

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION)	
AGAINST DISCRIMINATION and)	
ZACHARY KEEFER)	
Complainants)	DOCKET NO. 22SEM02009
v.)	
)	
FATHERS & SONS, INC.)	
Respondent)	
)	

Appearances: Raymond Dinsmore, Esq. and Ryan Guers, Esq. for Complainants
Trevor Brice, Esq. and Elaine Reall, Esq. for Respondents

DECISION BY THE HEARING OFFICER AS TO LIABILITY

I. INTRODUCTION

On August 25, 2022, Complainant, Zachary Keefer (“Mr. Keefer” or “Complainant”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD” or “Commission”) charging Respondent, Fathers & Sons, Inc. (“Fathers & Sons” or “Respondent”) with disability discrimination, veteran status discrimination and retaliation. On October 21, 2024, the Investigating Commissioner certified five issues: (1) Whether Respondent discriminated against Mr. Keefer on the basis of disability by refusing to provide a reasonable accommodation in violation of M.G.L. c. 151B, § 4(16); (2) Whether Respondent discriminated against Mr. Keefer on the basis of disability, apart from a failure to reasonably accommodate, in the terms and conditions of employment, including termination, in violation of M.G.L. c. 151B, § 4(16); (3) Whether Respondent discriminated against Mr. Keefer on the basis of veteran status in the terms and conditions of his employment, including termination, in violation of M.G.L. c. 151B, § 4(1); (4) Whether Respondent retaliated against Mr. Keefer on the basis of protected activity by subjecting him to adverse action, including termination, in violation of M.G.L. c. 151B, § 4(4);

and (5) What, if any, damages did Complainant Zachary Keefer suffer as a result of the alleged discrimination and retaliation?

On January 17, 2025, I bifurcated the hearing such that the hearing scheduled to commence on April 14, 2025 would be solely on the matter of liability. On April 14 and 15, 2025, I conducted a public hearing (“hearing”) solely on issues of liability. Five witnesses testified: Stacy Cantoni, Ethan Prentiss, Jennifer Coombs, Zachary Keefer and Damon Cartelli. Seventeen (17) exhibits were entered into evidence. The written transcript is the official record. On May 30, 2025, counsel 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. Mr. Keefer lives in Westfield, Massachusetts and has a bachelors degree from the University of Massachusetts (Amherst).¹ Tr. 448 (Keefer); Exhibit 13 at 1. At the time of the hearing, Mr. Keefer was completing his second year at Suffolk Law School. Tr. 263 (Keefer); Exhibit 14 at 2.
2. Mr. Keefer was in the United States Army for “almost 13 years” and obtained a Sergeant First Class rank. He started in the infantry, went to Special Forces Selection and became a Green Beret. Mr. Keefer was deployed almost a dozen times and the majority of these were combat deployments as a Green Beret. During his time in the Armed Forces, Mr. Keefer was injured by

¹ There is one, consecutively paginated transcript of the two days of public hearing (“Tr.”). Citations to the transcript include “Tr.” and the page number(s) of the transcript and name of the individual testifying – e.g. Tr. 30 (Keefer). Citations to exhibits include the exhibit number and if applicable, the associated pages in the exhibit – e.g. Exhibit 5; Exhibit 3 at KEEFER 104; Exhibit 10 at 22-24.

explosive device blasts and shootings, and at various points, broke his neck, back, hip, fingers and hands. Tr. 256-258 (Keefer).

3. In 2015, Mr. Keefer was medically retired due to injuries and medical conditions including post-traumatic headaches, tinnitus, an eye disorder, hand, neck and back injuries, nerve impingement in his elbows, injuries to his hands, sleep apnea, and post-traumatic stress disorder. When a service-member is medically retired, the Veterans' Administration assigns the service-member a percentage of their disability based on their injuries, which is determinative of the amount of money they will receive, and does not disqualify the service-member from working or going to school. Tr. 257-267 (Keefer).

4. In 2022, Mr. Keefer's primary medical issues were headaches, orthopedic injuries, and tinnitus. Mr. Keefer suffers from migraines "at least half of the time." His post-concussive headaches are debilitating, increase in pain over time, and cause sensitivity to light and nausea. Tr. 262-267, 361 (Keefer). In addition, Mr. Keefer experiences pain from his military-related injuries and has participated in a pain management clinic with the VA to help him manage his pain. He is also 70% deaf in his right ear. Tr. 480 (Keefer).

5. Fathers & Sons has two car dealerships in Western Massachusetts, one of which is located at 434 Memorial Ave., West Springfield, Massachusetts (West Springfield location) and sells cars from three franchises: Volkswagen, Volvo and Audi. Tr. 24 (Cantoni); Tr. 285 (Keefer); Exhibit 1. Fathers & Sons has 85 employees at its West Springfield location. Tr. 150 (Prentiss).

6. In 2022, Stacy Cantoni was the Fixed Operations Director at the West Springfield location and oversaw approximately 40 employees. Ms. Cantoni reported to Ethan Prentiss, and met with Mr. Prentiss every day to discuss business-related issues. Tr. 24, 71, 97-98 (Cantoni).

7. In 2022, Mr. Prentiss was General Manager and supervised 8-10 department managers including Ms. Cantoni, oversaw the 3 franchises and “worked with the department heads” when an employee needed an accommodation for a disability to “ensure employees get what they request.” Tr. 24 (Cantoni); Tr. 149-153 (Prentiss).

8. Mr. Prentiss reported to Damon Cartelli, President of Fathers & Sons. Mr. Cartelli has worked at Fathers & Sons for decades and has a thorough understanding of how each department functions. Tr. 150 (Prentiss); Tr. 491-492 (Cartelli); Exhibit 10 at 1.

9. Jennifer Coombs is Fathers & Sons’ Office Manager and her tasks include clerical work, such as collecting forms from employees seeking to sign up for insurance and handling direct deposit. Tr. 246 (Coombs).

10. Brent Hewitt was Fathers & Sons’ Comptroller and handled payroll and claims with the Company’s insurance provider, Guardian Life Insurance of America (“Guardian”). Tr. 123 (Cantoni); Tr. 242, 251 (Coombs). Mr. Hewitt, Mr. Cartelli and Ms. Coombs were the three individuals at Fathers & Sons who had access to a locked human resources (HR) file in Ms. Coombs’ office. Tr. 242 (Coombs).

Fathers & Sons’ Employment Policies

11. In 2022, Fathers & Sons’ written employment policies included the following: (1) Probationary Policy, (2) Reasonable Accommodation Policy, (3) Corrective Action Plan, and (4) Paid Family & Medical Leave Policy. Exhibit 10.

12. Probationary Policy. All employees at Fathers & Sons are hired “with the understanding that the first three (3) months are considered a probationary, adjustment period.” Exhibit 10 at 47; Tr. 191 (Prentiss). The purpose of the probationary period is for Fathers & Sons “to get to know the person within the 90-day period.” Tr. 85 (Cantoni). The probationary period is an

“evaluation period” at the end of which the employee’s performance is reviewed. Provided that performance has been satisfactory, the probationary period will end, and the employee will become eligible for benefits such as paid sick leave. Alternatively, the employee’s probationary period will be extended for a month, or their employment will be terminated. During the probationary period, Fathers & Sons does not provide written performance evaluations or paid sick leave. Exhibit 10 at 47. Fathers & Sons verbally coaches probationary employees and generally does not document the verbal coaching. Tr. 36-37, 84-85 (Cantoni); Tr. 191 (Prentiss).

13. Reasonable Accommodation Policy. Fathers & Sons’ policy was to “make reasonable accommodations for the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless undue hardship would result.” The policy defines a “qualified individual with a disability” as “someone who is able to perform the essential functions of a position with or without reasonable accommodations.” Employees who have a disability for which they feel they need an accommodation to perform their job are directed to speak with their direct manager and/or the HR Department. Exhibit 10 at 15.

14. Corrective Action Plan. Fathers & Sons “may issue any corrective action it deems appropriate, up to and including termination for a first offense. . . . Employees are not entitled to progress sequentially through each progressive measure and the Company reserves the right to issue appropriate discipline regardless of an employee’s disciplinary history (emphasis in original).” Corrective action may include a verbal warning, a written warning, a final written warning, suspension and termination. The Corrective Action Plan does not distinguish between employees who are in their probationary period and those who are not. Exhibit 10 at 51.

