §5 states, in part, "If, upon all the evidence at any such hearing, the commission shall find that a respondent has engaged in any such unlawful practice, it may, in addition to any other action which it may take under this section, assess a civil penalty against

---

<sup>8</sup>There is no evidence in the hearing record that Complainant took the prescribed medication for any significant period during 1998 through 2003.

the respondent: (a) in an amount not to exceed \$10,000 if the respondent has not been adjudged to have committed any prior discriminatory practice." Having found that Wal-Mart have engaged in a discriminatory practice based on unlawful gender discrimination when they failed to adequately respond to Complainant's multiple complaints regarding Fisher's unlawful harassment during 1997, I conclude that a civil penalty in the amount of \$10,000.00 is warranted.

#### IV. ORDER

Based on the foregoing findings of fact and conclusions of law, I hereby issue the following order:

1. Wal-Mart shall immediately cease and desist from engaging in unlawful sexual harassment or discrimination based on gender.
2. Wal-Mart shall pay Complainant the sum of \$1,144.00 in lost wages and \$35,000.00 in emotional distress damages plus interest thereon at the statutory rate of 12% per annum from the date of filing the complaint until such date as the payment is made or this obligation is reduced to a court judgment and post-judgment interest begins to run. Wal-Mart shall pay these sums to Complainant within 60 days of its receipt of this decision.
3. Within 60 days of its receipt of this decision, Wal-Mart shall also pay a civil penalty in the amount of \$10,000.00 to the Commonwealth of

Massachusetts. Wal-Mart shall forward its civil penalty payment to the Clerk of the Commission within the prescribed time period.

### Training Provisions

1. Within 60 days of the Commission's final decision, Wal-Mart shall schedule all managers and supervisors at the Raynham Wal-Mart, including all employees with supervisory authority, to attend comprehensive training that addresses gender discrimination and sexual harassment. The training shall include, but not be limited to, definitions of workplace discrimination and harassment, a supervisor's role in recognizing and preventing discrimination and other forms of workplace harassment and Wal-Mart's liability under G.L. Chapter 151B for unlawful discrimination. This training must be at least 4 hours in length and must be completed within 90 days of Wal-Mart's receipt of this decision. No more than 25 employees shall attend each training session.
  
2. Once each calendar year for the next three years after completion of the initial training session(s), Wal-Mart shall repeat the initial training session for all new supervisors and managers hired and promoted after the date of the initial training sessions. Wal-Mart shall also conduct a refresher course (at least two hours in duration) once each calendar year for all other

managers and supervisors for a total of three years after the initial training sessions.

3. Within 30 days of its receipt of this decision, Wal-Mart shall notify the Commission's Director of Training of its decision to select the Commission or a private trainer to conduct the initial training sessions. If Wal-Mart selects a private trainer, he or she must be selected from the list of trainers who have completed the Commission-certified discrimination or harassment prevention training courses, available from the Commission's Director of Training. Within one week of its selection of an approved trainer, Wal-Mart shall give a copy of this decision to the approved trainer as background information.
  
4. If Wal-Mart selects a private trainer to conduct the initial training sessions, it must submit a draft training agenda to the Commission's Director of Training for approval at least 30 days prior to the proposed training session(s). At least 30 days prior to the training date(s), Wal-Mart shall inform the Commission's Director of Training, in writing, of the proposed training date(s) and location(s) so that the Commission has the option of sending a representative to attend and observe one or more of the training sessions as they are conducted. Wal-Mart shall give the Commission's representative unfettered access to its training sessions.

5. Within 30 days after each training session, Wal-Mart must submit documentation to the Commission's Director of Training of its compliance with this order. The documentation must be signed by the trainer and identify the training agenda and topics covered, the names of the persons required to attend the training as identified in paragraph one, above, the names of persons who completed the training session and the date and time of each training session.
  
6. In the event Wal-Mart's business is sold, materially changed or taken over by new management, any and all successor employers, purchasers, assignors, managers or operators of Wal-Mart's business (hereafter: the "new owners") shall be responsible for fulfilling the training requirements set forth in this decision within the stated time frames if any of the following conditions apply:
  - a. A majority of Wal-Mart's managers and supervisors employed as of the date of this decision continue to work for the new owners as of the succession date;
  - b. A majority of Wal-Mart's governing board, e.g., board of directors or trustees) as of the date of this decision continue to serve on the new owners' board as of the succession date;
  - c. The new owners are relatives of Wal-Mart's owner, or previously employed as a manager or supervisor by Wal-Mart; and/or

- d. Wal-Mart retains an interest in the successor entity;
- e. For purposes of enforcement, the Commission shall retain jurisdiction over these training requirements.

- 7. The parties shall notify the Clerk of Commission as soon as Wal-Mart makes the payments described in this Order. If Wal-Mart fails to comply with the terms of this Order, Complainant is instructed to immediately notify the Clerk of the Commission.

This constitutes the final order of the Hearing Officer. Any party aggrieved by this decision may file a Notice of Appeal with the full Commission within ten (10) days of receipt of this order and a Petition of Review with the full Commission within thirty (30) days of receipt of this order.

SO ORDERED this 3<sup>rd</sup> day of December, 2004.

---

Kenneth B. Grooms  
Hearing Officer