

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

M.C.A.D. & MARK CARMODY,
Complainants

v.

DOCKET NO. 10-BEM-01450

LYONS AMBULANCE SERVICE, INC.,
JENNIFER CHOPELAS & DAVE RAYMOND¹,
Respondents

Appearances:

Marcy Richmond, Esq. for Mark Carmody
Michael Splaine, Esq. for the Respondents

I. PROCEDURAL HISTORY

On June 11, 2010, Mark Carmody filed a complaint with this Commission charging Respondents with unlawful termination of employment on the basis of disability, in violation of M.G.L. c. 151B§4¶16. The Investigating Commissioner issued a probable cause determination. Attempts to conciliate the matter failed, and the case was certified for public hearing. A public hearing was held before me on December 16 and 17, 2013. Following the testimony of Dave Raymond at the public hearing, I dismissed Mr. Raymond as a Respondent as there was no evidence of his personal involvement in any alleged discriminatory action against Complainant. After careful consideration of the entire record and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law and order.

¹ Raymond was dismissed as a Respondent at the public hearing.

II. FINDINGS OF FACT

1. Complainant Mark Carmody resides in Salem, Massachusetts. Complainant successfully completed an EMT training program at Northern Essex Community College and received his EMT certification in May 2008.

2. Respondent Lyons Ambulance Service, Inc. (“Respondent”) provides emergency and non-emergency ambulance services in Northeastern Massachusetts. The company is owned by Kevin Lyons and his adult children and employs numerous part-time and full time EMTs and paramedics. In addition to several smaller locations, Respondent has two locations or “bases” on School Street and Maple Street in Danvers, MA.

3. Complainant has suffered from schizo-affective disorder, ADHD, Social Phobia and other phobias for several years. Complainant’s symptoms included self-mutilation (cutting and burning) and auditory hallucinations. Complainant’s symptoms were largely controlled by medications in 2009, although he suffered from panic attacks and social phobias. (Testimony of Complainant; Exh. 12)

4. Respondent Jennifer Chopelas (“Chopelas”) was a part-time human resources representative for Respondent from 2006 to 2011. Her office was located at Maple Street, Danvers.

5. LeeAnn Lyons (“Ms. Lyons”) has worked at Respondent for 14 years, where she is head of accounts payable. Ms. Lyons has been married to owner Kevin Lyons for 10 years. Her office is located at School Street. In 2009 Ms. Lyons was the back-up HR person to Chopelas.

6. Quadrant Health Strategies, Inc. (“Quadrant”), located in Beverly, MA, is under contract with Respondent to conduct pre-employment physical examinations for new hires.

Diane Talbot is Quadrant's director of client services. She testified that Quadrant's primary contact at Respondent was "A," the director of operations and company nurse. Under the terms of its contract with Quadrant, A is the sole employee of Respondent who is authorized to receive and review records relating to pre-employment physicals performed by Quadrant and he had a dedicated fax line in his office for receipt of medical information about employees. Chopelas was listed as an alternate contact but the contract did not state specifically that she could receive medical information. (Testimony of Talbot; Exh. 8)

7. In July or August 2009, Complainant applied for an EMT position at Respondent's Respondent Maple Street location. He was interviewed by David Raymond, Lyons' BLS (Basic Life Support) coordinator who trained and supervised EMTs. Raymond stated that Complainant's prior experience at another ambulance company and as a camp counselor caused him to consider Complainant a good candidate and he recommended Complainant to Kevin Lyons, who usually followed his hiring recommendations. (Testimony of Raymond; Testimony of Complainant)

8. Kevin Lyons approved Complainant's hire and referred Complainant's application to Chopelas, who called Complainant on August 7, 2009 and offered him employment as a full-time EMT beginning August 17, 2009, at the rate of \$11.65 per hour, plus benefits, pending the results of a physical examination. The same day, Chopelas mailed Complainant an offer letter and scheduled Complainant for a physical exam on August 12 at Quadrant. (Testimony of Chopelas; Testimony of Complainant; Exh. 10)

9. On August 12, 2009, Complainant was examined by a physician's assistant at Quadrant. Complainant informed Quadrant of his schizo-affective disorder and provided a list of his medications. (Testimony of Complainant; Exh. 8)