15. Paid Family & Medical Leave Policy. All employees, including those in their probationary period, are entitled to take medically necessary paid family and medical leave (PFML) on a continuous, intermittent or reduced schedule for medical leave due to their serious health condition. If practicable, employees must provide Fathers & Sons with 30 days' advanced notice of the need for PFML leave. When planning medical treatment, the employee must discuss the need for leave with human resources in advance of an application with Guardian and make a reasonable effort to schedule the treatment so as not to unduly disrupt Company operations, subject to the approval of a health care provider. Fathers & Sons will work with employees to set a mutually agreed-upon schedule for intermittent or reduced schedule leave that meets the employee's needs and limits disruption to the Company's operations. Employees who take PFML are entitled to job protection, meaning that the employee will be restored to their previous (or equivalent) position after the employee's PFML leave of absence. Exhibit 10 at 21-24. Fathers & Sons employees submit PFML forms to Ms. Coombs and where appropriate, Ms. Coombs sends the PFML forms to Guardian. Tr. 235-236 (Coombs).

16. Other Policies. (1) A "guiding principle" at Fathers & Sons is that customer satisfaction is the key to success; (2) employment decisions shall be made without regard to protected classes such as "qualified mental or physical disability[ies]" and veteran status, (3) "[d]epartment managers must approve all travel and other expenses related to Company business in advance and in writing. Where expenses are claimed, a form must be completed and authorized by an approved signatory, usually your manager." Exhibit 10 at 4 & 14.

Advertising for the Service Manager position

17. On December 13, 2021, Fathers & Sons advertised on Indeed.com for an Automotive Service Manager (“Service Manager”). Exhibit 4. The Service Manager supervises between 25 and 40 employees. Tr. 69 (Cantoni); Tr. 276 (Keefer).

18. The advertisement described the responsibilities and requirements of the Service Manager position, including:

(1) overseeing day-to-day operations; (2) managing production and department throughput daily; (3) maintaining a high customer satisfaction index; (4) being self-motivated and [possessing] a high-energy personality; (5) paying strong attention to details and working well in a process-driven environment; (6) having a valid driver’s license and a good driving record; (7) passing a background check and drug screen. Exhibit 4.

In addition, Service Managers were required to have 5 years of service management experience, a proven track record of high performance, significant dispatching experience, outstanding CSI (customer satisfaction index), an ability to handle a high volume of customers and an ability to work with numerous technicians varying in skill sets among various brands, strong interpersonal skills, and the ability to “adhere to strict production guidelines and lead with a hands on management style.” Exhibit 4. The ideal candidate for the position will have an outgoing personality and positive attitude, along with “an expertise of building strong relationships with customers and team members.” Exhibit 4.

19. The Service Manager handles customer complaints which sometimes involves having to tell the customer, “No.” Tr. 278-279 (Keefer).

Interview and Hire

20. At some point prior to January 13, 2022, Mr. Keefer applied for the Service Manager position at Fathers & Sons and included information about his military service. Tr. 442-443 (Keefer).

21. After reviewing his application, Ms. Cantoni felt that Mr. Keefer was qualified as a Service Manager based on Mr. Keefer's experience at his previous employer, Tommy Car Group ("Tommy Car"), where he supervised a service department. Tr. 71-73 (Cantoni).

22. Ms. Cantoni, Mr. Prentiss and Mr. Cartelli felt that military experience was a positive attribute for the Service Manager position and generally, preferred to hire veterans. Tr. 75 (Cantoni); Tr. 190 (Prentiss); Tr. 517 (Cartelli). During the hiring process, Ms. Cantoni and Mr. Prentiss knew that Mr. Keefer was a veteran. Tr. 75 (Cantoni); Tr. 189-190 (Prentiss); Tr. 442-443 (Keefer).

23. At the time he interviewed Mr. Keefer, Mr. Prentiss did not know that Mr. Keefer had a disability. Tr. 190 (Prentiss). I do not have sufficient evidence to determine whether Ms. Cantoni knew that Mr. Keefer was disabled at the time that he was hired. On June 26, 2023, Mr. Keefer stated under oath that he disclosed his service-connected disabilities to Ms. Cantoni at the time he was hired. Exhibit 13 at 6. Mr. Cantoni testified that prior to hiring Mr. Keefer, she was not aware that Mr. Keefer had any disabilities. Tr. 129 (Cantoni).

24. After Mr. Keefer's interview, Ms. Cantoni and Mr. Prentiss felt that Mr. Keefer "would be a good fit." Tr. 76 (Cantoni).

25. On January 26, 2022, Ms. Cantoni offered Mr. Keefer the Service Manager position. Ms. Cantoni and Mr. Keefer agreed on a start date of March 1, 2022. Exhibit 6 at KEEFER 275-278.

26. On February 28, 2022, Mr. Keefer notified Ms. Cantoni that he had been seriously injured in a car accident, resulting in a lacerated liver, bruised kidneys and whiplash. Mr. Keefer offered to come in to Fathers & Sons, and Ms. Cantoni responded that she appreciated the update, but that there was no need to come in to the shop and Mr. Keefer could text her after his medical

appointments. Exhibit 6 at KEEFER 279-281. Before Mr. Keefer's start date, Mr. Prentiss was also aware that Mr. Keefer had been seriously injured in a car accident. Tr. 190-191 (Prentiss).

27. When Ms. Cantoni inquired as to how Mr. Keefer was, Mr. Keefer texted on March 18, 2022 that his "[d]octor put me in for FMLA or PFMLA or whatever one pays you for your injury or serious condition and since I was employed by Tommy Car at the time of my accident it was [my] last parting gift that their disability insurance picked up the tab. He said I'll be cleared 100% April 19 no restrictions nothing and that's when the FMLA ends as well." Ms. Cantoni responded that that it was great to hear that Mr. Keefer was feeling better and she looked forward to him joining them. Exhibit 6 at KEEFER 281.

Internet Search

28. Fathers & Sons regularly conducts internet searches on individuals who they are hiring. Tr. 504 (Cartelli).

29. Prior to Mr. Keefer's on-boarding, the results of an internet search regarding Mr. Keefer were shared with Ms. Cantoni. Tr. 114-115 (Cantoni); Tr. 495-497 (Cartelli). The internet search regarding Mr. Keefer revealed information of an event in Mr. Keefer's life that caused Ms. Cantoni, Mr. Prentiss and Mr. Cartelli to have elevated concerns about Mr. Keefer, resulting in a determination that during the probationary period, they should "keep a close eye on him." Tr. 116 (Cantoni); Tr. 501-510 (Cartelli). Once she was notified of the internet search, Ms. Cantoni continued to want to hire Mr. Keefer because she valued his experience and military background. Tr. 119 (Cantoni).

Commencement of Employment

30. On April 20, 2022, Mr. Keefer began working as a Service Manager at Fathers & Sons' West Springfield location, reporting to Ms. Cantoni. Tr. 155 (Prentiss); Exhibit 1.

31. The first month of Mr. Keefer's employment went "fairly well." Tr 86 (Cantoni); Tr. 229 (Prentiss). Thereafter, there were several customer complaints and employee complaints that, according to Ms. Cantoni and Mr. Prentiss, led to the decision to terminate Mr. Keefer during his probationary period. Tr. 86 (Cantoni); Tr. 167-168, 214 (Prentiss). The chief complaint by the customers related to Mr. Keefer's lack of empathy. Tr. 207 (Prentiss).

32. Two Fathers & Sons employees - E.M. and A.L.² - complained about Mr. Keefer to Ms. Cantoni and Mr. Prentiss. Tr. 86-90 (Cantoni); Tr. 193-196 (Prentiss).³ These complaints were not documented in Mr. Keefer's personnel file, or in emails or texts. Tr. 136 (Cantoni).

