

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and  
JESSICA CARELLA

v.

DOCKET NO. 08-BEM-03432

BLUE CROSS BLUE SHIELD OF  
MASSACHUSETTS and  
KATHLEEN YAEGER

Appearances: Brian J. MacDonough Esq., for Complainant  
Joseph D. Halpern, Esq., for Respondents

DECISION OF THE HEARING OFFICER

I. INTRODUCTION

On November 13, 2008, Complainant, Jessica Carella, filed a complaint against her former employer Blue Cross and Blue Shield of Massachusetts, Inc., her former supervisor Kathleen, now known as Katherine, Yaeger and the national Blue Cross and Blue Shield Association alleging unlawful discrimination on the basis of pregnancy in violation of G.L. c. 151B, § 4. Specifically Complainant alleged that she was terminated from her employment three days after notifying her supervisor that she was pregnant. The national Association was dismissed from the proceeding as a party-Respondent by stipulation at the Public Hearing.

The Investigating Commissioner found probable cause to credit Complainant's allegations and conciliation efforts were unsuccessful. The Investigating Commissioner thereafter certified the case for Public Hearing and a Hearing was held before me on January 24, 26 and 27, 2012. The parties filed proposed Findings of Fact and Conclusions of Law on April

30, 2012. Having reviewed the record in this matter and the post-hearing submissions, I make the following Findings of Fact and Conclusions of Law. To the extent that the proposed findings and conclusions are in accord with the findings herein, they are accepted; to the extent that they are not, they are rejected. Certain proposed findings have been omitted as not relevant or necessary to a proper determination of the material issues presented.

## II. FINDINGS OF FACT

1. Complainant began working for Respondent, Blue Cross Blue Shield as a Recruiter in its Human Resources department in August of 2005. (Tr. 20) As a recruiter in the HR Department, Complainant's position was focused on recruiting candidates for the Member Services department of Human Resources, to work specifically in Respondent's call center. (Tr. 20)

2. Respondent Blue Cross Blue Shield is located in Boston, Massachusetts. Respondent employs more than six persons and is an employer within the meaning of M.G.L. c. 151B, § 1(5). Respondent Katherine Yaeger, formerly Kathleen Yaeger, was an employee of Respondent and was Complainant's direct supervisor from January 2008 until Complainant was separated from her employment with Respondent on July 31, 2008. (Tr. p. 309)

3. As a Recruiter, Complainant initially reported to Michael Fales from 2005 to early 2007, then to Kathy Fahey from early 2007 to early 2008, and finally to Ms. Yaeger. These individuals all worked in Human Resources and reported to Susan Birdsey, who was Human Resources Director for Sales-Marketing-Service/ Information Technology at Blue Cross. (Tr. 26-27; 235-36, 310)

4. Complainant's recruitment functions principally supported Respondent's Member Services department. As such, the chief clients for Complainant's services were Gloria Pegurri, then Vice President of Member Services, and Patricia Dillane, who was the Director of Member Services, and Pegurri's second in command. (Tr. 33, 93-94, 173, 201) Complainant's primary responsibilities included sourcing, recruiting and interviewing potential candidates to be hired for the Member Services area, which entailed routine, high-volume hiring for entry-level positions. (Tr. 311) Complainant's job was essentially to successfully identify and recruit qualified entry-level candidates who would be trained to work in Respondent's high volume call center responding to and resolving the inquiries of Blue Cross members. (Tr. 175, 193, 197) Part of the challenge of Complainant's job was to fill training classes with qualified candidates on a tight schedule of class deadlines during aggressive hiring periods. (Tr.36)

5. Respondent's in-bound call center was responsible for about 2 million calls annually and recruitment and hiring were very important to ensure that the call-center be at peak staffing level. The call center serviced customer inquiries from 8 a.m. to 9 p.m. (Tr. 196-197) In 2008, Pegurri who was then Vice President of Member Services, had strategic and over-sight responsibility for the in-bound call center services. (Tr. 170) Pegurri testified that the call center was constantly hiring new employees, between ten and twenty a month, and that the call center provided a critical service function for the company. There was significant internal promotion from the in-bound call center to other areas of the company. (Tr. 171-172) Dillane, Pegurri's second in command, testified that the call center associate positions were entry level and very high energy, fast-paced jobs with a lot of structure. As a result the position had a limited life span, there was high turnover, and many of the associates moved on to other jobs within the company and had to be replaced. (Tr. 196-197)

