COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION and GARY COOPER
Complainants

v. DOCKET NO. 11-BEM-01635

RAYTHEON COMPANY,
Respondent.

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision by Hearing Officer Judith E. Kaplan that the Raytheon Company ("Raytheon") illegally discriminated on the basis of disability against its employee, Gary Cooper ("Mr. Cooper"), in violation of M.G.L. Chapter 151B § 4(16).

Raytheon placed Mr. Cooper, who has a traumatic brain injury ("TBI"), on a performance improvement plan ("PIP") that tested his ability to perform cognitive tasks he had never performed before, and removed him from his job when he failed the PIP. Prior to and during the PIP, Raytheon did not acknowledge that Mr. Cooper had a disability, notwithstanding the multiple instances in which Mr. Cooper or his sister discussed Mr. Cooper's TBI with his supervisors and other Raytheon employees. Based on this nexus of

facts, the Hearing Officer concluded that Raytheon subjected Mr. Cooper to disparate treatment based on disability and failed to engage in an interactive process to explore the possibility of a reasonable accommodation, both in violation of M.G.L. c. 151B, § 4(16).

Raytheon was ordered to cease and desist from engaging in disability discrimination, to conduct training, and to pay Mr. Cooper damages in the amounts of $100,000 for emotional distress and $91,424.80 in back pay, both with 12% interest per annum from the date the Complaint was filed. Both parties appealed to the Full Commission. Mr. Cooper argues that the Hearing Officer erred in denying him front pay and in cutting off his back pay prior to the date of the public hearing. His counsel also request $230,381.35 in attorneys' fees and $12,141.85 in costs. Raytheon argues that it had a right to alter or expand Mr. Cooper's job functions, and the Hearing Officer's misunderstanding of that right caused her to erroneously find Raytheon liable for disability discrimination. Raytheon also argues that the Hearing Officer abused her discretion in ordering a 12% per annum interest rate added to the damage awards.

For the reasons discussed below, we affirm the Hearing Officer's decision in full, and grant the petition for attorneys' fees and costs without modification.

STANDARD OF REVIEW

The responsibilities of the Full Commission are outlined by statute, the Commission's Rules of Procedure (804 CMR 1.00 (2020)), and relevant case law. It is the duty of the Full Commission to review the record of proceedings before the Hearing Officer. M.G.L. c. 151B, §5. The Hearing Officer's findings of fact must be supported by substantial evidence, which is

defined as "....such evidence as a reasonable mind might accept as adequate to support a finding...." Katz v. MCAD, 365 Mass. 357, 365 (1974); M.G.L. c. 30A, § 1(6).

It is the Hearing Officer's responsibility to evaluate the credibility of witnesses and to weigh the evidence when deciding disputed issues of fact. The Full Commission defers to these determinations of the Hearing Officer. See, e.g., School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). The Full Commission's role is to determine whether the decision under appeal was rendered in accordance with the law, or whether the decision was arbitrary or capricious, an abuse of discretion, or was otherwise not in accordance with the law. See 804 CMR 1.23(10) (2020).

LEGAL DISCUSSION

I. Liability determination

Contrary to Raytheon's arguments on appeal, the question of liability cannot be reduced to answering the oversimplified question of whether an employer has the right to alter or expand a disabled employee's job duties. Generally speaking, an employer has this right. An employer does not have the right, however, to terminate an employee with a known disability by transferring them to a different job with new duties without any consideration of a reasonable accommodation. In the latter example, it can be said that the employer is expanding the employee's job functions, but of course that is not the full story.

The evidence shows that for eight years, Mr. Cooper satisfactorily performed under one classification (Technical Support Engineer) until he was selected for a negative performance review and placed on a PIP that required him to perform under a new classification (Test Engineer). Raytheon argued at the public hearing that Mr. Cooper was never anything other

than a Test Engineer, albeit one who had never been required to perform all of the functions of his job prior to his negative performance review. On appeal, Raytheon similarly argues that it had an unfettered right to expand Mr. Cooper's job functions after determining that his limited set of daily functions did not meet its business needs. Both characterizations fall short in light of the myriad of documentary and testimonial evidence concerning the two separate jobs. Namely, there was evidence showing that Test Engineer and Test Support Engineer were separate classifications with different educational requirements and duties; that Mr. Cooper received a satisfactory performance review for his Test Support Engineer job all eight years; and that Mr. Cooper's job performance was never evaluated based on the full scope of duties of a Test Engineer. All of this evidence supported the Hearing Officer's finding that the jobs were, in fact, distinct. Therefore, as a preliminary matter, the Hearing Officer correctly identified this case as involving a job transfer.