33. E.M. E.M., a Volkswagen Service Advisor who is currently employed by Fathers & Sons and who reported to Mr. Keefer, told Ms. Cantoni that she was uncomfortable with Mr. Keefer's behavior and how he reacted when customers spoke to him. Tr. 88-89 (Cantoni); Tr. 135, 184 (Prentiss). E.M. told Ms. Cantoni that Mr. Keefer was argumentative and rude. The date that E.M. made this complaint to Ms. Cantoni is not in the record. Ms. Cantoni spoke with Mr. Prentiss about E.M.'s complaint and told E.M. that she would keep a close eye on things. Tr. 88-89 (Cantoni). At the end of June 2022, E.M. complained to Mr. Prentiss that Mr. Keefer was "very argumentative towards her, didn't provide much support, was oftentimes distracted or not providing the assistance or guidance that she needed." Tr. 195-198 (Prentiss). While I recognize that Mr. Keefer perceived his relationship with E.M. to be a "good working relationship," I credit

² These individuals, and the names of the customers who complained about Mr. Keefer (described in detail below), are identified herein using their initials to protect their identity.

³ Based on the vagueness of his testimony, I do not credit Mr. Prentiss' testimony that a Fathers & Sons technician, J.V., complained about Mr. Keefer, or that a male customer complained verbally to Mr. Prentiss about Mr. Keefer's customer service. Tr. 195-199, 205-206 (Prentiss).

Ms. Cantoni and Mr. Prentiss' testimony that E.M. complained about Mr. Keefer. Tr. 461 (Keefer).

34. A.L. At some point during Mr. Keefer's employ, A.L., a Fathers & Sons Service Advisor who reported to Mr. Keefer, complained to Ms. Cantoni that she was uncomfortable working with Mr. Keefer, that he did not listen to her when she had concerns and that she was uncomfortable with the way he spoke with customers. Tr. 90 (Cantoni); Tr. 135-136, 184 (Prentiss).

35. In addition, A.L. informed Mr. Prentiss that Mr. Keefer was "very combative" and dismissive. Tr. 194 (Prentiss). A.L. complained that she "felt that anything that she was saying, he just wouldn't take any advice and viewed it as criticism, and just wasn't easy to speak ... to." Tr. 194-195 (Prentiss); Tr. 462 (Keefer) (acknowledging that A.L. gave him "pushback" on "a few things").

36. Mr. Prentiss took A.L.'s complaint about Mr. Keefer seriously. Tr. 196-199 (Prentiss). I do not find that the following detracts from this conclusion: (1) A.L. had been passed over for the Service Manager position, and in Mr. Keefer's view, was "pretty bitter about it" (Tr. 318 (Keefer)); (2) A.L. complained about other Fathers & Sons employees (Tr. 196-199 (Prentiss)); or (3) Ms. Cantoni's text to Mr. Keefer, "You haven't killed [A.L.] yet I take it." Exhibit 6 at KEEFER 290.

37. While it was Mr. Prentiss' understanding that Ms. Cantoni relayed E.M. and A.L.'s complaints to Mr. Keefer, I do not have sufficient evidence to determine whether any of the co-worker complaints were shared with Mr. Keefer. Tr. 192-197 (Prentiss); Tr. 461 (Keefer). Ms. Cantoni was not asked whether she conveyed E.M. and A.L.'s complaints to Mr. Keefer.

Customer Complaints About Mr. Keefer

38. Fathers & Sons received three written customer complaints about Mr. Keefer: (1) M.M. Complaint; (2) M.J. Complaint and (3) Daughter/Mother Complaint.

39. M.M. Complaint. On May 20, 2022, a customer (M.M.) sent an email to Ms. Cantoni, Mr. Prentiss and Mr. Cartelli stating that Mr. Keefer: (1) argued with her for 15-20 minutes, (2) accused her of failing to perform scheduled maintenance resulting in a void warranty, (3) refused to “listen to what she had to say” and refused to work towards identifying what the mechanical issue was, (4) “made sure to point the finger and blame [her] in addition to VW of America instead of trying to determine if the tech and tech support misdiagnosed” her vehicle, and (5) treated her as if she were “dull witted and incoherent.” M.M. wrote that “[t]he lack of emotional intelligence and the lack of industry knowledge your service manager displayed exemplifies his lack of qualification to fulfill that position” and that “[u]nder no circumstance should a customer be treated as inferior and unintelligent because the service manager refuses to do the research, provide the evidence and assist the customer.” Exhibit 15.⁴

40. In addition to writing Fathers & Sons an email regarding Mr. Keefer, M.M. posted on Google a 1 out of 5-star review of Fathers & Sons repeating many of the points she made in her May 20, 2022 email and stating that Mr. Keefer had said, “So I read your email and I don’t appreciate what you said about me. I was a Green Beret and I just graduated from law school.”

Exhibit 11 at KEEFER 315; Tr. 126 (Cantoni).⁵ At the time M.M. posted a 1-star review, Fathers

⁴ In one portion of this complaint, M.M. refers to a service advisor calling her rude and having no response when she asked why. I find that Fathers & Sons viewed this portion of M.M.’s complaint as referring to Mr. Keefer, who was a service manager, not a service advisor, because: (1) M.M. referred to the “service advisor” as “he” and there were no male service advisors employed at this Fathers & Sons location at the time, and (2) throughout the remainder of the complaint, M.M. referred primarily to Mr. Keefer, the Service Manager. Tr. 62-63 (Cantoni); Tr. 184 (Prentiss); Exhibit 15.

⁵ M.M.’s reference to “Zach Cottingham” in this posting was to Mr. Keefer. Tr. 126 (Cantoni) (no other

& Sons had moderately good online reviews. Tr. 423-425 (Keefer); Exhibits 11. I do not credit Mr. Keefer's testimony that in 2022, Fathers & Sons was known for having poor customer service. Tr. 280 (Keefer). I find the on-line reviews submitted by Mr. Keefer to be unreliable because they appear to be hand-picked rather than a comprehensive set of reviews. Exhibit 11.

41. Mr. Keefer asked M.M. why she was being rude and told M.M. he was a Green Beret. Tr. 415-419 (Keefer).

42. Mr. Keefer told M.M. he was a law student. Based on Mr. Keefer's admission that some of M.M.'s complaint was truthful, the fact that Mr. Keefer commenced law school in Fall 2022, and the reasonable inference that M.M. could not have known that Mr. Keefer had any relationship to law school unless Mr. Keefer told her, I do not credit Mr. Keefer's denial that he told M.M. he was a law student. Exhibit 14 & 15; Tr. 416-418.

43. I infer that Mr. Keefer placed a degree of blame on M.M. during his interaction with her based on Mr. Keefer's admission that he told M.M. that she ran the DEF fluid empty on her diesel engine. Tr. 288 (Keefer).

44. Both Mr. Prentiss and Ms. Cantoni viewed the complaint from M.M. as concerning and inappropriate even though M.M. was a difficult customer and the question of whether services were under warranty was out of Mr. Keefer's control. Tr. 181, 201-202 (Prentiss); Tr. 95 (Cantoni).

45. At the time of M.M.'s email complaint, Mr. Keefer knew both that M.M. was "pretty angry" and that she complained to Mr. Prentiss. Tr. 287, 411 (Keefer). Mr. Prentiss did not coach or discipline Mr. Keefer regarding M.M.'s complaint; he instructed Ms. Cantoni to verbally coach Mr. Keefer about the M.M. complaint. Tr. 202 (Prentiss). Ms. Cantoni coached Mr. Keefer

employees named Zach, or with the last name of Cottingham).

about M.M.'s complaint, stating to Mr. Keefer that "sometimes, you know, you do have to have a little give with customers. It can't be just your way; you know? Sometimes you have to work with them through the . . . process of fixing their vehicle." Tr. 93 (Cantoni); Tr. 192, 202 (Prentiss). Consistent with Fathers & Sons' policy, there was no documentation of Ms. Cantoni's conversation with Mr. Keefer. Tr. 37-38, 43, 66 (Cantoni); Exhibit 10 at 46.

46. I do not credit Mr. Keefer's testimony that no one had anything critical to say about the way he dealt with M.M. or that he did not discuss the M.M. complaint with Ms. Cantoni. Tr. 290-291 (Keefer). I base this conclusion on: (1) Ms. Cantoni's credible testimony that she coached Mr. Keefer about the M.M. complaint; and (2) Mr. Prentiss' credible testimony that M.M.'s Complaint was concerning and that he instructed Ms. Cantoni to coach Mr. Keefer. Tr. 93 (Cantoni); Tr. 202 (Prentiss). I reject Mr. Keefer's suggestion that if Mr. Prentiss truly viewed the M.M. Complaint as a concern, he would have waived M.M.'s diagnostic fee. Tr. 289 (Keefer).

