

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION &
VALERIE LAFAUCI,
Complainant

v.

DOCKET NO. 95-BEM-2701

AIRPORT SKYCAP SERVICES,
Respondent

Appearances: Geraldine Fasnacht, Commission Counsel for Complainant

DECISION OF THE HEARING OFFICER

I. PROCEDURAL BACKGROUND

On October 23, 1995, Complainant, Valerie LaFauci, filed a complaint with this Commission alleging that Respondent had denied her the opportunity to apply for a job on account of her disability, a hearing impairment. Complainant, who is hearing impaired and uses the services of a TTY for telephonic communication, alleged that when she contacted Respondent in response to a job ad in the Boston Globe, the contact person refused to discuss the job with her and hung up.

After a finding of probable cause by the Investigating Commissioner the matter was certified for a public hearing on March 11, 2003.

A public hearing was held before the undersigned hearing officer on August 20, 2003. The Respondent did not appear at the public hearing and an Order of Entry of Default and Notice of Entry of Default were issued to Respondent at its last known address. Respondent did not petition to remove the default. A default public hearing was conducted on August 20, 2003 and Complainant testified with the assistance of two certified sign language interpreters. Having reviewed the Complainant's un rebutted testimony and the documents submitted to into record, I make the following findings of fact and conclusions of law.

II. FINDINGS OF FACT

1. Complainant, Valeri LaFauci is a hearing impaired female who is almost completely deaf. She has only about 5% hearing capacity and was diagnosed as being deaf at the age of 10 months. Complainant attended Horace Mann school for the deaf for 12 years and graduated high school. She then attended college for one year to learn bookkeeping.
2. Complainant reads lips and communicates with sign language and with pen and pencil if necessary. She does attempt to speak and if one listens carefully her speech can be understood.
3. Complainant has had a varied work history and at the time of the public hearing she had worked at Party-lite in Plymouth, Massachusetts for over 6 years doing business operations including data entry, accounting and processing refunds. She also worked at Terradyne Industries on an electronics assembly line for 11-12 years and also worked at New England Home for the Deaf and New England Medical Center in Boston as a receptionist for the hearing impaired.

4. Complainant testified that she has experienced frustration at times looking for jobs and from people making fun of her but she does not consider herself as limited. In August of 1995, she was working one day a week at New England Medical Center and was looking for full time or other part time work. Complainant went about looking for general employment by reading the employment ads in the local newspapers.

5. On Sunday, August 2, 1995, Complainant saw a job advertisement in the Sunday newspaper for Airport Skycap Service, described only as flexible hours, flexible pay, good 2nd employment and welcoming women and students to apply. The ad listed a phone number. Complainant was interested in the job because the Airport was close to her home at Admiral's Way in Chelsea, MA. Complainant identified the advertisement. (Ex. 1).

6. Complainant called the phone number listed in the advertisement using TTY services. She was using a relay, by which she called a hearing person who had a TTY and that person called the phone number in the ad. The relay then communicated Complainant's message to the person on the other end and typed the response to Complainant via the TTY. When telephone contact was made with the number listed in the ad, Complainant attempted to explain that she was deaf, but that she could read lips. She attempted to explain the relay system and indicated that she was interested in the job, but the person on the other end hung up. (Ex. 2). She called back a second time and the person on the other end stated that he did not wish to have the conversation and hung up. For this reason, there was no discussion about the available job, the duties of the job, or the required qualifications.

7. On October 23, 1995, Complainant filed a Complaint of discrimination alleging that she had been rejected as an applicant for the job because she was deaf. At the hearing Complainant testified that she was very upset by this incident and felt afraid to call other companies. She testified that she became obsessed with the incident. She lost interest in cooking and in everything for a few months and had no motivation. She attended the Massachusetts Rehabilitation Commission for computer training to help her forget about the incident but said she couldn't forget about it, and still carries it with her.

