COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
JAMIE HUGHES,
Complainants

v. DOCKET NO. 15-NEM-00218

CRANBERRY DENTAL ASSOCIATES,
Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision by Hearing Officer Betty E. Waxman in favor of Cranberry Dental Associates ("Respondent"). Following an evidentiary hearing, the Hearing Officer found Respondent did not discriminate against Jamie Hughes ("Complainant") for seeking a maternity leave in violation of M.G.L. c. 151B, § 4(1), and ordered that the case be dismissed. Complainant appealed to the Full Commission. For the reasons discussed below, we affirm the Hearing Officer's decision in full.

STANDARD OF REVIEW

The responsibilities of the Full Commission are outlined by statute, the Commission's Rules of Procedure (804 CMR 1.00 (2020)), and relevant case law. It is the duty of the Full Commission to review the record of proceedings before the Hearing Officer. M.G.L. c. 151B, §§ 3(6), 5. The Hearing Officer's findings of fact must be supported by substantial evidence, which

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

It is the Hearing Officer's responsibility to evaluate the credibility of witnesses and to weigh the evidence when deciding disputed issues of fact. The Full Commission defers to these determinations of the Hearing Officer. See, e.g., School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). Fact-finding determinations are within the sole province of the Hearing Officer who is in the best position to judge the credibility of witnesses. See Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005); MCAD and Garrison v. Lahey Clinic Medical Center, 39 MDLR 12, 14 (2017) (because the Hearing Officer sees and hears witnesses, her findings are entitled to deference). It is nevertheless the Full Commission's role to determine whether the decision under appeal is supported by substantial evidence, among other considerations, including whether the decision was arbitrary or capricious or an abuse of discretion. 804 CMR 1.23(10) (2020).

LEGAL DISCUSSION

Complainant argues that the Hearing Officer's decision dismissing the case was in error of law; unsupported by substantial evidence; arbitrary and capricious; an abuse of discretion; and, finally, not in accordance with the law and an order of the Investigating Commissioner. After careful review, we find no material errors with respect to the Hearing Officer's findings of fact or conclusions of law. We further find that the Hearing Officer's determinations were not arbitrary and capricious, an abuse of discretion, or not in accordance with the law. We address Complainant's arguments in turn.

The Hearing Officer applied the familiar three stage burden shifting analysis set forth in McDonnell Douglas v. Green, 411 U.S. 792, 802 (1972), and concluded that although

Complainant established a prima facie case of sex discrimination, she ultimately failed to prove that the Respondent's legitimate reason for termination, i.e., dissatisfaction with Complainant's work performance, was a pretext for discrimination. Complainant largely contends that the timing of her termination, just a couple of weeks after announcing her pregnancy, was sufficient to prove sex discrimination, and argues that the Hearing Officer erred by failing to consider or address the proximity in time between her pregnancy announcement, the posting of her position and her termination. Complainant further contends that the Hearing Officer erred by failing to consider the proximity in time between the date Respondent placed Complainant on probation in March 2014 and the adverse employment action, i.e., termination, on September 16, 2014, arguing that nothing in the record supported that Respondent's decision to terminate Complainant had any correlation to past disciplinary issues or probation.

To the contrary, the Hearing Officer fully considered and addressed the timeline issues raised by Complainant. Most importantly, the Hearing Officer determined that Respondent made the decision to terminate Complainant in the second week of August 2014, which was before Complainant announced her pregnancy on or around August 27, 2014. The Hearing Officer also found that, after repeated complaints by one dentist and Complainant's coworkers about her performance, including failure to sterilize medical instruments and perform office tasks, and after a staff meeting in mid-March 2014 to address the criticism about Complainant's failure to help out in the office, Respondent placed Complainant on probation after she met with the practice owner, Robert Hegner, on March 26 or 27, 2014. This finding was buttressed by an excerpt from a computer ("palm") calendar belonging to Hegner indicating he made the decision to place Complainant on probation on March 26, 2014.[1] Respondent then advertised Complainant's

[1] The Hearing Officer also expressly discredited Complainant's claim that she was unaware of her probationary status, a conclusion supported by Complainant's own email to a coworker regarding her probation in September,

position on Craig's List on March 31, 2014, though it did not hire a replacement at that time either because Complainant's performance improved for a period or there was no suitable candidate found. However, Complainant's performance issues ultimately continued after she was put on probation, with Complainant refusing to help file office charts in or around June 2014, and refusing to work Friday and some Saturday hours as requested during the summer of 2014. That Respondent again posted an advertisement for Complainant's position on September 2, 2014 and terminated her employment on September 16, 2014, after Complainant announced her pregnancy, are outweighed by the fact that Respondent had already decided to terminate Complainant prior to her pregnancy announcement. Thus, the Hearing Officer sufficiently considered the timing of Respondent's actions in relation to the pregnancy announcement, and reasonably concluded that Complainant made the announcement some six months before her due date in an effort to ensure her job security and forestall being terminated.[2]