Moreover, contrary to Raytheon's extensive argument on appeal, the Hearing Officer was not mistaken about Raytheon's prerogative to operate its business according to its needs. More specifically, the Hearing Officer did not decide that Raytheon was prohibited from taking action with respect to an employee's job duties just because the employee has a disability. Raytheon could determine that the job Mr. Cooper had worked for eight years no longer met its business needs, and it had the concomitant ability to transfer Mr. Cooper to a job that did meet its business needs. Nothing in the Hearing Officer's decision indicates that she believed or determined Raytheon could not generally exercise those prerogatives, even knowing that Mr. Cooper was a person with a disability. Instead, her decision is clear that under the particular circumstances of this case, Raytheon's decision to transfer Mr. Cooper to a different job without any consideration of a reasonable accommodation and then terminate him from that job constituted illegal discrimination.

In the context of the foregoing, the Hearing Officer's liability determinations with respect to disparate treatment and the failure to reasonably accommodate are supported by substantial evidence and applicable case law. In order to establish a prima facie case of disparate treatment based on disability under M.G.L. c. 151B, § 4(16), Mr. Cooper had to produce some evidence that he "(1) is handicapped within the meaning of the statute [M.G.L. c. 151B, §1(17), (19)]; (2) is a qualified handicapped person capable of performing the essential functions of his job either with or without a reasonable accommodation [M.G.L. c. 151B, § 1(16)]; and (3) was subject to an adverse employment action because of his handicap." McLaughlin v. City of Lowell, 84 Mass. App. Ct. 45, 64 (2013) (citations and quotations omitted). Raytheon argues that Mr. Cooper failed to show that he was a qualified handicapped person capable of performing the essential functions of the Test Engineer position because he failed the PIP requiring him to prove he could perform that job. As the Hearing Officer aptly observed, however, in the context of a job transfer, unless a complainant's qualifications are analyzed in terms of his prior, eliminated job, an employee's rights under M.G.L. c. 151B, § 4(16) could be extinguished merely by reassigning him to a job that he cannot do and then claiming accommodation is not feasible. Doble v. Engineered Materials Solutions, 36 MDLR 36, 37, n.1 (2013). Mr. Cooper proved he was a qualified handicapped person capable of performing the essential functions of his job either with or without a reasonable accommodation via evidence showing he satisfactorily performed his Test Support Engineer position for eight years without accommodation.[1] We also find there was sufficient evidence of the other elements of the prima facie case—it was undisputed that Mr. Cooper is handicapped as defined by Chapter 151B, and Raytheon's decisions to target him for a negative performance review

[1] Mr. Cooper never formally requested or received a reasonable accommodation for his Test Support Engineer position but he did essentially self-accommodate his TBI, which was made obvious to his supervisors. For example, Mr. Cooper took advantage of the relative quiet of the second shift and the freedom to arrange his workspace to suit his needs, i.e., keeping a clean, well-organized desk space that was free from distraction.

(just months after his communications about his TBI with a supervisor and other Raytheon staff), transfer him to a new job via the PIP without any consideration of reasonable accommodation, and then terminate him when he failed the PIP constituted prima facie evidence of an adverse action on the basis of handicap.

Having made out his prima facie case, the burden shifted to Raytheon to provide a legitimate reason for the adverse action, which, if satisfied, required Mr. Cooper to prove the reason was pretextual. See Abramian v. President & Fellows of Harvard College, 432 Mass. 107, 116 (2000). The Hearing Officer correctly applied the law and determined that although Raytheon met its burden, there was sufficient evidence of pretext. As for providing a legitimate reason, Raytheon produced evidence that it implemented a ratings scale that required a certain percentage of employees within different ranks at the company to receive a rating of "improvement required," necessitating Mr. Cooper's downgrade from "meets" to "needs improvement." There was also testimony calling into question Mr. Cooper's competency with respect to a test procedure prior to the rating downgrade, as well as testimony that the PIP was intended to help Mr. Cooper attain competency with the full range of Test Engineer duties. However, the Hearing Officer found these reasons to be pretextual based on evidence that Raytheon knew about but ignored Mr. Cooper's TBI and its specific challenges when it put him on a PIP requiring performance of new duties in an environment that was obviously ill-suited to his needs.[2] Also, quite tellingly, Raytheon was already exploring the availability of other jobs for Mr. Cooper at the very inception of the PIP, and it actively ignored additional communications from Mr. Cooper and his sister with respect to his disability as he struggled

