COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
PAUL F. DAUWER,

Complainants

v. DOCKET NO. 11-BEM-02659

COCA- COLA REFRESHMENTS
USA, INC. formerly doing business as
Coca-Cola Bottling Company of New
England, and MARK WOODFORD

Respondents

Appearances: Simone R. Liebman, Esq. Commission Counsel for Complainant
John R. Bode, Esq. for Respondents

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On July 21, 2011, Complainant filed a claim with this Commission against Respondents[1] alleging discrimination in employment based on his wife's disabilities. The charges were dismissed by the Investigating Commissioner upon a finding of Lack of Probable Cause, but after an appeal of that finding and a preliminary hearing, the finding was reversed in part to a finding of Probable Cause on Complainant's claim that his termination was discriminatory because it was motived by his association with his severely disabled wife. Her disabilities caused him to be absent from work and resulted in significant health insurance costs to

[1] The Complaint was also filed against Complainant's Union, AFL-CIO Local 513, but the Commission ultimately dismissed the claims against the Union as lacking probable cause.

Respondent.[2] Efforts at conciliation were not successful and the matter was certified for a Hearing. The Hearing was conducted on July 17-19, 2019. The parties submitted post-hearing briefs on September 20, 2019. Having reviewed the record of the proceedings and the parties' post-hearing submissions, I make the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

1. Complainant, Paul F. Dauwer, was employed as a maintenance mechanic for Respondent, then doing business as Coca-Cola Bottling Co. of New England, at its former Needham Heights, MA facility. Complainant was employed there from September 2009 until April of 2011. (Tr. Vol. I, pp. 42-43) Prior to his employment with Respondent, Complainant had worked as a mechanic for Cambridge Brands for over six years with no disciplinary or attendance problems. (Tr. Vol. I, 35, 38)

2. During his employment with Respondent, Complainant was a member of AFL-CIO Local 513, Beverage and Production Workers Union, and the terms and conditions of his employment were governed by a collective bargaining agreement between Respondent and the Union. (Tr. Vol, I, p. 47, Vol. II, p. 150; Joint Ex. 1) Pursuant to the agreement, Complainant was entitled to leave time of three personal days per year with two weeks prior notice and forty-eight hours (six days) of sick leave per year. He was entitled to one week of vacation after completion of one year of continuous service. (Jt. Ex. 1 Articles 8 & 7)

3. Complainant resides in Brockton MA. He and he and his wife Stacey Dauwer have three daughters who were ages 13, 11, and 8 in 2010. (Tr. Vol. I, pp. 28-29) Complainant's wife has suffered from many serious illnesses during their marriage including, multiple scerlosis

[2] When used in the singular herein, "Respondent" refers to the corporate entity.

(MS), lupus, epilepsy and a heart condition. Stacey Dauwer testified that MS is a very unpredictable disease that is subject to flare-ups. (Tr. Vol. 1, p. 32, Vol. II, p. 14)

4. Complainant was eligible for health insurance through Respondent and paid for a family plan. (Tr. Vol. I, p. 50; Joint Ex. 2) The health plan was administered by Blue Cross Blue Shield and funded by Respondent. While Blue Cross and Blue Shield of Georgia, Inc. administered the plan, Respondent was responsible for the payment of insurance benefits. (Joint Ex. 2, DEF 657)

5. As a Maintenance Mechanic, Complainant worked the third shift from 9:30 p.m. to 6:00 a.m. (Tr. Vol. III, 45-46, 75) Maintenance mechanics reported to Maintenance supervisors who reported to the Maintenance Manager, Mark Woodford. (Tr. Vol. III, p. 122) Complainant reported directly to Maintenance Supervisor, Mark Charbonneau. (Tr. Vol. III, p.13)

6. Within a few months of Complainant's employment with Respondent, his wife's health began to deteriorate and she was diagnosed with epilepsy in December 2009. (Tr. Vol. I , p. 53, Vol. II, p. 21) Complainant spoke to co-workers including his supervisor, Charbonneau about his wife's health issues, including her difficulty walking and having seizures. (Tr. Vol. I, pp. 53-57) Maintenance manager Woodford overheard one of these conversations sometime prior to January of 2010, and commented on the hardship Complainant was going through. (Tr. Vol. I, 58-60)

7. In May of 2010, Complainant injured his back at work, saw his physician and went home to rest. While resting at home he received a call from Woodford who in a hostile manner directed him to see a Coca Cola physician at a hospital in Boston that day. Upon arriving at the hospital after a forty-five minute ride in severe pain, no appointment had been made for Complainant and he had to wait several hours to see a physician. When his wife contacted

Woodford to advise him Complainant had no appointment, he responded with words to the effect of, "That's what happens when you get hurt at work," and he slammed the phone down. (Tr. Vol, I, pp. 77-79: Vol. II, pp. 24-30) Complainant was out of work for two weeks and received worker's compensation. (Tr. Vol. I, p. 81) He sought to return to light duty but Respondent took the position that the facility could not accommodate light duty restrictions and there was no light duty available. (Tr. Vol. I, p. 80; Ex. C-26)

8. Prior to his worker's comp leave, Complainant had never received any written warnings. Within a month of his return, Respondent issued Complainant a Corrective Action for not properly punching out of work on June 8, 2010. (Tr. Vol. I, p. 85) On June 30, 2010, Complainant's supervisor disciplined him again for failing to properly punch out for lunch breaks between 6/20 and 6/24. Complainant testified credibly that he had not previously been instructed to punch out for lunch breaks and that the issuing supervisor told Complainant that he wasn't sure what Complainant had done, but that he had to issue the "write-up." (Tr. Vol. I, pp. 86-89, 91) He showed Complainant an email dated 6/28/2010 from Regina Cacciola to Woodford which stated, "now is the time to discipline...then we can go from there." (Ex. C-2) Complainant described Cacciola as the Human Resources manager on at the facility. (Tr. Vol. I, 132) [3]

9. In 2010, Stacey Dauwer began receiving injections to treat her MS and was diagnosed with Sick Sinus Syndrome. Her health continued to deteriorate in the summer and fall of 2010. In June of 2010 her health care costs were $39, 452. (Tr. Vol. II, p.22, 30, 39: Exs. C-13 & 14) In September of 2010 her, health costs were $43,660.78. By October 2010, they had spiked to $82,256.08. (Tr. Vol. I, 94; Vol. II, pp. 30-32, 39; Exs. C-13 & 14)

[3] Respondent asserted that Cacciola was not a manager, but an administrative clerk in the office and that she had no authority to speak on behalf of management, despite her directive to Woodford in this email. (Tr. 133)

