

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

Massachusetts Commission
Against Discrimination and Claire Gurnett,
Complainants

v.

DOCKET NO. 17-BEM-01945

Organogenesis, Inc.
Respondent,

Appearances: Joshua Robbins, Esq. for Complainants
James Fullmer, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. INTRODUCTION

On August 10, 2017, Complainant, Claire Gurnett (“Ms. Gurnett”), filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD” or “Commission”) charging her former employer, Respondent, Organogenesis, Inc. (“Organogenesis” or “Respondent”), with disability discrimination including failure to provide a reasonable accommodation. On April 27, 2020, the Investigating Commissioner certified the case to public hearing and on August 18, 2022, the Commission issued a Supplemental Certification Order, certifying the following issues for public hearing:

1. Whether Ms. Gurnett was a “qualified handicapped person” under M.G.L. c. 151B, § 4(16);
2. Whether Organogenesis failed to provide Ms. Gurnett with a reasonable accommodation(s) in violation of M.G.L. c. 151B, § 4(16);
3. Whether Organogenesis failed to engage in an interactive process(es) with Ms. Gurnett in violation of M.G.L. c. 151B, § 4(16); and
4. Whether Organogenesis constructively discharged Ms. Gurnett from her employment.

On January 23, 24, and 25, 2023, I conducted a public hearing (“hearing”). During the hearing, the following persons testified: Claire Gurnett, DonPaul Nogueira, Walter Quinlisk, and Thomas Pearl. Ninety-three exhibits were entered into evidence. On March 30, 2023, the parties filed post-hearing briefs. Unless stated otherwise, where testimony is cited, I find the testimony

credible and reliable, and where an exhibit is cited, I find it reliable to the extent it is cited. Having reviewed the record of the proceedings, I make the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

1. From April or May 2012 to May 6, 2013, Organogenesis employed Ms. Gurnett as a temporary employee. From May 6, 2013 to November 14, 2017, Organogenesis employed Ms. Gurnett as a full-time employee. Gurnett at 34-35, 266-67;¹ JE 1.²
2. From December 2013 to the end of her employment, Ms. Gurnett lived in Southborough, Massachusetts and worked at Organogenesis in Canton, Massachusetts (“the Canton facility”). Gurnett at 34, 97. Ms. Gurnett’s home was approximately 35 miles from the Canton facility, and it took her 1-2 hours each way to drive to, or from, work. Gurnett at 97-99.
3. Organogenesis makes skin substitutes for patients with skin wounds, and has facilities in Massachusetts, California and Alabama. Quinlisk at 444-46, 550. As of December 31, 2016, Organogenesis employed 538 employees and 49 independent contractors, and as of December 31, 2017, Organogenesis employed 645 employees and 31 independent contractors. Transcript III at 709.
4. During Ms. Gurnett’s employment, Organogenesis’ human resources representatives included Houma Samaha (Head of Human Resources); Phyllis Howard (Senior Manager/Human Resources); Carolyn Walsh (Director of Compensation/Benefits/HRIS); and Hetal Patel (Supervisor, HR benefits). Quinlisk at 542; JE 82; JE 12; JE 85.
5. From May 2017 to early 2020, Organogenesis engaged Corban OneSource to be its benefits administrator, and handle leaves of absence, leave administration and benefits. In early 2020 Organogenesis, discontinued Corban OneSource’s services because it was determined that “it was better quality for us to do it in-house.” JE 14; Pearl at 715.

¹ The transcript is referred to herein by identifying the witness who was testifying and the page of the transcript: Witness name at ___. If the citation in the transcript is not to testimony, the cite form is Transcript (volume number) at ___ (page number).

² Joint exhibits are identified herein as JE ___. Four exhibits entered by Respondent are marked as R1, R2, R3 and R4 and identified herein as such.

6. Throughout her employment, Ms. Gurnett worked in the Purchasing Department at the Canton facility, and her supervisor was Walter Quinlisk (“Mr. Quinlisk”). Gurnett at 41; Quinlisk at 449. The Purchasing Department was located across the street from Organogenesis’ factory in Canton. Quinlisk at 625.
7. During Ms. Gurnett’s employment, Mr. Quinlisk was Director of Purchasing and Assistant Vice President of Purchasing. Quinlisk at 452-453. Mr. Quinlisk reported to Henry Hagopian (“Mr. Hagopian”), Vice President of Finance. Gurnett at 277.
8. At the beginning of Ms. Gurnett’s employment, the Purchasing Department consisted of Mr. Quinlisk, John Vital (Buyer IV), Karen Snyder (Buyer IV), and Ms. Gurnett (Buyer I). Quinlisk at 457. After Karen Snyder (“Ms. Snyder”) left the company in 2015, Organogenesis hired Natalee Dantouno (“Ms. Dantouno”) as Buyer III or Buyer IV in January 2017. Gurnett at 302-303, 457, 461. Mr. Quinlisk supervised the buyers, whose duties included obtaining the raw materials used to manufacture finished products. Quinlisk at 447-81.
9. From May 2013 to April 2014, Ms. Gurnett worked as a Buyer I. Gurnett at 34-36.
10. On April 9, 2014, Mr. Quinlisk recommended that Organogenesis increase Ms. Gurnett’s salary and promote her from Buyer I to Buyer II. JE 55. In mid-2014, Ms. Gurnett was promoted to Buyer II and held this position for the remainder of her employment. Gurnett at 40-41.
11. When Ms. Snyder left the company in 2015, Mr. Quinlisk emailed Mr. Hagopian, seeking to distribute Ms. Snyder’s responsibilities between Mr. Quinlisk, Mr. Vital and Ms. Gurnett, and to fill Ms. Snyder’s position. JE 19. Mr. Quinlisk was “very concerned” that Ms. Gurnett was a “flight risk” because she had a long commute, did not require the company’s insurance, and had a relatively low salary. JE 19. Mr. Quinlisk described Ms. Gurnett as good at the job and recommended that Organogenesis increase her compensation. JE 19. On April 6, 2015, in a formal recommendation for promotion, Mr. Quinlisk said of Ms. Gurnett that she “has done a great job handling the fleet”, that it takes a diverse skill set to do this successfully and she has excelled at it. JE 61. Mr. Quinlisk described Ms. Gurnett as “very collaborative”, able to communicate effectively, and consistent in making the correct business decisions. JE 61; Quinlisk at 629-631. Mr. Quinlisk noted that Ms. Gurnett’s skill set was difficult to replicate. JE 61.

Ms. Gurnett's Job Responsibilities in 2016 and 2017

12. In 2016 and 2017, Ms. Gurnett was responsible for (1) fleet management and (2) working as a buyer. Gurnett at 42-43. Ms. Gurnett testified that during that time, 85-95% of her work involved fleet management (Gurnett at 44, 68-69) while Mr. Quinlisk testified that the division of fleet management and buyer responsibilities for Ms. Gurnett was 50%-50%. Quinlisk at 499. In July 2017, Mr. Quinlisk created a job description of the Buyer II position, which accurately reflected Ms. Gurnett's job responsibilities as of July 2017 ("the job description"). JE 27; Gurnett at 189. The job description contains a "work to be performed" section with 22 bullet points – 13 under "Fleet responsibilities" and 9 under "Buyer responsibilities." JE 27. Without assuming that each bulleted tasks would take the same amount of time to complete, there were more tasks under fleet responsibility than buyer responsibility supporting my findings that: (1) Ms. Gurnett is overstating, and Mr. Quinlisk is understating, Ms. Gurnett's fleet responsibilities during this time period; and (2) Ms. Gurnett's fleet management responsibilities in July 2017 were greater than 50% but less than 85%. The record does not support a more precise allocation of fleet management/buyer responsibilities.
13. In 2016 and 2017, Ms. Gurnett's fleet management responsibilities included working with EMkay, an outside fleet management company that provided vehicles for Organogenesis' sales force. Quinlisk at 469-70. Ms. Gurnett arranged for the return of fleet vehicles ("vehicles") and analyzed information related to the fleet. Gurnett at 39; Quinlisk at 462, 468-71. Ms. Gurnett would ensure that the vehicles were registered, inspected and properly insured by coordinating with EMkay. Quinlisk at 462. In addition, she would ensure that the vehicles were properly maintained and would monitor the costs associated with their upkeep. Quinlisk at 463. If a driver had an accident, a mechanical failure or flat tire, Ms. Gurnett would ensure that the driver was back on the road quickly. The drivers would usually email or call Ms. Gurnett to let her know if they needed assistance. Gurnett at 69. If a driver had an accident, Ms. Gurnett would ensure that a police report was filed, work with EMkay and utilize Organogenesis' internal insurance policy. Quinlisk at 464-65. Ms. Gurnett monitored fuel expenditures, was responsible for running motor vehicle reports, and ensured that if a driver was laid off, the vehicle was returned. Quinlisk at 466-69. A key component of Ms.

- Gurnett's fleet manager responsibilities was communication with the salespeople. Quinlisk at 473. In addition, Ms. Gurnett spoke with EMkay every day by phone or email. Gurnett at 39.
14. Ms. Gurnett used the EMkay on-line system 90% of the time when she was working on fleet management and could log on to the EMkay on-line portal from any browser. Gurnett at 40, 70-71, 397. EMkay's on-line portal contained information on every vehicle and driver, insurance certificates, drivers' licenses, lists of repairs, and invoices for repairs. Gurnett at 71.
 15. Ms. Gurnett's fleet management responsibilities included training fleet drivers (i.e. the sales personnel) on the rules for using vehicles ("fleet driver training"). Gurnett at 72. The fleet driver training occurred approximately once a quarter and was planned weeks, and sometimes months, in advance. Quinlisk at 474-75; Gurnett at 82.
 16. To perform her fleet management responsibilities in 2016 and 2017, Ms. Gurnett used a computer, phone, pen, paper and email. Gurnett at 46, 70.
 17. Ms. Gurnett could perform the fleet management duties from home (Gurnett at 399) with one exception: the fleet driver training. In 2017, Organogenesis did not regularly use videoconferencing or other on-line platforms, and therefore, it would not have been feasible, reasonable or practical to conduct the fleet driver training from a remote location. Gurnett at 171-72. However, because the training was pre-planned, Ms. Gurnett could have arranged in advance to be in the office to perform this job duty. Gurnett at 402.
 18. Prior to 2016, Ms. Gurnett had buyer responsibility for the Apligraf product, which was highly regulated by the United States Food and Drug Administration ("FDA"). Gurnett at 61. In 2016 and 2017, she was no longer responsible for buying parts for the Apligraf product, and was responsible for buying parts for the PuraPly products, which were not highly regulated by the FDA. Gurnett at 61; Quinlisk at 480, 500-501.
 19. In 2016 and 2017, Ms. Gurnett's buyer responsibilities were to buy approximately twenty (20) parts for the PuraPly products and ensure that the parts were received by Organogenesis. Gurnett at 45; Quinlisk at 481, 489, 493-94, 592.
 20. In 2016 and 2017, Organogenesis would not have been in violation of any FDA policy, regulation, or state law if it had permitted Ms. Gurnett to work from home two days a week as part of a request for a reasonable accommodation. Transcript III at 709.