10. Complainant testified that when he completed the physical, he was told that prior to approving him for employment, Quadrant required input from his treating psychiatrist. Complainant gave Quadrant written authorization to obtain his medical records and to talk to his treating physician. Quadrant faxed the written authorizations to Complainant's mental health provider on August 12, 2009. (Testimony of Complainant; Exh. 8)

11. On the same day, August 12, Quadrant faxed a notice to A stating that Complainant was on "medical hold pending further data." The form further stated that Complainant must obtain the information requested by Quadrant as explained at the examination. Quadrant also left a voice mail message with A stating that Complainant was on medical hold.² (Exh. 8)

12. At the time of the physical, Complainant instructed Quadrant not to divulge his medical history to Respondent. Quadrant noted Complainant's request on his medical history form. (Testimony of Complainant; Exh. 8)

13. A was on emergency leave from the office for part of the week of August 12, 2009 and did not pick up the faxes from his office. (Exh. 7; Testimony of Ms. Lyons) Chopelas testified credibly that she was unaware that Complainant had been placed on medical hold and had she known of his status she would not have permitted him to begin training.

14. Raymond was responsible for training EMTs. He testified that new employees' first two days of training involved completing paperwork relative to employment, reviewing Respondent's policies, training in fire and electrical safety, watching a video on emergency vehicle operations and testing on the video's content. Trainees were assigned to incoming crews to test their knowledge about incoming procedures and were assigned to outgoing crews as observers. (Testimony of Raymond)

² A note in Quadrant's files documenting the voice mail message was dated August 10, 2009. The date is an apparent error. I find that the note was written on August 12, 2009.

15. Complainant and another EMT began training on Monday, August 17, 2009.

Complainant testified that he was given two polo shirts and was instructed to wear a polo shirt, khaki pants and shoes to work. Ms. Lyons was also present at Maple Street and spoke to Complainant briefly. She found him pleasant and personable.³ (Testimony of Ms. Lyons)

16. Chopelas also met Complainant on August 17 when he came into the HR office to complete paperwork. She stated that Complainant was very friendly and excited about being an EMT.

17. Complainant underwent a respirator fit test, which involves fitting to his face a HEPA mask designed to prevent exposure to TB. He also underwent a TB skin test administered by a nurse employed by Respondent.

18. Chopelas, who worked part-time, was off on Tuesday, August 18. (Testimony of Chopelas)

19. On Wednesday, August 19, Chopelas called Ms. Lyons to say that she could not locate A⁴ and needed medical clearance forms for Complainant and the other trainee. Ms. Lyons knew that A had recently been out on leave and called Kevin Lyons for direction. He instructed Ms. Lyons to enter A's office on Maple Street, where she located papers from Quadrant regarding the two new employees on A's fax machine. The fax relative to Complainant stated that he was on medical hold, pending receipt of more information from his medical providers. (Testimony of Chopelas; Testimony of Ms. Lyons; Exh. 8)

20. Ms. Lyons then called Quadrant and asked whether Complainant's status had changed and she was told that he was still on medical hold. (Testimony of Ms. Lyons)

³ Ms. Lyons testified that she made negative comment about Complainant's clothing and grooming during his first two days of training. Complainant disputed her testimony. I find her testimony in this regard gratuitous and totally irrelevant to the issues at hand in this matter.

⁴ A worked 40 hours the week of August 17, 2009. He did not testify at the public hearing and there was no explanation as to why he did not pick up his faxes that week.

21. Ms. Lyons next went to Chopelas' office and informed her that Complainant was on medical hold. She called Raymond and asked to see Complainant, who was in the adjacent training room. Raymond had no further contact with Complainant after sending him to the HR office. (Testimony of Raymond; Testimony of Ms. Lyons)

22. Complainant testified that Ms. Lyons called him into the HR office with Chopelas present and told him that he was "not a good fit" for the company. According to Complainant, she did not inform him that he was on a "medical hold." (Testimony of Complainant) I do not credit Complainant's testimony that Ms. Lyons did not tell him about the medical hold.

