COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD and ROBERT D. BRYSON,
Complainants

v. Docket No. 07 BEM 01217

DEMAKES ENTERPRISES, INC.,

Respondent

For Complainant Robert Bryson: Elisabeth LeBrun, Esq.
For Respondent: Timothy J. Perry, Esq.

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On October 25, 2007, Robert Bryson ("Complainant") filed a complaint with the Massachusetts Commission Against Discrimination ("MCAD") charging that Demakes Enterprises, Inc., and its individually-named owner, Thomas Demakes, discriminated against him on the basis of disability/perceived disability when it terminated his employment as a truck driver on or around August 23, 2006 for absenteeism resulting from a migraine condition. Complainant claimed that the termination violated G.L. c. 151B, sections 4 (4A), (5), and (16). On December 31, 2008, the Commission issued a Finding of Split Decision finding Probable Cause against the Respondent Company but not against its individually-named owner. The Commission certified the case for public hearing on November 10, 2009.

A public hearing was conducted o June 7 and 8, 2010. The following individuals testified at the public hearing: Robert Bryson, Donna Bryson, Ann Conner, and Thomas Demakes. The parties introduced twenty-five (25) joint exhibits into evidence.

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 Robert D. Bryson was employed as a truck driver by Respondent from August of 2002 until August of 2006. He has a public utilities driver's permit and a Class A license. The Class A license allows Complainant to operate semi tractor trailer combination vehicles. Respondent is a business in Lynn, Massachusetts which manufactures and distributes cold cuts, hot dogs, sausages, and other deli products. The business is owned by Thomas Demakes who is the Company CEO. The business has approximately 330 employees.
2. According to Complainant, at his job interview in 2002, Demakis grabbed his arm and said, "You look pretty healthy." Transcript I at 31. I do not credit this testimony about a stray comment allegedly made in 2002.
3. At the time that Complainant was hired by Respondent, there were two basic driving assignments for truck drivers: 1) delivering goods to customers throughout New England and New York, and 2) making one-mile shuttle runs between Respondent's manufacturing plant on Waterhill Street in Lynn, MA and the company's warehouses on the Lynnway in Lynn, MA. Transcript I at 39. Truck drivers are expected to work in the warehouse periodically, in part, to become familiar with company products. Transcript II at 118-119.

4. Truck drivers who sought to bolster their income could work extra hours in the warehouse in addition to driving their scheduled routes. Transcript I at 39-40. Warehouse work consists of loading boxes on pallets using a pallet jack and performing other manual labor. Transcript I at 40-41.
5. Complainant's history of absenteeism with the Company consisted of missing two weeks of work in July of 2003 due to gout, missing several days of work in early July of 2004 due to a motorcycle accident and thereafter working light-duty until August 25, 2004, and missing approximately four weeks of work in May of 2006 for an appendectomy. Transcript I at 42-44.
6. In June of 2006, Complainant had a headache and saw lights in his field of vision during a weekend when he wasn't working. Transcript I at 46-47; 50; 168.
7. On July 10 or 11, 2006, Complainant experienced blurred peripheral vision and shiny lights for approximately twenty minutes. Transcript I at 45, 48, 168, 170. He experienced these symptoms after he finished his truck route and backed his truck into the warehouse. Id. Complainant saw his primary care physician, Dr. Salil Midha, who sent him for tests and to consult with a neurologist, Dr. Edward Fischer. Transcript I at 49-50, 55
8. Complainant saw Dr. Fischer on July 24, 2006. Dr. Fischer diagnosed Complainant with "probable acephalgic migraine with visual obscurations." Dr. Fischer ordered some tests and suggested that Complainant be seen on as-needed basis in the future. Joint Exhibit 6, pp. 6, 23-25. Dr. Fischer did not place any work limitations on Complainant and did not advise Complainant that he had any impairments that prevented him from working or prevented him from operating a motor vehicle.

Joint Exhibit 6, pp. 23-25; Transcript I at 160.

9. On July 31, 2006, Complainant had an eye test with Dr. C. Douglas Evans. Joint Exhibit 6, p. 64. Complainant's vision was noted to be 20/15. Id. Dr. Evans diagnosed Complainant's symptoms as migraines. Id.

