

**COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION**

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MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION and  
THOMAS FLINT,  
Complainants

v.

DOCKET NO. 09-BEM-03058

THE MASSACHUSETTS TRIAL COURT,  
Respondent

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**DECISION OF THE FULL COMMISSION**

This matter comes before us following a decision of Hearing Officer Judith Kaplan in favor of Respondent on Complainant's claim of race and color discrimination pursuant to M.G.L. c. 151B, § 4(1). Following an evidentiary hearing, the Hearing Officer determined that Respondent was not liable for discrimination based on race and color after terminating Complainant from his job as a court officer. 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.*), 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. Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005); see 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(1)(h).

#### **BASIS OF THE APPEAL**

Complainant has appealed the decision on the grounds that the Hearing Officer erred by: (1) failing to make certain findings of fact and credibility determinations; (2) litigating prior incidents of Complainant’s discipline; (3) failing to allow Complainant to call additional witnesses and hindering his cross-examination of certain witnesses in violation of his due process rights; and (4) determining that Complainant failed to establish a prima facie case of race and color discrimination. After careful review we find no material errors with respect to the Hearing Officer’s findings of fact and conclusions of law. We properly defer to the Hearing Officer’s findings that are supported by substantial evidence in the record. See Quinn v. Response Electric Services, Inc., 27 MDLR at 42. The standard does not permit us to substitute our judgment for that of the Hearing Officer even if there is evidence to support the contrary

point of view. See O'Brien v. Director of Employment Security, 393 Mass. 482, 486 (1984).

Complainant argues that the Hearing Officer erred by making certain findings of fact that are not supported by substantial evidence.<sup>1</sup> Complainant also argues that the Hearing Officer should have credited his testimony and the testimony of his witnesses over that of Respondent's witnesses and so her decision should be overturned. We disagree. 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 a witness's testimony and demeanor, and her credibility determinations generally should not be disturbed. See Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005). This standard of review 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 the record.

Complainant argues that the Hearing Officer erred by "violating her own ruling by litigating prior incidents" that resulted in Complainant's discipline. Specifically, Complainant argues that the Hearing Officer erred in admitting evidence related to workplace incidents that were the subject of his prior MCAD complaints. We disagree. In her pre-hearing order, the Hearing Officer ruled that Complainant's prior MCAD cases could be referenced by the parties,

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<sup>1</sup> Complainant makes several arguments concerning the Hearing Officer's findings related to his lengthy disciplinary history. Complainant argues that there was no evidence in the record to support the Hearing Officer's findings that he was involved in any workplace incidents that resulted in his discipline. We disagree. There is substantial evidence in the record to support the Hearing Officer's findings that Complainant was involved in incidents including: fighting and threatening coworkers, behaving in an insubordinate and disrespectful way toward supervisors and judges, leaving a prisoner unattended, abandoning his job post without securing relief from another employee, failing to follow proper courtroom protocol, and showing an inappropriate video to jurors. The record further supports the Hearing Officer's finding that these incidents resulted in Respondent suspending Complainant from work and warning him that his job was in jeopardy.

but would not be considered for purposes of Respondent's liability. See Hearing Officer's Order of June 4, 2013. The Hearing Officer further stated that "Respondent may produce evidence that prior discipline of Complainant was a factor in its decision to terminate Complainant's employment" but noted that "such prior incidents shall not be litigated in the present case." Id. The Hearing Officer properly admitted evidence of Complainant's disciplinary history, including events related to Complainant's prior MCAD complaints, as this evidence was relevant to Respondent's decision to terminate Complainant. The Hearing Officer properly complied with her pre-hearing order and did not err in admitting evidence of Complainant's prior discipline.

Complainant further argues that his due process rights were violated at the public hearing because (1) Complainant did not have the opportunity to cross-examine a witness that Respondent chose not to call; (2) the Hearing Officer hindered Complainant's cross-examination of Respondent's witness Leslie Lewis; and (3) the Hearing Officer did not allow Complainant to call additional witnesses whose testimony would have put into question the credibility of Respondent's Director of Security, Thomas Connelly. We disagree with Complainant's assertion that his due process rights were violated.

The record indicates that both parties had an opportunity to present their cases during the eight-day public hearing and Complainant had the benefit of counsel. Complainant had the opportunity to call witnesses, refute evidence that Respondent proffered, and cross-examine Respondent's witnesses. The Hearing Officer is responsible for conducting and maintaining control over the hearing and retains significant discretion in making evidentiary rulings. M.G.L. c. 151B, § 5; 804 CMR 1.21(3) and (11). The Hearing Officer may properly exclude testimony if she deems such evidence irrelevant to the issues to be decided in the case. We see no error in the Hearing Officer's evidentiary rulings, as Complainant was given the opportunity to call

witnesses and proffer relevant evidence at the hearing in satisfaction of his due process rights.