23. According to Ms. Lyons and Chopelas, when Complainant entered the human resources office, Ms. Lyons told him that there was a problem concerning his employment status and that he was on medical hold. Complainant said he did not understand why. Ms. Lyons responded that she did not know why and that Complainant would have to contact Quadrant for further information. According to Ms. Lyons and Chopelas, Complainant became upset and continued to question the reason for his medical status. Ms. Lyons repeatedly responded that she did not know why, that she was prevented by privacy laws from finding out and that Complainant should contact Quadrant. Chopelas and Ms. Lyons testified that he became more upset, and that he moved toward Ms. Lyons with his arms out and she backed up against Chopelas' desk. Ms. Lyons testified that while she did not fear for her physical safety, Complainant was "invading her space" and the atmosphere was tense. Complainant denied that he became upset. I do not credit his testimony. I found the testimony of Ms. Lyons and Chopelas to be consistent and credible.

24. Ms. Lyons testified that the conversation had come to an impasse and she told Complainant to go home, calm down and resolve the matter with Quadrant and decide whether

the company was a “good fit” for him. However, Complainant would not leave and Chopelas had to summon the field supervisor for assistance. Upon assessing the situation, the field supervisor asked Complainant to leave and escorted him out of the building. (Testimony of Chopelas; testimony of Ms. Lyons) I credit their testimony.

25. Ms. Lyons denied terminating Complainant’s employment and stated that she had suspended him from training until Complainant resolved the matter with Quadrant. Chopelas and Ms. Lyons stated that they had no authority to terminate employees and that Kevin Lyons was the only person who had that authority. I credit their testimony.

26. Ms. Lyons testified that she subsequently told A about the situation and left the matter for him to resolve.⁵ Neither Ms. Lyons nor Chopelas ever contacted Complainant after August 19, 2009.⁶ (Ex. 8)

27. On September 1, 2009, Complainant’s counsel wrote to Respondent seeking Complainant’s personnel records and warning the company to preserve all evidence relating to Complainant’s employment because of potential litigation. On September 8, 2009, Chopelas sent a copy of Complainant’s personnel file to Complainant’s counsel. (Exh. 9; Exh. 10)

28. On September 8, 2009, a Quadrant employee called Complainant to inquire whether he had requested his medical provider to send his medical records to Quadrant. Complainant told the employee that he no longer worked at Respondent and asked her whether she had told the company about his mental illness. She denied doing so. (Exh. 8) Complainant testified that after his termination, he received a call from Quadrant inquiring whether he wished to continue his employment. (Testimony of Complainant)

⁵ A did not testify at the public hearing.

⁶ Talbot testified about her conversation with a former Quadrant employee who purportedly spoke to A about Complainant but did not divulge Complainant’s medical history to him. This multi-level hearsay is supported only by an undated, unsigned, opaque note in Quadrant’s records that does not mention by name either Complainant or A and is highly unreliable. I do not consider it in making my decision.

29. On September 9, 2009, Quadrant's then medical director called Complainant's mental health provider and stated that Quadrant had not yet received Complainant's medical records. According to the medical director's notes, he was told that the medical provider was extremely backed up and would try to expedite sending the records. (Ex. 8)

30. Chopelas testified that during her employment at Respondent, three other applicants were placed on medical holds but she did not know their medical histories. She knew of paramedics working for Respondent who had conditions such as alcoholism and mental disabilities who voluntarily disclosed their conditions to her. Chopelas' testimony differs from that of Quadrant's witness, who stated that Complainant was the only prospective employee of Respondent that Quadrant had placed on a medical hold.

III. CONCLUSIONS OF LAW

Massachusetts General Laws c. 151B, §4(16) makes it unlawful to dismiss from employment or otherwise discriminate against a qualified handicapped person who is capable of performing the essential functions of the job with or without a reasonable accommodation. Complainant may establish a prima facie claim of handicap discrimination by showing that he: (1) is handicapped within the meaning of the statute; (2) is capable of performing the essential functions of the job with or without a reasonable accommodation; (3) was terminated or otherwise subject to an adverse action by his employer; and (4) the adverse employment action occurred under circumstances that suggest it was based on his disability. Tate v. Department of Mental Health, 419 Mass. 356, 361 (1995); Dartt v. Browning-Ferris Industries, Inc., 427 Mass. 1 (1998)

A handicapped person is one who has a physical or mental impairment, a record of such impairment, or is regarded as having an impairment, which substantially limits one or more of

the individual's major life activities. M. G. L. c. 151B §1(17). Massachusetts Commission Against Discrimination Guidelines: Employment Discrimination in the Basis of Handicap-Chapter 151B at p. 7, 20 MDLR (1998); Rapoza v. Ocean Spray, 21 MDLR 43(1999).