47. M.J. Complaint. On July 6, 2022, Ms. Cantoni texted Mr. Keefer about a complaint from a customer named M.J., by attaching a text from M.J. to Mr. Cartelli or Mr. Prentiss. M.J.'s complaint states that she told a Fathers & Sons employee that her car was under warranty and that he told her she "would not qualify [for a waiver of the diagnostic fee] because [she was] not a loyal Audi customer because [she] took [her] car to an independent service station." M.J. further stated that she was "so ripped" at the service department and: "You can only imagine what I wanted to say back." Tr. 391 (Keefer); Exhibit 6 at KEEFER 295-96. Mr. Keefer acknowledged that he spoke with M.J. on the phone and told her she would need to pay for a diagnostic. Exhibit 6 at KEEFER 295. Ms. Cantoni texted Mr. Keefer that she "checked her history looks like she had been a loyal customer?" and in response, Mr. Keefer texted, "That's not what she was told. She's just refusing to pay for a diagnostic. She had an appointment for this

issue apparently and when [A.L.] quoted her the diagnostic she stormed out and refused to pay for it.” Ms. Cantoni responded “weird people.” Exhibit 6 at KEEFER 296.

48. Despite Mr. Keefer’s awareness during his employment that M.J. complained to Mr. Cartelli or Mr. Prentiss, Mr. Keefer did not view this text exchange as Ms. Cantoni criticizing the way he handled this issue, and in particular, felt that Ms. Cantoni would not have responded “weird people” if Ms. Cantoni was criticizing Mr. Keefer. Tr. 471-474 (Keefer).

49. As of July 6, 2022, Mr. Keefer knew that M.M. and M.J. had filed written complaints to Fathers & Sons to express their anger about Mr. Keefer’s customer service.

50. Daughter/Mother Complaint. On July 11, 2022 at 3:11 p.m., Mr. Prentiss received an email from the daughter of an elderly customer reporting an incident that occurred on July 8, 2022 at 9:00 a.m. as follows:

When [the Mother] approached the desk, [a man] was typing up something and should have asked her to wait a minute while he finished. Instead, he asked her what she needed. She proceeded to tell him what was going on and wanted to see about making an appointment. All while he was still typing something on the computer. She asked when she could make an appointment because she is concerned with the AC as it can get very hot and didn’t want it to break. He then looked at her and said well why don’t you go home and look at your calendar and call us. My mother wasn’t there to be told that. She was there to try and make an appointment since she didn’t receive a call back. Then she said her concerns with it breaking and he turned around and said well your health isn’t guaranteed either. You could wake up tomorrow sick.

I’m sorry but who says that? That is not customer service at all, don’t care if he was sarcastic or not. She has had this issue for a year now. This is a little too long and then to have that customer service? Exhibit 15; Tr. 207 (Prentiss).

51. Mr. Keefer acknowledged that he said to the mother: “[Y]ou know, one day you're fine, and then the next day you wake up sick. Like, you can't guarantee your health. Like, you just don't know when. Like, you don't know when you're going to get sick. Like, I can't predict" -- "you can't predict that, and you can't predict the same thing like if your car is going to break.” Mr. Keefer acknowledged that this was a poor choice of words. Tr. 455-456 (Keefer).

52. Mr. Prentiss felt that this incident showed Mr. Keefer to be “very nonempathetic” to the customer and believes empathy is a main qualification for the Service Manager, even with difficult customers. Tr. 208 (Prentiss).

53. Mr. Prentiss and Ms. Cantoni discussed the Daughter/Mother Complaint. Tr. 96-97 (Cantoni). Due to Ms. Cantoni’s vague testimony on this point, I do not credit Ms. Cantoni’s testimony that she discussed the Daughter/Mother Complaint with Mr. Keefer. Tr. 41-42, 68, 98-100 (Cantoni); Tr. 291-293 (Keefer).

54. From Mr. Prentiss’ perspective, the “main issue with Mr. Keefer was just the number of complaints he had received in such a short period of time.” Tr. 206 (Prentiss).

July 7, 2022 Discussion Regarding Frequent Cell Phone Use

55. On July 7, 2022, Ms. Cantoni met with Mr. Keefer to ask him why he was making frequent personal phone calls at work. Tr. 56-57 (Cantoni); Tr. 312-313 (Keefer). Mr. Keefer described the interaction as follows:

[S]he asked me, you know, "Why were you on your phone?" One, I never took a lunch. I still don't. I always work from my desk. So then if I have to use, like, personal time, I just kind of aggregate it. Like, if I go take a phone call, I bill that into, like, you know, your 30 minutes or a 15. And I just let her know I was in the middle of buying a house. Tr. 313 (Keefer).

56. On July 7, 2022, Ms. Cantoni texted Mr. Prentiss as follows: “Just spoke to Zach. He should be all set there. He is closing on a house. Conversation tool (sic) longer than expected. He got the point though.” Exhibit 16 at RESP00046.

57. The parties have differing accounts of the tenor of the July 7, 2022 interaction: Ms. Cantoni described Mr. Keefer as angry and aggressive in his response; Mr. Keefer testified that it was a civil conversation, and that he didn’t get angry or use aggressive body language. Tr. 51 (Cantoni); Tr. 316-317 (Keefer). While I cannot determine whether Mr. Keefer was angry/aggressive or civil during the July 7, 2022 interaction, I infer from the fact that the

conversation took Ms. Cantoni longer than expected and Mr. Keefer's defensive description of his use of the phone during work hours (e.g. "One, I never took a lunch"), that Mr. Keefer met Ms. Cantoni's criticism about his use of his personal cell phone with resistance and defensiveness. I credit Ms. Cantoni's testimony that Mr. Keefer's body language during the July 7, 2022 interaction made her very uncomfortable, and that Ms. Cantoni told Mr. Prentiss that she "felt fearful around" Mr. Keefer. Tr. 56 (Cantoni); Tr. 169-170 (Prentiss).

Mr. Keefer and Ms. Cantoni's Professional Relationship

58. In general, Ms. Cantoni found coaching Mr. Keefer to be "very difficult." Tr. 98 (Cantoni). She experienced Mr. Keefer as unable to "take constructive criticism whatsoever, and [to become] angry any time [she would] try to have a conversation with him about it." Tr. 91 (Cantoni). She found Mr. Keefer's response to criticism to be aggressive in tone and body language (e.g. standing over her, encroaching her space) and described Mr. Keefer as trying to "spin it on the customer and not take constructive criticism." Tr. 98-99, 101-103 (Cantoni). Ms. Cantoni shared with Mr. Prentiss that Mr. Keefer "was quite combative with regards to coaching -- and critiques and just could not take criticism in any way, shape or form" and that Mr. Keefer's response to coaching was to "dismiss it" and state it was "the customer's fault or he was in the right about the situation." Tr. 208-209, 218 (Prentiss).

59. Ms. Cantoni's view that Mr. Keefer was combative with regards to coaching and critique and that he blamed the customer is not contradicted by the following: On June 20, 2022, Ms. Cantoni texted Mr. Keefer that she had "[e]nded up in the ER. Passed out ended up with a concussion pretty bad smashed my head and face. After I blacked out and hit my head I had some issues with my hands and feet major spasms. Was pretty scary." Mr. Keefer expressed sympathy and said everything at work was going smoothly and that it would be a good week. In

response, Ms. Cantoni said: “Good to hear! I know you can handle it. I have all the faith in the world. Thank you, it’s good to know everything is under control. Tty soon.” Exhibit 6 at KEEFER 289-290. On June 30, 2022, in response to Mr. Keefer’s text stating that he thought it was a good month at work, Ms. Cantoni texted, “Absolutely, and there is still room for improvement which is a huge plus. Everything is running pretty smoothly. Great job thanks for all you do!” Exhibit 6 at KEEFER 293. For the following reasons, the June 20 and June 30, 2022 texts do not contradict Ms. Cantoni’s general view that Mr. Keefer was combative in response to constructive criticism: (1) The June 20 and 30, 2022 texts were received before Ms. Cantoni’s receipt of the M.J. Complaint, the Daughter/Mother Complaint and the July 7, 2022 discussion; (2) At least with respect to the June 20, 2022 text, I infer from Ms. Cantoni’s text that she had just experienced a frightening medical event, that she was more emotional and appreciative than she might have been had she not been recently hospitalized and that she was reliant on Mr. Keefer to manage work issues in her absence; and (3) Ms. Cantoni’s “job [was] to be a cheerleader and keep the morale up with [her] employees.” Tr. 28 (Cantoni).