21. At material times, Organogenesis used a software program called AX Dynamics MRP Program (“AX program”) which maintained vendor information, purchase orders and information about the stock status of the parts used in its products. Gurnett at 48, 53, 397; Quinlisk at 484, 503. Employees could remotely access purchase orders and other information through the AX program. Quinlisk at 503, 598-99.
22. At material times, Organogenesis also had an online quality control program called Pilgrim (“Pilgrim program”) that employees could access from any browser. Gurnett at 48-52. The Pilgrim program allowed an employee to look up a part number and review vendor information, including any changes, meeting notes or minutes from quality control meetings, quality control reports, emails and any information pertinent to quality. Gurnett at 49-52, 419. Organogenesis’ email system also contained information relevant to performing Buyer II job duties. Gurnett at 53.
23. Generally, buyers performed purchase order transactions by calling the vendor. Quinlisk at 625-26. To perform this function, Ms. Gurnett could access from home the AX program, the Pilgrim program and email through a computer. Gurnett at 397-398; Quinlisk at 628.
24. As noted, in July 2017, Mr. Quinlisk created a job description of the Buyer II position, JE 27; Gurnett at 189. The job description was titled “Job Description – Buyer/Fleet Administrator”, and described the “primary function” of the job as follows:

Vehicle Fleet Administrator who will assist with the administration and coordination of the organization’s fleet of motor vehicles. The Vehicle Fleet Administrator will also own the development of the reports and analysis of fleet data from various sources to provide insight that improves fleet optimization. This position acts as a liaison between Organogenesis, EMkay, and the Sales personal (sic). The administrator handles any exceptions and solves any issues between EMkay and the Sales Personal (sic). This position is responsible for the Fleet Policy, Driver training, Repair approval, Fleet budgeting, performance reporting, exception management, and Portfolio selection.

Buyer: The Buyer will be responsible for the procurement of various commodity materials including packaging and raw materials. He/she will support new product introductions, evaluate the existing and potential supply base for lowest total cost, highest quality and superior performance and drive cost reductions to the bottom line. He/she will manage complex tasks independently and act as the primary liaison between the Internal Customer and the Supplier on major issues.

Under “Work Performed”, the job description lists 9 bullet points under Buyer Responsibilities (Customer Service, Stock Status, Cost, Communication, Technical Skills, New Product Planning, Reporting, Training, and Improvements). JE 27.

25. In Mr. Quinlisk’s view, customer service was the most important job duty of a buyer. Quinlisk at 481. “Customer service” requires ensuring stock status is “reviewed and acted on weekly”, placing paper requisitions in a timely fashion and pro-actively communicating with customers when an issue arises with an order. JE 27. A buyer performed the purchase order transaction by calling the vendor. Quinlisk at 625-26. To perform this function, Ms. Gurnett could access the AX Program, the Pilgrim program and email from home through a computer. Gurnett at 397-398; Quinlisk at 628.
26. The second bullet point under Buyer Responsibilities - “Stock Status” - was described in relevant part, as “supply production requirements to manufacturing locations that support weekly the needs of the factory and ensures that factory production is not disrupted. Continuously evaluate, understand and update the Stock Status as necessary. The Internal and External Lead-time, Re-order Point and the Lot Size must be updated on a quarterly basis and the latest data must be entered in AX system. . .” JE 27. Managing stock status involved printing out a stock status report from the AX program “once or twice a week” to assess whether Organogenesis needed more product and following up to ensure timely deliveries of the products. Quinlisk at 484-85. Buyers were responsible for identifying the lowest cost suppliers, and Mr. Quinlisk described Ms. Gurnett as “very good” at cost savings. Quinlisk at 485-486; JE 27.
27. “Communication” required communicating with internal and external customers, and was a job function that Mr. Quinlisk felt that Ms. Gurnett did very well. JE 27; Quinlisk at 492. “Improvements” required Ms. Gurnett to assist Mr. Quinlisk in statistically calculating the level of inventory of products that Organogenesis would want to carry. Gurnett at 497. “Technical Skills” required working with the AX program. “New Product Planning” involved participating on the team that helped launch PuraPly. “Reporting” required notifying Mr. Quinlisk if there were issues with the timeliness or quality of a supplier. JE 27; Quinlisk at 492-95.
28. While the Buyer II job description lists training new hires as a job responsibility, Mr. Quinlisk admitted that Ms. Gurnett did not train the one new employee who was hired

between 2016 and 2017. Quinlisk at 495-96; JE 27. There was no evidence that Ms. Gurnett trained any employees at Organogenesis at any time during her employment. This leads me to draw the inference that Ms. Gurnett was not responsible for training new hires in the Purchasing Department.

29. The Buyer II job description does not state that in-office attendance is required, nor does it mention or include among the job responsibilities, the completion of white cards. JE 27. The job description states that the position “requires no direct supervision of other employees” and that it involves operating “independently 95% of the time within scope of authority using established procedures.” JE 27.
30. In 2016 and 2017, Ms. Gurnett maintained paper files for each part that she was responsible for purchasing. Gurnett at 47; Quinlisk at 501. The paper files were 300-600 pages and included copies of purchase orders, emails, meeting notes including notes from material review board (“MRB”) meetings, invoices, paperwork from the Pilgrim program, and a white card. Gurnett at 47; Quinlisk at 504. With the exception of the white card, the information in the paper files was accessible through the AX program, the Pilgrim program and email. Gurnett at 47-48.
31. Generally, buyers would keep a white card for each part. The buyer would write on the white card how much was ordered, who the buyer spoke with, and what lot was being sent. Quinlisk at 502, 597. The buyer could look at the white card and get the history of that particular part. Quinlisk at 502. Everything on the white card, which included the part number, the name of the vendor, the vendor’s phone number, address and some information on the part, was available either in the AX program or the Pilgrim program - with the exception of what can best be described as subjective notes. Gurnett at 419.
32. While notes that a buyer would keep when ordering a part were generally accessible remotely in electronic form (Quinlisk at 597-98), there were some subjective notes -- such as “Jane usually takes a week to get back to me” -- that were kept on the white card and not maintained electronically. Quinlisk at 503-504, 699.
33. Organogenesis generally maintained the MRB meeting and quality control notes electronically in the Pilgrim program. Gurnett at 50-52; Quinlisk at 700 (sometimes notes from the MRB meeting were kept only on the white card).

34. On occasion, buyers needed to place a paper requisition which would require being present in the office. Gurnett at 191. Mr. Vital generally handled paper requisitions, and it was “very, very infrequent” for Ms. Gurnett to handle paper requisitions. Gurnett at 402. In 2016 and 2017, Ms. Gurnett did not place paper requisitions with the exception of one or two she might have done if Mr. Vital was out of the office. Gurnett at 191-92. Ms. Gurnett could not place paper requisitions if she was working from home unless she brought paperwork home in advance, but could have placed a paper requisition the next day in the office. Gurnett at 402-403.
35. In 2016 and 2017, Ms. Gurnett met weekly for about ½ hour with Mr. Quinlisk. Gurnett at 55-57. Ms. Gurnett printed the status report from the AX program and reviewed it with Mr. Quinlisk to ensure that there was sufficient stock. Gurnett at 56. If they did not have enough stock, Ms. Gurnett would place purchase orders, which would appear on her AX Program status report. Gurnett at 56. Ms. Gurnett could have participated in these meetings by phone by remotely accessing the AX program status reports. Gurnett at 58, 79.
36. Ms. Gurnett participated in team meetings, scheduled up to 2 weeks in advance and attended by representatives from manufacturing, quality control, and the buyer. Gurnett at 59-60.
37. Ms. Gurnett was responsible for filing 30-45 minutes per week, and filed once a week or every two weeks. Gurnett at 190. If Ms. Gurnett worked remotely two days per week, she would have filed on the days she was in the office. Gurnett at 190.
38. In 2016 and 2017, Ms. Gurnett worked remotely 10-15 times. Gurnett at 87. When she worked from home, she used a laptop available to the Purchasing Department and a company cell phone. Gurnett at 86, 88. There was one laptop for the Purchasing Department, and additional laptops available through the IT Help Desk. Gurnett at 396. Organogenesis had a help desk in the IT department who would assist with VPN connection problems. Gurnett at 251-52. When Ms. Gurnett worked from home, Mr. Quinlisk could reach Ms. Gurnett by calling her on her personal cell phone, emailing her, or by calling her on the company cell phone, which was listed on the company directory. Gurnett at 91, 418; Quinlisk at 616-17. On those occasions that Ms. Gurnett worked remotely, she did not receive any criticism regarding her work performance. Gurnett at 89.

39. In 2016 and 2017, there were no emergencies involving the products for which Ms. Gurnett was responsible, nor did Organogenesis run out of stock for Apligraf or the PuraPly products. Gurnett at 64; Quinlisk at 491-92, 549, 611.

Organogenesis' Written Employment Policies

40. From November 2012 to April 2016, Organogenesis' employee handbooks did not contain any policies or practices regarding reasonable accommodation law or the interactive process or an employee telecommuting policy. JE 66.
41. Effective April 2016, Organogenesis adopted a policy on alternative work schedules, which, at management's discretion, allowed employees to work part-time, a compressed week and "flex-time." JE 58.
42. Effective May 2017, Organogenesis adopted a telecommuting policy, which allowed employees in "some jobs" who were interested in working from home on a regular basis to contact Human Resources. JE 81.
43. In August 2017, Organogenesis adopted a reasonable accommodation policy which states:
- The Company recognizes that employees with physical or mental disabilities may need reasonable accommodations to enable them to perform their essential job functions and instructs employees to notify their supervisor and Human Resources if they need a reasonable accommodation. JE 62.

The reasonable accommodation policy states that the need for accommodations is determined on a case-by-case basis and that generally, Organogenesis engages in an interactive process with the employee and the employee's healthcare provider to confirm the existence of the condition, its limitations in the workplace and possible reasonable accommodations. JE 62.

The policy states that the employee has an obligation to cooperate with the company, which may include authorizing the company to communicate with the employee's healthcare providers concerning the employee's condition, its limitations and possible reasonable accommodations. JE 62.

Ms. Gurnett's Work Performance

44. Mr. Quinlisk described Ms. Gurnett as collaborative, very good at communicating with internal and external customers and "at times, a pleasure to work with." Quinlisk at 492, 505, 628-29. Mr. Quinlisk also felt that Ms. Gurnett was not always engaged in her work, needed a lot of oversight and was easily distracted. Quinlisk at 506, 632, 634. He felt she did too much internet shopping at work and that there were times the job was not being done.

Quinlisk at 507. In summer 2017, Ms. Gurnett did not complete the Fleet budget and Mr. Quinlisk assigned that task to an intern who completed it on August 9, 2017. Quinlisk at 523-29; JE 71.