10. In August of 2010, Complainant received a verbal warning for excessive absences and in September of 2010 he received two additional disciplines from his immediate supervisor, Charbonneau, a written warning and a final written warning for excessive absences. (Tr. Vol. I, pp. 273-275; Ex. R-13, 14 & 15) Complainant's absences were related to his wife's serious health issues. In one of the September instances, Complainant reported to Respondent's sick leave call line that his wife had stopped breathing due to a grand mal seizure and needed resuscitation. (Tr. Vol. I, pp. 100-103)

10. On October 6, 2010, Complainant requested and received Family Medical Leave (FMLA) in order to deal with his wife's serious medical conditions. (Ex. C-3) When Complainant was absent on October 6, 2010, his supervisor Charbonneau recommended his termination to Pamela DiStefano, an attorney in Labor Relations. (Ex. C-28) DiStefano reviewed the recommendation and did not approve it since it appeared to be covered by FMLA leave. (Tr. Vol. II, pp. 162-164) Initially, Complainant intended his FMLA leave would be intermittent depending on the severity of his wife's conditions at a given time. Ultimately Complainant had to use the time consecutively because his wife experienced a flare-up of her MS, had increased paralysis, and was hospitalized for treatment. Complainant had no other family support and was the primary caretaker for his three young daughters. (Tr. Vol. I, pp. 94, 107-108, 111-112; Tr. Vol. II, pp. 20, 49)

11. From September 2010 to January 2011, Stacey Dauwer suffered from internal bleeding from the development of a blood condition. She underwent extensive treatment, including the installation of a vascular catheter in her jugular vein for a procedure called plasmapheresis, a process which removes proteins from the blood. In October 2010, her MS caused severe paralysis, but after several weeks of the treatment she was able to walk again. (Tr.

Vol. I, p. 116; Vol. II, pp. 10-11) Complainant came to understand that the plasmapheresis treatments were very expensive and he communicated this to several co-workers, including his immediate supervisor, Charbonneau. (Tr. Vol. I, pp. 117-120) He also kept a photograph of his wife with the vascular catheter in her neck in his toolbox and showed it to various co-workers. (Tr. Vol, I, pp. 167-168)

12. While on leave, Complainant communicated updates about his wife's medical condition to Respondent via its FMLA line, including information that he was caring for his wife due to her MS, that she was suffering from paralysis and that she had been hospitalized and released on November 11, 2010. (Tr. Vol. I, pp. 109-111)

13. At the time Complainant returned from FMLA leave in January of 2011, Respondent's health insurance premium payments for employees had increased from $59.56 per week to $68.95 per week. Around that time, Complainant overheard a conversation between Mark Woodford and another employee whose voice he did not recognize, about the increase in health insurance premiums, wherein Woodford indicated that the increase in premiums was likely due to Complainant's wife's excessive medical costs, which might continue as long as Complainant remained employed at Respondent. (Tr. Vol. I, pp. 122-123, 304-305) While Woodford denied the allegation, Complainant was very specific about the time and place he heard this, and his wife testified that he called her to relay what he had overheard. (Tr. Vol. III, p. 79, Vol. II, p. 57) Complainant also reported this allegation in his complaint to the Commission, stating that it made him feel like his family's personal issues were some kind of a joke. (Tr. Vol. I, p. 125; Complaint) I credit his testimony that he heard Woodford make this comment. Complainant also testified that sometime after he returned from is his leave, his union

representative gave him a "heads up" that Woodford "is out to can your ass," but the union representative did not know why. (Tr. Vol. I, pp. 146-149)

14. As Stacey Dauwer's severe health issues continued, Complainant was absent or had to leave early on some occasions in February and March of 2011. He received disciplinary warnings, one verbal and one written, for two instances of absenteeism in Februrary 2011 and began to be concerned about the security of his job. (Exs. R-16 & 17; Tr. Vol. II, p. 61) He testified that his wife was "in a bad way at the time," and they had several emergency situations. (Tr. Vol. I, p. 126)

15. In March of 2011, Stacy Dauwer suffered a flare-up of her MS, resulting in paralysis and inability to use her legs. During that time she had five placements of the vascular catheter in her jugular vein to receive plasmapheresis treatments. (Tr. Vol. II, p. 11) Since Complainant needed to be available in an emergency and was concerned about the security of his job, he submitted documentation dated March 11, 2011, to Mark Charbonneau. The letter from Stacey Dauwer's neurologist at the Lahey Clinic stated that Mrs. Dauwer had a serious neurological disorder requiring urgent treatment, that she would likely need outpatient treatments daily or every other day for the next two weeks, and that she was dependent upon her husband for transportation. (Ex. C-5)

16. During this time period, Mrs. Dauwer's condition worsened and, instead of outpatient care, she required hospitalization on March 15, 2011. On some occasions the Dauwer children remained overnight at the hospital so that Complainant could go to work. (Tr. Vol. I, p. 131; Vol. II, p. 65) Complainant testified that he felt like he had to put his job ahead of concerns about his wife, since he was not eligible for further FMLA leave at the time. (Tr. Vol. I, p. 131) He provided further documentation to Respondent from Mrs. Dauwer's neurologist

dated March 17, 2011, with his own cover letter, informing Respondent of his wife's hospitalization. The doctor's letter stated that the need to attend to his wife's serious health issues and to care for his children might impact Complainant's ability to keep his regular schedule at work, and requested that accommodations be made until his wife was discharged and recovering. (Ex. C-6; Tr. Vol. I, p. 128) During this time, the Dauwers were in the process of making arrangements for a visiting nurse to come to their home on a regular basis and for a personal care assistant to be in the home at night while Complainant was at work. (Tr. Vol. II, pp. 68-69)

17. At the time, due to concern for his job, Complainant also sought to have discussions with Chris Maros, the Operations Manager at Respondent's Needham Heights facility and Regina Cacciola, whom he viewed as the on-site HR manager. Complainant explained the severity of his wife's condition to Cacciola and sought information about a possible voluntary leave with no pay or any type of arrangement that would allow him to remain employed, conveying that he was desperately seeking any solution at that point. Cacciola advised him to speak with Maros, the Operations manager. (Tr. Vol. I, pp. 133-134)