60. Ms. Cantoni and Mr. Keefer’s work relationship was outwardly friendly but was also punctuated by clashes when Ms. Cantoni raised concerns about Mr. Keefer’s work performance or customer complaints. Mr. Keefer resisted taking constructive criticism. This is supported by the above findings and Mr. Keefer’s testimony: while he initially described his work relationship with Ms. Cantoni as a good professional relationship, he subsequently described Ms. Cantoni as “brash or off-putting” and testified that his personality and Ms. Cantoni’s personality “may clash a bit.” Tr. 317, 459 (Keefer).

61. I do not credit Mr. Keefer’s testimony that he was never informed he was doing anything wrong, never received negative feedback, or that the only feedback he got from Ms. Cantoni was

positive. Tr. 284, 290-291 (Keefer). I base this on Mr. Keefer's admissions that he knew of both the M.M. Complaint and the M.J. Complaint, which reflect two customers who believed Mr. Keefer to be doing something "wrong", and that Ms. Cantoni spoke with him about improper use of his cell phone at work, as well as Ms. Cantoni's credible testimony that she provided constructive criticism to Mr. Keefer. I do not find the lack of documentation in Mr. Keefer's personnel file regarding Mr. Keefer's performance or conduct to be inconsistent with this finding because: (1) Fathers & Sons' Probationary Policy excepts probationary employees from written performance evaluations (Exhibit 10 at 46); and (2) Fathers & Sons' general practice is not to issue written warnings during the probationary period. Tr. 36-37, 43, 85 (Cantoni); Tr. 191 (Prentiss).

62. I credit Mr. Keefer's testimony that in or around June 2022, Robert Cartelli, Mr. Damon Cartelli's father, verbally complimented Complainant on his management of the Service Department. Tr. 284-285 (Keefer). This does not contradict Fathers & Sons' position that, over time, it developed a serious concern about Mr. Keefer's communication style with customers, supervisors and employees. Tr. 206 (Prentiss).

63. While Mr. Prentiss did not personally observe issues with Mr. Keefer's performance, he received copies of the M.M. Complaint, the M.J. Complaint and the Daughter/Mother Complaint and took the verbal complaints from Mr. Keefer's subordinates -- E.M. and A.L. -- which caused Mr. Prentiss to have concerns about Mr. Keefer's communication style. Tr. 221 (Prentiss).

Training Discussion

64. At some point during Mr. Keefer's employment, Ms. Cantoni told Mr. Keefer that he needed to go to a manufacturer's training, and then scheduled it. Tr. 435 (Keefer).⁶

⁶ I do not have sufficient evidence to determine: (1) when Fathers & Sons signed Mr. Keefer up for the training, if at all; (2) if and when the training was paid for by Fathers & Sons prior to Mr. Keefer's

65. As of July 11, 2022, Mr. Keefer planned to attend an out-of-state 2-3 day training in New Jersey to certify him through the manufacturer, scheduled to occur the week of July 18, 2022. Tr. 306-307 (Keefer).

66. On July 11, 2022, between 11:46 a.m. and 1:04 p.m., Mr. Keefer and Ms. Cantoni exchanged the following texts (“July 11th Text Exchange”). Mr. Keefer stated: “For training next week, do I book my hotel and submit the receipts when I get back, or does someone else book it? It doesn’t matter to me either way.” Ms. Cantoni responded, “Yes that would be great.” Tr. 30-31 (Cantoni); Exhibit 6 at KEEFER 300.

67. No form or other documentation seeking or granting specific approval for Mr. Keefer’s travel and expenses was submitted at hearing.

68. Between July 11 and July 13, 2022, Mr. Keefer borrowed a Fathers & Sons “loaner” car from Ms. Cantoni. Tr. 474-476 (Keefer). No one from Fathers & Sons attempted to retrieve the loaner from Mr. Keefer before his termination on July 18, 2022. Exhibit 6 at KEEFER 304.

Submission of July 12, 2022 Paperwork

69. On July 12, 2022, Mr. Keefer emailed Ms. Coombs and stated, in relevant part:

I have a question the VA sent me paperwork for FMLA because I am 100% disabled due to injuries I sustained over a dozen deployments. I don’t ever use it but they told me it’s a good idea to file it with my employer just in case I have some flare up from my injuries while I was a Green Beret. What do you need from me? I have attached the paperwork they signed. Let me know if you need anything else. Exhibit 7 (“the July 12 Email”).

Attached to the July 12 Email was a form from the Massachusetts Department of Family and Medical Leave (“DFML”) entitled “Certification of Your Serious Health Condition”

termination; or (3) how much the training cost Fathers & Sons. I do not find Mr. Keefer’s testimony on these subjects persuasive, because I do not believe Mr. Keefer had first-hand knowledge of these matters. Tr. 306-307 (Keefer) (Mr. Keefer’s conjecture that the application to sign him up for this training was submitted a couple weeks before the start date of the training and that it cost between \$500 and several thousands of dollars).

("Certification"), signed by William Sullivan (Nurse Practitioner) and dated October 26, 2021. The Certification identifies that Mr. Keefer has "chronic back, neck pain + headaches," that his condition is chronic and long-term and that he "should avoid activities that can trigger flare such as heavy lifting, prolonged standing." The Certification states that when his condition is flared, "he may need 1-2 days off to rest and at times may need 3-5 days to seek treatment" and that his condition "requires treatments at least twice a year, and ongoing medical supervision, with or without active treatment." The Certification further states that an intermittent leave schedule will start on 1/1/2021 and end on 12/31/2022, that the condition will require the employee to be absent from their job once or more per week, approximately 2 times per week; that Mr. Keefer may require periodic absences and 2 or more medical visits within 30 days, that Mr. Keefer requires one medical treatment plus a regimen of care, that Mr. Keefer's condition requires multiple treatments and that he could become incapacitated without treatment, that no reduced leave schedule is needed and that it was not Mr. Sullivan's medical opinion that the patient must refrain from working either partly or completely during this time period (1/1/2021 – 12/31/2022). Exhibit 7.

70. Mr. Keefer clarified in his testimony that someone at the Veterans' Administration who Mr. Keefer spoke to when he was working for Tommy Car told him that it was a good idea to file a PFML form. Tr. 248 (Keefer).

71. While he was employed at Tommy Car, Mr. Keefer submitted the same Certification that he subsequently submitted to Fathers & Sons on July 12, 2022. Mr. Keefer did not take paid family medical leave or intermittent leave for any medical condition at Tommy Car⁷, nor did he take paid family medical leave or intermittent leave at Fathers & Sons. Tr. 330-344, 432 (Keefer).

⁷ At hearing, Mr. Keefer testified that he took PFML leave at Tommy Car due to the birth of his son for child-bonding purposes and during part of that time, he was recovering from injuries he suffered in the car

72. Mr. Keefer submitted the July 12 Email and Certification to Fathers & Sons so that he would receive partial pay through the PFMLA (Paid Family and Medical Leave Act) insurance program if he had a flare-up from injuries and needed to use intermittent leave, and obtain other protections, available under the PFMLA. Tr. 298-299, 361 (Keefer). When asked why he submitted the July 12 Email and Certification, he stated:

Because in order to have an intermittent leave claim, it needs to be on -- like, to get paid for it, the claim already needs to be filed. Like, you need to have a claim number. And then you take the -- you take the leave against the claim. Like, the -- the insurance agency or the state will say, "Okay. Well, you get 12 weeks of leave." And then when you take that time off for an appointment, you tell them how many hours you took off. And then they tell your employer, and then the check actually comes from the insurance company. Tr. 298 (Keefer).

73. When asked what he hoped to be in place if he had a flare-up that kept him from working, Mr. Keefer answered: "A paycheck, basically. That's what it's for. And to protect -- job protection, all the stuff that comes along with PFMLA." When asked why he was submitting it "in advance, not necessarily needing it imminently," Mr. Keefer answered "I mean, just in case. That's what it's there for. It's basically insurance." Tr. 299 (Keefer).

74. Mr. Keefer expected that a Fathers & Sons' human resources representative would tell him what he needed to do in order to file a PFML claim so that in the event he needed to take a day off, he would have a claim open. Tr. 345 (Keefer).