[2] For example, although Mr. Cooper had communicated (via a PowerPoint presentation and multiple conversations with supervisors) his need for good lighting, and a relatively quiet, well-contained and organized workspace in order to perform work, the PIP required him to change shifts and workspaces, resulting in a working environment with inadequate lighting, more noise, and a workspace he had significantly less ability to control and keep organized.

with performing his new cognitive tasks. Moreover, other similarly situated employees were not terminated or demoted when they failed PIPs or otherwise demonstrated deficiencies in core engineering duties. For these reasons and others, the Hearing Officer did not find the testimony about the intent of the PIP to be credible, and determined that the true intent of the PIP was to force Mr. Cooper out of his Test Support Engineering position. Not only do we defer to the Hearing Officer's credibility determinations, but the evidence supports her conclusions that Raytheon was motivated by discriminatory animus and intended to remove Mr. Cooper from his job when it downgraded his performance review and placed him on the PIP. For all of these reasons, there was sufficient evidence of disparate treatment.

The record similarly supports liability for the failure to reasonably accommodate. In order to prevail on a claim of disability discrimination based on the failure to provide a reasonable accommodation, the complainant must prove that: "(1) (s)he is handicapped within the meaning of G.L. c. 151B, § 4 (16); (2) (s)he is qualified and able to perform the essential functions of the job with a reasonable accommodation of her handicap; (3) (s)he requested a reasonable accommodation and (4) (s)he was prevented from performing her job because her employer failed to reasonably accommodate the limitations associated with her handicap." Linda Johansson v. Department of Corrections, 32 MDLR 95, 97 (2010) (citing Handicap Discrimination Guidelines of the Massachusetts Commission Against Discrimination ("MCAD Handicap Discrimination Guidelines"), § VII (B) (1998) and Dartt v. Browning-Ferris Industries, Inc., 427 Mass. 1 (1998)). The request for reasonable accommodation triggers the obligation to engage in an interactive process to explore the possibility of accommodation, and "[t]he refusal of an employer to participate in that process once initiated, or to make a reasonable accommodation once it has been identified, is a violation of our discrimination laws." Ocean Spray Cranberries, Inc. v. Massachusetts Comm'n Against Discrimination, 441

Mass. 632, 644 (2004). While the employee is responsible for proposing a reasonable accommodation (see Russell v. Cooley Dickinson Hosp., Inc., 437 Mass. 443, 457 (2002)), there may be occasions when "an employer's duty to inquire and interact with an employee about a reasonable accommodation is triggered even though the employee has not made a request…[t]his affirmative duty arises when an employer is aware of the employee's disability, or the disability is obvious, and the employer observes that the employee is having a difficult time on the job." Johansson, 32 MDLR at 97 (citing MCAD Handicap Discrimination Guidelines, § VII (B)). The sufficiency of the evidence to support the first two elements of the reasonable accommodation claim has been addressed. As for whether Raytheon had a duty to engage Mr. Cooper in the interactive process and failed to do so, we agree with the Hearing Officer's determinations on those points.

There is ample evidence that Raytheon knew about Mr. Cooper's TBI and its associated limitations not only before it placed him on the PIP, but also during the implementation of the PIP when Mr. Cooper was clearly struggling to perform his new cognitive tasks, so much so that the stress caused him to take a medical leave of absence. Before the PIP, Mr. Cooper informed his supervisor in 2002 or 2003 about his TBI and spoke to medical staff at work about his injury. Mr. Cooper's sister also discussed his TBI with his supervisors and the HR Director in 2003, 2005, and 2006. In October 2009, just several months before his negative performance review and placement on the PIP, Mr. Cooper told his current supervisor about this TBI (also offering him his explanatory TBI PowerPoint) who referred him to Raytheon's medical department. Mr. Cooper then emailed the medical department about "workplace accommodations", and expressed concern that his TBI may be a factor in his work evaluation. The supervisor discussed Mr. Cooper's TBI and these events with the Raytheon employee who shortly thereafter downgraded Mr. Cooper's performance evaluation, placed him on the PIP,

and made herself the PIP supervisor. During the PIP, when Mr. Cooper was obviously having difficulty performing his new tasks, he mentioned his TBI to Raytheon's ethics office in June 2010, and provided Raytheon with doctors' notes from his medical providers about his TBI in July, August and September 2010. Mr. Cooper complained to his PIP supervisor about his need for adequate lighting and a different workspace, and Mr. Cooper's sister spoke directly to his PIP supervisor in October 2010 to request an accommodation.