10. Complainant testified that during July of 2006, he may have told his immediate supervisor, George Karavedas, about his visual problems and his need to go for tests. Transcript I at 145-146. Karavedes allowed Complainant to limit his work-related driving to shuttle runs and to take off time between July 10, 2006 and July 31, 2006 in order to see doctors and have medical tests. Transcript I at 147, 155.

11. Prior to August 1, 2006, none of the doctors with whom Complainant consulted, including Drs. Midha and Fischer, placed any work or driving limitations on him and Complainant did not inform Respondent that he had any restrictions. Joint Exhibit 6. Transcript I at 144, 157, 160. Complainant testified that he was not afraid to drive during June and July of 2006 and didn't believe he had any impairment that affected his driving. Transcript I at 144.

12. On August 1, 2006, Complainant was assigned to a long haul route from Boston to Springfield, to Connecticut, to New York. Transcript I at 60. While driving to Springfield, Complainant began to see lights and his peripheral vision constricted to tunnel vision. Transcript I at 61. The tunnel vision lasted at least thirty minutes. Transcript I at 63. Complainant drove his truck to his next customer's site, pulled into the customer's warehouse, and called his supervisor. Id. He was advised by his supervisor to call 911. Transcript I at 62. Complainant called 911 and his wife. Transcript I at 63. Complainant was transported to Baystate Medical Center by

ambulance where he was given a CT scan of his head. Transcript I at 64, 68.

13. Complainant was released from the hospital after a couple of hours. Transcript I at 68. Complainant received a note stating that he should be out of work for three days and was told to follow up with his primary care physician and his neurologist. Joint Exhibit 1; Transcript I at 70-71.

14. Complainant testified that he submitted the note regarding the three-day absence to Respondent on the same day as the incident or else "pretty quickly after I returned from the hospital." Transcript I at 72. Respondent's Human Resources Benefits Administrator Ann Conner testified that she did not see the note until her deposition following the filing of Complainant's MCAD charge. Transcript II at 69. I credit Conner's testimony over Complainant's because Conner had no motive to claim ignorance about a note which permitted Complainant to return to work in three days whereas Complainant had a motive to refrain from submitting the note if he wanted to remain out of work for more than three days.

15. According to Conner, Complainant came into work following the August 1, 2006 incident without any medical paperwork but reported that he had gone to the hospital on the previous day after experiencing blurred vision and numbness in his hand. Transcript II at 74-76. Conner testified that she offered Complainant the options of working in the warehouse or performing shuttle runs at the same rate of pay he earned as a truck driver but that Complainant refused the offer. According to Conner, Complainant said that and that he was afraid to drive because he was concerned about hurting himself or others, and he did not want to work in the warehouse because he was not an "indoor guy" Id. at 74-79, 90; Joint Exhibit 22.

Complainant asked to take off the rest of the week and charge his absence to vacation time which Conner agreed to do. Id. at 77. I credit Conner's testimony because of her credible demeanor and because it is corroborated by contemporaneous notes she made of the meeting, it is supported by credible testimony of CEO Demakes, and it is consistent with the Company's prior practice of paying Complainant his truck driver's rate of pay when he performed shuttle runs or worked in the warehouse. Transcript II at 90; 123, 135-139, 142, 150. I do not credit Complainant's contradictory testimony that Conner refused to pay him his truck driver rate of pay for performing other types of work.

16. CEO Demakes testified that he believed that Complainant declined to perform shuttle runs over the one mile route between the plant and warehouse or work in the warehouse picking up orders and operating a hand jack because he was "lazy" rather than disabled and he wanted to take the summer off. Transcript II at 136, 138, 148.

17. Complainant claims that he visited Dr. Fischer during the three days he was off work or, at the latest, on the following Monday, August 7, 2006. Transcript I at 73. According to Complainant, he received from Dr. Fischer a handwritten note on a prescription pad which said "no work" or "out of work," gave it to Conner, and informed head truck driver George Karavedas that he was going to be absent from work indefinitely. Transcript I at 74-75, 175-177, 181-182. I do not credit Complainant's testimony that he saw Dr. Fischer, received such a note, and gave it to Respondent because: 1) the note was not offered into evidence; 1) the alleged content of the note is too vague to be believable; 2) Complainant and his wife

provided conflicting testimony about the alleged note; 3) Dr. Fischer was not subpoenaed as a witness to the public hearing in order to corroborate Complainant's testimony; and 4) Dr. Fischer's medical records contain no documentation of such a visit or note. Joint Exhibit 6; Transcript I at 182, 186, II at 55.