In the present case, Complainant has established that he was disabled within the meaning of c. 151B, because of his schizo-effective disorder and other conditions that limited several major life activities, including interacting with others. At the time he was conditionally hired by Respondent, Complainant was under the care of mental health professionals and his symptoms were largely controlled by medication. An individual who is taking medication for a mental impairment is considered disabled if there is evidence that the mental impairment, when left untreated, substantially limits a major life activity. MCAD Handicap Guidelines at p. 4; See also, Dahill v. Police Dept. of Boston, 434 Mass. 233 (2001) (individual considered disabled even though impairment is alleviated by corrective device or other mitigating measures)

Respondent extended a conditional offer of employment to Complainant as an EMT, subject to his passing a physical examination performed by a third-party contractor, Quadrant. Upon learning of Complainant's mental health history, Quadrant put Complainant on medical hold, pending receipt of further information from his mental health provider.⁷

Due to an apparent communications failure between Respondent's director of nursing and its HR manager, Complainant was hired and commenced EMT training without having been medically cleared by Quadrant. Complainant alleges that Respondent had actual knowledge of his disability or perceived him as disabled and unlawfully terminated him as a result. See

⁷ Under M.G. L.c. 151B§4(16), an employer may require a medical examination after making a job offer to an applicant and may condition an offer of employment on the results of such examination. Such an examination should be conducted solely for the purpose of determining whether the employee, with reasonable accommodation, is capable of performing the essential functions of the job. An employer may only conduct such an examination if all entering employees in the same job category are subjected to such an examination not merely those with known disabilities or those whom the employer believes may have a disability. See, MCAD Handicap Guidelines, at p. 14

Talbert Trading Company v. MCAD, 37 Mass. App. Ct. 56 (1994) (employee with known heart condition was perceived by employer to be handicapped); Keenan v. Town of Weymouth Fire Department, 28 MDLR 199 (2006) (disc injuries, chronic pain and addiction to prescription pain killers did not cause impairment in major life function but established a record and perception of impairment)

I conclude that the facts adduced at the hearing in this matter do not support Complainant's allegation that Respondent knew of his mental illness or perceived him to be disabled. There was no evidence that Quadrant told anyone at Respondent about Complainant's mental illness. The evidence showed that Ms. Lyons called Quadrant on two occasions and was told that Complainant was on medical hold. She testified credibly that she was not permitted to and did not ask Quadrant about the reasons for the hold. Therefore, I conclude that Respondent was unaware of Complainant's mental illness at the time of his separation from Respondent.

Even assuming that, without actual knowledge of a disability, Respondent perceived Complainant's "medical hold" status as evidence of a disabling condition, the record evidence does not support Complainant's contention that Respondent terminated Complainant's employment. Rather, the evidence supports Respondent's assertion that Complainant's training was suspended pending his resolution of the matter with Quadrant and that he was informed of this and asked to leave work pending such resolution. He was escorted out of the building only after behaving in a confrontational manner toward Ms. Lyons and refusing to leave the premises. While Respondent did not actively encourage Complainant to complete his medical examination after the events of August 19, the evidence suggests that this was a result of his aggressive stance and confrontational behavior with Ms. Lyons, and not his medical history. When Quadrant

employees attempted to follow up with Complainant, he told them he was no longer employed at Respondent.

Complainant was understandably frustrated to learn, after having secured employment and begun EMT training, that he had not been medically cleared. However, I conclude that the unfortunate error was due to an administrative oversight by Respondent and was not the result of discriminatory animus. Moreover, I conclude that Respondent did not terminate Complainant's employment, but rather merely informed him it was suspending his training until the medical matter was resolved. Therefore, I conclude that Respondents did not engage in unlawful discrimination in violation of M.G.L.c. 151B and hereby order that this matter be dismissed.

IV. ORDER

Based upon the above foregoing findings of fact and conclusions of law, and pursuant to the authority granted to the Commission under M. G. L. c. 151B, section 5, it is hereby ordered that the above referenced matter be dismissed as to all Respondents.

This constitutes the final order of the Hearing Officer. Pursuant to 804 CMR 1.23, any party aggrieved by this decision may file a Notice of Appeal with the Clerk of the Commission within ten days of receipt of this order and a Petition for Review with the Clerk of the Commission within thirty days of receipt of this order.

SO ORDERED, this 1st day of October, 2014

JUDITH E. KAPLAN,
Hearing Officer