6. One of Complainant's key job responsibilities was to "establish and implement recruitment strategies." (Exhibits 3-6) Her job duties included developing interview and screening materials for use during the hiring process; tracking and reporting on recruitment and hiring data; partnering with business leaders, hiring managers, and the human resources department to develop recruitment plans and strategies; coaching business leaders and hiring managers regarding the interview process; coordinating and participating in job fairs, and networking and participation in community activities to promote employment at Respondent. (Tr. 28, 29, 32; Exs. 3-6) Prior to joining Respondent, Complainant had over five years of recruiting experience that included similar areas of responsibility. (Tr. 22-23)

7. Complainant's duties included working with business leaders in Member Services including Gloria Pegurri and Patty Dillane. Complainant testified that she had a generally positive working relationship with the business leaders in Member Services but had some difficulties working with Pegurri and Dillane. She stated that working with them could be challenging, in part due to Pegurri's management style, and particularly during aggressive hiring periods when there were deadlines to fill training classes. (Tr. 34-36, 106) Complainant testified that there were times as early as 2005 and 2006 when Pegurri treated her unprofessionally and sometimes with disdain. Pegurri made comments about Complainant's presentations in meetings that Complainant considered sarcastic. (Tr. 35-36, 93-94, 106) Complainant admitted that Dillane expressed concerns about her performance and ability to fill training classes in 2006 and 2007 and said Dillane sometimes treated her unfairly. (Tr. 94-97) She testified to several specific disagreements with Dillane. (Tr. 97-107) These difficulties with the business leaders in Member Services occurred prior to Complainant becoming pregnant.

8. As early as the Fall of 2007, Pegurri and Dillane complained directly to Birdsey about Complainant's performance. (Tr. 177-79, 181, 216; 238-47, 284, Ex 40) Pegurri testified that she began to feel uncomfortable that Complainant was focused more on the quantity rather than the quality of associates hired for the call center, was disappointed with Complainant's lack of participation at staff meetings, and her lack of creativity in implanting more innovative and strategic planning for recruitment. (Tr. 174-175) Pegurri was also concerned about the inadequate level of recruitment of college graduates and Spanish speaking associates by Complainant and her failure to design a set of metrics to follow candidates after they were hired to determine whether or not they were a successful hire and why. (Tr. 177-178)

9. Pegurri expressed frustration that Complainant was not open to suggestions to improve her performance, and despite receiving feedback from Member Services managers, she did not improve. (Tr. 176) Despite Pegurri's frustrations, Dillane sought more time to work with Complainant. (Tr. 177) Pegurri stated that when it became clear that Complainant was not meeting the needs of the business she asked Birdsey to find another candidate for the role. (Tr. 180-181) Prior to speaking to Birdsey, Pegurri expressed her concerns about Complainant to Mike Fales who was Complainant's supervisor for a period of time. (Tr. 177) Pegurri did not document her concerns about Complainant's performance because Complainant did not work for her and was not a member of her staff. Pegurri did provide input to Complainant's leaders and her manager about issues related to her performance. (Tr. 190) Both Pegurri and Dillane sought to have Complainant replaced by someone with more senior skills. (Tr. 181; 216-217)

10. Dillane testified that she had concerns regarding the quality of candidates Complainant presented for hire, and stated that Complainant's approach to the job was not innovative. (Tr.202, 204) She stated that the candidates Complainant presented were not doing

well in the second round interviews, and thus her managers were not recommending them for hire. (Tr. 202) She testified that Complainant never developed various sources or pipelines from which to pull strong candidates, and did not vet candidates properly. She stated that Complainant was unable to meet the challenge to strategize regarding how to get the right candidates in the door and failed to refresh the competencies of the candidates she was looking for or to look ahead and anticipate her customer's needs. (Tr. 206-208) I credit her testimony.

11. Birdsey confirmed that Pegurri and Dillane expressed displeasure and frustration with Complainant's performance which failed to improve, despite their feedback to her. In their view, Complainant's recruitment plans and strategy lacked innovation and were focused primarily on the quantity and not the caliber of candidates recruited. (Tr. 239) Birdsey's notes from discussions in September 2007 state that Pegurri had "checked out" on Complainant some time ago and that Dillane wanted Complainant "fired or rotated out," and that the entire Member Services team was frustrated with Complainant. Exs. 40, 40A.