18. Complainant's wife testified that she drove Complainant to a follow-up appointment with Dr. Fischer on Monday, August 7, 2006 in order to pick up paperwork for a diagnostic test. Transcript I at 44. Mrs. Bryson also testified that Dr. Fischer told her that Complainant should not be driving until "they could figure out what the problem was for his safety and for other people's safety." Transcript II at 46-47. I do not credit Mrs. Bryson's testimony. Complainant acknowledged in his testimony that he never received an order from any physician that he not drive an automobile. Transcript I at 127-128.

19. According to Dr. Fischer's medical records, he saw Complainant on July 24, 2006 and on August 10, 2006. Joint Exhibit 6; Transcript I at 187. On August 10, 2006, Dr. Fischer drafted a letter to Complainant's internist, Dr. Salil Midha, stating that, "clinically, [Complainant] appears to be stable and capable to return to his full time work." Joint Exhibit 6, p. 69; Transcript at 187-188.

20. Complainant attempted to explain the discrepancy between his testimony and Dr. Fischer's medical records by stating that Dr. Fischer changed his mind after concluding that Complainant was capable of returning to work and said, "But you know something … No, I don't think so … because I want you to have this test." Transcript I at 188-189, 191-192; Transcript II at 6. I do not credit Complainant's assertion that Dr. Fischer changed his mind about Complainant going back to work

because this assertion is not contained in Dr. Fischer's medical records and contradicts his letter to Dr. Midha.

21. Dr. Fischer arranged for Complainant to take a test in which he wore a monitor at his waist and electrodes on his head for 48 hours. Transcript I at 78-79. Complainant testified in a contradictory fashion about whether he left the house during the test, stating at one point in his testimony that he did not go out of the house while he had the electrodes on his head and at another point that he went to Respondent's Waterhill Street plant wearing the electrodes. Transcript I at 79; II at 13. I do not credit Complainant's testimony that he went to the plant wearing electrodes on his head in order to deliver a note from Dr. Fischer stating that he was to stay out of work indefinitely.
22. Complainant claims that he talked to Human Resources Administrator Conner about the possibility of collecting disability pay while he was out of work in August of 2006 and was told that he was not eligible for coverage without a diagnosis. Conner denies that Complainant asked her about short-term disability payments. Transcript II at 96. The Employer's Handbook states that employees who are absent for three or more consecutive days due to illness or injury must provide a physician's statement verifying the disability, its beginning and ending dates, and, upon returning to work, must submit a physician's verification that he/she may safely return to work. Joint Exhibit 5, pp. 26-27. In regard to the alleged request for short-term disability payments, I credit Complainant's testimony over Conner's.
23. Conner testified credibly that she had a conversation with Complainant again during the week of August 7, 2006 in which he said that he was still fearful of

driving. Transcript II at 78-80. Conner relayed this information to CEO Demakes who asked her to advertise for another driver and to arrange for a meeting with Complainant. Transcript II at 139.

24. On or around August 18, 2006, Complainant met with Demakes and Conner. Conner testified that Complainant said that he had been diagnosed with migraines but was cleared to return to work by his doctor. Complainant, on the other hand, testified that he told Demakes and Conner that he was still undergoing tests and that Demakes got angry, referred to Complainant's previous absences due to a motor cycle accident and appendicitis, and said, "What's wrong with you …You left my truck out in Springfield. You just abandoned my truck out there." Transcript I at 97-98; Transcript II at 8, 11, 82. I credit Complainant's testimony about Demakes's response.

25. On August 22, 2006, Complainant gave Respondent a note from Dr. Fischer which said that that "[Complainant] has been medically cleared to return to work without restriction." Joint Exhibit 1. The note was rejected by Respondent because it failed to indicate a diagnosis and treatment. Transcript II at 21-22, 87, 141. Complainant testified that he "immediately" went to Dr. Fischer's office to obtain a more complete note and had to "almost plead" for it because Dr. Fischer believed his first note was adequate and that the provision of more information raised privacy concerns. Transcript I at 102-102. According to Complainant, he prevailed upon Dr. Fischer to provide a second note, also dated August 22, 2006, which stated that Complainant was medically cleared to return to work, that he carried a diagnosis of migraine headaches, and that he was on a low dose of Neurontin at night time.