45. Mr. Quinlisk acknowledged that he watched MSNBC while at work, accessed his personal email, and took personal calls at work. Quinlisk at 634.
46. In 2013, 2014, and 2015, Ms. Gurnett received annual performance reviews from Mr. Quinlisk. JE 43; JE 47; JE 59.³ Mr. Quinlisk issued a mid-year performance review on July 10, 2017. JE 63. A 5 rating was defined as “consistently exceeding expectations”; a 4 rating as “often exceeds expectations”; a 3 rating as “fully achieves expectations: meets all business objectives and general job responsibilities”; a 2 rating as “partially achieves/needs improvement” and a 1 rating as “rarely achieves expectations.” JE 43; JE 47; JE 59.
47. In 2013, Ms. Gurnett received a final rating of 3.0 for “performance” and 3.0 for “values & behaviors.” JE 43; Gurnett at 255. This final rating was generally comparable with the ratings Mr. Quinlisk assigned that year to Mr. Vital (3.0, 3.3) and Ms. Snyder (3.1, 3.2). JE 53. In 2014, Mr. Quinlisk gave Ms. Gurnett a final rating for performance of 3.3 and for values & behaviors of 3.2. JE 47. For the year 2015, Ms. Gurnett received a final rating of 3.2 for performance and 3.2 for values & behaviors. JE 59.
48. Throughout Ms. Gurnett’s employment, Mr. Quinlisk gave her performance evaluation ratings that reflected his view that she fully achieved company expectations, but also documented his concerns about Ms. Gurnett’s lack of focus and distraction. JE 43; JE 47; JE 59; JE 63.
49. On July 10, 2017, Mr. Quinlisk gave Ms. Gurnett a mid-year review, which does not include a numerical rating. JE 63. The review states that Ms. Gurnett is responsive to operational customer requirements, very creative especially in the acquisition and deployment of vehicles, the “resident expert in Fleet”, good at getting low cost solutions, and open and honest. It also states:

Claire continues to administer the Fleet Program, and with the addition of Puraply she has picked up the Planning and Purchasing of these components. Puraply is our most important and volatile product and will be launching several new variants over the next 12 months. This will require her undivided attention. Claire will need to work more independently and stay focused on work activities.

³The parties did not submit a 2016 annual performance review for Ms. Gurnett. There was no evidence to support the conclusion that such a review was conducted.

50. The July 10, 2017 review states that Ms. Gurnett is to focus on three important areas: 1) stay focused on work related activities. 2) become more self-sufficient, make deadlines and drive issues to conclusion. 3) Time Management and Organization. “Claire has all the necessary skills to be successful at OI, however she needs to make that choice and apply herself consistently to the requirements of the Job.” JE 63. The review states “I think there’s an opportunity for Claire to drive issues to closure without the intervention of her management.” JE 63.
51. Ms. Gurnett’s 2014 and 2015 performance evaluations, and 2017 mid-year review have a section titled “training and development”, described as “designed to ensure ongoing employee/manager discussions and planning for training and development accomplishments needs and expectations.” JE 47; JE 59; JE 63. Mr. Quinlisk did not recommend training or development in the 2014 or 2015 performance evaluation, or 2017 mid-year review.
52. Throughout her employment at Organogenesis, Ms. Gurnett did not receive a written warning, a performance improvement plan, or any formal discipline. Gurnett at 37.

Ms. Gurnett’s Medical Condition and Requests to Work from Home

53. In 2016, Ms. Gurnett began feeling pain in the back of her neck and shoulder, which was aggravated by driving. Gurnett at 105. Ms. Gurnett also experienced pain down the back of her spine and arms, which progressively worsened over summer 2016. Gurnett at 105. In fall 2016, sitting in one position while driving caused pain in the back of her hip. Gurnett at 106.
54. In 2016, the pain in Ms. Gurnett’s back and shoulders became sharper and more painful and toward the end of 2016, Ms. Gurnett felt cold, numb tingling in her arms and legs. Gurnett at 108. Her pain was “excruciating.” Gurnett at 108. Driving and lifting heavy items intensified the pain in Ms. Gurnett’s feet, and she began wearing slippers at work. Gurnett at 110-11.
55. In October 2016, Ms. Gurnett was referred to Dr. Mathur, a rheumatologist and infectious disease specialist. Gurnett at 112; JE 8. On December 31, 2016, Ms. Gurnett received emergency medical care, presenting with “migratory numbness and tingling of her legs as well as some neck and right shoulder discomfort.” JE 1.
56. On January 5, 2017, Dr. Mathur diagnosed Ms. Gurnett with atypical fibromyalgia, which presented with chronic pain in her neck, shoulders, back, hips and feet. JE 1; JE 48. As of

that time, Ms. Gurnett was unable to drive and sit for more than 10 minutes without pain. JE 1.

57. Beginning in August 2016 and continuing through May 2017, Ms. Gurnett verbally informed Mr. Quinlisk of the pain she was experiencing and the fact that the commute to and from work contributed to the pain. Gurnett at 132-133. Mr. Quinlisk acknowledged that he knew prior to May 2017 that Ms. Gurnett had a long commute and that in 2016, Ms. Gurnett talked about her doctors' appointments which leads me to infer that Ms. Gurnett shared with Mr. Quinlisk her symptoms, efforts to obtain a diagnosis, and the effect of the commute. Quinlisk at 644-645.
58. Beginning in August 2016, Ms. Gurnett asked Mr. Quinlisk if there was any way she could work from home and Mr. Quinlisk's response was "no, don't ask." Gurnett at 134. Between August 2016 and the end of 2016, Ms. Gurnett asked Mr. Quinlisk 5-6 times if she could work from home on a weekly basis, and his response was no. Gurnett at 135-136. Based on the following, I find that after Ms. Gurnett was diagnosed with fibromyalgia in early January 2017 and prior to May 24, 2017, she informed Mr. Quinlisk that she had fibromyalgia and that the long work commute worsened her pain and asked to work from home on a regular basis. Gurnett at 136-143. First, Mr. Quinlisk and Ms. Gurnett had a sociable work relationship that included sharing personal information, including health information. Gurnett at 358-359. Mr. Quinlisk had an "open door policy" and talked with Ms. Gurnett generally about his own health, her health, and their shared hobby of running. Gurnett at 132, 152, 157, 356-359; R2 (reflecting Ms. Gurnett's awareness of the names of Mr. Quinlisk's family members); Quinlisk at 642-43. Secondly, my observations of Ms. Gurnett at hearing, corroborated by her husband, was that she had an open and talkative demeanor. Nogueira at 429, 434 (describing Gurnett as "social and "vibrant"). Third, I do not credit Mr. Quinlisk's testimony that he did not remember Ms. Gurnett telling him prior to May 24, 2017 that she had fibromyalgia based on my observations of his restrained and uncomfortable demeanor while testifying on this topic. Quinlisk at 568. Fourth, I do not credit Mr. Quinlisk's testimony that Ms. Gurnett did not ask to work from home prior to May 24, 2017 based on Mr. Quinlisk's May 25, 2017 notes. These notes contain a statement by Mr. Quinlisk that supports the conclusion that Ms. Gurnett and Mr. Quinlisk had previously talked about Ms. Gurnett's requests to work on a regular basis from home. When Ms. Gurnett provided Mr.

Quinlisk with a physician's note on May 24, 2017 seeking the accommodation of a 2-3 day/week remote work schedule, Mr. Quinlisk's May 25, 2017 notes, memorializing his meetings with Ms. Gurnett on May 24 - 25, 2017, state: "this is an on-site position **and that has not changed.**" JE 78 (emphasis added). I infer from Mr. Quinlisk's statement -- "and that has not changed" -- that Ms. Gurnett had previously asked to work on a regular basis from home and Mr. Quinlisk had previously stated that the position was on-site and that nothing had changed to make it a partially remote position.

59. I recognize that the Charge of Discrimination ("Charge") filed by Ms. Gurnett does not state that prior to May 2017, Ms. Gurnett told Mr. Quinlisk that the commute to and from work caused her pain, or that she asked Mr. Quinlisk for permission to work from home on a regular basis. JE 24. Ms. Gurnett did not have an attorney to draft her Charge, nor did she view her pre-May 2017 discussions with Mr. Quinlisk as formal requests for accommodation but rather "casual conversations." Gurnett at 358, 407. As such, these omissions in the Charge are not inconsistent with Ms. Gurnett's testimony and are insufficient to detract from the findings in ¶¶ 57-58.
60. On May 23, 2017, Ms. Gurnett visited Dr. Mathur due to a significant flare-up of pain in her spine, neck, shoulders, arms, and legs. Gurnett at 144; JE 21. Ms. Gurnett described this as "the worst pain" she had experienced to date and testified that she was in "absolute agony." Gurnett at 151. Ms. Gurnett explained to Dr. Mathur that she had previously asked to work from home and that she needed a physician's note to support her request to work remotely. Gurnett at 145-146.
61. Ms. Gurnett believed and continues to believe that she could have performed all her job responsibilities from 2016 to the end of her employment working from home 2 days a week and in the office 3 days a week. Gurnett at 54.
62. On May 24, 2017, Ms. Gurnett met with Mr. Quinlisk, who kept notes of this meeting as well as the meeting the following day on May 25, 2017. JE 78. Ms. Gurnett stated that she had bursitis in her hip and possible fibromyalgia, and asked him to work 2-3 days per week from home in order to recover from the days she commuted to work. Gurnett at 151; JE 78; Quinlisk at 563. Mr. Quinlisk's response was that this was an "on-site position" and that "has not changed." JE 78. Mr. Quinlisk indicated that he did not believe that working from home was a good idea, that it was not something he would support, but that he would let human

resources and Henry Hagopian know about the request. Quinlisk at 569. Mr. Quinlisk told Ms. Gurnett that even when she was in the office, her focus on the job needed to improve. JE 78; Quinlisk at 567. When Ms. Gurnett told Mr. Quinlisk that other people work from home, Mr. Quinlisk told her that working from home was not possible for this position. JE 78.

63. During the May 24, 2017 meeting, Mr. Quinlisk told Ms. Gurnett that if she felt she could not get to work, he would see if she would qualify for a severance package. JE 78. At the suggestion that she leave her employment, Ms. Gurnett was shocked and upset because she thought that Mr. Quinlisk valued her work. Gurnett at 152-53, 164. When Ms. Gurnett told Mr. Quinlisk she did not want to sever her employment relationship with Organogenesis, Mr. Quinlisk told Ms. Gurnett that he would discuss this with Mr. Hagopian and human resources. JE 78. At the time this conversation took place, Ms. Gurnett was in extreme pain and felt very frustrated by Mr. Quinlisk's response. Gurnett at 153-54.
64. I do not credit Mr. Quinlisk's testimony that the reason he offered Ms. Gurnett a severance package during their May 24, 2017 meeting was that he thought she wanted to start her own business and that if he could get her a package, "she would be happy and you know, it would not be an issue." Quinlisk at 570, 663. I base this determination on the timing of Mr. Quinlisk's offer of severance – which occurred in the same meeting in which Ms. Gurnett submitted a written request for an accommodation with medical documentation. Additionally, after Ms. Gurnett made it clear to Mr. Quinlisk that she did not wish to sever her employment, Mr. Quinlisk continued to pursue Ms. Gurnett's severance from Organogenesis into mid-June 2017. JE 83. I draw the reasonable inference that Mr. Quinlisk offered Ms. Gurnett a severance package because he did not want to provide her with a work-from-home arrangement or engage further on the topic, and thought this to be the most expedient way to address Ms. Gurnett's request.
65. Organogenesis did not provide any disability discrimination or reasonable accommodation training to Mr. Quinlisk in 2016 or 2017. Quinlisk at 685.
66. On May 25, 2017, Ms. Gurnett gave Mr. Quinlisk a copy of Dr. Mathur's May 25, 2017 note ("May 25 doctor's note") and again asked to work from home. Gurnett at 146-47. The May 25 doctor's note stated that Ms. Gurnett had a medical condition, exacerbated by prolonged periods of driving, and asked that Organogenesis allow Ms. Gurnett to work from home, which, Dr. Mathur stated, would help to alleviate some of Ms. Gurnett's pain. JE 4. In the

May 25 doctor's note, Dr. Mathur asked that the company contact his office with any questions. JE 4. Upon receiving this note, Mr. Quinlisk stated: "I need someone here five days a week. If you would like to pursue this further, you will need to discuss with HR." Gurnett at 147; JE 78. Neither Mr. Quinlisk nor Ms. Gurnett proposed accommodations other than working from home 2-3 days/week at the May 25, 2017 meeting. Gurnett at 153.