Complainant argues that the Hearing Officer erred in determining that Complainant did not establish a prima facie case of race and color discrimination. Specifically, Complainant argues that he was performing his job in a satisfactory manner and had no disciplinary problems in the two years that he worked at the South Boston Court. Complainant also argues that similarly situated qualified persons not in his protected class were not treated in a like manner in circumstances giving rise to an inference of race and color discrimination. We disagree, as the evidence in the record refutes Complainant's arguments.

In order to establish a prima facie case of race and color discrimination Complainant must show that: (1) he is a member of a protected class; (2) he was performing his position in a satisfactory manner; (3) he suffered an adverse employment action; and (4) similarly-situated, qualified persons not of his protected class were not treated in a like manner in circumstances giving rise to an inference of race and color discrimination. See *Matthews v. Ocean Spray Cranberries, Inc.*, 426 Mass. 122, 129 (1997).

The Hearing Officer found that Complainant, an African-American man, was a member of a protected class by virtue of his race and color. The Hearing Officer, however, concluded that Complainant failed to establish that he was performing his job in a satisfactory manner at the time of his termination. Specifically, the Hearing Officer credited the testimony of Complainant's coworker, John Donohue, that Complainant was involved in several arguments during his time at the South Boston Courthouse. Donohue testified that he observed a probation officer intervene in a shouting match between Complainant and a police officer over court procedure. Donohue testified that on another occasion Complainant tried to provoke a fight with a prisoner in custody. Donohue also testified about the heated argument he had with

Complainant that ultimately led to Complainant's termination. During this argument, Complainant called Donohue several derogatory names, stood very close to Donohue, put his finger in Donohue's face, and told Donohue that he was "protected" and that Donohue would be the "first to go." The Hearing Officer credited Donohue's testimony, as his testimony about this incident was entirely consistent with Complainant's past conduct at the other courts.<sup>2</sup>

The Hearing Officer further determined that Complainant failed to establish that similarly situated co-workers not in his protected class were treated differently. Specifically, the Hearing Officer determined that the comparator evidence did not support Complainant's claim that white court officers were treated differently and allowed to take more time off for personal matters than African-American court officers. The Hearing Officer credited the testimony of Respondent's Director of Security, Thomas Connelly, and found that the white officers Complainant alleged were treated leniently were shown to have been disciplined, while the black officers Complainant alleged had been disciplined more severely and terminated were in fact still employed by Respondent. The Hearing Officer did not err in concluding that Complainant failed to establish a prima facie case of race and color discrimination.<sup>3</sup>

On the above grounds, we deny the appeal and affirm the Hearing Officer's decision in its entirety.

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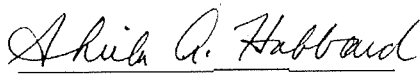
<sup>2</sup> The Hearing Officer found that during Complainant's time as a court officer, from 1989 until his termination in 2009, Complainant was involved in numerous disciplinary incidents and transferred to nearly every court in Suffolk and Norfolk Counties. Complainant was disciplined with lengthy suspensions, transfers, and was repeatedly warned that his job was in jeopardy and that any further incident could result in his termination.

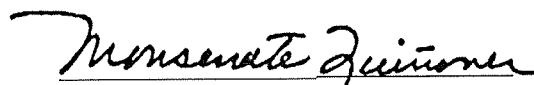
<sup>3</sup> The Hearing Officer further found that even if Complainant had established a prima facie case, Respondent articulated legitimate, non-discriminatory reasons for its decision to terminate Complainant, and Complainant did not prove that these reasons were pretext. The Hearing Officer found that Complainant's lengthy disciplinary record involving insubordinate conduct, arguing with co-workers, supervisors, and judges, and his receipt of numerous warnings that his job was in jeopardy supported Respondent's decision to terminate Complainant after he got into an argument with his coworker.

**ORDER**

For the reasons set forth above, we hereby affirm the decision of the Hearing Officer. This order represents the final action of the Commission for purposes of 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<sup>4</sup> this 8<sup>th</sup> day of May, 2019

  
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Sheila A. Hubbard  
Commissioner

  
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Monserrate Quiñones  
Commissioner

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<sup>4</sup> Chairwoman Sunila Thomas George was the Investigating Commissioner in this matter, so did not take part in the Full Commission Decision. See 804 CMR 1.23(1)(c).