Joint Exhibit 1.

26. I infer that Complainant solicited the two return-to-work notes from Dr. Fischer on or around August 22, 2006 after becoming concerned that he was going to lose his job for remaining out of work during the previous three weeks. Complainant gave the notes to Conner on August 24, 2006, as indicated by a handwritten comment appearing at the top of the second note: "Given to Ann 8/24 3:30 PM." Joint Exhibit 1.

27. I do not credit Complainant's assertion that Dr. Fischer prohibited him from returning to work prior to August 22, 2006 out of concern that Complainant's vision problem might cause him to trip over equipment. Id. at 80-82. Dr. Fischer's medical records make no reference to such a safety concern, and Dr. Fischer's letter to Complainant's internist, dated August 10, 2006, states that Complainant is capable of returning to work. Joint Exhibit 6, p. 69.

28. Complainant sought to return to work on Monday, August 28, 2006, but when he called into work on Friday, August 25, 2006 to inquire about his starting time, he was told that he was terminated. Transcript I at 105; Joint Exhibit 19.

29. According to Conner, the decision to terminate Complainant was made because he never provided medical documentation substantiating his absence and he refused alternative work in the warehouse. Transcript II at 89, 93.

30. At the time of his termination, Complainant earned $19.50 per hour. Transcript I at 111; Joint Exhibit 19. Complainant earned $39,522.81 in 2005 and $25,315.00 in 2006, prior to his termination. Joint Exhibits 7 & 9.

31. After his termination, Complainant received unemployment benefits in the amount

of $441.00 per week for approximately 15 weeks until he obtained a new job. Transcript II at 24; Joint Exhibit 15. Complainant testified that he incurred COBRA costs of $800.00 per month. He used the funds in his 401K to cover his expenses while he was out of work. Transcript I at 111-112.

32. Complainant testified that he was "pretty depressed," "crushed," and in a "down mood" until he received his next job in January of 2007. Transcript I at 92-93; II at 26. According to Complainant, he started crying when he learned that he was fired. Transcript I at 106. He experienced a lack of confidence for a long time. Transcript I at 107. Dr. Fischer's notes state that Complainant was in "quite a reactively down mood about the situation" but Complainant did not take medications or see a therapist for emotional distress. Transcript I at 92. Complainant was supposed to follow-up with Dr. Fischer on February 27, 2007 but was a "no show." Transcript II 1t 28.
33. Complainant's wife testified that her husband was "absolutely devastated" by his termination and "really down in the dumps." Transcript II at 50. She described Complainant as very depressed and uncommunicative with his friends and agitated and snappy with their children. Transcript II at 50-51. Mrs. Bryson testified that she and her husband "grew apart." She testified that they lost their house as a result of Complainant's job loss. Transcript II at 52.
34. Complainant obtained employment as a transit and charter bus driver at M& L Transport in January of 2007, but left after several months to take another job. He earned a total of $4,868.00 at M&L. Joint Exhibit 10. Complainant next obtained employment at Murphy & Sons Trucking driving a dump truck trailer where he

remained until April of 2010. Transcript I at 115. He earned $27,879.50 at Murphy & Sons in 2007 and $40,558.14 in 2008. Joint Exhibits 11 & 12. In April of 2010, Complainant left Murphy & Sons to take a job at J&S Transport where he delivers gasoline in a tanker truck. Transcript I at 115. From May of 2010 to the time of public hearing, Complainant earned $21.00 per hour. Transcript I at 116.

II. CONCLUSIONS OF LAW

M.G.L. c. 151B, sec. 4 (16) makes it unlawful for an employer to discriminate against a handicapped person who is qualified to perform the essential functions of a job with or without a reasonable accommodation. A handicapped person is one who has an impairment which substantially limits one or more major life activities, has a record of impairment, or is regarded as being impaired. See M.G.L. c. 151B, sec. 1 (17); Massachusetts Commission Against Discrimination Guidelines: Employment Discrimination on the Basis of Handicap – Chapter 151B, 20 MDLR Appendix (1998) ("MCAD Handicap Guidelines") at p. 2.