Taken together, this evidence was sufficient to trigger Raytheon's duty to engage Mr. Cooper in an interactive process. See Ocean Spray Cranberries, 441 Mass. at 649–50 (complainant's cumulative actions demonstrating his disability and his need for accommodation was sufficient to trigger the duty to engage in the interactive process). However, the record is devoid of evidence that Raytheon met its duty. Instead, Raytheon steadfastly refused to acknowledge Mr. Cooper's disability, insisting on a formal, explicit communication from Mr. Cooper, going so far as to assert that it could not accommodate Mr. Cooper without a determination by its medical staff that such action was necessary. This was perilous error where "[a] doctor or health care provider who conducts a medical examination (and/or inquiry) for an employer should not be responsible for making employment decisions or deciding whether or not a reasonable accommodation can or should be made…the employer is responsible for such decisions." MCAD Handicap Discrimination Guidelines, § V(C). The human resources ("HR") specialist that was involved in Mr. Cooper's PIP also testified that the HR department did not have the ability to acknowledge whether an employee needed an accommodation, and told Mr. Cooper during the PIP that Raytheon did not "recognize" that he had a disability. This evidence and multiple other painstaking factual findings by the Hearing Officer support a conclusion that Raytheon went to great lengths to ignore the fact of Mr. Cooper's disability, and to continue with the PIP that set him up for failure.

In short, having reviewed the entire record of proceedings, including the voluminous transcripts of the seven-day public hearing in this matter, multiple volumes of exhibits and the Hearing Officer's forty-five page decision including over one hundred findings of fact, we find there was substantial evidence to support the Hearing Officer's factual findings underpinning her liability determinations, and we will not disturb any findings that rely upon her assessment of credibility. We also expressly reject the extensive argument with respect to the right to expand job functions pressed by Raytheon in this case—while an employer may add duties to jobs, eliminate jobs and transfer employees to suit its business needs, Chapter 151B prohibits targeting employees with known disabilities, or willfully ignoring employees' known disabilities, in exercising those prerogatives. Instead, we reiterate that "[w]hen an employer decides to re-assign an employee who it knew or should have known had physical limitations, it must endeavor to assign that employee to a job that (s)he is capable of performing with or without a reasonable accommodation." Doble, 36 MDLR at 39.

II. Damages

The Hearing Officer awarded Mr. Cooper two and a half years of back pay, calculated from the time he was placed on the PIP[3] on June 25, 2010 to January 1, 2013, based on testimony from Mr. Cooper that "test engineers were being laid off during this time." Given evidence of layoffs, the Hearing Officer reasoned that awarding back pay up to the time of the public hearing was speculative, and reducing back pay was fair and reasonable. Mr. Cooper argues that he was entitled to back pay through the date of the public hearing beginning on May

[3] Although Mr. Cooper remained at the same salary before and after the PIP went into effect, he took a medical leave of absence during the PIP to deal with the physical and mental stress caused by the drastic and sudden changes to his work environment and duties, and then returned to work on a reduced schedule. The Hearing Officer calculated what Mr. Cooper's 2010 wages would have been without the leave of absence and reduced schedule, and with his annual raise, essentially reasoning that but for his placement on the discriminatory PIP, he would have earned an additional $11,295.55 in 2010. Raytheon does not take issue with the Hearing Officer's decision to start the back pay calculation "at the time of the PIP." We agree with the Hearing Officer's determination that back pay was owed from the time Raytheon placed Mr. Cooper on the PIP.

4, 2015, and the Hearing Officer's decision to cut off back pay as of January 2013 misapplied or ignored the employer's burden to prove the need for a reduction in the back pay award.