18. Complainant took Cacciola's advice and contacted Maros. He met with Maros and Woodford and explained that his wife was suffering from paralysis, that he had no available sick leave, and that he was desperate to keep his job and a roof over his family's head. Complainant testified that Maros seemed shocked to hear this news. (Tr. Vol. I, pp. 134-135) During this meeting Complainant raised a number of options including possibly changing shifts. Woodford suggested that he resign from his position so as to not be blacklisted and to able to collect unemployment. (Tr. Vol. I, p. 136) Maros then noted that if Complainant quit his job, he would not be eligible to collect unemployment. Maros stated he would check his resources and get

back to Complainant. (Tr. Vol. I, p. 137) Complainant received no response to his request to transfer to another shift, while during this time, a co-worker with less seniority than Complainant was transferred from the third shift to second shift. (Tr. Vol. I, pp. 142-143)

19. Complainant also spoke with Pamela DiStefano, an attorney in Labor Relations about his desperate situation. DiStefano had been made aware of Complainant's absenteeism in the summer and fall of 2010 by Mark Charbonneau and knew that Complainant had taken FMLA leave beginning in October 2010. (Tr. Vol. II, pp. 162-164) DiStefano testified that she could not recall having ever seen the March 2011 documentation of Mrs. Dauwer's severe health issues, but she had noted their receipt in an email dated March 21, 2011, in which she indicated that Complainant was inquiring about further leave. (Tr. Vol. II, p. 280-286; Ex. R-27) Complainant testified that when he spoke to DiStefano in March of 2011, she was disinclined to hear about his situation and was short-tempered and short with him. She suggested that he resign and Respondent would not contest his claim for unemployment and he would not be blacklisted from the company. (Tr. Vol. I, p. 146)

20. In March of 2011, as Stacey's Dauwer's health continued to decline, her health care costs reached a high of $90,871.63. (Exs. C-13 & -14) Complainant received warnings for leaving work early three times during the month of March. (Exs. R-19, 20, 21) Each of these departures in the middle of the night were related to his wife's health care crises. The first two warnings purported to be for Complainant's 8th and 10th times being tardy. Complainant could not recall receiving notices of being tardy a 9th or 11th time. (Tr. Vol. I, p. 160) [4] On April 3, 2011, Complainant received a final warning for a 12th tardy for leaving work early on March 30, 2011. (Ex. R-21) Absent any indication that Complainant had been tardy an 11th time prior to

[4] The record is devoid of any Bargaining Unit Corrective Action Forms (disciplinary warnings) completed by Respondent indicating 9th or 11th instances of tardiness. In fact Complainant recalled receiving two warnings for the same incident. (Tr. Vol. 1, pp. 157-158; Exs. C-27 and 28)

receiving this notice, a final warning in such instance would be a misapplication of Respondent's policy. (Ex. R-21; Tr. Vol. II, p. 206) On April 5, 2011, Charbonneau gave Complainant a second version of the warning issued on April 3rd claiming that the original warning had been misplaced. The second version was identical to the first except that it stated, "leaving early will result in termination," whereas the first version warned only of "further disciplinary action" if Complainant was tardy again. (Exs. C-7 & 8; Tr. Vol. I, pp. 157-158; Ex. C-25) Complainant testified that Charbonneau represented to him that it was the same document he had signed on April 3rd. Charbonneau testified that he was directed by DiStefano to revise the disciplinary document. (Tr. Vol. III, p. 40)

21. On April 7, 2011, Complainant received a phone call from his eight year old daughter telling him his wife was having a seizure and was non-responsive. He informed the supervisor that he needed to leave because of a family emergency and that he would speak to Mark Charbonneau in the morning. (Tr. Vol. I, pp 151-153; 160-162) Stacey Dauwer suffered two grand mal seizures that day and Complainant had to transport her for medical care. (Tr. Vol. I, p. 163) Complainant spoke with Charbonneau the next morning telling him that home health care had finally been arranged for his wife to begin the following week and Complainant would no longer have to deal with leaving work. Charbonneau informed Complainant that there might have to be a meeting with the union and that he would get back to him about the next part of the process. (Tr. Vol. I, p. 154, 163-164)

22. Later that same day, April 7, 2011, Complainant received a voice mail message from Charbonneau informing him that he would be receiving by mail imminently an official notice terminating his employment. Charbonneau told Complainant to take care of himself and his family, and stated home was where Complainant needed to be. (Tr. Vol. III, p. 33) Complainant

was stunned to receive this message because Charbonneau had led him to believe there would be further discussion with management and his Union prior to any termination, as part of a process referenced by Charbonneau. He could not believe that his employment was terminated given his dire circumstances. Complainant desperately needed his job to provide for his family, and had just secured the assistance they needed to allow him to continue working an uninterrupted schedule. (Tr. Vol. I, 154, 164-168)

23. Charbonneau brought the matter of Complainant leaving work early on April 7, 2011, to DiStefano. DiStefano reviewed the disciplinary documents, approved Complainant's termination and drafted the termination letter. (Tr. Vol. III, pp. 24-25, 92; Vol. II, pp. 165-169) DiStefano had notice since the Fall of 2010 that Complainant's wife suffered from medical issues and understood that "some of" Complainant's attendance problems were because of his wife's illnesses. (Tr. Vol. II, pp. 169-170, 276) Complainant received the termination letter along with a Bargaining Unit Corrective Action form stating that he was terminated for leaving his shift at 1:00 a.m. on April 7, 2011. (Jt. Ex 3) The form was signed by Charbonneau and noted that Complainant had waived his right to have a shop-steward present, which was untrue. (Jt. Ex. 3; Ex. C-9; Tr. Vol. I, pp. 172-173) Complainant had not signed the form nor had he waived his right to union representation. (Tr. Vol. I, p. 173)

24. Woodford testified repeatedly that he did not know Complainant's wife was seriously ill until issuance of the final written warning. However, he testified in a deposition that he recalled Complainant telling him that his wife was sick and in the hospital, and that he needed to babysit. (Tr. Vol. III, 139-140) He also acknowledged that it was likely common knowledge in the facility that Complainant's wife was very ill. (Tr. Vol. III, pp. 140-141) He claimed that he never questioned why Complainant took FMLA leave and did not know it was because of his

wife's illness. (Id.) His testimony regarding his ignorance of this issue was not at all credible. Woodford admitted that with the exception of his attendance, Complainant had no other performance issues. (Tr. Vol. III, pp. 236-237)

24. Upon his termination, Complainant applied for unemployment compensation and was informed by the state agency that Respondent had contested his unemployment asserting that he had abandoned his position and engaged in misconduct. (Tr. Vol. I, p. 174-175) Complainant appealed the denial and was ultimately awarded unemployment compensation some three months later. (Tr. Vol. I, pp. 175-176)