67. On May 25, 2017, Mr. Quinlisk gave the May 25 doctor's note to Ms. Howard and said he did not "want this position to be a work from home arrangement." JE 82. He expressed to Ms. Howard that he felt strongly that he wanted someone there 5 days a week and that he considered this issue "non-negotiable." JE 82. Mr. Quinlisk also gave the May 25 doctor's note to Mr. Hagopian and Ms. Samaha. Quinlisk at 665.
68. Mr. Quinlisk's reasons for not supporting Ms. Gurnett's request to work from home were: (1) Organogenesis "had too much going on"; (2) Ms. Gurnett was not sufficiently focused at work; (3) it would be difficult for Mr. Quinlisk to ensure that Ms. Gurnett got her work done; (4) Mr. Quinlisk would have to change what he was doing for the day to ensure that Ms. Gurnett's work was covered, which would "put the company at risk"; and (5) being under the control of the FDA was a "contributing factor." Quinlisk at 564, 611-615, 685-686.
69. On May 26, 2017, Ms. Howard emailed Ms. Samaha and described her meeting with Mr. Quinlisk. JE 82. Ms. Howard provided Ms. Samaha with Dr. Mathur's May 25, 2017 note and stated that she did not "know if there's anything else we need to do with this" and that the doctor's note is "vague" but, Ms. Howard noted, Dr. Mathur's note stated that they could call to discuss the matter with him. JE 82.
70. In early June 2017, Ms. Howard asked Ms. Gurnett to provide a more detailed letter from her health care provider. Gurnett at 169-70. Ms. Gurnett then sent Ms. Howard a letter ("Ms. Gurnett's June 9 letter"), and attached a letter from Dr. Mathur dated June 8, 2017 ("Dr. Mathur's June 8 letter"). JE 8. Dr. Mathur's June 8 letter stated that Ms. Gurnett had been diagnosed with a rheumatologic condition that causes chronic pain, that her commute was 1-2 hours each way and that "sitting in a constricted manner for prolonged periods of time without the ability to stretch can exacerbate her symptoms." JE 8. Dr. Mathur's June 8 letter stated that driving five days in a row, without a break, intensifies Ms. Gurnett's symptoms, that working from home 2 days/week would reduce the severity of her symptoms, and that Ms. Gurnett's "limitations do not prevent her from performing her essential job duties." JE 8.

71. Ms. Gurnett's June 9 letter describes her symptoms as including pain, numbness, tingling and the inability to sit for long periods of time, without pain; and how Ms. Gurnett's lengthy commute causes Ms. Gurnett pain in her feet, fatigue and depression. The June 9 letter requests that Ms. Gurnett be permitted to work from home Tuesdays and Thursdays; states that Ms. Gurnett could productively perform the essential functions of her job remotely as she had done so in the past; and explains that the majority of Ms. Gurnett's work involves communicating by email or phone. JE 8. In the June 9 letter, Ms. Gurnett states that if there were a need for her to be in the office on a particular Tuesday or Thursday, for example, for "sales training, vendor meetings or a company event", she would "certainly change [her] schedule to be there when needed." JE 8.
72. On June 19, 2017, Ms. Howard emailed Ms. Samaha, stating that she had talked with Mr. Quinlisk about Ms. Gurnett's request to work from home and that Mr. Quinlisk asked for a copy of Ms. Gurnett's medical letter, which she provided to him even though she was "very uncomfortable sharing medical documentation." JE 83. Ms. Howard informed Ms. Samaha that Mr. Quinlisk told Ms. Howard that he would like to get Ms. Gurnett a "package" because he did not think this was the right job for her, that Ms. Gurnett had performance problems and that Mr. Quinlisk had a folder of paperwork related to her performance. JE 83. Ms. Howard reported to Ms. Samaha that Mr. Quinlisk said that Ms. Gurnett does not take initiative and requires monitoring, that if she was working from home "it could be a hardship for the company", and that Mr. Quinlisk planned to ask Mr. Hagopian if he could "give her a package." JE 83.
73. On July 3, 2017, Ms. Gurnett handed Ms. Howard a letter dated July 3, 2017 ("Ms. Gurnett's July 3 letter"), which referenced her previous requests for accommodation and stated:
- On or around June 16th, you informed me that my request was being reviewed by a lawyer for Organogenesis, and that the lawyer had been out of the office, but that you would get back to me the following week or June 19th. On June 28, since I had not heard anything I asked you again if a decision had been made and you informed me that you needed to speak to my manager, Walter. On Friday, June 30th, you informed me that you had spoken with him but that a decision had still not been reached and that you would be out of the office for the week of July 3rd, so you would not have any more information for me until your return on July 10th. Since my original request was on May 25th, and I still have not had a definitive answer, I would appreciate that you get back to me with a decision by July 15th. JE 35.

74. Ms. Howard was on vacation from July 4-7, 2017. JE 14.⁴
75. On July 10, 2017, Ms. Howard learned that Mr. Quinlisk had been in contact with Ms. Walsh and that Ms. Walsh had followed up with Corban OneSource because Ms. Walsh “learned that they [Corban OneSource] would handle inquiries and requests for accommodations and had sent the documents to them for review on Friday 7-7.” JE 14. Ms. Howard also learned that when she was on vacation, Corban OneSource told Ms. Walsh that there was a need for a doctor’s questionnaire, that Ms. Walsh informed Ms. Gurnett they needed a medical questionnaire, and that Ms. Walsh “struggled to explain [to Gurnett] the connection but wasn’t clear on the process since [Organogenesis had not] had a request like this before.” JE 14.
76. On July 10, 2017, Ms. Howard emailed Ms. Gurnett, confirming receipt of Ms. Gurnett’s July 3 letter. JE 85. Ms. Gurnett, who was in pain and very frustrated, replied to Ms. Howard by email the next day saying she was in a lot of pain and would “really like an answer soon.” JE 85; Gurnett at 183-184.
77. Ms. Howard forwarded Ms. Gurnett’s July 10, 2017 email to Ms. Patel, saying “Hi . . . anything we could tell Claire?” JE 85. On July 11, 2017, Ms. Patel forwarded the emails to Mr. Quinlisk and Ms. Walsh: “FYI, I just told her [Ms. Howard] to tell Claire that we are waiting on Corban.” JE 85.
78. Ms. Howard’s July 13, 2017 notes state: “[W]e just started our connection with Corban One in May and are still learning about what issues we can address with them. I mentioned this to Claire so that she would know we are still working on her request but that there will be a need for more information.” JE 14; Gurnett at 185.
79. On July 12, 2017, Ms. Walsh sent a letter (“Ms. Walsh’s July 12 letter”) to Ms. Gurnett acknowledging receipt of Dr. Mathur’s June 8 letter, which, she said, “we understand . . . to be a request for an accommodation.” JE 12. Ms. Walsh’s July 12 letter stated that the company must first engage in a dialogue to determine whether Ms. Gurnett was entitled to a reasonable accommodation. The purpose of the dialogue, Ms. Walsh explained, was to determine “the nature, duration and extent of any physical or mental limitations that you may have as a result of your condition” and to evaluate whether there was a reasonable accommodation that would allow Ms. Gurnett to perform the essential functions of her

⁴ Ms. Howard authored JE 14. Respondent’s Post Hearing Brief, p. 20.

position. JE 12. Ms. Walsh attached an Interactive Process Questionnaire and asked that Ms. Gurnett have her healthcare provider complete it and return it to Corban OneSource by July 27, 2017. JE 12.

80. As noted, on July 12, 2017, Mr. Quinlisk created a job description for the position of Buyer II. JE 27; Quinlisk at 618. Prior to this, there had been no job description for Ms. Gurnett's position. Quinlisk at 454. Mr. Quinlisk consulted with EMkay in drafting the job description, and human resources reviewed it. Quinlisk at 618-621. Mr. Quinlisk initially testified that he created the job description at human resources' request, and then testified that he did not know who asked him to create the job description. Quinlisk at 454-456. Based on Mr. Quinlisk's inconsistent testimony on this subject, and the timing of the creation of this job description, I find that Mr. Quinlisk created the job description in connection with Ms. Gurnett's request for accommodation at the request of Corban OneSource or the human resources department.

81. On July 26, 2017, Dr. Mathur completed the Interactive Process Questionnaire, explaining that Ms. Gurnett has a "chronic medical condition associated with diffuse pain, fatigue and sleep disturbance", which was aggravated by prolonged sitting and inadequate rest after periods of activity. JE 16; Gurnett at 340. Dr. Mathur stated that her condition could relapse and that "it is an essential part of her regimen that she reduces her sedentary time - as in commuting - to stretch, exercise and avoid prolonged sitting." JE 16. Dr. Mathur stated that Ms. Gurnett could perform the essential functions of the job, but that "her rather long commute she tells me causes worsening of her symptoms and inability to rest." JE 16. Dr. Mathur stated that working from home 2 days/week will help her with her condition by eliminating travel time so that she can recuperate between the days she commutes. JE 16.

82. No representative of Organogenesis contacted Dr. Mathur to discuss Ms. Gurnett or her request for accommodation at any time during Ms. Gurnett's employment. Gurnett at 228. After receipt of the completed Interactive Process Questionnaire, no representative from Organogenesis requested further medical documentation from Ms. Gurnett. Gurnett at 227.

July 31, 2017 Meeting

83. On July 31, 2017, Ms. Samaha tapped Ms. Gurnett on the shoulder and asked if she would go into her office for a meeting. Gurnett at 198. Ms. Walsh was in Ms. Samaha's office. Ms. Samaha picked up the Interactive Process Questionnaire, held it by the corner and said,

“we’re here to talk about your request” and said, “this is meaningless.” Gurnett at 199-200.

Ms. Samaha said that the request was not legitimate, that Ms. Gurnett’s doctor only repeated what Ms. Gurnett had told him to state and there was no start date or end date to Ms.

Gurnett’s medical condition. Gurnett at 100. Ms. Gurnett was told that this was an on-site position, that Mr. Quinlisk required Ms. Gurnett to be there 5 days a week, and that

Organogenesis was not going to allow the request to work from home. Gurnett at 200.

84. During the July 31, 2017 meeting (“July 31 meeting”), Ms. Samaha asked if Ms. Gurnett had read the American with Disabilities Act (“ADA”) guidelines and when Ms. Gurnett responded affirmatively, Ms. Samaha said, “Well, you better read them again.” Gurnett at 201. Ms. Samaha told Ms. Gurnett that she was denying the request, but that Organogenesis would offer her a change to her schedule, a stand-up desk, and a conference room in which to stretch. Gurnett at 201. Ms. Samaha then said, “Or you could move closer to the work office.” Gurnett at 201. Ms. Gurnett asked Ms. Samaha if she would make a record of this meeting, and Ms. Samaha refused to do so. Gurnett at 200-202. Ms. Gurnett told Ms. Samaha that if she was not going to make a record of the meeting, Ms. Gurnett would do so, and when she stepped out of the office, Ms. Gurnett was shaking “from head to toe” and on the verge of tears. Gurnett at 202. Ms. Gurnett found Ms. Samaha rude, “very intimidating” and abusive; and felt demeaned by her tone and manner. Gurnett at 200-01, 373; JE 24.