Complainant was not a handicapped individual in the summer of 2006 even though he experienced migraine headaches at that time because his condition consisted of only three short episodes and did not interfere, to a significant extent, with any major life activity, including working. Compare Dartt v. Browning-Ferris Industries, Inc., 427 Mass. 1, 16-17 (1998) (work-related injuries resulting in plaintiff having multiple operations and being unable to work for over two years is sufficient for jury to decide whether condition constitutes a handicap); Lagasse v. South Shore Hospital, 29 MDLR 157 (2007) (chronic or episodic disorders that are substantially limiting may constitute a handicap). Complainant's symptoms were restricted to periods of less than one hour each

during which his head ached and/or he experienced blurry peripheral vision and shiny lights. Aside from a hospital note advising that Complainant remain out of work for three days, none of Complainant's doctors ever impossed work or driving limitations nor did Complainant ever inform Respondents that he had any such restrictions. Complainant acknowledged at the public hearing that he was not afraid to drive a truck during June and July of 2006. He may have developed a genuine fear of driving after an incident of blurred vision and arm numbness on August 1, 2006, but by August 10, 2006, his fears were contradicted by the medical opinion of his specialist. On that date, Complainant's neurologist, Dr. Fischer, drafted a letter to Complainant's internist, Dr. Midha, stating that, "clinically, [Complainant] appears to be stable and capable to return to his full time work." Notwithstanding this communication, Complainant remained out of work from August 2, 2006 until August 22, 2006, when he brought in a doctor's note clearing him to return to work in reaction to Respondent's frustration over his continuing absence.

Whatever fears Complainant harbored about functioning as a long haul truck driver could have been allayed by his working in Respondent's warehouse or making one-mile shuttle trips between Respondent's plant and its warehouse. Credible evidence and past practice establish that Complainant could have performed either assignment on a temporary basis and continued to earn the same rate of pay he earned as a long haul driver. Complainant denies that this was the case, but I find his testimony to be unconvincing. Respondent's CEO and its HR Administrator provided convincing testimony that Complainant had the options of working in the warehouse and/or making shuttle runs without a loss of pay while he pursued a diagnosis and treatment for his migraine condition.

The alternative employment possibilities available to Complainant, together with Dr. Fischer's note of August 10, 2006 stating that Complainant's migraine condition did not disable him from working, distinguish the case from Kuhn v. Kimball Companies, 23 MDLR 331 (2001) where an employee had disabling irritable bowel symptoms consisting of vomiting, abdominal cramps, dizziness, diarrhea and constipation with blood; was told by her doctor that she needed to be out of work until her condition was under control; and was terminated while pursuing diagnosis and treatment. Unlike the situation in Kuhn, the medical condition facing Complainant in this case was relatively minor. It did not impose a substantial interference on the major life activity of working. Compare Anderson v. United Parcel Service, 32 MDLR 45 (2010) (bipolar depression and anxiety disorder held to substantially limit major life activities of sleeping, working, and interacting with others because condition caused insomnia, panic attacks, fatigue, lack of concentration, and suicidal ideation). Even under the relaxed standard of recent EEOC regulations which favor broad coverage of individuals, Complainant's three migraine episodes do not constitute a substantial impairment on any major life activity, including working. See ADA Amendments Act of 2008, Public Law # 110-325, sec. 2(b)(5).

Complainant also fails to demonstrate a record of impairment or to provide evidence that he was regarded as impaired. Complainant's medical records contradict any notion that he was incapacitated from performing his usual duties for Respondent, much less the modified duties that Respondent was willing to have him perform. Credible testimony offered by CEO Demakes makes clear that he did not believe Complainant to be handicapped. To the contrary, Demakes believed Complainant was fully functional but unwilling to work during the summer out of laziness. The Company

was busy at the time and had to rely on others to perform Complainant's deliveries. It was for these reasons that Respondent placed an advertisement in the newspaper to hire a replacement driver. Compare Stephan v SPS New England, Inc. 24 MDLR 332 (2004) (by treating employee's working at home as sick or vacation time and by transferring his job duties to other individuals, employer indicated that it perceived employee to be disabled from working).