75. Based on Mr. Keefer's statements in the July 12 Email, Ms. Coombs, Mr. Prentiss and Mr. Cartelli understood Mr. Keefer's communication to be a request to keep the Certification on file. Tr. 241-244 (Coombs); Tr. 156, 209-210, 227 (Prentiss); Tr. 523 (Cartelli). Ms. Coombs understood the July 12 Email and Certification as a request to file the Certification "if he needed it in the future." Tr. 242, 248-249 (Coombs).

accident identified in ¶27; Exhibit 6 at KEEFER 281; Tr. 371-372 (Keefer).

76. As a result, Ms. Coombs did not: (1) send the Certification to Guardian, (2) have any conversations with Mr. Keefer about his disabilities or any resulting need for accommodation, or (3) send Mr. Keefer a Guardian application. Tr. 242, 244-245, 250 (Coombs).

77. Mr. Prentiss viewed the July 12 Email as stating that Mr. Keefer had no need, intention or plan to use PFML. Tr. 210, 228 (Prentiss). Neither Mr. Prentiss nor Mr. Cartelli viewed the July 12 Email as a request for a leave or an accommodation. Tr. 156-157, 210 (Prentiss); Tr. 523-524 (Cartelli).

78. During Mr. Keefer's employment, Ms. Cantoni was not aware of the July 12 Email or Certification. Tr. 35 (Cantoni).

79. The July 12 Email was the first time Mr. Keefer communicated in writing that he had a 100% disability rating through the Department of Veterans' Affairs, and the first time that Mr. Prentiss learned that Mr. Keefer had a 100% disability rating. Tr. 228 (Keefer); Tr. 158 (Prentiss).

80. During his employment at Fathers & Sons, Mr. Keefer did not request a day off for any reason. Tr. 339, 344 (Keefer).

81. On July 12, 2022, at 4:50 p.m., Ms. Coombs forwarded the July 12 Email and Certification to Mr. Prentiss because Ms. Coombs understood that if Mr. Keefer was going to be out of work in the future, it would be Mr. Prentiss, as Mr. Keefer's manager, who would need to be aware of this. Exhibit 7; Tr. 241 (Coombs).

82. On July 14, 2022, at 9:27 a.m., Ms. Coombs forwarded Mr. Keefer's July 12 Email and Certification to Mr. Hewitt and Mr. Cartelli, with an email stating: "FYI...I will put a copy in his blue medical file." Exhibit 7; Tr. 158-159 (Prentiss); Tr. 241 (Coombs). All full-time employees, including employees in their probationary period, have a blue medical file which is where documents related to disabilities and accommodations are maintained. Tr. 240 (Coombs).

83. Ms. Coombs sent the July 12 Email and Certification to Mr. Hewitt and Mr. Cartelli because they are the only individuals with access to Ms. Coombs' office, which contains a locked human resources cabinet. Tr. 242 (Coombs). Ms. Coombs' reason for sending the July 12 Email to Mr. Hewitt and Mr. Cartelli was that if there was a future event in which Mr. Keefer needed to take intermittent leave, Mr. Hewitt and Mr. Cartelli would have access to the July 12 Email and Certification. Tr. 242-252 (Coombs); Tr. 159 (Prentiss).

84. On July 14, 2022, Ms. Coombs replied to Mr. Keefer's email and stated, "I don't believe I need anything else, if so, I will let you know. Thanks for sending." Exhibit 7. Ms. Coombs did not consult with Mr. Prentiss about how to respond to Mr. Keefer. Tr. 159 (Prentiss).

The Date That the Decision to Fire Mr. Keefer Was Made

85. Ms. Cantoni and Mr. Prentiss made the decision to terminate Mr. Keefer and recommended this to Mr. Cartelli. Mr. Cartelli approved the decision. Tr. 119 (Cantoni); Tr. 216 (Prentiss).

86. I cannot determine whether the decision to terminate was made on July 11, 2022, prior to receipt of the July 12 Email, or if it was made after Fathers & Sons received the July 12 Email. For the following reasons, I find that Fathers & Sons made the decision to terminate Mr. Keefer at some point after the Daughter/Mother Complaint was received on July 11, 2022: (1) Fathers & Sons submitted a sworn-to statement in its Position Statement and interrogatory responses that the decision to terminate was made on July 11, 2022 after the Daughter/Mother Complaint was received (Tr. 52 (Cantoni); Exhibit 12); (2) the Position Statement and interrogatory responses were signed closer in time to Mr. Keefer's employment at Fathers & Sons; (3) Ms. Cantoni and Mr. Prentiss were uncertain as to the precise date the decision to terminate was made (Tr. 30-35, 52 (Cantoni); Tr. 168 (Prentiss)); and (4) consistent with Fathers & Sons' standard practice to review an employee's performance and conduct prior to the end of the probationary period, the

Daughter/Mother Complaint was received 8 days prior to the end of Mr. Keefer's probationary period. Tr. 118-119 (Cantoni). In making this finding, I acknowledge that Mr. Prentiss testified in his deposition on September 26, 2023, and at hearing, that the decision was made on July 7, 2022, but consider the previously stated factors, on balance, more persuasive than Mr. Prentiss' testimony. Tr. 171 (Prentiss).

Termination

87. On July 18, 2022 -- the day before Mr. Keefer's 90 day probationary period was to end -- Ms. Cantoni and Mr. Hewitt terminated Mr. Keefer. Exhibit 1.

88. It is Fathers & Sons' practice for its supervisors to be accompanied by a witness when terminating an employee. Tr. 123 (Cantoni); Tr. 217 (Prentiss); Tr. 247 (Coombs). Ms. Cantoni brought Mr. Hewitt to the termination meeting with Mr. Keefer because she needed to have a witness and she felt Mr. Hewitt would provide her with some degree of security during the termination meeting. Tr. 123 (Cantoni); Tr. 218 (Prentiss).

89. Ms. Cantoni did not tell Mr. Keefer why he was being terminated. Tr. 48 (Cantoni); Tr. 319-320 (Keefer). This was consistent with Fathers and Sons' practice not to give a reason when terminating a probationary employee. Tr. 160 (Prentiss). Mr. Cartelli instructed managers terminating an employee in their probationary period to "keep it short and simple" and "not to go too deep in the reasoning ... because it can only lead to an argument" and "could become confrontational for no reason." Tr. 516 (Cartelli).

Separation Notice – Exhibits 8 & 9

90. On the date Mr. Keefer was terminated, Fathers & Sons was in the process of changing operating systems. Tr. 438 (Keefer).

91. When Mr. Keefer was terminated, a Separation Notice was completed, signed by Mr. Keefer and sent to his home on July 27, 2022. Exhibit 8. In addition, a Separation Form was retained by Fathers & Sons in Mr. Keefer's personnel file. Exhibit 9.

92. Exhibits 8 and 9 have four sub-headings: 1. Employee Information; 2. Separation Details; 3. Final Employee Evaluation; and 4. Separation Issues Discussed With Employee.

93. **Exhibits 8 & 9 Similarities**: Exhibits 8 and 9 are identical in the following ways: (1) Employee Information: This section identifies Zachary Keefer, Service Manager, hire date: 4/22/2022; Department: Service; Supervisor: Stacey Cantoni; Effective Separation Date: 7/18/2022; (2) Separation Details: Under Type of Separation, "Discharge" is checked and under Reason for Separation, "Other" is checked⁸; (3) Final Employee Evaluation: several areas include checkboxes for outstanding, satisfactory and unsatisfactory and none of the checkboxes is checked. In addition, "Would you rehire?" is not answered. Exhibits 8 & 9.