12. Birdsey was in accord with the assessment of Pegurri and Dillane, and she testified that by October or November of 2007, she had determined that Respondent needed to terminate Complainant's employment and hire a recruiter with more senior skills. (Tr. 252) In the fall of 2007 she had a discussion with the Kathy Fahey who had most recently evaluated Complainant's performance, because she did not believe the evaluation reflected the negative feedback she was receiving about Complainant's performance. Birdsey was upset that Fahey had not been honest with Complainant and believed that Complainant's rating should have been lower. (Tr. 250-251) I credit this testimony.

13. In January or February of 2008, Katherine Yaeger assumed the position of Human Resources Manager with responsibilities for the Member Services department. (Tr. 27, 312)

As such, she became Complainant's direct supervisor. Birdsey informed Yaeger that Pegurri and Dillane were not happy with the recruiting support they were getting from Complainant and that they were determined to make a change. (Tr. 251-55, 313-15) Since Yaeger was new to the job and did not know Complainant, she asked for some time to assess Complainant and draw her own conclusions. (Tr. 251-54, 272, 314) Although Birdsey had already concluded that Complainant should be replaced, she agreed to extend Yaeger some time to evaluate Complainant and to make her own assessment as to whether Respondent needed to replace her with a more senior recruiter .

14. In the first few months of 2008, Yaeger discussed Complainant's performance with Fales and Fahey, Complainant's former leaders at Respondent. She also had discussions with Pegurri and Dillane, and other managers in the Member Services department. (Tr. 324-33) Yeager specifically asked Fales why Complainant had received an A rating for "Achieved" in a previous review and he responded that Complainant was good at high volume entry level recruiting, and the routine functions of just filling classes. However, he stated that Complainant did not take things to the next level and was not good at problem solving. (Tr. 326-328) Fales assessment of Complainant included his view that she did not push back knowledgeably or offer solutions to problems, but rather left him to put out fires and was good at the "dump and run." (Tr. 327-32; Exs. 26, R-6). Fahey corroborated Fales assessment of Complainant. (Tr. 333) I credit Yaeger's testimony about these discussions.

15. Within the first few months of 2008, Yaeger came to the conclusion that the leadership in Member Services was correct in its assessment of Complainant's abilities. On March 4, 2008, Yaeger noted that Fahey was going to have a conversation with Complainant regarding her failure to perform at a more strategic level, as was expected. (Ex. 25) Yaeger

testified to difficulties Complainant experienced with Pegurri, Dillane, other managers in Member Services and co-workers in Human Resources. Complainant sought Yeager's assistance and intervention in managing those relationships, and Yeager testified that she believed Complainant should have been able to manage these relationships on her own. (Tr. 318-319; see Exs. 24, 45) As a result of her own observations and discussion with others, Yeager came to agree with the assessment of Member Services managers that Respondent should terminate Complainant and hire a Senior Recruiter.

16. Yeager testified that she and Birdsey came to a final decision on Complainant's position sometime in April of 2008 prior to consulting with the legal department about how to proceed. (Tr. 335-36, 338-39) A decision was made to eliminate Complainant's position so that she could be granted severance pay. According to Yeager, the target date for notifying Complainant of her termination was mid-June 2008. (Tr. 340-341) Complainant was not pregnant in April of 2008 at the time these discussions occurred. Complainant was not notified of her termination in mid-June, because she had plans to go on a family vacation at that time and subsequently Yaeger had a scheduled vacation. (Tr. 343-344) I credit this testimony.

17. Once the decision to eliminate Complainant's position was made, Birdsey instructed Yaeger to work with Catherine Devlin, the Business Partner for the Human Resources Department, to start the process to eliminate Complainant's position and to begin working on a job description for a Senior Recruiter. (Tr. 252) Birdsey testified that they began to review resumes from a previous search and that at the time Human Resources was actively interviewing candidates. (Tr. 256)

18. On April 22, 2008, Yaeger and Devlin consulted with Attorney Lynn Toney Collins an Associate General Counsel and lead employment attorney in Respondent's Law Department



about the decision to eliminate Complainant's position and to hire a Senior Recruiter. (Tr. 285-89, 294-98, 339-40; Exs. 33 and R-5) Attorney Collins confirmed that Yaeger and Devlin contacted her to discuss a restructuring and elimination of Complainant's position. When such an action is anticipated, Attorney Collins generally asks about the employee's status and if they are protected under the anti-discrimination laws. (Tr. 285-288) Since Complainant was not pregnant at the time, Attorney Collins received no information that Complainant could claim protected status as a pregnant female. Based on the testimony of Yaeger, Collins and Respondent's other witnesses, I find that discussions regarding the termination of Complainant's employment had been ongoing for some months prior to April. In addition to the testimony, Attorney Collins prepared a memo which notes the April 22, 2008 date of her phone conversation with Yaeger and Devlin. I find that the decision to terminate Complainant's employment was made prior to the April 22, 2008.