A complainant is not automatically entitled to back pay all the way up to the time of the public hearing. "On a finding of discrimination, the commission has the authority to grant such relief as is appropriate," and "[t]he formulation of the type of relief appropriate in a particular case is within the commission's discretion, provided any damages awarded are supported by substantial evidence" (citations omitted). Wynn & Wynn, P.C. v. Massachusetts Comm'n Against Discrimination, 431 Mass. 655, 674 (2000), overruled on other grounds by Stonehill Coll. v. Massachusetts Comm'n Against Discrimination, 441 Mass. 549 (2004). Indeed, damages cannot be determined by speculation or guess. Conway v. Electro Switch Corp., 402 Mass. 385, 388 (1988). It follows from the foregoing that the Hearing Officer should not ignore or disregard credible evidence in favor of mitigating damages. See, e.g., Christopher P. v. Dep't of Soc. Servs., 69 Mass. App. Ct. 1109, 868 N.E.2d 955 (2007) (Rule 1:28), citing Edward E. v. Department of Social Servs., 42 Mass. App. Ct. 478, 480 (1997) (in an adjudicatory proceeding subject to judicial review under M.G.L. c. 30A, §14, "[t]he hearing officer must take into account all of the evidence in the record").

The Hearing Officer found Mr. Cooper's testimony with respect to engineering layoffs to be credible and we will not second guess that credibility determination. Furthermore, while the respondent bears the burden of proving the complainant failed to mitigate his damages (see Francis Croken and John Tamayo v. Hagopian Hotels et al., 35 MDLR 155, 157 (2013) and cases cited therein), the principle is distorted if taken to mean that a Hearing Officer must ignore credible testimony with respect to reasonable damages even if respondent's counsel did not elicit the testimony. Mr. Cooper remained a Raytheon employee from the time his PIP ended and the date of the public hearing, and he was in a position to observe engineering layoffs

in his company; it was not error to consider that evidence when rightfully trying to avoid awarding speculative damages. See, e.g., Wynn, 431 Mass. 655 at 676 (affirming hearing officer's determination that front pay award would have been speculative due to evidence of layoffs and resignations by other employees). Crediting testimony from Mr. Cooper with respect to the existence of layoffs at his company does not, as argued on appeal, equate to requiring him to prove he would have remained employed as a Test Support Engineer up to the date of the public hearing. The latter example turns the burden of proof on its head but the former does not.

Moreover, Raytheon provided testimony that at the time Mr. Cooper was placed on the PIP, his duties were allowed to be performed by a non-engineer, suggesting that as early as June 25, 2010, Mr. Cooper's particular Test Support Engineering position was all but eliminated. Raytheon also introduced evidence with respect to the utility and elimination of the Test Support Engineer position generally. Considering this evidence alongside Mr. Cooper's testimony that "a cascade of layoffs" in test engineering began around January 1, 2011, ultimately resulting in a lack of engineering support for the program(s) he used to work on as of October 2014, it was not unreasonable to cutoff back pay as of January 1, 2013. The Hearing Officer exercised her discretion in choosing a reasonable date for the cutoff considering all of the evidence bearing on the question of layoffs, in order to avoid speculative damages that were not causally related to Raytheon's wrongdoing. See, e.g., Janine Cook v. Town of Wakefield Municipal Light Department, 23 MDLR 289, 290 (2001) (no abuse of discretion or error of law to refuse to award back pay when not causally related to respondent's wrongdoing).

We also find that the Hearing Officer properly exercised her discretion to deny front pay. The Commission and the courts have long held that front pay awards will be made only in very limited instances due to their speculative nature, "such as where the discriminatory act

occurs near an individual's retirement date or where comparable positions would be difficult to find." Williams v. New Bedford Free Public Library, 24 MDLR 171, 173 (2002) (Hearing Officer did not abuse discretion in finding award of front pay speculative where evidence insufficient that complainant had no opportunity for future earnings). At the time he lost his Technical Support Engineer position, Mr. Cooper was 51 years old and generally had the opportunity for future earnings given his work experience and training. While it is true that Mr. Cooper had chosen to spend his entire career at Raytheon (beginning in 1978), it is not clear from the record that his technical skills could not be utilized in comparable positions elsewhere. We agree with the Hearing Officer that given evidence of layoffs, etc., it was speculative to conclude that Mr. Cooper would have spent the rest of his career at Raytheon in a Test Support Engineer or comparable position, and, considering that Mr. Cooper nevertheless chose to stay at Raytheon rather than seek employment elsewhere, denying front pay was not an abuse of discretion.

