

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

THE MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
MICHELE COSTA,
Complainants

v.

DOCKET NO. 09-BEM-00158

GABRIEL CARE, LLC,
Respondent.

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision by Hearing Officer Judith E. Kaplan in favor of Respondent Gabriel Care, LLC. Following an evidentiary hearing, the Hearing Officer concluded that Respondent was not liable for discrimination on the basis of disability in violation of M.G.L. c. 151B, § 4(16) when it terminated Complainant’s employment. Complainant has appealed to the Full Commission. For the reasons discussed below, we affirm the Hearing Officer’s decision.

STANDARD OF REVIEW

The responsibilities of the Full Commission are outlined by statute, the Commission’s Rules of Procedure (804 CMR 1.00 *et seq.*(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). Fact-finding determinations are within the sole province of the Hearing Officer who is in the best position to judge the credibility of witnesses. See Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005); MCAD and Garrison v. Lahey Clinic Medical Center, 39 MDLR 12, 14 (2017) (because the Hearing Officer sees and hears witnesses, her findings are entitled to deference). It is nevertheless the Full Commission’s role to determine whether the decision under appeal was supported by substantial evidence, among other considerations, including whether the decision was arbitrary or capricious or an abuse of discretion. 804 CMR 1.23(10) (2020).

BASIS OF THE APPEAL

Complainant has appealed the Hearing Officer’s decision on the grounds that the Hearing Officer’s findings were not supported by substantial evidence. Complainant further contends that the Hearing Officer erred in determining that Respondent was not liable for discrimination on the basis of disability. After careful review we find no material errors with respect to the Hearing Officer’s findings and conclusions of law. We properly defer to the Hearing Officer’s findings as they are supported by substantial evidence in the record. See Quinn v. Response Electric Services, Inc., 27 MDLR at 42.

Complainant argues that sixteen specific findings made by the Hearing Officer are unsupported because the Hearing Officer improperly credited the testimony of Respondent’s witnesses and discredited the testimony of Complainant. We disagree that the Hearing Officer’s

findings are unsupported due to her credibility determinations. The Full Commission defers to the Hearing Officer's credibility determinations and findings of fact, absent an error of law or abuse of discretion. School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007 at 1011. The Hearing Officer is in the best position to observe the witnesses' testimony and demeanor, and her credibility determinations generally should not be disturbed. See Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005). This review standard does not permit us to substitute our judgment for that of the Hearing Officer in considering conflicting evidence and testimony, as it is the Hearing Officer's responsibility to weigh the evidence and decide disputed issues of fact. We will not disturb the Hearing Officer's findings of fact, where, as here, they are fully supported by credible testimony and evidence in the record.

Complainant argues that the Hearing Officer erred by failing to conclude that Respondent discriminated against Complainant based on her disability when it terminated her employment. Specifically, Complainant asserts that the Hearing Officer erred by failing to conclude that she was adequately performing her job and that Respondent's asserted non-discriminatory reasons for Complainant's termination were pretext. We disagree with Complainant's assertions.

To establish a prima facie case of disability discrimination the Complainant must show that (1) she was disabled under the meaning of M.G.L. c. 151B; (2) she was able to perform the essential functions of her job with or without a reasonable accommodation; (3) she was terminated or otherwise subject to an adverse action by her employer; and (4) the adverse employment action occurred because of her disability. See Dartt v. Browning-Ferris Indus., Inc., 427 Mass. 1, 3 (1998); Labonte v. Hutchins & Wheeler, 424 Mass. 813, 821 (1997). Once Complainant establishes a prima facie case, Respondent must then articulate legitimate non-

discriminatory reasons for its actions, supported by credible evidence. See Matthews v. Ocean Spray Cranberries, Inc., 426 Mass. 122, 129 (1997). Complainant must then prove that the employer's stated reasons for its actions are pretext for discrimination, which can be established by proving that the employer acted with discriminatory intent, motive, or state of mind. See Lipchitz v. Raytheon Co., 434 Mass. 493, 504 (2001).

The Hearing Officer found that Complainant established that she was a handicapped person based on her history of breast cancer. Respondent was aware of Complainant's history of breast cancer and knew that the nurse clinician position, the position for which Complainant was hired, provided Complainant with a flexible work schedule that permitted her to arrange medical appointments around her patient visits. Complainant suffered an adverse employment action when Respondent terminated her employment. However, the Hearing Officer determined that the Complainant did not establish that she was adequately performing her job and there were no circumstances to suggest that the decision to terminate her employment was based on her disability. Instead, the evidence showed that Complainant's poor job performance and workplace behavior led to her termination. The Hearing Officer concluded that Complainant failed to establish a prima facie case.

The Hearing Officer further found that even if Complainant could establish a prima facie case of discrimination based on handicap, Respondent articulated legitimate, non-discriminatory reasons for terminating Complainant, and Complainant failed to prove that these reasons were pretext. Respondent asserted that Complainant was terminated for falsifying mileage reimbursement reports, for creating a hostile work environment for other employees, and for her inadequate performance. Specifically, based on credible testimony, the Hearing Officer found that Complainant argued loudly with co-workers in a demeaning manner and engaged in

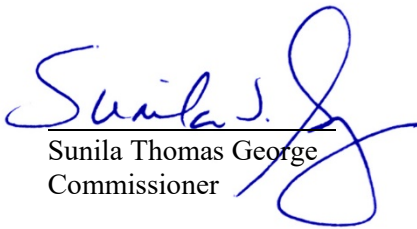
behavior which caused disruptions in the workplace. The Hearing Officer also credited Complainant's former supervisor's testimony that Complainant canceled patient home visits, failed to account for her time spent between patient visits, and fraudulently requested mileage reimbursement for patient visits for which she had not actually made or for visits when a co-worker had driven and she had not incurred any cost. Respondent discussed Complainant's workplace behavior and inappropriate conduct with her on several occasions, and when Complainant's behavior did not improve, Respondent began documenting discussions with Complainant about her performance. Respondent gave Complainant opportunities to improve her workplace behavior and performance, but ultimately this did not occur. The Hearing Officer determined that Respondent did not act with discriminatory intent when it terminated Complainant's employment. Instead, Respondent consistently emphasized its willingness to accommodate Complainant's medical conditions and terminated Complainant because she was not adequately performing her job. The Hearing Officer did not err in concluding that Respondent was not liable for discriminating against Complainant based on her disability.


ORDER


For the reasons set forth above, we hereby affirm the decision of the Hearing Officer. 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 this 8th day of June, 2020


Sunila Thomas George
Commissioner


Monserrate Quiñones
Commissioner


Nedy Jean-Francois
Commissioner