Complainant further argues that the Hearing Officer failed to consider the matter as a "mixed motive" case, but a mixed-motive analysis is inapplicable where there is no direct evidence of discrimination. See MCAD & Maggie M. Torres v New England Sports Orthopedics, Spine and Rehabilitation, 42 MDLR 57 (2020), citing Wynn and Wynn, P.C. v. MCAD, 431 Mass. 655 (2000) (overruled on other grounds by Stonehill Coll. v. Massachusetts Comm'n Against Discrimination, 441 Mass. 549 (2004)) and Price Waterhouse v. Hopkins, 490 U.S. 228, 244-245 (1989). "Direct evidence in [the mixed-motive] context is evidence that "if believed, results in an inescapable, or at least highly probable, inference that a forbidden bias

2014.

[2] Complainant further contends that even if Respondent relied on Complainant's job performance as a legitimate reason for the termination, the timing of the termination is suspect where she had at least five months' worth of performance that did not warrant any type of discipline. However, as noted above, in or about the summer of 2014, Complainant's performance was lacking. Given these documented incidences of substandard performance that predated the pregnancy announcement, the Hearing Officer's conclusion that the timing of the termination did not reflect bias or a retaliatory motive is well supported by the evidence.

was present in the workplace.'"' Wynn & Wynn, 431 Mass. at 667, quoting Johansen v. NCR Comten, Inc., 30 Mass. App. Ct. 294, 300 (1991). See MCAD and April Robar v. Int'l Longshoreman Assoc. Local 1413-1465 et al., 42 MDLR 85 (2020) (direct evidence of discriminatory bias where union president stated the union hired females who "knew their place" regarding work assignments and accepted the "outcome.") Complainant alleges that she was terminated after announcing her pregnancy, allowing for the inference that unlawful discrimination occurred. This is indirect, circumstantial evidence of discrimination appropriate for a McDonnell Douglas analysis, not a mixed-motive analysis.

Complainant next argues that the Hearing Officer's decision was unsupported by substantial evidence. As discussed above, Complainant was placed on probation for performance-related deficiencies in March 2014, well before the pregnancy announcement, and Complainant's text message to a coworker showed that she was aware of her probationary status. Respondent took affirmative steps to find a replacement for Complainant, including advertising for her position on March 31, 2014, reflecting that it was motivated to terminate Complainant's employment for non-discriminatory, performance related reasons before the pregnancy announcement. In short, the record shows substantial evidence upon which the Hearing Officer based her determination that Respondent was terminated for poor performance, not unlawful discriminatory animus.

Complainant's arguments that the Hearing Officer's determination was arbitrary and capricious, an abuse of discretion, and not in accordance of the law are also unavailing. The Hearing Officer made twenty-two different findings of fact, carefully determined the credibility of witnesses and other testimony in accordance with her broad discretion, and correctly applied the law to the facts. That Complainant disagrees with the Hearing Officer's determinations does

not mean that the Hearing Officer misinterpreted or misconstrued the evidence presented, even if there is some evidentiary support for that disagreement. See MCAD and Rigaubert Aime v. Mass. Department of Correction, 43 MDLR 1 (2021), citing Ramsdell v. W. Massachusetts Bus Lines, Inc., 415 Mass. 673, 676 (1993).

Finally, Complainant alleges that the Hearing Commissioner failed to comply with an order of the Investigating Commissioner by canceling the pre-hearing conference, but admits that the parties themselves agreed to a continuance of the conference. Additionally, nothing in the Commission's regulations in effect at the time of the public hearing, or now, requires that the Commission hold a pre-hearing conference, and Complainant does not explain how the failure to hold the conference interfered in her ability to introduce evidence, question witnesses, and otherwise present her case to the Hearing Officer at the public hearing in this matter. See M.G.L. c. 151B §5. Therefore, the decision to proceed to public hearing without a pre-hearing conference was not in error.

ORDER

For the reasons set forth above, we hereby affirm the decision of the Hearing Officer in its entirety. The Complainant's appeal to the Full Commission is hereby denied.

This Order represents the final action of the Commission for the purpose of judicial review pursuant to M.G.L. c. 151B, § 6 and M.G.L. c. 30A. Any party aggrieved by this Order may challenge it by filing a complaint in Superior Court seeking judicial review, together with a copy of the transcript of proceedings. Failure to provide a copy of the transcript may preclude the aggrieved party from alleging that the Commission's decision is not supported by substantial evidence, or is arbitrary or capricious, or is an abuse of discretion. Such action must be filed within thirty (30) days of service of this Order and must be filed in accordance with M.G.L. c.

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

SO ORDERED[3] this 29th day of November, 2021.

Monserrate Quiñones
Commissioner

Neldy Jean-Francois
Commissioner

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