As for emotional distress damages, the award in this case is based on sufficient evidence that Raytheon caused Mr. Cooper's emotional distress. The award is also reasonable based on the factors set forth in Stonehill College v. MCAD, et al., 441 Mass. 549, 576 (2004), i.e., 1) the nature and character of the alleged harm; 2) the severity of the harm; 3) the length of time the complainant has suffered and reasonably expects to suffer; 4) whether the complainant has attempted to mitigate the harm. The evidence shows that Mr. Cooper suffered intense emotional distress throughout the PIP and afterwards and was prescribed new medication for anxiety. Mr. Cooper also sought help from a psychotherapist and his primary care physician, who confirmed that Raytheon's actions exacerbated his

depression and anxiety. The drastic implementation of the PIP, which eliminated all of the measures Mr. Cooper had in place to essentially self-accommodate his TBI in his Technical Support Engineer position, caused Mr. Cooper such distress that he had to take a medical leave of absence and return to work at a reduced schedule during the PIP. The Hearing Officer also found Mr. Cooper credible when testifying about the great embarrassment and humiliation he felt when terminated from his position and forced to seek and accept a lower paying job at a lower status, requiring him to work for years with employees he had previously supervised. In short, there was sufficient evidence that Raytheon's discriminatory conduct caused Mr. Cooper significant emotional distress, supporting the award of those damages.

Last, Raytheon argues that the Hearing Officer abused her discretion by awarding interest at the statutory rate of 12% because it results in a windfall to Mr. Cooper. We affirm the Hearing Officer's award of interest on damages at a rate of 12% per annum in light of Hagopian v. Massachusetts Comm'n Against Discrimination, 89 Mass. App. Ct. 1127 (2016) (Rule 1:28). The Commission's authority to assess an award of 12% interest per annum is well established.

III. Attorneys' Fees and Costs

Counsel for Mr. Cooper seek attorneys' fees in the amount of $216,333.85 and an additional $14,047.50 for work on Complainant's Opposition to Respondent's Petition for Full Commission Review.[4] The petition is supported by detailed contemporaneous time

[4] Since the Petition for Attorneys' Fees and Costs was filed pursuant to 804 CMR 1.00 (1999) et seq., the Full Commission determined the award.

records noting the amount of time spent on specific tasks and affidavits of counsel. Chapter 151B, § 5 allows prevailing complainants to recover attorney's fees for the claims on which Complainant prevailed. The determination of whether a fee sought is reasonable is subject to the Commission's discretion and includes such factors as the time and resources required to litigate a claim of discrimination in the administrative forum. The Commission has adopted the lodestar methodology for fee computation. Baker v. Winchester School Committee, 14 MDLR 1097 (1992). By this method, the Commission will first calculate the number of hours reasonably expended to litigate the claim and multiply that number by an hourly rate it deems reasonable. The Commission then examines the resulting figure, known as the "lodestar," and adjusts it either upward or downward or determines that no adjustment is warranted depending on various factors, including complexity of the matter.

Only those hours that are reasonably expended are subject to compensation under Chapter 151B. In determining whether hours are compensable, the Commission will consider contemporaneous time records maintained by counsel and will review both the hours expended and tasks involved. Compensation is not awarded for work that appears to be duplicative, unproductive, excessive or otherwise unnecessary to prosecution of the claim. Hours that are insufficiently documented may also be subtracted from the total. Brown v. City of Salem, 14 MDLR 1365 (1992).

Counsel for Mr. Cooper seek reimbursement for a total of 280 hours of work performed on this matter. Raytheon contends that compensation for two attorneys to attend the public hearing is duplicative and should be reduced to reflect the actual contributions of each attorney. However, a review of both Attorney Sulman and Attorney Brody's time sheets and affidavits shows that both attorneys relied on each other to take detailed notes during the

hearing and to support and advise each other during the examination of witnesses, which they divided. Whereas Raytheon also had two attorneys at the public hearing and this case involved a number of issues and witnesses spanning seven days of hearing, we find that having two attorneys at the public hearing is reasonable under the circumstances of this case. Both attorneys submitted detailed time sheets and affidavits to show their respective work and we conclude that the tasks performed are adequately documented and that the amount of time spent is within reason.