85. When Ms. Gurnett returned and asked Ms. Samaha to repeat some of the statements she had made, Ms. Samaha repeated them “with absolute venom in her voice.” Gurnett at 202.

86. Ms. Gurnett described the July 31 meeting as distressing, degrading, dehumanizing and threatening. Gurnett at 284. After the July 31 meeting, Ms. Gurnett called her husband crying. Gurnett at 203; Nogueira at 436. It was the only call her husband had ever received where Ms. Gurnett was that upset at work. Nogueira at 436. Ms. Gurnett was so distressed that she took a Xanax following the meeting. Gurnett at 284.

Post-July 31 Meeting

87. After the July 31, 2017 meeting, Ms. Gurnett had no face-to-face conversations with any Organogenesis human resources representatives including Ms. Samaha, Ms. Walsh, Ms. Patel, and Ms. Howard.

88. The decision to deny Ms. Gurnett the opportunity to work from home on a regular basis was made by Mr. Quinlisk and Ms. Samaha. I do not credit Mr. Quinlisk’s testimony that after

Ms. Gurnett gave Mr. Quinlisk the May 25 doctor's note, Mr. Quinlisk had "very minimal involvement" in the accommodation request and that he did not make the decision to deny Ms. Gurnett's request to work remotely. Quinlisk at 573, 691-92. I base this on the following: After the May 24 and 25, 2017 meetings with Ms. Gurnett, Mr. Quinlisk acknowledged that he discussed Ms. Gurnett's accommodation request with Ms. Samaha and "a couple of HR folks", Ms. Walsh and Ms. Howard, and with Corban OneSource. Quinlisk at 666-67. In mid-June 2017, Mr. Quinlisk asked Ms. Howard for a copy of Ms. Gurnett's medical documentation and continued to seek Ms. Gurnett's severance from Organogenesis, despite her rejection of a severance package in May 2017. JE 83. In early July 2017, Mr. Quinlisk contacted Ms. Walsh about Ms. Gurnett's accommodation request and in July 2017, he drafted the job description in connection with Ms. Gurnett's request for accommodation. Mr. Pearl, Organogenesis' vice president of human resources, admitted that the decision not to allow Ms. Gurnett's accommodation request was made by Ms. Samaha and Mr. Quinlisk. Pearl at 713, 719-720.

89. At the public hearing, Mr. Quinlisk was asked: "[i]n your opinion, in 2016 and 2017, could Mrs. Gurnett have worked at least one day a week on a regular basis as part of a request for a reasonable accommodation." Mr. Quinlisk testified: "[w]ell, if she could work from home one day a week and we didn't have any supply issues, then that would have been great; so, in theory, it could have been accomplished." Quinlisk at 692-93. From this testimony, I draw the inference that Mr. Quinlisk believed it would have been feasible, in the relevant time-period, for Organogenesis to permit Ms. Gurnett to work remotely one day a week.
90. On August 10, 2017, Ms. Gurnett filed a Charge at the MCAD, alleging that Organogenesis discriminated against her because of her disability by denying her a reasonable accommodation. JE 24. Ms. Gurnett filed with the MCAD, rather than following up with Ms. Walsh or Ms. Samaha, because her request for accommodation was denied and Ms. Samaha had upset and frightened her. Gurnett at 214-15. When she filed the Charge, Ms. Gurnett was upset, depressed, in pain and angry. Gurnett at 216.
91. On August 10, 2017, Ms. Gurnett wrote to Ms. Samaha documenting her understanding of their July 31, 2017 meeting and providing a response to the proposals made by Ms. Samaha during that meeting (Ms. Gurnett's August 10 letter"). JE 20. Ms. Gurnett's August 10 letter stated: (1) Ms. Gurnett's doctor could substantiate how her commute exacerbated her

condition; (2) Ms. Gurnett could obtain more information from her physician; (3) the offer to create a flexible schedule does not significantly alter her commuting time; (4) access to a place to stretch during the day “by itself does not address the difficulties [she] experience[s] with the commute” and (5) a standing desk would only assist her in the office, not during her commute. JE 20. Ms. Gurnett summarized by stating:

These offers would not address the symptoms I experience from driving. Those symptoms are the reason that I specifically made the request to telecommute for two days per week. As I previously explained, the anticipated benefit of working from home two days per week would allow me to recuperate in between commuting days and would not have as large a cumulative effect as 12-18 hours driving per week has on me now. JE 20.

92. Neither Ms. Gurnett nor a representative from Organogenesis followed up regarding providing her with a stand-up desk, or a conference room to stretch. Gurnett at 213, 223.
93. A flexible schedule, place to stretch and stand-up desk did not provide her with the relief from the pain caused by fibromyalgia that she and her physician believed a 2 day/week remote schedule would provide by allowing her the opportunity to recuperate between commuting days. Gurnett at 211-212; JE 4; JE 8; JE 16. Ms. Gurnett stretched during work and while it provided a few minutes’ relief, “it did not address what was really causing [her] pain.” Gurnett at 212.
94. Ms. Gurnett and her husband could not afford to relocate closer to the Canton facility. Gurnett at 212.
95. On August 23, 2017, Ms. Walsh wrote Ms. Gurnett contesting some of the statements in Ms. Gurnett’s August 10 letter. JE 31. Ms. Walsh stated that what Ms. Samaha had conveyed in their July 31 meeting was that Organogenesis was not prepared to provide the requested accommodation of working from home 2 days/week because it believes other accommodations that Organogenesis offered would be effective. JE 31. The correspondence states that:

Ms. Samaha conveyed during the meeting that Organogenesis is not prepared to provide your requested accommodation – working from home two days per week – because it believes other accommodations that the company has offered would be effective. Our obligation as a company is to provide you an accommodation that enables you to perform the essential functions of your position without imposing an undue hardship on the company. We believe that the accommodations we have offered comply with our obligations.

We suggest that you attempt to work with these accommodations and/or suggest other accommodations that would be effective for you (in that they will enable to perform your job

on premise) . . . I want to reiterate that, we have not stopped the “interactive process” and will continue to ensure an accommodation that is effective and is not an undue hardship on the company. JE 31.

96. Ms. Gurnett received this letter on September 3, 2017. Gurnett at 217- 220.

97. With Mr. Quinlisk’s permission, Ms. Gurnett changed her work hours in an attempt to reduce her commute, on September 19, 2017 [from 9:30 a.m.-6 p.m. to 10 a.m.-6:30 p.m.] and again on October 13, 2017 [to 6 a.m. / 7 a.m.- 3:00 p.m.]. Gurnett at 228; JE 73 (September schedule change); JE 69 (October schedule change). The September schedule change did not reduce Ms. Gurnett’s commute time, and her pain during this period was “excruciating.” Gurnett at 232. After the September schedule change, Ms. Gurnett discussed with Mr. Quinlisk the lengthy commute, her pain and her recent diagnosis of silent reflux because of getting home late and going to bed immediately after eating. Gurnett at 234-37. Similarly, Ms. Gurnett did not find that the October schedule change helped with the pain because it did not substantially reduce the length of the commute, and Ms. Gurnett informed Mr. Quinlisk of this. Gurnett at 240-41.

98. Between October 13, 2017 and November 14, 2017, Ms. Gurnett spoke with Mr. Quinlisk about her pain and the lengthy commute between three and four times and Mr. Quinlisk’s response each time was to shut the subject down and not discuss it. Gurnett at 241-242.

99. No one in the purchasing department had a regular work from home schedule. Gurnett at 251. There were some employees in other departments at Organogenesis who worked from home on a regular basis. Gurnett at 250.

100. None of the human resources representatives or other agents of Organogenesis discussed Organogenesis’ April 2017 telecommuting policy with Ms. Gurnett. Gurnett at 260-61.

101. No representative from Corban OneSource contacted Ms. Gurnett. Gurnett at 186.

Ms. Gurnett’s Resignation from Organogenesis

102. Ms. Gurnett began interviewing for other jobs between August and October 2017. Gurnett at 367. On November 1, 2017, Ms. Gurnett submitted her resignation from Organogenesis with a last day of employment of November 14, 2017. JE 76. As of November 14, 2017, Ms. Gurnett’s annual base salary at Organogenesis was \$65,977.60. JE 1.

103. In an exit interview questionnaire, Organogenesis asked Ms. Gurnett what the company could have done to dissuade her from leaving. JE 18. Her response was: “[a]llowed me to

work from home a couple of days a week because of my commute and disability.” JE 18. Ms. Gurnett also suggested that the company allow flexibility and treat employees equally across the company. She stated that her department supervisor is very rigid and inflexible and micromanages his employees. JE 18; Gurnett at 268-69. No Organogenesis representative followed up with Ms. Gurnett after the exit interview. Gurnett at 270.

104. Ms. Gurnett accepted a position at BWT Pharma, Inc. & Biotech, Inc. (“BWT Pharma”), which was a 10-12 minute commute from her home –and which permitted her to work remotely. Gurnett at 265. Ms. Gurnett worked at BWT Pharma from November 26 or 27, 2017 to July/August 2020, and her starting salary was \$66,000. Gurnett at 270, 272; JE 1.

Emotional Distress

105. Prior to 2016, Ms. Gurnett was a vibrant, energetic, and fun person. Nogueira at 428-429. As her condition progressed in 2016, Ms. Gurnett expressed her pain, reluctance to get in a car, distress and frustration. Nogueira at 430. After 2016, Ms. Gurnett appeared exhausted, in pain, listless, and lacking in any desire to do anything after work. Nogueira at 431. Between July 2016 and 2017, Mr. Nogueira and Ms. Gurnett’s marriage was “definitely challenged.” Nogueira at 433.
106. Ms. Gurnett felt very demeaned by Organogenesis because she felt that the company responded to her requests for accommodation in a rigid and non-collaborative fashion. Gurnett at 271. After the July 31 meeting, she was upset and distressed for weeks and had difficulty sleeping. Gurnett at 272-273. She was angry, depressed and anxious from the time she started asking to work from home in August 2016 until November 2017, when she stopped working for Organogenesis. Gurnett at 272-75. In the August 2016 to November 2017 time frame, Ms. Gurnett cried all the time and described her marriage as in “shambles at times.” Gurnett at 274-275. Organogenesis’s response to her request for accommodation made her feel ignored, belittled and like she “didn’t matter.” Gurnett at 275. Ms. Gurnett felt this way until she left the company in 2017. Gurnett at 275.
107. On October 13, 2017, Ms. Gurnett sought care for an anxiety attack and reported this to her doctor as “due to long commute and stress.” JE 9; Gurnett at 278. From 2016 through the end of her employment, Ms. Gurnett had 12-15 anxiety attacks. Gurnett at 278-279. Ms. Gurnett attributes these anxiety attacks to the stress of the commute, the pain she was

experiencing, and the fact that her requests for accommodation were ignored. Gurnett at 278-279.

108. In 2016, Ms. Gurnett was prescribed Xanax for anxiety and between 2016 and November 2017, took Xanax every 2-3 days. Gurnett at 283-86. On January 25, 2018, Ms. Gurnett met with Dr. Mathur and was feeling much better, not experiencing the levels of pain she had previously had, and was very happy because she did not need to take Xanax. Gurnett at 281.

III. **CONCLUSIONS OF LAW**

Ms. Gurnett alleges that Organogenesis discriminated against her on the basis of her disability by failing to accommodate her disability, and constructively discharging her.