19. Complainant became pregnant no earlier than May 1, 2008. She learned that she was pregnant sometime in early June of 2008 after taking a pregnancy test. (Tr. 45-46) Complainant asserted that she discussed her pregnancy with some co-workers in early June and that her pregnancy should have been apparent to management in middle or late June because of the changes to her body and the fact that she was already wearing maternity clothes by the end of June. (Tr. 50-51) Complainant informed Yaeger of her pregnancy on July 28, 2012 and stated that Yaeger's response was awkward, and rather than congratulating Complainant she made a comment about Complainant not being sick, which Complainant found odd. (Tr. 52; 108-110) Yaeger stated that prior to that conversation she was not aware that Complainant was pregnant or had been planning a pregnancy, but she had noticed that Complainant had gained weight. I

credit this testimony. (Tr. 353-354) After their conversation, Yaeger immediately sent an email to Birdsey informing her that Complainant was pregnant. (Ex. 37)

20. According to Yaeger, Respondent was initially to notify Complainant of her termination on July 10, 2008, but the meeting was postponed because Complainant took the day off for a medical appointment. (Tr. 351) The meeting to notify Complainant of her termination was postponed again to the end of July 2008 because of Complainant's and Yaeger's vacation schedules. I credit this testimony.

21. On July 31, 2008, Respondent informed Complainant that her position was being eliminated and her employment with Respondent terminated. (Tr. 52-53) Respondent asserts that it eliminated Complainant's recruiter position, so that she would be eligible for severance pay, and hired a new employee named Jeanne Lotti into the position of Senior Recruiter. Yaeger's notes indicate that she interviewed Lotti on June 9, 2008. (Ex. 41, Tr.348). Pegurri and Dillane interviewed Lotti on or about July 7 or 8, 2008. (Tr. 188, Ex. 36) The decision was made to hire Lotti, even though she did not have the number of years of experience listed for the position on the job description. Respondent's witnesses testified that this did not concern them, because they were very impressed with Lotti's interview and unanimously believed her to have the skills they were seeking. (Tr. 187-188; 219-25; 346-48) I credit this testimony.

22. Respondent's managers who were involved in the decision to terminate Complainant's employment were all women of child bearing age, and a number of them had given birth and taken maternity leaves while working for Respondent. Catherine Devlin was about to go on a maternity leave in July of 2008. (TR. 352-353) Pegurri had taken two maternity leaves while working for Respondent in 2003 and 2005 and both times returned to work for Respondent. She testified that approximately 65 to 70% of the 500 or so employees who worked

under her in Member Services were women and that pregnancies were not an uncommon event. (Tr. 170-171) Dillane testified that the field of customer service is predominantly female and that she took two maternity leaves while working for Respondent, returning to work both times. (Tr. 198- 199) Birdsey also took a maternity leave while working for Respondent and returned to work thereafter. (Tr. 236)

### III. CONCLUSIONS OF LAW

General Laws c. 151B § 4(1) prohibits discrimination based on an employee's gender. The Commission and the Courts have long since recognized that pregnancy and childbirth are sex-linked characteristics, and that adverse employment actions based on a female employee's pregnancy constitute unlawful discrimination. *See Sch. Comm. of Braintree v. MCAD*, 377 Mass.424, 430 (1979); *White v. Univ. of Massachusetts at Boston*, 401 Mass. 553, 557 (1991); *Lane v. Laminated Papers, Inc.*, 16 MDLR 1001(1994).

To establish a prima facie case of sex/pregnancy discrimination Complainant must demonstrate that (1) she is a member of a protected class; (2) she performed her job at an acceptable level; (3) she was terminated; and (4) her termination occurred under circumstances that give rise to a reasonable inference of discrimination.

At the time Complainant's employment was terminated, she was pregnant and protected by G.L. c. 151B. She had just days before her termination, officially notified her supervisor of her pregnancy. Focusing on the time frame alone, the elimination of her position seems tied to the news of her pregnancy, giving rise to an inference of discrimination.