Raytheon also argues that the request for fees for 108 hours associated with the preparation of the post-hearing brief is excessive where the Commission has determined that 80 hours to prepare a post-hearing brief is reasonable in cases of similar scope. Given the number of issues, the complexity of some issues, the length of the hearing, witness testimony and evidence in this case, we find that the number of hours reported to draft a post-hearing brief does not amount to excessive time spent.

Raytheon further argues that Attorney Sulman's hourly rate of $400 and Attorney Brody's requested hourly rate of $225 exceed the usual rates charged by attorneys in Boston with comparable experience in the area of employment discrimination law. The Commission calculates reasonable hourly rates for attorney's fee awards by comparing the petitioning attorney's hourly rate with the rates that are customarily charged by attorneys with comparable expertise and experience in the same geographic region. See Lulu Sun v. University of Massachusetts, Dartmouth, 36 MDLR 85, 88 (2014) (addressing the reasonableness of Complainant's attorneys' fee petition with respect to the 2010 Massachusetts Law Reform Institute Attorneys Fees Scale, and the discretion to apply a single reasonable rate). We find that Attorney Sulman and Attorney Brody's rates are fully

consistent with the rates customarily charged by attorneys with comparable experience and expertise in such cases and are within the range of rates charged by attorneys practicing employment law within the area. Likewise, the hours billed and work performed by both attorneys do not appear to be duplicative, unproductive, excessive or otherwise unnecessary to the prosecution of this claim so as to warrant a reduction of their fees. We therefore conclude that the total amount of fees sought is appropriate and hereby award fees in the amount of $216,333.85 and an additional $14,047.50 in accordance with Complainant's supplemental petition for a total of $230,381.35 in attorney's fees.

Last, the request for costs in the amount of $12,141.85 for deposition and hearing transcripts, plus costs that were incidental to litigation of this matter, are supported by documentation in the form of invoices. We find these requests for costs reasonable and therefore award them in the amount sought.

ORDER

For the reasons set forth above, the parties' appeals to the Full Commission are hereby dismissed. We hereby affirm the decision of the Hearing Officer in its entirety and issue the following order that:

1. Respondent immediately cease and desist from engaging in discrimination on the basis of disability;

2. Respondent pay to Complainant the sum of $100,000.00 in damages for emotional distress with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made or until this order is reduced to a court judgment and post-judgment interest begins to accrue;

3. Respondent pay to Complainant the sum of $91,424.80 in damages for back pay with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made or until this order is reduced to a court judgment and post-judgment interest begins to accrue;

4. To conduct, within one hundred twenty (120) days of the receipt of this decision, a training of Respondent's human resources managers located in its Massachusetts facilities. Such training shall focus on discrimination based on disability, the interactive process and negotiation of reasonable accommodations for disabled employees. Respondent shall utilize a trainer certified by the Massachusetts Commission Against Discrimination. Following the training session, Respondent shall send to the Commission the names of persons who attended the training. Respondent shall repeat the training session at least one time for any of the above described employees who fail to attend the original training and for new personnel hired or promoted after the date of the initial training session;

5. Respondent shall pay to Complainant, Gary Cooper, the sum of $242,523.20 in attorneys' fees and costs with interest thereon at the rate of 12% per annum from the date on which the petition for fees was filed until such time as payment is made, or until this Order is reduced to a Court judgment and post-judgment interest begins to accrue.

This order represents the final action of the Commission for purposes of judicial review under M.G.L. c. 30A. Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint in superior court seeking judicial review, together with a copy of the transcript of proceedings. Such action must be filed within thirty (30) days of service of this decision and must be filed in accordance with M.G.L. c. 30A, c. 151B, § 6,

and the 1996 Standing Order on Judicial Review of Agency Actions, Superior Court Standing Order 96-1. Failure to file a petition in court within thirty (30) days of service of this order will constitute a waiver of the aggrieved party's right to appeal pursuant to M.G.L. c. 151B, § 6.

SO ORDERED[5] this 29th day of June, 2020.

Monserrate Quiñones
Commissioner

Neldy Jean-Francois
Commissioner

[5] Chairwoman Sunila Thomas George was the Investigating Commissioner in this matter, so she did not take part in the Full Commission Decision. See 804 CMR 1.23(6) (2020).