94. **Exhibits 8 & 9 Differences**. Exhibit 8 and 9 differ in one section, Separation Issues Discussed With Employee, in the following ways. First, on Exhibit 8, someone wrote "N/A" and Mr. Keefer wrote "No reasons discussed: unjustifiable." Exhibit 8; Tr. 162 (Prentiss); Tr. 439-440 (Keefer). On Exhibit 9, the sub-heading Separation Issues Discussed With Employee is crossed out; Ms. Cantoni did not remember creating this line. Tr. 48 (Cantoni). Also, on Exhibit 9, there is no text next to the sub-heading Separation Issues Discussed With Employee. Second, there is a section under Separation Issues Discussed With Employee that states "To be completed by Human Resources Personnel" and includes checkboxes such as COBRA Rights and Vacation Due Days. Both Exhibit 8 and Exhibit 9 state "N/A" but the N/A appears to be in different handwriting. Third, the Supervisor Signature and Employee Signature lines differ on Exhibits 8

⁸The check boxes under Reason for Separation include: Performance, Attendance, Conduct, Other Employment, Personal, Better Position and Other. Exhibits 8, 9.

and 9. Exhibit 8 has the signatures of Ms. Cantoni next to Supervisor Signature and Mr. Keefer next to Employee Signature. Under Supervisor's Signature on Exhibit 9, it states "Refused to Sign" and the Employee Signature is blank.

95. Exhibit 8 was sent to Mr. Keefer directly. Mr. Prentiss posited that Mr. Keefer may have refused to sign at the time of termination and signed it later when it was sent to Mr. Keefer. Tr. 165-166 (Prentiss).

96. It is the policy of Fathers & Sons, when terminating an employee in their probationary period, to check "other" on the Separation Form. Tr. 122 (Cantoni); Tr. 161 (Prentiss); Tr. 516 (Cartelli). Based on the vagueness of the testimony, lack of examples, and the short time that Mr. Keefer was employed at Fathers & Sons, I give no weight to Mr. Keefer's testimony that during the time he worked at Fathers & Sons, he had never been informed that terminating an employee in their probationary period should differ from terminating an employee who has completed the probationary period. Tr. 326 (Keefer).

Bonuses

97. Mr. Keefer received bonuses of \$5,002.17 for May 2022, \$5,238.19 for June 2022 and \$480.36 for July 2022. These bonuses were calculated by applying a percentage to the Service Department's adjusted net profit. Tr. 526 (Cartelli); Tr. 470-471 (stipulation as to amounts).

Post-Termination Events

98. After the termination, Mr. Keefer contacted Mr. Cartelli to ask why he was terminated and Mr. Cartelli said it was just not a good fit. Tr. 444 (Cartelli).

99. Consistent with the policy in their Employee Handbook, Mr. Keefer was not provided with a written performance evaluation during his employment at Fathers & Sons. Tr. 283 (Keefer).

Fathers & Sons' Management of Accommodation Requests

100. Mr. Prentiss has never received any formal training on disability discrimination or reasonable accommodation. Tr. 151 (Prentiss).

101. Mr. Prentiss understands that if a disabled employee is asking for intermittent PFMLA leave, this can constitute a request for reasonable accommodation. Tr. 153 (Prentiss).

History of Fathers & Sons' Treatment of Other Employees

102. Prior to Mr. Keefer's hire, Fathers & Sons had a Service Manager, S.O. who was an Army veteran and who was diagnosed with brain cancer in the last two years of his employment with Fathers & Sons. Tr. 211 (Prentiss). S.O. requested, and received, time off to go to chemotherapy treatments. Tr. 212 (Prentiss). In 2019 and 2020, Fathers & Sons accommodated S.O. by permitting him to take intermittent leave and by providing him with paid leave until his death. Tr. 517-519 (Cartelli).⁹

103. In 2018 or 2019, Fathers & Sons had a receptionist identified as "K.", who had limited knee mobility. K. is still employed by Fathers & Sons. K. asked for, and received the accommodation of a first floor office, which allowed her to avoid using stairs. Tr. 519-520 (Cartelli).

104. Fathers & Sons terminated other employees during their probationary period. Other employees of Fathers & Sons were terminated due to customer complaints. Exhibit 12; Tr. 222-224 (Prentiss).

⁹ At no time during Mr. Keefer's employment did Ms. Cantoni make a negative remark about Mr. Keefer's military service or veteran status. Tr. 442-443 (Keefer).

III. CONCLUSIONS OF LAW

A. FATHERS & SONS DID NOT FAIL TO PROVIDE MR. KEEFER WITH A REASONABLE ACCOMMODATION

Employers are required by law to provide reasonable accommodations (if feasible) to disabled employees to permit them to carry out the job and continue working.¹⁰ Courts have described the elements of a reasonable accommodation claim under M.G.L. c. 151B, § 4(16), *generally*, as requiring an employee to show that: (1) she is a qualified handicapped person, (2) she requested a reasonable accommodation and (3) the employer failed to accommodate her. Nicholson v. Massachusetts Bay Transportation Authority, 783 F.Supp.3d 506, 523 (D. Mass. 2025), citing Russell v. Cooley Dickinson Hosp. Inc., 437 Mass. 443, 444 (2002).¹¹ The MCAD Disability Guidelines require proof of the following for a reasonable accommodation claim: (1) employee was a qualified handicapped individual; (2) who needed a reasonable accommodation due to her handicap to perform her job; (3) the employer was aware of the handicap, and was aware that the employee needed reasonable accommodation to perform her job; (4) the employer was aware of a means to reasonably accommodate the handicap, or the employer breached a duty, if any, to undertake reasonable investigation of a means to reasonably accommodate the handicap; and (5)

¹⁰ “[T]he words ‘disabled’ and ‘disability’ are the more common and accepted parlance than the words ‘handicapped’ and ‘handicap.’ The word ‘handicap,’ however, is utilized in the governing statute and regulations.” Massachusetts Commission Against Discrimination, Guidelines: Employment Discrimination on the Basis of Handicap (“MCAD Disability Guidelines”), § I n.1 (2002). This decision will use the words “handicap,” “handicapped,” “disability,” and “disabled.”

¹¹ Another variation of the elements of a reasonable accommodation claim requires an employee to show that: (1) she has a disability; 2) she was able to perform the essential functions of her position with a reasonable accommodation; 3) such an accommodation was requested; 4) her employer rejected that request; and 5) that rejection resulted in some harm. Gudava v. Northeast Hospital Corp., 440 F.Supp.3d 49, 58 (D. Mass. 2020), citing Alba v. Raytheon Co., 441 Mass. 836, 843 n. 9 (2004).

the employer failed to provide the employee the reasonable accommodation. MCAD Disability Guidelines, § IX.A.3. (2002).¹²

Under both the court's and the MCAD Disability Guidelines' description of the elements of a reasonable accommodation claim, Mr. Keefer can establish that he was a qualified handicapped person - a person with a disability who is capable of performing the essential functions of his job with or without an accommodation.¹³ He cannot, however, establish, that he requested a reasonable accommodation (or that he needed one) or that Fathers & Sons was, or reasonably should have been, on notice of such a need.¹⁴

¹² MCAD & Santiago v. Caregivers of Massachusetts, Inc., 44 MDLR 61, 72 (2023); MCAD & Lapete v. Country Bank for Savings, 39 MDLR 24, 27 (2017).

¹³ During the time that Mr. Keefer was employed by Fathers & Sons, he had injuries and medical conditions including frequent headaches, orthopedic injuries, deafness in his right ear, and tinnitus, which caused him debilitating pain, nausea and sensitivity to light. I infer from the testimony and medical records that the pain Mr. Keefer experienced as a result of his orthopedic injuries and headaches substantially limited the major life activities of thinking and concentrating. MCAD Disability Guidelines at § II (A)(5) (2002). In addition, I infer that the 70% hearing loss Mr. Keefer experienced in his right ear substantially limited the major life activity of hearing. M.G.L. c. 151B, § 1(20). As such, Mr. Keefer had "a physical or mental impairment which substantially limits one or more major life activities of a person. . ." and was handicapped (disabled) as defined in M.G.L. c. 151B, § 1(17).

In addition, Mr. Keefer was a "qualified handicapped person" as he was capable of performing the essential functions of the Service Manager position. M.G.L. c. 151B, § 1(16). Given the ample testimony that Mr. Keefer was capable of performing the essential functions of the Service Manager position, the Department of Veterans' Administration's determination that Mr. Keefer was "100% disabled" does not affect this conclusion. Cf. Cleveland v. Policy Mgt. Sys. Corp., 526 U.S. 795, 801-807 (1999) (determination by the Social Security Administration that plaintiff was "totally disabled" for purposes of Social Security disability insurance does not create a strong presumption against plaintiff's success under the Americans with Disabilities Act); Russell v. Cooley Dickinson Hospital, Inc., 437 Mass. 443, 450-453 (2002) (plaintiff who received workers' compensation benefits for "temporary total disability" is not precluded from claiming that she is a "qualified handicapped person"); Labonte v. Hutchins & Wheeler, 424 Mass. 813, 817-820 (1997) (plaintiff not estopped from bringing an M.G.L. c. 151B disability discrimination claim due to claim for private disability benefits).