25. After Complainant's employment was terminated, health insurance coverage for his wife ceased immediately, while coverage for Complainant and his three children remained in effect until the end of the month of April 2011. (Tr. Vol. I, pp. 191-201; Exs. C-9 & 10; Tr. Vol. II, pp. 70-73) Mrs. Dauwer learned of this when she went to a medical appointment and was informed that her health insurance coverage was terminated. (Tr. Vol. II, p 70). The relevant Blue Cross, PPO Summary Plan Description states that coverage terminates for all covered parties at the same time, either on the date the individual is terminated or through the end of the month. There is no reference in the Summary Plan, in Respondent's policies, nor in the Collective Bargaining Agreement, regarding cessation of coverage for some family members, but not others. (Jt. Ex. 2 p. 35; Jt. Ex. 1; Tr. Vol. II, pp. 264-266) Respondent had no explanation for this occurrence, claiming that it was unaware of the basis for the discrepancy, and asserting that administration of the insurance plan's benefits was handled by BlueCross Blue Shield (BC/BS) of Georgia. Stacey Dauwer contacted BC/BS and was informed her coverage was terminated April 7, 2011, and that the date of termination was at the discretion of the employer. When she inquired if the practice of terminating one family member and not others

was common, she received no response and was referred to Respondent. (Tr. Vol. II, p. 71) I found Respondent's position with respect to the discrepancy in the termination to be totally disingenuous. Thereafter, Mrs. Dauwer had to revert to Medicare as her primary health care insurer.

26. On or about May 13, 2011, Complainant received a deposit in the amount of $590.92 from Respondent credited to his checking account for five days of vacation pay, time that he would have used during his wife's medical crisis, had he been permitted to do so. (Exs. C-15 & 16, Tr. II, pp. 73-78) Respondent asserted that Complainant was not entitled to use this time because he had designated in January of 2011 the week he intended to take vacation, and because he had not accrued the time as of his termination since he had not yet completed two years of continuous service. (Jt. Ex. 1, Article VII; Tr. Vol. I, 267-269)

27. Respondent repeatedly stressed that it enforced the attendance provisions of the Collective Bargaining Agreement uniformly and consistently. (Tr. Vol. III, p. 58) DiStefano and Woodford testified that its managers had no discretion in applying the attendance policy. (Tr. Vol. II, p. 212; Vol. III, p. 127) DiStefano was responsible for counseling, coaching, and advising supervisors regarding the attendance policy and other contract provisions. (Tr. Vol. II, p. 162) Respondent asserted that its discipline and discharge of Complainant were strictly in accordance with the attendance guidelines outlined in the Collective Bargaining Agreement. (Tr. Vol. II p. 148, 262)

28. Pursuant to the provisions of the Collective Bargaining Agreement and according to DiStefano, "tardy" was defined as being in excess of five minutes past a scheduled start time or leaving work early after completion of half of any scheduled work day. (Jt. Ex. 1, s. 2 p. 43; Tr. II p. 197) The final written warning for tardiness issued to Complainant on April 3, 2011, was

for leaving work early on April 1, 2011. Complainant's shift began at 9:30 p.m. and ended at 6:00 a.m. and he left work at 1:40 a.m. on April 1st. Since Complainant left work prior to completing half of his scheduled work day, he was not tardy under the provisions of the Collective Bargaining Agreement. (Ex. C-7; R-21) The discipline that resulted in Complainant's termination for leaving at 1:00 a.m. on the morning of April 7th was also not properly characterized as a "tardy" as defined by the contract. (Jt. Ex. 3) Pursuant to the Agreement discipline for excessive tardiness following the first three occurrences/ and after six occasions was to be administered as follows:

> 4th Occurrence (7th & 8th occasion) -- Verbal warning
> 5th Occurrence (9th & 10th occasion) -- Written warning
> 6th Occurrence (11th & 12th occasion) -- Final written warning
> 7th Occurrence (13th and 14th occasion) -- Termination
>
> Jt. Ex. 1 Art. XII, pp. 12-13

Respondent asserted that even if Complainant's absence was mischaracterized as "tardy," his leaving on April 7, 2011, before completing one-half of his scheduled work day would have been considered an "absence," that Complainant was on a final written warning for excessive absences prior to April 6, 2011, and that he was subject to termination for exceeding the number of absences allowed under the agreement. (Jt. Ex. 3; Ex. R-18)

29. Complainant's termination was purportedly for being tardy on 13 occasions, according to Respondent's Corrective Action forms. A 13th instance of tardiness does not warrant termination pursuant to the collective bargaining agreement. In order for there to be a 7th Occurrence warranting termination under the contract, as noted above, there must be a 13th and 14th instance of tardiness.[5] (Tr. Vol. II, 199-200) There were also no Corrective Action Forms referencing a 9th or 11th instance of tardiness for Complainant. Woodford testified that he could

[5] Charbonneau testified that it was his understanding that an employee's termination could be triggered on either the 13th or the 14th occasion of tardiness.

not recall any discussions with DiStefano about Complainant's termination, but when pressed stated that DiStefano "absolutely" expressed reservations about it. (Tr. Vol. III, pp. 112-118)

30. Complainant was the only maintenance mechanic involuntarily terminated from Respondent's Needham facility from January 1, 2010 to December 2012. (Tr. Vol. II, pp. 266-267; Vol. III, 57-58) He was also the only employee terminated during Woodford's tenure at Respondent from 2009 to 2013. (Tr. Vol. III, p. 126) More importantly, as discussed below, the evidence demonstrates, and Complainant was aware of, at least three other employees who arrived late on more occasions than he did and were not terminated for attendance violations. (Tr. Vol. I, 178-187) Woodford testified that none of these individuals are disabled or associated with a close family member who is disabled. (Tr. Vol. III, p. 250-251)

31. A Building Maintenance Mechanic who worked on the first shift under a different supervisor who reported to Woodford was tardy thirty (30) times in 2010 and twenty-four (24) times in 2011. (Tr. Vol. I, 178-179; Ex. C-29) Woodford admitted that he was likely aware that the supervisor had written this employee up for excessive tardiness, but the employee was not terminated during Woodford's tenure. (Tr. Vol. III, p. 188)