There is a dispute about whether Complainant was performing her job at an acceptable level. While Respondent asserts that Complainant's performance had been the subject of

complaints and concerns for some time, she had not been formally disciplined or received a poor evaluation. Since the burden of establishing a prima facie case is not meant to be onerous, I conclude that for the purposes of establishing a prima facie case only, Complainant has established that she was performing at a minimally acceptable level. *See Sullivan v. Liberty Mutual Insurance Co.*, 444 Mass. 34, 45 (2005)

Once Complainant has established a prima facie case of discrimination, the burden of production shifts to Respondents to articulate a legitimate non-discriminatory reason for its actions supported by some credible evidence. *See Abramian v. President & Fellows of Harvard College*, 432 Mass. 107, (2000). If Respondents do so, Complainant, at stage three, must prove by a preponderance of evidence that Respondent's articulated reason was not the real one but a pretext and that there was a discriminatory motive. *Lipchitz v. Raytheon Company*, 434 Mass. 493, 504 (2001). Complainant retains the ultimate burden of proving that Respondents' adverse actions were the result of discriminatory animus. *See id.; Abramian*, 432 Mass. at 117.

Each of Respondents witnesses testified that for some time prior to Complainant's pregnancy, they had experienced problems with the quality of Complainant's performance and her inability to meet expectations for improvement. The business leaders in Member Services and Human Resources who were Complainant's clients were dissatisfied with the level of her recruitment abilities, her failure to think and plan strategically, and the level of candidate she was procuring for hire into Respondent's high volume call center. There was ample testimony from each of Respondent's witnesses attesting to their dissatisfaction with Complainant's performance, the complaints they had received about her, and their discussions and plans to replace her. The testimony from these witnesses that these discussions occurred before Complainant became pregnant was credible. I found Yaeger and Dillane to be particularly

credible witnesses and believe they sought to work with Complainant and extended her additional time to improve. While it was apparent that Birdsey and Pegurri were more vocal about their difficulties with Complainant, and were not as sympathetic towards her as others, there was nothing in their testimony to suggest that these negative feelings resulted from Complainant's pregnancy and, in fact, they pre-dated her pregnancy. It was apparent that their negative view of Complainant resulted from their frustration with her performance.

In addition to ample credible testimony about the deficiencies in Complainant's performance and the management discussions addressing this problem, Respondent submitted documentary evidence that discussions about dissatisfaction with Complainant's performance had been ongoing for some time prior to her pregnancy. Concerns about Complainant's performance and the need to replace her surfaced before Complainant became pregnant as did discussions about replacing her. I believe Respondent's witnesses' testimony that the decision to eliminate Complainant's position and hire a new person with stronger skills was made prior to her pregnancy and/or Respondent's knowledge of her pregnancy. Respondent thus met its burden at stage two to articulate a legitimate non-discriminatory reason for the adverse action that was unrelated to Complainant's pregnancy.

At stage three, Complainant must prove that Respondent's reason is a pretext for discrimination meaning that Respondent acted with discriminatory intent, motive or state of mind. *See Lipchitz supra.*, 434 Mass. at 493. Complainant argues that the timing of her termination is so suspect and that the hiring of a so-called "senior recruiter" with fewer years of experience than the job description called for renders Respondent's reasons a sham. Moreover, Complainant asserts that since her performance evaluations do not reflect the stated concerns about her ability to perform the job, Respondent's claim of poor performance is suspect. She

also alleges that Respondents would have known of her pregnancy months before she formally announced it and points to all of these facts as evidence of pretext.

The parties dispute when Respondent's management learned that Complainant was pregnant. Complainant claims that Respondent had reason to know about her pregnancy much earlier than when she gave her official notice because she had shared her information with some co-workers and she had gained substantial weight. I conclude that this dispute is essentially irrelevant since the decision to terminate Complainant was made sometime prior to her becoming pregnant, but in any event no later than April of 2008. This was proven by the testimony and notes of the in-house employment attorney who was consulted by Yaeger and Devlin regarding the termination.

While the timing of the notification to Complainant may have been ill advised and was extremely unfortunate, having made the decision, Respondents managers chose to execute the change they had been planning for some time and believed was warranted. The timing of Complainant's termination is insufficient to prove discriminatory motive in the face of ample evidence that Complainant's primary client, Member Services, had been displeased with her performance for some time and had begun formulating a plan to replace her before she became pregnant. It is unfortunate that the official notification to Complainant of her termination was delayed several times, first, at the beginning of the year to give Yaeger the opportunity to formulate her own opinion as to Complainant's abilities and later, due to summer vacation schedules, including Complainant's. It is no wonder that Complainant felt justifiably blindsided and shell-shocked by the timing of her termination. But, given that the decision to terminate Complainant's position occurred prior to her becoming pregnant, the decision was not and could not have been influenced by her pregnancy.