Organogenesis is an employer within the meaning of M.G.L. c. 151B, § 1(5).⁵

A. Disability Discrimination and Failure to Accommodate

It is an unlawful practice for an employer to “dismiss from employment or refuse to hire, rehire or advance in employment or otherwise discriminate against, because of his handicap, any person alleging to be a qualified handicapped person, capable of performing the essential functions of the position involved with reasonable accommodation, unless the employer can demonstrate that the accommodation ... would impose an undue hardship to the employer's business.” M.G.L. c. 151B, § 4(16). Ms. Gurnett alleges that Organogenesis violated M.G.L. c. 151B, § 4(16) by denying her the reasonable accommodation of restructuring her position to permit work from home 2 days per week after she began to experience pain, numbness and extreme discomfort due to fibromyalgia.

A claim that Organogenesis discriminated against Ms. Gurnett on the basis of her disability by denying her a reasonable accommodation requires a showing that: i. she was a qualified handicapped person capable of performing the essential functions of her job with reasonable accommodation; ii. she requested such accommodation, and the company refused to provide it; and iii. as a result of this refusal, she suffered some harm. Alba v. Raytheon Co., 441 Mass. 836, 843 n. 9 (2004); Akerson v. University of Phoenix, 97 Mass. App. 1126 n. 3 (2020) (1:28).

⁵ In 1983, when Chapter 151B was amended to include the prohibition against disability discrimination, the term “handicap” was used in the statute. Since its enactment, the term handicap has fallen into disfavor. Therefore, where possible, the term disabled and disability will be used in place of “handicapped” and “handicap” in this decision.

1. Qualified Handicapped Person

Ms. Gurnett had a disability as defined by M.G.L. c. 151B, §1(17). The parties stipulated that Ms. Gurnett is diagnosed with fibromyalgia and other health and medical conditions and that she is “handicapped” pursuant to M.G.L. c. 151B, § 1(17). JE 1. In addition, Ms. Gurnett demonstrated that when she worked at Organogenesis, she experienced severe pain, numbness and tingling throughout her body which substantially limited the major life activities of sitting and lifting heavy objects. JE 1; JE 48; Low & Massachusetts Commission Against Discrimination v. Costco Wholesale Corp., 31 MDLR 87, 91 (2009) (disabilities included fibromyalgia).

The parties dispute whether Ms. Gurnett was a “qualified handicapped person”, defined as a “handicapped person who is capable of performing the essential functions of a particular job, or who would be capable of performing the essential functions of a particular job with reasonable accommodation to her disability.” M.G.L. c. 151B, §1 (16). At the outset, it is necessary to determine whether the relevant job functions are essential, and if so, whether such functions can be performed with reasonable accommodation. This is an intensely fact-based inquiry which requires an individualized analysis. Godfrey v. Globe Newspaper Co., 457 Mass. 113, 121 (2010); Cargill v. Harvard Univ., 60 Mass. App. 585 (2004).

a. Essential Functions

The ‘essential functions’ of the job are those functions which must necessarily be performed by an employee in order to accomplish the principal objectives of the job. Put another way, the ‘essential functions’ are those that are not incidental or tangential to the job in question.” MCAD Guidelines: Employment Discrimination on the Basis of Handicap (“MCAD Disability Guidelines”), § II.B. Where a job function is “in fact rarely or never performed”, it will not likely be considered essential. Id. Where removing a given function from the job would fundamentally change the nature of the job, the job function is likely essential. Id. In determining whether a job function is “essential”, several factors may be considered. These include: (1) the employer’s judgment as to which functions are essential; (2) written job descriptions prepared before advertising or interviewing applicants for the job; (3) the amount of time spent on the job performing the function; (4) the consequences of not requiring the incumbent to perform the function; (5) the terms of the parties’ collective bargaining agreement; (6) the work experience of past incumbents in the job; and (7) the current work experience of incumbents in similar jobs.

Cargill, 60 Mass. App. at 596.⁶ While the employer’s judgment is a factor to be considered, it is not necessarily controlling. Smith v. Bell Atlantic, 63 Mass. App. 702, 712 (2005).

b. Reasonable Accommodations

A “reasonable accommodation” is any adjustment to a job, or the way the job is done, employment practice, or work environment that makes it possible for a person with a disability to perform the essential functions of the position involved and enjoy equal terms, conditions and benefits of employment. MCAD Disability Guidelines, § II.C. Allowing an employee to work at home certain days of the week can be a reasonable accommodation as it is a type of adjustment to a job, or the way the job is done. MCAD Disability Guidelines, § II.C.

The possibility of working at home or elsewhere should be considered in evaluating whether an employer can reasonably accommodate an individual’s need to be away from the workplace. If a qualified individual can perform the essential functions of his/her position from an off-site location without posing an undue hardship on the employer, such accommodation may be reasonable. Such a determination depends on the nature of the job, the individual and the handicap. For example, an employee with chronic back and neck pain who could not endure long daily commutes to work may be able to work from home using a computer modem, fax and other technologies. However, off-site work may not be a reasonable accommodation where, for example, the position requires personal contact and coordination with coworkers or clients. Also, depending on the nature of the position, it may not be reasonable to permit an employee to work without supervision. MCAD Disability Guidelines, § X. B.

The Massachusetts Appeals Court and the Commission have found remote work reasonable as an accommodation for individuals with disabilities whose work lends itself to remote work. Smith, 63 Mass. App. at 716 (where job primarily requires the use of a telephone and computer and does not require much physical interface, remote work can be a reasonable accommodation; jury could find that allowing Smith to do substantial amounts of her work at home was a reasonable accommodation); Massachusetts Commission Against Discrimination and Ibeh v. Lahey Hospital and Medical Center, 42 MDLR 34 (2020) (on-site work was not an essential function of a hospital professional coder and full-time remote work was a reasonable accommodation).⁷

⁶ The federal guidelines set forth similar considerations in evaluating whether a particular job function is essential. 29 C.F.R. §1630.2(n)(3)(i.-vii.) (2012).

⁷ The appropriate analysis is to assess the feasibility of permitting remote work as an accommodation at the time the request was made.

In appropriate circumstances, accommodations related to commuting to and from work may constitute reasonable accommodations under M.G.L. c. 151B. That the employee's disability-related limitations make it difficult to get to and from work (and that this occurs outside of the workplace⁸) make the request for accommodation no less reasonable than if the disability-related limitations manifested themselves at the workplace.⁹ A job modification sought by an employee whose disability-related limitations make commuting difficult is not akin to an employee who asks her employer to provide an off-site assistive device. Commuting to and from work is a necessary element of accessing the workplace and permitting the individual with a disability to perform the job.¹⁰

c. Ms. Gurnett was capable of performing the essential functions with reasonable accommodation

In the 4+ years Ms. Gurnett worked for Organogenesis, Mr. Quinlisk promoted her and recommended her for a salary increase, rated her slightly above “fully achieves expectations” in her yearly performance evaluations, and described her as very creative, collaborative and an effective communicator. The evidence demonstrates that Ms. Gurnett possessed the requisite skill, education, experience and training for her position. Mr. Quinlisk's view that at times, Ms. Gurnett lacked focus on the job and could improve her initiative, does not alter this conclusion. Compare Mammone v. President & Fellows of Harvard College, 446 Mass. 657, 666-67 (2006)

⁸ Modifications outside of the workplace but related to the work and within the employer's control may be a reasonable accommodation. See Smith v. Bell Atlantic, 63 Mass. App. 702, 717 (2005) (company failed to provide Smith with an adequate computer, failed to support her use of equipment that she purchased herself and, for several years, failed even to provide her with ‘plain old telephone service’ lines that she could use to connect with the company network.)

⁹ In Colwell v. Rite Aid Corp., 602 F.3d 495 (3rd Cir. 2010), a cashier sought to not work the night shifts because her partial blindness made it dangerous for her to drive to work at night. The Third Circuit rejected the district court's conclusion on summary judgment that “commuting to and from work falls outside the work environment”, and held that under certain circumstances, the ADA can obligate an employer to accommodate an employee's disability-related difficulties in getting to work, if reasonable. Such circumstances occur when the requested accommodation is a change to a workplace condition that is entirely within an employer's control and that would allow the employee to get to work and perform her job.

¹⁰ See Befort, Accommodating an Employee's Commute to Work Under the ADA: Reasonable, Preferential, or Both, 63 Drake L. Rev. 749 (2005) (commuting accommodation is a logical extension of the ADA's central goal of workplace access, which requires employers to remove transportation-related barriers to workplace access, unless it imposes undue hardship).

(employee's egregious workplace misconduct --conduct so inimical to an employer's interest that any employee would be fired for the same acts --precludes a finding that employee is capable of performing the essential functions of the position with or without a reasonable accommodation).

Organogenesis argues that Ms. Gurnett's physical presence was an essential function of her position because the company needed her to work on-site five days a week to interface effectively with suppliers and internal departments, to respond to unforeseen problems, and to engage in teamwork. Communicating with Organogenesis' suppliers and internal departments was an essential function of Ms. Gurnett's buyer-related duties of the Buyer II position. With the exception of meetings, discussed below, Ms. Gurnett interfaced with suppliers and internal departments primarily by phone, computer or email and not in face-to-face interactions. Based on this, Ms. Gurnett was capable of interfacing with suppliers and internal departments while working remotely 2 days/week.

Organogenesis argues that Ms. Gurnett was actively involved in "addressing unforeseen problems" and that her on-site presence 5 days a week was required to respond to such problems. While addressing unforeseen problems may have been a function of Ms. Gurnett's job, as a Buyer II in a department with a Director of Purchasing and Assistant Vice President of Purchasing, and two senior buyers (a Buyer IV and a Buyer III/IV), it is unlikely Ms. Gurnett was primarily tasked with responding to unforeseen problems. However, even assuming that addressing unforeseen problems constituted an essential function of her position, the evidence does not support the premise that she would not have been capable of addressing unforeseen problems while working remotely 2 days a week. There were no emergencies involving the products for which Ms. Gurnett was responsible in 2016 or 2017, nor did Organogenesis run out of stock for the Apligraf or PuraPly products in that time period even though she periodically worked from home.

As for the assertion that teamwork was an essential function of the Buyer II position, the job description requires that the Buyer II work independently 95% of the time. In any event, working as part of a team was accomplished through the telephone and computer when Ms. Gurnett worked in the past at home, and could have been accomplished remotely had she been accommodated. Ms. Gurnett was highly collaborative and communicative, and even assuming "teamwork" was an essential function of the Buyer II position, Ms. Gurnett was capable of working as part of a team from a remote location 2 days a week.