Even if Complainant were disabled, there is no basis for concluding that Respondent failed to reasonably accommodate the limitations associated with his handicap. See Russell v. Cooley Dickinson Hospital Inc., 437 Mass. 443 (2002); Hall v. Laidlaw Transit, Inc., 25 MDLR 207, 213-214, *aff'd*, 26 MDLR 216 (2004); Mazeikus v. Northwest Airlines, Inc., 22 MDLR 63, 68 (2000). A reasonable accommodation is defined as "any adjustment or modification to a job that makes it possible for a handicapped individual to perform the essential functions of the position and to enjoy equal terms, conditions and benefits of employment." MCAD Handicap Guidelines, section 11(C); Ocean Spray Cranberries, Inc. v. MCAD, 441 Mass. 632, 648, n.19 (2004). The duty to provide a reasonable accommodation requires an employer to participate in an interactive process with a disabled employee who requests an accommodation. See MCAD Handicap Guidelines at VII; Mammone v. President & Fellows of Harvard College, 446 Mass. 657, 670 n.25 (2006).

Complainant alleges that Respondent did not engage in an interactive process with him to facilitate his taking time off from work for diagnostic testing. This claim flies in the face of credible evidence that Complainant's immediate supervisor, George Karavedas, allowed Complainant to limit his driving to shuttle runs and take off time

between July 10 and 31, 2006 in order to see doctors about his visual problems and have medical tests. Having granted such an accommodation in July of 2006, it is reasonable to infer that Respondent would have extended the same accommodation in August of 2006 following Complainant's trip to the emergency room. There is, moreover, credible evidence that in early August of 2006, HR Administrator Conner offered Complainant the options of driving a shuttle truck or working in the warehouse for an indefinite period and that Complainant declined both offers. The record supports Respondent's contention that the Company would have continued to grant Complainant a modified work arrangement until his medical condition resolved but that Complainant refused to work out of fear of driving a shuttle truck and a disinclination to be in the warehouse because he was not an "indoor" guy. Complainant attempts to rebut this evidence by arguing that migraines prevented him from making shuttle runs or handling any machinery in August of 2006 and that the only reasonable accommodation was a medical leave of absence. I am not persuaded by Complainant's arguments, however, in light of the absence of medical documentation supporting his claims. Complainant's position demonstrates an inflexible and unreasonable reaction to Respondent's attempts to reasonably accommodate the limitations associated with his migraine condition.

Turning to Complainant's allegation that he was fired due to his handicapped status, Complainant has the burden of showing, in the first instance, that he was a qualified handicapped individual who was treated differently from similarly-situated, nondisabled employees. See Dartt v. Browning-Ferris Industries, Inc., 427 Mass. 1 (1998). This claim must be rejected because Complainant has not established that he was a qualified handicapped individual (see infra). Even if he were such an individual,

however, Complainant has not identified any nondisabled employee(s) who refused to work for three weeks without supporting medical documentation and did not suffer adverse consequences. Without such a showing, Complainant fails to sustain his prima facie burden of identifying similarly-situated, non-disabled employees were treated more favorably.

Rather than show that Respondent terminated Complainant because of a handicap or perceived handicap, the evidence indicates that Respondent terminated Complainant because CEO Demakes believed that he was a healthy employee with a non-disabling migraine condition and a poor work ethic. To be sure, Demakes could have given Complainant a warning or imposed a disciplinary suspension before firing him for job abandonment, but the failure to do so does not convert Complainanat's refusal to work into a disability. Respondent's Handbook provides for progressive discipline but states that "[t]here may be circumstances when one or more steps are bypassed." Joint Exhibit 5, p. 20. According to Demakes, it was not a worthwhile use of his time to write up reprimands for recalcitrant employees.

Finally, Complainant's allegation that the record contains direct evidence of discrimination must also be rejected. It is undeniable that Demakes used colorful language to describe Complainant's prior absences, his abandonment of a Company truck, and his refusal to work in the warehouse but such language was uttered in frustration over Complainant's perceived lack of cooperation, not as an expression of discriminatory animus. Demakes's language, while forceful, is not direct evidence of discrimination because it focuses on Complainant's job-related deficiencies rather than on his medical condition. Demakes concluded that Complainant was unwilling to help

himself and that his disappearance for three weeks under such circumstances justified termination. Such a decision may have been harsh, but it is not handicap discrimination. Accordingly, the complaint must be 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 29th day of December, 2010.

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Betty E. Waxman
Hearing Officer