32. Another Maintenance Mechanic who worked on the same production line as Complainant, was subject to the same attendance policy, and reported to a supervisor who reported to Woodford, told Complainant that he had been tardy over 18 times and told Complainant not to worry. (Tr. Vol. I, pp. 184-186; Vol. III, p. 184) His record of absenteeism showed that in 2011, he called in sick nine times and was a no call/no show for a tenth occasion and was not terminated. (Ex. C-17) DiStefano testified that this employee's discipline was inconsistent with what was required under the contract. (Tr. Vol. II, p. 184) She testified that a no call/no show could be grounds for immediate termination under the contract, and that four

additional instances of sick leave beyond the six days allowed under the contract would result in termination. (Tr. Vol. II, pp. 193, 196; Jt. Ex. 1) In August and September of 2011, that same employee received a second written warning for being tardy seventeen times and a third written warning for an eighteenth occasion of tardiness. (Exs. C-8 & C-9) According to DiStefano, this discipline was an incorrect application of the policy as fourteen instances of tardiness should result in termination. (Tr. Vol. II, p. 216, 223) Woodford was put on notice of the discipline for this employee's eighteen instances of tardiness via an email from the supervisor copied to him. (Ex. C-32; Tr. Vol. III, 210-215) Woodford claimed he would not have seen the email because he did not open emails copied to him, and would not have recommended termination even if he had seen the email. (Tr. Vol. III, pp. 214-220) Records reveal that, all-told in 2011, the employee in question was tardy (arriving late or leaving early) a total of 22 times. In the prior year, 2010, this employee had been tardy approximately 35 times and was issued only two written disciplines. (Ex. C-30; Tr. Vol. III, pp. 196-199, 201-203) Despite claiming he did not read the above-cited email, Woodford acknowledged that it was possible the supervisor had made him aware of the employee's attendance issues. (Tr. Vol. III, p. 257) This same employee also failed to punch into work on a number of occasions which could be a terminable offense, and was caught on video camera on four occasions breaking into an office to misappropriate supplies. (Exs. C-22, C-23, C-24; Tr. Vol. II, p. 263) For this offense, he was issued only a written warning in May of 2013. (Ex. C-24)

33. Another maintenance mechanic received vacation at the commencement of his employment, contrary to Respondent's policy, an option Respondent did not offer to Complainant when he desperately needed more time to care for his wife. This employee also engaged in a fight with a co-worker during his probationary period and remained employed. (Tr.

Vol. I, pp. 189-190) I find that despite his purported ignorance of employees' attendance records, Woodford was generally aware of which employees were subject to disciplinary measures for problematic attendance or other performance issues, and was on notice of the fact that discipline was inconsistently applied and was not always in conformance with the policies in the CBA. (Tr. Vol. III, 127-131) In addition, copies of all corrective action forms which were notice of discipline were forwarded to human resources (HeRe). (Tr. Vol. III, p. 133)

34. Despite the absence of an express provision in the contract for unpaid leaves of absence, certain employees were permitted to take a leave without pay or unpaid vacation time, including the employee cited above for excessive absenteeism and tardiness. (Ex. C-21, Tr. Vol. III, pp. 238-240, 242-243, 246-247) Woodford testified that it's possible to arrange for Respondent to grant such a leave. (Tr. Vol. III, p. 247) Complainant was never offered any of these options despite his assurances to Charbonneau that he would likely not need further emergency leave as his wife was getting a health care assistant imminently.

35. Complainant was "devastated" by the loss of his job. He testified that he was "totally ripped apart" and was a completely different person as a spouse and a father. He stated he was "mess,' a "shell of a person," and unable to hold his family together. (Tr. Vol. I, p. 209-210) Stacey Dauwer testified that throughout the many months of her serious illness, he was the "total strength" of the family, "the rock," who "kept everyone going," and who took care of their daughters and "made sure everyone was happy." (Tr. Vol. II, p. 53) Complainant also referred to himself as "the rock that held my family together," and stated that his wife's health issues were "very, very tough for my children to deal with," and that he helped to distract them with activities. (Tr. Vol. I, pp. 209-210) His termination adversely impacted his relationships with his wife and children. According to Stacey Dauwer, their roles reversed and she had to be strong

for Complainant. (Tr. Vol. II, pp. 81-82) He also lost his appetite and ability to sleep. (Tr. Vol. I, p. 213)

36. Stacey Dauwer described Complainant as a "proud person," who loved gardening, building things with his hands, and working on his house and in the yard. (Tr. Vol. II, p. 81) Complainant stated that after his termination, he lost interest in things he had previously enjoyed. He stopped engaging in activities with his daughters, such as camping and going to the beach, and he stopped working on dirt bikes, doing yard work and gardening. (Tr. Vol. I, p. 209, 213; Tr. II, p. 86) He lost his confidence and his sense of humor and said the part of his personality that was playful and funny became non-existent for many years. (Tr. Vol. I, p. 209, 211, 212) His wife Stacey testified that as of the hearing, she was just beginning to get "glimpses of him back." (Tr. II, p. 88)

37. Stacey Dauwer testified that toward the end of his employment as Complainant made every effort to retain his job, he began to withdraw emotionally. She described him breaking down and crying when he lost his job and saying he had done everything he could. She stated, that the termination, "broke my husband," and she watched him slip into a depression. (Tr. Vol. II, 79-81) Complainant testified that he considered ending his life and was not in the right state of mind for a long time. He had serious suicidal thoughts for a period of months. (Tr. Vol. I, p. 210) His wife Stacey relayed the incident where a month or two after the termination, he came to her and told her he was going to hang himself in the shed and that the family would be better off without him. (Tr. Vol. II, pp. 80-82) According to both Complainant and Mrs. Dauwer, given this dire admission, Stacey Dauwer arranged for Complainant to see her psychiatrist. He saw her a for a few visits and was prescribed a couple of different medications. The Dauwers attempted to obtain the records of his treatment with the psychiatrist, but were unable to do so

and were informed by her office that the records were destroyed after 6-7 years. (Tr. Vol. I, p. 309; Vol. II p. 83) The immense emotional pain and suffering Complainant endured was entirely evident from his and his wife's earnest and sincere testimony and their disheartened and dispirited demeanor as witnesses. The testimony surrounding Complainant's emotional anguish and feelings of helplessness resulting from his termination was compelling, heart-felt, gut-wrenching and entirely credible.

38. In June of 2011, the Dauwers were in danger of losing their home as they had fallen behind in their mortgage payments. They negotiated a payment plan which they could not meet and ultimately lost their home in June of 2012. (Tr. Vol. II, p. 82) This event further exacerbated Complainant's still vulnerable mental state.