8. Complainant's daughter testified that she observed demonstrable changes in her mother after this incident. She stated that prior to the incident her mother was happy, active, liked to work and was always cooking for her grandchildren and keeping busy. She stated that after the incident her mother felt rejected and her attitude about working was one of resignation and giving up. She testified that Complainant took it really hard and stopped going out and stopped cooking for a couple of months. She stated that they talked about therapy, but after a couple of months her mother bounced back.

III. CONCLUSIONS OF LAW

General Laws c.151B s. 4 p. 16 makes it an unlawful practice to refuse to hire or otherwise discriminate against any person alleging to be a qualified handicapped individual who is capable of performing the essential functions of the job with a reasonable accommodation because of her handicap. G.L. c. 151B s. 1(17) defines handicap as (a) physical or mental impairment which substantially limits one or more

major life activities of a person; (b) a record of having such impairment; or (c) being regarded as having such impairment. The Complainant, by virtue of her almost total hearing loss since birth, is a handicapped individual. She is completely impaired in the major life function of hearing. Nonetheless, Complainant drives and has held numerous and varied jobs over the course of her working life.

The Commission has held that a one may establish liability for discrimination by demonstrating that she was denied the opportunity to apply for a job for which the Respondent was seeking applicants if she can prove:

- 1) she is a member of a protected class;
- 2) she attempted to apply for a job for which the Respondent was seeking applicants; and
- 3) she was deterred from applying under circumstances which gave rise to an inference of unlawful discrimination.

Murphy & Young v. J. C. Hillary's, 7 MDLR 1031 (1985); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1026 n. 14 (1982).

In this case, Complainant has met this burden. She has proved that she is a handicapped individual. While she was denied the opportunity to demonstrate that she would be capable of performing the essential functions of the job with or without a reasonable accommodation, Complainant testified about her long and varied work history. In this case, she was denied the opportunity to discuss the nature or requirements of the job. In effect, she was deterred from applying for or being considered for the job, under circumstances that give rise to an inference of discrimination. Twice she was hung up on after she told the person who was presumably an agent of the employer that she

was deaf and that she was interested in applying for the job listed in the paper. Having established a prima facie case of handicap discrimination in hiring, it is incumbent upon the Respondent to articulate a legitimate non-discriminatory reason for its action.

Respondent did not appear to defend at the public hearing. Complainant's allegations, which I find to be entirely credible, are therefore un rebutted. Complainant may meet her burden of proof "by establishing an unanswered prima facie case of discrimination."

Wheelock College v. Massachusetts Commission Against Discrimination, 371 Mass 130,139 (1976). The result in this case is that Complainant has proven a claim of unlawful handicap discrimination in violation of G.L. c. 151B, by establishing an un rebutted prima facie case.

IV. REMEDY

Upon a finding of unlawful discrimination, the Commission is authorized to award damages resulting from Respondent's unlawful discrimination, including damages for emotional distress. Stonehill College v. MCAD, (SJC Docket Nos. 09112, 09081, 09100, 09002) (May 6, 2004). Complainant is seeking damages for the emotional distress she suffered when Respondent's agent refused to speak to her about the job and hung up on her twice. I believe she felt stigmatized and demeaned by his actions. Complainant testified that the incident upset her so much that she felt paralyzed to continue with her job search. She testified that she lost interest in her daily activities and had no motivation. I believe that Complainant was emotionally disturbed by this incident and that it affected her everyday life for some time afterwards. I conclude that she is entitled to an award of \$15,000 in damages for emotional distress.

V. ORDER

The Respondent is hereby Ordered:

- 1) To pay to Complainant, within 45 days of the date of this Order, the sum of \$15,000 in damages for emotional distress with interest thereon from the date the Complaint was filed.
- 2) The parties shall notify the Clerk of the Commission as soon as the ordered payment has been made. If the Respondent fails to comply with the terms of this Order within the prescribed time period, the Complainant shall notify the Clerk of the Commission.

Any party aggrieved by this Order may file an appeal to the Full Commission pursuant to 804 C.M.R. 1.23 by filing a notice of appeal within 10 days of receipt of this decision and a Petition for Review within 30 days of its receipt.

So Ordered this 11th day of May, 2004

Eugenia M. Guastaferr
Hearing Officer