Organogenesis argues that Ms. Gurnett was not capable of performing the following three tasks with the accommodation that she requested: (1) salesforce training; (2) on-site meetings; and (3) working with white cards. Salesforce training occurred approximately 4-6 times annually and Ms. Gurnett was responsible for approximately 30 minutes of the training. Even assuming that salesforce training -- albeit a small portion of Ms. Gurnett's job -- constituted an essential function of the job, Ms. Gurnett was capable of performing this job function while working remotely 2 days/week. Organogenesis planned the salesforce training well in advance, and Ms. Gurnett would have rearranged her off-site schedule to be physically present in the office for in-person events such as training. The weekly meetings between Mr. Quinlisk and Ms. Gurnett were essential functions of the job which Ms. Gurnett was capable of performing with a 2 day/week remote schedule. Their weekly meetings could have been conducted by telephone as the stock status report that Ms. Gurnett reviewed with Mr. Quinlisk during these meetings, was accessible from a remote location. Alternatively, the weekly meetings could have taken place on one of the days Ms. Gurnett was physically in the office -- which Ms. Gurnett offered to reschedule to meet the company's needs. Completing the white card was not an essential function of the Buyer II position. The job description does not mention completing or maintaining the white card. The white card was not raised with Ms. Gurnett when she sought accommodation from Mr. Quinlisk, nor when she spoke with Ms. Samaha and Ms. Walsh on July 31, 2017. It was not raised as an allegedly "essential function" of Ms. Gurnett's job during the time Ms. Gurnett worked at Organogenesis. Moreover, the completion or maintenance of the white card required a negligible amount of Ms. Gurnett's time and was a relatively minor component of the position. Most of the notes the Buyer II maintained regarding the parts purchased for PuraPly were accessible electronically and could have been accessed remotely. Failure to complete the white card would not fundamentally change the nature of the job and was not an essential function of the job. Even assuming it was essential to performing the Buyer II position, it would have been feasible for Ms. Gurnett to complete the white card while working remotely 2 days/week. For any subjective notes that were not accessible from a remote location, Ms. Gurnett could have completed the white card by simply making a copy of it when she was working remotely, and copying her notes on the white card when she was in the office the next day. Given this, Ms. Gurnett could have completed this task while working remotely 2 days/week.

In sum, I find that Ms. Gurnett was a “qualified handicapped person” capable of performing the essential functions of the position with reasonable accommodation. M.G.L. c. 151B, § 1 (16).

2. Request for Accommodation and Rejection of Accommodation

Requests for accommodation need not be stated in a formulaic manner or by using the words “reasonable accommodation.” Ferris and Massachusetts Commission Against Discrimination v. City of Lawrence, 42 MDLR 15, 21 (2020). Where an employee informs her employer that she needs an adjustment or change at work for a reason related to a medical condition, she has effectively requested an accommodation. EEOC Enforcement Guidance: Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act; EEOC Notice Number 915.002, 10/27/02 (“EEOC 915.002”). There is ample evidence that Ms. Gurnett requested an accommodation and that Organogenesis was aware of that. From August 2016 to her diagnosis in January 2017, Ms. Gurnett asked Mr. Quinlisk if she could work remotely because she was experiencing pain and discomfort which was exacerbated by her commute. Once diagnosed with fibromyalgia in January 2017, Ms. Gurnett continued to ask him to work remotely because she and her doctor believed that if she were given the time to rest from her commute between days in the office, it would significantly reduce the pain associated with her fibromyalgia. In May 2017, she submitted a written request and documentation from her medical provider to work from home 2-3 days a week in order to recover from the days she commuted to work. Organogenesis was on notice of Ms. Gurnett’s requests for a reasonable accommodation.

Once a qualified individual with a disability requests a reasonable accommodation, the employer must make a reasonable effort to determine the appropriate accommodation through a flexible, interactive process that involves both the employer and the qualified individual with a disability. Russell v. Cooley Dickinson Hosp., Inc., 437 Mass. 443, 457 (2002). Both the employer and the employee must approach the accommodation process in good faith and with flexibility. Id.; Gustafson v. Genesis Eldercare Rehabilitation Services, Inc., 89 Mass. App. 1135 (2016) (1:28) (citations omitted). The importance of the interactive dialogue cannot be overemphasized. Mazeikus v. Northwest Airlines, 22 MDLR 63, 68-69 (2000). It is through this open and constructive process that the employer and employee can come to understand the employee's abilities and limitations, as well as the reasonable potential adjustments that feasibly could be made to overcome those limitations. Santiago and Massachusetts Commission Against Discrimination v. Caregivers of Massachusetts, 44 MDLR 61, 73 (2022).

The interactive process is collaborative and requires both the employer and employee to engage in analysis, discussion, and implementation. Once an employee makes a request for accommodation, the employer should analyze the particular job involved and determine its purpose and essential functions. 29 C.F.R. Pt. 1630, App. (2016). The employer should then consult with the employee to understand and ascertain the precise job-related limitations that the disability entails. Once the employer understands the job-related limitations, the employer should discuss with the employee how a reasonable accommodation might overcome those limitations. This assessment assists in identifying the precise barrier to the employment opportunity and should aid in determining the accommodations that could alleviate or remove that barrier. Id. The employer should work with the employee to identify potential accommodations and then assess the effectiveness each potential accommodation would have in enabling the individual to perform the essential functions of the position. Id.

Mr. Quinlisk failed to engage in an interactive dialogue. When Ms. Gurnett asked Mr. Quinlisk to restructure the Buyer II position to permit her to work off-site on a consistent basis, Mr. Quinlisk's response was a hard "no." Mr. Quinlisk's view that permitting Ms. Gurnett to work remotely was "non-negotiable" was informed by a generalized anxiety that the company "had too much going on", that a 2 day remote work schedule would put the company "at risk" and could result in Mr. Quinlisk having to do Ms. Gurnett's work. Yet, Mr. Quinlisk testified that Ms. Gurnett could have worked from home one (1) day a week on a consistent basis if Organogenesis "didn't have any supply issues." If working remotely 1 day a week would not have put the company at risk, it is difficult to conceive how working 2 days a week remotely would not have been feasible. Moreover, in 2016 and 2017, Ms. Gurnett worked remotely 10-15 times and did not receive any criticism regarding her work performance, undermining the notion that a 2 day remote work schedule was not reasonable. When Ms. Gurnett formalized her request on May 24, 2017, and provided written corroboration from Dr. Mathur, Mr. Quinlisk told her that her position was an "on-site position." He did not explore permitting Ms. Gurnett to work 1 or more days a week on a remote basis for a trial period. Instead, he raised the notion of a severance package, informed Organogenesis' human resources department of Ms. Gurnett's request and opposed such an accommodation.

The human resource department also failed to engage in an interactive dialogue. For over two months, between May 24, 2017 and the July 31, 2017 meeting, the human resources department

did not have a response for Ms. Gurnett. The internal emails between Organogenesis' human resources professional during this time period expose a department of human resources professionals in a transitional stage during which the department was struggling to understand the interactive process, and the role that their new administrator of reasonable accommodations and leaves -- Corban OneSource --played in that process. It was not until August 2017 that Organogenesis developed and implemented a reasonable accommodation policy. Meanwhile, Ms. Gurnett was experiencing worsening pain caused by fibromyalgia, and repeatedly attempted -- unsuccessfully -- to have a productive conversation with Organogenesis. When Ms. Walsh and Ms. Samaha finally met with Ms. Gurnett on July 31, 2017, they did not ask her questions about her medical limitations. They did not ask her how working from home 2-3 days/week would help her perform her job without debilitating pain. Organogenesis' human resources representatives made no attempt to understand why Dr. Mathur opined that working off-site 2 days/week would reduce Ms. Gurnett's pain by affording her an opportunity to recover from her commute. Ms. Samaha did not exhibit flexibility or good faith -- but rather, aggression and hostility, rigidity and a distinct lack of interest as to how she might help Ms. Gurnett access her employment on equal terms and conditions. Had Ms. Samaha engaged in a productive dialogue and asked Ms. Gurnett about her job functions, or how she might perform these functions remotely, the meeting may have resulted in a suitable accommodation. If the human resources department had questions about how a 2 day/week remote schedule would help Ms. Gurnett manage her pain, it could have engaged in a discussion with Ms. Gurnett's medical provider, but there was no evidence that any such effort was made.

Further, instead of engaging in an interactive dialogue, Mr. Quinlisk continued to seek Ms. Gurnett's separation from her employment. Even as late as mid-June 2017, Mr. Quinlisk told Ms. Howard that he was planning to ask Mr. Hagopian to end Ms. Gurnett's employment and provide her with a severance package -- a course of action which Ms. Gurnett had made clear in May 2017, that she did not want. Mr. Quinlisk's efforts to have Ms. Gurnett terminated -- even though it was never acted upon -- evidences bad faith and a disinterest in a dialogue designed to identify how Organogenesis might provide an accommodation that could alleviate Ms. Gurnett's disability-related pain.

Organogenesis' position is that it fulfilled its obligation of engaging in an interactive process when it offered Ms. Gurnett a conference room in which to stretch, a stand-up desk and the

opportunity to change her work hours. Massachusetts employers are not required to provide the best accommodation available, or the accommodation specifically requested by the employee. Finlan v. Verizon New England, Inc., 74 Mass. App. 1127 (2009) (1:28) (employee has right to reasonable accommodation, not accommodation of his choice). Employers do, however, have an obligation to provide an accommodation that is effective for its purpose. Id. citing MCAD Disability Guidelines, § II. C. A place to stretch and a stand-up desk did not address the root, exacerbating cause of Ms. Gurnett's pain, which was sitting in a car in traffic for more than an hour at a time. While stretching at work provided a few minutes of relief, Ms. Gurnett and her medical professional felt that a 2 day/week remote work schedule would reduce her fibromyalgia-related pain, and permit Ms. Gurnett to perform her job with less pain, and enjoy equal terms, conditions and benefits of employment. Compare Stratton v. Bentley University, 2021 WL 6098974 (D. Mass. 2021) (where alternative accommodation permits employee to perform work effectively by allowing her to work in a location without sitting upright, alternative accommodation was "effective for its purpose"). A conference room to stretch and a stand-up desk were not effective for their purpose and did not constitute reasonable accommodations. The schedule modifications provided to Ms. Gurnett by Mr. Quinlisk were also not effective to their purpose and did not constitute reasonable accommodations. Ms. Gurnett tried the schedule modifications and informed Mr. Quinlisk that they did not appreciably reduce the length of her commute, but Mr. Quinlisk refused to discuss the matter further. This is not the collaborative and cooperative approach employers are required to engage in when an employee with a disability seeks a modification to the manner in which her job is performed.

Moreover, I find for several reasons that the August 23, 2017 letter ("August 23 letter") sent by Ms. Walsh to Ms. Gurnett was not a good faith attempt by Organogenesis to engage in the interactive process with Ms. Gurnett towards the requested accommodation, despite its statement to the contrary. JE 31 ("I want to reiterate that, we have not stopped the 'interactive process' and will continue to ensure an accommodation that is effective and is not an undue hardship on the company.") First, the August 23 letter forecloses the possibility of discussing remote work, relying instead on three alternative accommodations (standing desk, conference room to stretch, modified work schedule). The August 23 letter confirms that Organogenesis would not entertain any accommodation that was not "on premise", by which I infer that it would not entertain any accommodation that involved remote work. JE 31 (urging Ms. Gurnett to "work with these

accommodations and/or suggest other accommodations that would be effective for you (in that they will enable to perform your job **on premise**”) (emphasis added). There was no evidence that, prior to issuing the August 23 letter, Organogenesis or Corban OneSource evaluated whether the position could feasibly be performed 1 or more days per week off-site. The lack of analysis and evaluation conducted by Organogenesis, and the focus on “on premise” modifications is not consistent with its promise that it had not stopped the interactive process. Secondly, the August 23 letter fails to acknowledge Ms. Gurnett’s August 10, 2017 letter (“August 10 letter”) in which Ms. Gurnett explained that the alternative accommodations offered by Organogenesis would not address the symptoms of her disability which were exacerbated by her commute. Ms. Gurnett’s explanation in her August 10 letter that the alternative accommodations were not effective warranted further discussion by Organogenesis, but there was no such effort made by Organogenesis. Finally, the August 10 letter explained that Ms. Gurnett’s doctor -- Dr. Mathur -- could substantiate how Ms. Gurnett’s commute exacerbated her condition. This would have enabled a dialogue about how job restructuring to permit Ms. Gurnett a 2 day/week remote work schedule would help Ms. Gurnett with her condition by eliminating some travel time so that she could recuperate between the days she commuted. JE 16. No one from Organogenesis contacted Dr. Mathur to discuss how restructuring the position would accommodate Ms. Gurnett’s disability and allow her to perform the position on equal terms and conditions. If Organogenesis truly had not “stopped the interactive process”, it would be reasonable to expect that Organogenesis would have scheduled a meeting with Ms. Gurnett to ask questions, contact her physician to understand her disability, and keep an open mind about potential, feasible accommodations.