39. Complainant earned $23.99 per hour or $959.20 per week as a Maintenance Mechanic at the time of his termination from Respondent. (Exs. C-12; C-16) Prior to his employment with Respondent, Complainant had stable employment. Subsequent to his employment with Respondent, he held a succession of jobs until securing employment as a maintenance mechanic for Stacy's Pita Chips in January of 2017, a job he still held at the time of the hearing. (Tr. Vol. I, pp. 32, 35-38; Ex. R-1)

40. Approximately three to four months after his termination from Respondent, Complainant began to seek employment in his field via on-line job sites. He testified that he was not aggressive in looking for work because he was "really depressed," but he submitted resumes on line. His wife confirmed that approximately six months after his termination he began to seek work more aggressively. (Tr. Vol. II, p. 85) Complainant received $20,886 in unemployment compensation in 2011 and $20,313 in 2012. (Ex. R-2, R-4)

41. In October of 2012, Complainant secured employment as a maintenance mechanic at Proctor & Gamble at a rate of $19.31 per hour. He testified that he was still "not feeling good at all" at that time and had difficulties with the job. He was terminated during the probationary period. (Tr. Vol. I, pp. 216-217; Ex R-1) He remained unemployed through the first four months of 2013 and stated that he was still having difficulties emotionally. (Tr. Vol. I, p. 220) Complainant held a number of other jobs thereafter and was let go from several other jobs for performance reasons. (Tr. Vol. I, pp. 231-235; Ex. R-1) Complainant held two jobs, one at Garelick Farms, earning $24 per hour and another at 3M, earning over $54,400 per year, both of which he left voluntarily. (Tr. Vol. I, pp. 231-235; Ex. R-1)

III. CONCLUSIONS OF LAW

Massachusetts General Laws § 4(16) prohibits discrimination in employment against disabled individuals. The protections of G. L. c. 151B have been held to extend to discrimination based on one's association with a member of a protected class, and specifically to association with a person who is disabled. Flagg v. AliMed, Inc. 466 Mass. 23, 27 (2013).[6] The determination that the protections of c. 151B can extend to individuals associated with protected class members was guided by recognition of the over-arching purpose of G.L. c. 151B. In broadly interpreting the statute, Massachusetts courts have consistently noted that the purpose of the statute is not only to protect individuals, but to vindicate a broader public interest in eradiating discrimination. Gasior v. Massachusetts General Hospital, 446 Mass. 645, 653-654 (2006) (punitive damages address harm to society as "part of a scheme to vindicate a broader

[6] In Flagg, the plaintiff's wife was disabled from surgery for a brain tumor, and the plaintiff's need to care for the couple's children caused him to be absent from work for a period of time on certain days. Complainant was ultimately terminated for failing to punch out from work on the days that he needed to pick up his children from school.

public interest in eradicating systemic discrimination"); Stonehill College v. MCAD, 441 Mass. 549, 563 (2004) (primary purpose of MCAD proceeding is to vindicate public interest in eradicating discrimination); Rock v. Massachusetts Comm'n Against Discrimination, 384 Mass. 198, 204 (1981) (granting deference to agency's interpretation of legislative policy broadly set out in governing statute) The court in Flagg noted that G.L. c. 151B § 4(16) seeks to protect against "prejudice, stereotypes, or unfounded fear" surrounding protected classes, including, disability.

Subjecting an employee to adverse employment decisions premised on hostility towards the disability of the employee's spouse is, in essence, judging the employee's fitness for the job as if he were disabled himself, because, such treatment "is predicated on discriminatory animus," and penalizes the employee for reasons related to disability. Flagg, 466 Mass. 30. Such adverse conduct "treats the spouse's handicap as a characteristic bearing on the employee's fitness for his job." Id. Chief Justice Gants noted in a concurring opinion that, ... "where an employer provides health insurance coverage to an employee's family, and a family member is handicapped, an employer will attribute the anticipated or actual medical expenses arising from such a handicap to the employee, even if the employer recognizes that a family member and not the employee himself is handicapped, because the potential cost to the employer in higher insurance premiums is the same regardless of whether the medical expenses are incurred by the employee or the family member..." Flagg at 466 Mass. 40-41. That is precisely the issue at hand in this matter.

Complainant alleges that that he was subjected to disparate treatment and terminated from his employment because of his association with his severely disabled wife and the resulting discriminatory animus toward her and by extension toward him. This discriminatory animus was

related to the cost of health insurance and the significant health care expenditures for Complainant's wife incurred by Respondent as a self-insured employer.

In discrimination claims alleging disparate treatment in violation of G.L. c. 151B, the Commission employs the three-stage burden-shifting framework articulated in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973) (adopted by Massachusetts in Wheelock College v. Massachusetts Comm'n Against Discrimination, 371 Mass. 130 (1976); See also, Matthews v. Ocean Spray Cranberries, Inc., 426 Mass. 122, 127-28 (1997). Complainant bears the initial burden of establishing a prima facie case of employment discrimination on the basis of disability. Blare v. Husky Injection Molding Sys. Boston, Inc., 419 Mass. 437 (1995). If Complainant satisfies the elements of a prima facie case, unlawful discrimination is presumed and the burden of production shifts to the employer to articulate a legitimate, nondiscriminatory reason for Complainant's termination. See McDonnell Douglas Corp., 411 U.S. at 802-04; Matthews v. Ocean Spray Cranberries, Inc., 426 Mass. at 127-28. If Respondent does so, the burden is on Complainant to prove that the stated reason for his termination was a pretext for unlawful discrimination, and that Respondent acted with discriminatory intent, motive or state of mind. Lipchitz v. Raytheon, Co., 434 Mass.493, 504 (2001) Disparate treatment under G.L. c. 151B requires that certain elements be proven, including "membership in a protected class, harm, discriminatory animus, and causation." Id. at 502. Complainant retains the burden of persuasion by a preponderance of the evidence throughout.

Complainant's wife suffered from numerous disabling conditions and was severely ill in the months leading up to his termination. There is no dispute that she was disabled within the meaning of G.L. c. 151B § 1(17). In the fall and winter of 2010 and spring of 2011 she suffered from MS and epilepsy, had frequent seizures, had episodes of paralysis and was unable to walk

and on occasion, unable to breathe. She was hospitalized on multiple occasions and continued to receive extensive and expensive health care treatment for her conditions up until Complainant's termination. Her health care costs had reached $311,256 by the end of Complainant's employment. During this time, Respondent increased the health care insurance premiums paid by its employees. In accordance with the holding in Flagg, by virtue of his close association with his disabled wife, Complainant is a member of a class of individuals protected by G.L. c. 151B.

Complainant ultimately suffered an adverse employment action. At the completion of Complainant's FMLA leave in January of 2011, his wife's health continued on a downward trajectory, requiring him to be absent from, or leave work early, on occasion to deal with critical medical emergencies and to care for his three young daughters. The evidence supports a conclusion that there was widespread common knowledge of Mrs. Dauwer's serious health issues at Respondent's Needham facility. Respondent's managers were aware of the fact that Complainant's absenteeism or tardiness was necessitated by the exigent circumstances of her condition.