Complainant argues that the restructuring of her position was a sham and a pretext for discrimination because the candidate hired to replace her had fewer years of experience than the job description required, and could not credibly be described as a “senior” recruiter. To counter that argument, Respondent’s witnesses offered credible testimony that the successful candidate projected the ability and requisite skills to strategize creatively in the areas where they had concerns, including the process and manner of recruitment efforts and caliber of candidates recruited. There is no evidence to suggest that their impressions as articulated were fabricated to cover-up a discriminatory motive. Moreover, the hiring process was set in motion before Complainant announced her pregnancy. Thus, Complainant has not persuaded me by a preponderance of the evidence that the elimination of her position and the hiring of Ms. Lotti were a pretense masking discrimination against her on the basis of pregnancy.

As to Complainant’s evaluations, one supervisor opined that she received an “Achieved” because she met the quantitative requirements of filling classes with recruits. Human Resources Director, Birdsey, noted that she was unhappy with Complainant’s most recent evaluation and called the reviewer to task for not being more honest in her evaluation and accurately reflecting the concerns about Complainant’s performance. It goes without saying that delivering negative feedback to a subordinate is unpleasant, difficult and often eschewed by those tasked with reviewing and evaluating employee performance. By all accounts, and by my observation, Complainant was a very pleasant and likeable young woman. It is clear that her immediate supervisors had difficulty confronting her with the more subtle deficiencies in her performance which included not following through on problems, not strategizing or thinking creatively about ways to change her recruitment methods, not properly managing relationships with Member Services, and leaving more complicated problems or issues to be handled by her superiors.

Notwithstanding, there was evidence that Complainant was verbally apprised of her shortcomings and knew that the business leaders in Member Services were frustrated with her. The fact that she was not formally disciplined in accordance with Respondent's progressive discipline policy was complicated by the fact that a number of those with complaints about her performance were not directly tasked with conducting Complainant's evaluations or responsible for issuing discipline to her. I am not persuaded that Respondent's lax utilization of progressive discipline over the period of time that managers were frustrated with Complainant's performance amounts to pretext masking pregnancy discrimination or renders Complainant's termination suspect. Ultimately, the biggest hurdle for Complainant is her inability to prove by a preponderance of the evidence that Respondent made its decision to terminate her employment after learning of her pregnancy. Given the circumstances of this case, the timing appears to have been nothing more than an unfortunate and unhappy coincidence.

Finally, the decision makers in this case were women of child-bearing age who had given birth and taken maternity leaves while working for Respondent. They all testified that Respondent, Blue Cross has liberal maternity leave policies and encourages flexible working arrangements for working mothers. There was also evidence that the vast majority of employees in Member Services, as much as 70% of some 500 employees, are female and that pregnancy is not an uncommon or unexpected event. While Complainant argues that Respondent's reasons are a pretext for unlawful discrimination, in the absence of written poor performance evaluations and because the recruiter hired to replace her had less experience, there is insufficient credible evidence to support a conclusion that Respondent was motivated by discriminatory intent motive or state of mind. *Lipchitz v. Raytheon Co.* 434 Mass. 493, 503 (2001)



Even if I were to conclude that the decision to go forward with Complainant's termination was unduly harsh and cruel under the circumstances of her having just announced her pregnancy, "it is not the [Commission's] job to determine whether Respondent made a rational decision, but to ensure it does not mask discriminatory animus." *Sullivan v. Liberty Mutual*, 444 Mass. 34, 56 (2005); *see also Mesnick v. General Elec.Co.*, 950 F. 2d 816, 825 (1<sup>st</sup> cir. 1991), cert. denied, 504 U.S. 985 (1992). Since Complainant failed to prove by a preponderance of the evidence that a determinative cause of the termination of her employment was discriminatory animus based on gender and pregnancy the complaints against Respondents Blue Cross and Yaeger must be dismissed.

IV. ORDER

For the reasons discussed above, the Complaint is hereby 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 and a Petition for Review within thirty (30) days of receipt.

So Ordered this 26<sup>th</sup> day of December, 2012.

Eugenia M. Guastaferr  
Hearing Officer