Taken in context, Ms. Walsh’s assurance that Organogenesis had not stopped the interactive dialogue does not represent a good faith effort to identify and provide an accommodation.

3. Harm

Organogenesis’ failure to provide a 2 day/week remote schedule harmed Ms. Gurnett, as discussed herein. The only remaining question is whether Organogenesis proved that permitting Ms. Gurnett to work a 2 day/week remote schedule posed an undue hardship to the company.

4. Failure to Establish Undue Hardship

As Organogenesis rejected the request for an accommodation by a qualified disabled person, it has the burden to prove that the accommodation sought would be an undue hardship on its

business. Dahill v. Police Dep't of Boston, 434 Mass. 233, 243 (2001).¹¹ The factors to be considered when assessing whether there is an undue hardship on the conduct of an employer's business include: (1) the overall size of the employer's business with respect to the numbers of employees, number and type of facilities and size of budget or available assets; (2) the type of the employer's operation, including the composition and structure of the employer's workforce; and (3) the nature and cost of the accommodation needed. M.G.L. c. 151B, § 4(16).

Organogenesis argues that a 2 day/week remote schedule would unduly burden its operation by forcing "other Purchasing Department employees, including Quinlisk, to cover meetings or other tasks that Gurnett was unable to attend or do while working from home" and burden the company if there were an all-hands-on-deck emergency. Respondent's Post-Hearing Brief, pp. 33-34.

The effect of permitting Ms. Gurnett to work 2 days remotely on Organogenesis' operation does not constitute an undue hardship for several reasons. First, the evidence does not support the assertion that the Purchasing Department experienced "all-hands-on-desk" emergencies, at least during the time-period that Ms. Gurnett worked at Organogenesis. The reality of the workplace and of the Buyer II position was that it required Ms. Gurnett to order items on a weekly basis, ensure that parts were stocked, and respond -- generally by telephone or email -- to needs related to the sales staff's use of fleet vehicles, all activities that she could have performed while working 2 days remotely. Secondly, I am not persuaded that a 2 day/week remote schedule would have resulted in a need for Mr. Quinlisk to perform Ms. Gurnett's work on the days she worked from home. Ms. Gurnett had worked from home 10-15 times in 2016 and 2017, and did not receive any criticism in written or verbal form, at any time. Mr. Quinlisk, other members of the Purchasing Department, sales staff and vendors could (and regularly did) communicate with Ms. Gurnett through her personal or company cell phone and by email. Much of Ms. Gurnett's job was to work independently with sales staff, vendors and Mr. Quinlisk, using the electronic databases, email and the telephone. Organogenesis has not met its burden of showing that a 2 day/week remote schedule would have placed an undue hardship on Organogenesis or its Purchasing Department

¹¹ If the accommodation proposed by the employee appears unduly onerous, the employer has an obligation to work with the employee to determine whether another accommodation is possible. Godfrey v. Globe Newspaper Co., 457 Mass. 113, 119–20 (2010); Cargill v. Harvard Univ., 60 Mass. App. 585, 603–604 & n. 19 (2004).

I conclude that it was reasonable to grant Ms. Gurnett a 2 day/week remote work schedule and that Organogenesis' refusal to do so constituted a failure to provide a reasonable accommodation to her disability and a violation of M.G.L. c. 151B, § 4(16).

B. Constructive Discharge

A constructive discharge occurs when an employer's conduct effectively forces an employee to resign and thus the employment relationship is severed involuntarily by the employer's acts, against the employee's will. GTE Products Corp. v. Stewart, 421 Mass. 22, 33-34 (1995). In order to prevail on her claim of constructive discharge, Ms. Gurnett must establish that Organogenesis made her working conditions so intolerable that a reasonable person would have felt compelled to quit. Id. at 34. This requires an objective assessment as to whether the conditions under which Ms. Gurnett was expected to work were so difficult as to be intolerable. Id. at 34. The standard for constructive discharge "is, and should be, a strict one" and requires that an employee must demonstrate that "the threat of physical or psychic harm was so great as to preclude ever returning to work." Febo and Massachusetts Commission Against Discrimination v. Connecticut Care Rental Group, d/b/a Thrifty Car Rental, and Wendell Jordan, 32 MDLR 159, 161 (2010). In making this objective assessment, the adverse working conditions must be unusually aggravated or amount to a continuous pattern before the situation will be deemed intolerable. GTE Products Corp., 421 Mass. at 34-35.

While a breakdown in the interactive process by the employer may cause the constructive discharge of an employee, Pearlie Talley v. Family Dollar Store of Ohio, et al, 542 F. 3d 1099 (6th Cir. 2008), more than a mere failure to make reasonable accommodation is ordinarily necessary to prove constructive discharge. Hurley-Bardige v. Brown, 900 F. Supp. 567, 573 (1995); Rivera v. Altranais Home Care LLC, 2022 WL 161583 (D. Mass. January 18, 2022). Recognizing that Mr. Quinlisk's May 2017 offer of a severance package and Ms. Samaha's conduct in the July 31 meeting were distressing, there was not sufficient evidence of disability-based harassment, or other aggravating circumstances, to justify a finding that the workplace was so objectively intolerable that Ms. Gurnett had no other choice but to resign. In sum, Ms. Gurnett has failed to prove her claim of constructive discharge and that claim is dismissed.

IV. REMEDIES

Upon a finding that Organogenesis committed an unlawful act prohibited by M.G.L. c. 151B, the Commission is authorized to award damages to make Ms. Gurnett whole. M.G.L. c. 151B §5.

As the constructive discharge claim has been dismissed, there are no lost wages and benefits. Ms. Gurnett alleges she suffered distress from the time she first began seeking accommodation from Organogenesis in August 2016 to the end of her employment. The Commission is authorized to award damages for emotional distress resulting from Organogenesis' unlawful failure to accommodate her. Stonehill College v. Massachusetts Comm'n Against Discrimination, 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 [Ms. Gurnett] has suffered and reasonably expects to suffer; and (4) whether [Ms. Gurnett] has attempted to mitigate the harm...." Id. Ms. Gurnett must show a sufficient causal connection between Organogenesis' unlawful act and her emotional distress. Id.

Between August 2016 and May 2017, Ms. Gurnett felt ignored, frustrated, disappointed, demeaned, depressed, anxious and hurt that Mr. Quinlisk would not entertain her request to work remotely. In May 2017, Ms. Gurnett was in absolute agony physically due to fibromyalgia, and when she approached Mr. Quinlisk, his response was to reject her work-at-home proposal, offer her a severance package and refer her to human resources. This was very upsetting and discouraging because she thought she had a more mutually respectful working relationship with Mr. Quinlisk. Between May 24, 2017 and July 31, 2017, Ms. Gurnett's disability-related pain continued in addition to a sense that she was not being valued by Organogenesis. After the July 31, 2017 meeting, Ms. Gurnett felt distressed, degraded, dehumanized and threatened by Ms. Samaha. After the meeting, she cried, took a Xanax and called her husband, who described it as the only call he had ever received where she was that upset at work. These feelings manifested physically, including causing her difficulty sleeping. This high level of stress continued until Ms. Gurnett left her employment with Organogenesis on November 14, 2017.

From August 2016 until November 2017, when she stopped working for Organogenesis, Ms. Gurnett cried frequently and described her marriage as in "shambles at times." On October 13, 2017, Ms. Gurnett sought care for an anxiety attack which she reported to her doctor, was "due to long commute and stress." From 2016 through the end of her employment at Organogenesis, Ms. Gurnett had 12-15 anxiety attacks. Ms. Gurnett credibly attributes these attacks to the stress of the commute, the pain she was experiencing, and the fact that her requests for accommodation were ignored. In 2016, Ms. Gurnett was prescribed Xanax for anxiety and between 2016 and

November 2017, took Xanax every 2-3 days. By January 25, 2018, Ms. Gurnett met with Dr. Mathur and was feeling much better, not experiencing the levels of pain she had previously had, and did not need to take Xanax.

I find that the distress Ms. Gurnett suffered from Organogenesis' failure to accommodate her disability, was severe, long-lasting, manifested itself physically and impacted her marital relationship. As such, I conclude that Ms. Gurnett is entitled to damages for emotional distress resulting from employment discrimination in the amount of \$75,000.¹²

V. **ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, Organogenesis, Inc. is ordered:

- 1) To cease and desist from any acts of discrimination based on disability.
- 2) To require and ensure that certain individuals set forth below attend training to be provided by the Massachusetts Commission Against Discrimination entitled "Accommodation Request 201", and any pre-requisites for this training. The individuals required to attend this training are: (a) Walter Quinlisk, and (b) all individuals who work for any Organogenesis facility located in Massachusetts **and** (1) work for Organogenesis' human resources department, **or** (2) have managerial responsibilities; **or** (3) have any responsibility for responding to accommodation requests. This training shall be provided to these individuals within ninety (90) days of receipt of this Decision.
- 3) To require and ensure that Walter Quinlisk attends, within ninety (90) days of receipt of this Decision, the training "Creating Inclusive Workplaces for Employees with Disabilities" provided by the Massachusetts Office of Disability.
- 4) To pay to Complainant, Claire Gurnett, the sum of \$75,000 in damages for emotional distress with interest thereon at the rate of 12% per annum from the date the complaint was filed with the Commission until such time as payment is made or until this Order is reduced to a Court judgment and post-judgment interest begins to accrue.

VI. **NOTICE OF APPEAL**

This decision represents the final order of the Hearing Officer. Any party aggrieved by this Order may appeal this decision to the Full Commission. To do so, a party must file a Notice of Appeal with the Clerk of the Commission within 10 days of receipt of this decision and submit a Petition for Review within 30 days of receipt of this Decision. 804 CMR 1.23 (2020).

¹² I recognize that one of the sources of Ms. Gurnett's distress was her deteriorating health, which is not compensable in the present action as it is not directly attributable to Ms. Gurnett's employment or Organogenesis' actions. I have not compensated Ms. Gurnett for such distress.

VII. **PETITION FOR ATTORNEY'S FEES AND COSTS**

Any petition for attorney's fees and costs for Complainants' Counsel shall be submitted to the Clerk of the Commission within 15 days of receipt of this decision. Pursuant to 804 CMR 1.12 (19) (2020), such petition shall include detailed, contemporaneous time records, a breakdown of costs and a supporting affidavit. Respondent may file a written opposition within 15 days of receipt of said petition.

So ordered this 9th day of June, 2023.

Simone Liebman

Simone R. Liebman
Hearing Officer