Having exhausted his available leave time under the Collective Bargaining Agreement, Complainant continued to seek some reprieve from Respondent to address his wife's health crisis. He desperately sought options that might allow him to remain employed including a transfer to the day shift. Just prior to his termination he informed his supervisor that home health care for his wife had been arranged and would start imminently. He relied on representations from the supervisor that Respondent would engage in a process with management and his Union prior to any termination. He was heartened by information from a Maintenance Mechanic co-worker who had grossly exceeded the number of instances for tardiness allowed under the

contract that he had not suffered any serious adverse consequences. There was testimony that, notwithstanding these attendance issues, Complainant was otherwise adequately performing his job and was a good employee. Consequently, Complainant felt betrayed and stunned when he was unceremoniously terminated by a voice mail message on April 7, 2011 after having to leave work to deal with his wife's medical emergency.

Having demonstrated that he is in a class of individuals protected by G.L. c. 151B by virtue of his association with his disabled wife, and that he suffered adverse employment actions under circumstances that give rise to an inference of discrimination, Complainant has established a prima facie case of discrimination.

Respondent asserts that it had legitimate non-discriminatory reasons for Complainant's termination, i.e., that its actions were dictated solely by and in accordance with the terms of the Collective Bargaining Agreement. There is no dispute that at the time of Complainant's termination in April of 2011, he had exhausted the six days of sick leave permitted under the Collective Bargaining Agreement between his union and Respondent. Respondent claims that it applies the Collective Bargaining Agreement attendance policies consistently and uniformly with all union employees. On its face, adherence to the policies in the Collective Bargaining Agreement can be a legitimate reason for discipline. However, the facts reveal that this was far from the actual practice at Respondent. Respondent's inconsistent application of the policies with respect to attendance suggests that there was significant discretion exercised by supervisors surrounding decisions to elevate discipline to a final warning or a termination and that others not in Complainant's protected class were treated much less harshly.

The evidence suggests that Respondent's reasons are a pretext for discrimination for the following reasons. Complainant's termination significantly diverged from the treatment of other

similarly situated employees who were not associated with a severely disabled family member. Complainant also asserts some inconsistencies in the Corrective Action Forms purporting to justify his termination that demonstrate the number of instances of tardiness was fabricated, or at the very least exaggerated, and did not compel termination under the terms of the Collective Bargaining Agreement. Belying the assertion that Complainant's absences necessitated termination under the contract because he had no further available leave time, was evidence that other union employees were treated with far greater leniency for absences, tardiness, failing to punch in, taking more sick days than allowed by contract, and other serious misconduct in violation of the Collective Bargaining Agreement. Moreover, certain employees received additional vacation with no pay or unpaid leaves of absence beyond what was permitted by the contract. No such options were offered to Complainant.

Based on the facts in evidence, there is no question but that Respondent's supervisors exercised discretion in enforcing the disciplinary policy and granted frequent exceptions to the policy. The evidence also suggests that Woodford was aware of and sanctioned this practice. Irrespective of the fact that Complainant's absences or tardiness exceeded the number permitted under the contract, he was treated differently and more harshly than certain other employees who were not closely associated with a disabled family member or incurring high medical costs for the company.

Respondent asserts that the individuals granted more lenient treatment are not fair comparators in that they are not similarly situated. However, under Massachusetts law, comparators circumstances need not be identical to those of Complainant, but they need only be similarly situated as to relevant aspects concerning the adverse employment decision. There need not be exact correlation but rather rough equivalence of comparators. Trustees of Health

and Hospitals of the City of Boston v. Massachusetts Comm'n Against Discrimination, 449 Mass. 675, 682 (2007), *citing* Dartmouth Review v. Dartmouth College, 889 F.2d 13, 19 (1st Cir. 1989); Matthews v. Ocean Spray Cranberries, Inc., 426 Mass. 122, 129 (1997) Individuals have been considered similarly situated where there are company-wide standards of discipline and the employees being compared are subject to the same standards. Petsch-Schmid v. Boston Edison Co., 914 F. Supp. 697, n. 17 (D. Mass. 1996) Employees need not work in the same department under the same supervisor if there are company-wide discipline policies. Bratton v. CSX Transportation, Inc., 586 F. Supp. 2d 12 (D. Mass. 2008)

Here the individuals cited as comparators had the same job title, Maintenance Mechanic, and were supervised by Maintenance Supervisors tasked with applying the same standards of discipline under the same Collective Bargaining Agreement. Moreover, both Maintenance Supervisors reported to Woodford whose duties included overseeing disciplinary decisions and assuring consistency in the application of policies. I conclude that the evidence of disparate treatment strongly demonstrates a pretext for discrimination linked to Complainant's wife's disability. See Bulwer v. Mount Auburn Hospital, et al., 473 Mass. 672, 685 (2016) *citing* Matthews v. Ocean Spray Cranberries, Inc. 426 Mass. 122, 129 (1997)

There is additional indicia of discriminatory bias that demonstrates pretext and supports the conclusions that Respondent acted with discriminatory intent and state of mind. There is credible and persuasive evidence that Woodford treated Complainant very harshly with respect to his earlier workers compensation leave and was directed to discipline Complainant upon his return from leave. I further credited Complainant's testimony that he overheard Woodford state that Respondent's insurance premiums for employees had likely risen because of Complainant's wife's health issues. After returning from FMLA leave, Complainant was warned by his union

representative that Woodford was out to fire him, and Charbonneau was directed to discipline Complainant telling him he was unsure why. Further evidence of animus related to Complainant's wife's disabilities is that her health insurance coverage ceased on the date of Complainant's termination with no notice to him while coverage for the other insureds remained in effect until the end of the month. Respondent's disavowal of any involvement in this action was entirely unworthy of credence and so disingenuous as to suggest discriminatory animus.

Complainant was the only Maintenance Mechanic whose employment was terminated during Complainant's and Woodford's tenure at Respondent, despite others having worse disciplinary records. The fact the Charbonneau altered Complainant's two final Corrective Action Forms; falsely noted that Complainant had waived Union representation; led Complainant to believe there would be further discussion about his situation and a process prior to termination; and proceeded in haste to dispatch notice of the termination upon learning that Complainant had secured home health care for his wife obviating the need for further emergency leave, all lead me to conclude that the underlying motive for the termination was discriminatory. Evidence that other employees were granted additional leave time and that Complainant was denied further unpaid leave time for a brief period or not allowed to use vacation days that he had accrued further supports this conclusion. All of these factors are evidence of Respondent's discriminatory motive and support a conclusion of causation, i.e. that Complainant's association with his disabled wife and her extraordinary health care costs were the reason for the termination. I conclude that Respondent is liable for violating G.L. c. 151B.

As to the claim against the individual Woodford, I decline to hold him personally liable for the discrimination as I am not persuaded that his conduct, however objectionable, warrants a finding against him personally. He certainly displayed discriminatory animus, and sanctioned,

along with others, the disparate treatment of Complainant. I conclude that his actions as a manager may be imputed to Respondent which is vicariously liable for his conduct. [7]

IV. REMEDY

Upon a finding that Respondent has committed an unlawful act of discrimination, the Commission is authorized to award damages to make the victim whole. See G.L. c. 151B §5. This includes damages for lost wages and benefits. Wynn & Wynn P.C. v. Massachusetts Comm'n Against Discrimination, 431 Mass. 655, 674 (2000).

Complainant seeks damages for back pay and emotional distress suffered as a direct and proximate cause of his termination. Complainant was unemployed for a period of approximately eighteen months subsequent to his termination. Thereafter he held various jobs but had significant periods of unemployment in between. He was terminated from some of the positions he held and left others voluntarily. He seeks back pay for the entire period that he has been unemployed since his termination in April of 2011 until January of 2017 on the grounds that the extreme emotional suffering he endured as a result of his termination precluded him from seeking and retaining employment. I conclude that while Complainant suffered extreme emotional distress resulting from Respondent's actions, as discussed below, Respondent is not liable for his inability to retain a job over a period of six years.

I am, however, persuaded that Complainant was utterly incapable of seeking and holding down employment for eighteen months to two years after his termination. He and his wife testified credibly that he did not seek employment at all in the first three to four months after his termination due to extreme depression. He did not begin to seek work aggressively for a period

[7] See Collegetown Div. of Interco. v. MCAD, 400 Mass. 157 (1987) (employer liable for discrimination committed by those on whom it confers authority) Moreover, Woodford was represented by Respondent's counsel and presumably is indemnified by Respondent for actions taken within the scope of his employment.

of approximately six months. He received relatively small amounts of unemployment compensation during 2011 and 2012 and ultimately secured employment as a maintenance mechanic in October of 2012, but was terminated from that position prior to completion of his probationary period. I conclude that once Complainant began searching for work in earnest he made reasonable efforts to find a job in his field and to mitigate his damages. However, once he secured employment he struggled, was unable to make it through the probationary period, and was terminated for performance reasons. Complainant testified credibly that he was still quite depressed and having great difficulties at this new job because of his emotional state. The family had lost their home in June of 2012 for lack of income and inability to keep up with mortgage payments, an event serving to prolong the distress Complainant experienced that is directly attributable to the loss of his job with Respondent and having no income. I conclude that he is entitled to back pay for the period from his termination in April of 2011 until he secured a position in October of 2012, and then again for the period from December 20, 2012 until April 22, 2013, when he found another position. The lost wages for that period of time based on his weekly rate of pay at Respondent of $959.20 per week is $91,373.38. I conclude that, thereafter, Respondent is no longer liable for Complainant's decisions to voluntarily leave, or his inability to retain, subsequent jobs, as these were sufficiently independent intervening events far enough removed from the actions giving rise to the claim to be reasonably attributable to them or the emotional distress resulting therefrom.

The Commission is also authorized to award damages for emotional distress resulting from Respondent's unlawful conduct. Stonehill College v. MCAD, 441 Mass 549 (2004). Awards for emotional distress "should be fair and reasonable, and proportionate to the distress suffered." Id. at 576. Some of the factors to be considered are: "(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; and (4) whether the complainant has attempted to mitigate the harm..." Id. The Complainant "must show a sufficient causal connection between the respondent's unlawful act and the complainant's emotional distress." Id.

The evidence with respect to the emotional pain and suffering Complainant endured as a result of his termination was substantial and compelling. Complainant and his wife testified with overwhelming sentiment about how devastating Complainant's termination was to him. Complainant stated that he felt "totally ripped apart" and became a "shell of a person," no longer capable as a spouse and father of holding his family together in a time of crisis. Previously, he had been the emotional rock who kept the children's spirits up throughout his wife's health crises and provided for the family. As the sole support of his family, Complainant felt complete responsibility for his family's well-being. Losing their home further contributed to his diminished sense of self as a provider and care-taker. After his termination, he no longer engaged in activities he had previously enjoyed and ceased activities with his children, aimed at distracting them from his wife's health issues. He lost his appetite and had difficulty sleeping. Stacey Dauwer testified that Complainant's termination "broke" him and that the funny, playful and confident man she had known disappeared, cried frequently and lamented that he had done all he could to retain his job. She testified that only recently after seven years, has she begun to detect glimpses of the person he was.

Perhaps the most disturbing consequence of Complainant's emotional downward spiral was his serious contemplation of suicide for several months because he felt the family would be better off without him. When he told his wife he thought of hanging himself in the shed, this so frightened her that she urged to him see her therapist. Thereafter he attended some therapy

sessions and was prescribed medication. The immense emotional pain and suffering Complainant endured was not only evident from the Dauwers' testimony but was also entirely manifest in their expression and demeanor as witnesses. The quiet poignancy and earnestness of their revelations conveyed the intensity of Complainant's suffering and was heart-rending and gut-wrenching to observe.

It goes without saying that the state of Stacey Dauwer's health was a source of great stress to Complainant and contributed to his emotional distress during this time. However, this truth does not diminish the crushing blow of losing his job. Complainant had endured and managed any number of acute crises related to his wife's health over a number of years, but his termination was the *coup de grace* that sent him into a severe downward spiral of depression and despair that lasted for years. I conclude that he is entitled to an award of damages for the severe and pervasive emotional distress he suffered in the amount of $500,000.00.

V. ORDER

Based on the forgoing Findings of Fact and Conclusions of Law, Respondent Coca Cola Refreshments, USA, Inc. is hereby Ordered:

1) To cease and desist from any acts of discrimination based upon disability and particularly disparate treatment of employees associated with disabled family members.
2) To pay to Complainant, Paul F. Dauwer, the sum of $91,373.38 in damages for lost wages with interest thereon at the 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) To pay to Complainant, Paul F. Dauwer, the sum of $500,000.00 in damages for emotional distress with interest thereon at the 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.

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission pursuant to 804 CMR 1.23. To do so, a party must file a Notice of Appeal of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order. Pursuant to § 5 of c. 151B, Complainant may file a Petition for attorney's fees.

So Ordered this 21st day of November, 2019.

Eugenia M. Guastaferri
Hearing Officer