¹⁴ The failure to prove these elements is fatal to Mr. Keefer's reasonable accommodation claim, and thus, it is not necessary to analyze whether Fathers & Sons: (1) was aware of a means to reasonably accommodate Mr. Keefer's disability, (2) breached a duty to undertake reasonable investigation of a means to reasonably accommodate Mr. Keefer's disability, and/or (3) failed to provide Mr. Keefer with a reasonable accommodation.

1. Mr. Keefer did not request (or need) a reasonable accommodation.

A reasonable accommodation is “an adjustment or modification to a job (or the way a job is done), employment practice, or work environment that makes it possible for a handicapped individual to perform the essential functions of the position involved and to enjoy equal terms, conditions and benefits of employment.” MCAD Disability Guidelines, § II (C) (2002); Barbuto v. Advantage Sales & Marketing, LLC, 477 Mass. 456, 461 n. 5 (2017). A reasonable accommodation must “presently, or in the immediate future, enable the employee to perform the essential functions of the job.” Cf. Russell v. Cooley Dickinson Hosp., Inc., 437 Mass. 443, 455 (2002), citing Myers v. Hose, 50 F.3d 278, 283 (4th Cir. 1995).

The employer's duty to provide reasonable accommodation is triggered if an employee identifies him/herself as a qualified handicapped person and requests reasonable accommodation – that is, an adjustment or modification to a job or the way the job is done. MCAD Disability Guidelines, sec. VII.A (2002); Ocean Spray Cranberries, Inc. v. MCAD, 441 Mass. 632, 649 n. 21 (2004) (“[f]or an employee's actions to constitute a request for accommodation, they must make the employer aware that the employee is entitled to and needs accommodation. Specifically, the request must let the employer know that the employee is a qualified handicapped person, and that the employee is currently unable either to perform the essential functions of his job or to enjoy equal terms, conditions, and benefits of employment.”).¹⁵

¹⁵ Moore v. Industrial Demolition LLC, 138 F.4th 17, 33-34 (1st Cir. 2025) (“[t]o suffice as an accommodation request, an employee who asserts that he has a handicap limiting his engagement in his job's functions must inform his employer about his limitations with ‘sufficient[] direct[ness] and specific[ity],’ to give notice that he needs ‘special accommodation.’”)[Citations omitted]”); Reed v. LePage Bakers, Inc., 244 F.3d 254, 260 (1st Cir. 2001) (Reed “never adequately put LePage on notice of her disability and need for accommodation. Specifically, Reed never made LePage sufficiently aware that she had a disability marked by occasional fits of rage and consequently needed some sort of *special* accommodation. [Emphasis in original]”); Chadwick v. Duxbury Pub. Schools, 97 Mass. App. 1106 *7, n. 21 (2020) (1:28), citing Taylor v. Phoenixville School Dist., 184 F.3d 296, 315 (3d Cir. 1999) (“[w]e recognize that ‘[o]nce the employer knows of the disability and the employee's desire for

The July 12 Email and Certification disclosed to Fathers & Sons that Mr. Keefer was disabled. They did not, however, include a request that Fathers & Sons adjust or modify a job or the way a job is done because of a disability. Mr. Keefer stated in the July 12 Email that he “doesn’t ever use” family and medical leave but that the veterans’ administration told him it was “a good idea to file it with [his] employer just in case [he has] a flare up from [his] injuries while [he] was a Green Beret.” Exhibit 7. A reasonable reading of the July 12 Email was that Mr. Keefer had no present intention to take intermittent leave, **nor an expressed intention to do so at any time in the future.**

The Certification stated that Mr. Keefer had disabilities, identified the period of an intermittent leave schedule, stated that he “may need” leave to rest or seek treatment, and that he may require periodic absences. Notably, the Certification did not state that Mr. Keefer would need leave for rest and treatment or that he would require absences. Rather, the Certification qualified that the leave and absences were things that “may” be needed in the specified period, as opposed to things Mr. Keefer actually needed.

Even assuming, without deciding, that the statement in the Certification – that “the condition will require the employee to be absent from their job once or more per week, approximately 2 times per week” – could reasonably be construed *in isolation*, as stating an actual need for an accommodation, it is unreasonable to review that statement out of context. Mr. Keefer submitted the Certification with an email that clarified that his request was simply that Fathers & Sons file

accommodations, it makes sense to place the burden on the employer to request additional information that the employer believes it needs.’ [Citation omitted]”); MCAD & Santiago v. Li and Cheng, 47 MDLR 13, 19 (2025) (housing case) (“[a]ll that is required is that the request be made in a manner that a reasonable person could understand it to be a request for an exception, change, or adjustment to a service because of a disability.) [Citation omitted]”); Fortin, Evangelista & MCAD v. Marty Green Properties LLC et al., 44 MDLR 47, 55 (2022) (housing case) (“[a]ll that is required is that the request be made in a manner that a reasonable person could understand it to be a request for an exception, change, or adjustment to a rule, policy, practice or service because of a disability.) [Citation omitted]”).

the Certification. The July 12 Email, to which the Certification was attached, stated that Mr. Keefer doesn't "ever use" family medical leave and was submitting it because he was told that it was "a good idea to file it with my employer *just in case* I have some flare up from my injuries." Exhibit 7 (emphasis added). Taking into account the context in which the Certification was submitted to Fathers & Sons, the Certification did not make Fathers & Sons aware, nor would it make a reasonable person, aware that the employee needed an adjustment or modification to a job or the way the job is done. Reasonably construed, the July 12 Email and Certification were not a request for accommodation.

Rather, the July 12 Email and Certification was a request to put the proper paperwork in place in the event that Mr. Keefer needed to request partial payment through the PFML program. Mr. Keefer acknowledged that he wanted to establish "a claim number" so that if he needed to take time off in the future, the insurance company would have the claim so that he could obtain partial pay for a leave if it was needed. Mr. Keefer made it amply clear that his intent in submitting the July 12 Email and Certification was to ensure that if, in the future, he needed intermittent leave, he would have the paperwork in place to expedite the processing of a future, unanticipated request for leave and partial compensation through the PFML program. The distinction between requesting that paperwork be put in place and requesting an accommodation is driven home by the fact that Mr. Keefer filed the same Certification with his previous employer, Tommy Car, and *never requested or used intermittent leave for his disabilities*. His aim, at both Tommy Car and Fathers & Sons, was to plan for a contingency so that he might expedite a theoretical future PFML claim, not to request an adjustment or modification to a job or the way the job is done. The requirements for requesting an accommodation are, by design, quite minimal. However,

under these circumstances, the July 12 Email and Certification cannot reasonably be construed as a request (or reflect a need) for a reasonable accommodation for purposes of M.G.L. c. 151B.¹⁶

2. **Fathers & Sons was not on notice that Mr. Keefer needed an accommodation, nor should it have reasonably been on notice of such a need.**

If an employer knows, or reasonably should know, that an employee has a disability and needs a reasonable accommodation, its failure to offer one may not later be justified on the basis that the employee did not ask for one. Callander v. Big Lots Stores, Inc., 82 Mass. App. Ct. 1104, *1 n. 1 (2012) (1:28); Forest v. Wal-Mart, 23 MDLR 110, 117 (2001). In this case, Fathers & Sons neither knew, nor reasonably should have known, that Mr. Keefer needed any type of adjustment or modification to his job or the work environment because of a disability. First, as demonstrated, the July 12 Email and the Certification are not reasonably construed as requesting an accommodation. Second, Mr. Keefer's working history at Fathers & Sons did not put Fathers & Sons on notice that Mr. Keefer needed a reasonable accommodation because of a disability. There was no history of Mr. Keefer seeking, receiving, or needing an intermittent medical leave (or any other type of accommodation) while employed at Fathers & Sons that might have reasonably put the it on notice of a need for an accommodation. There was no pattern of self-help -- e.g. where an employee simply takes steps to accommodate their own disabilities so that they may perform the job -- that might have put Fathers & Sons on notice that Mr. Keefer needed an accommodation. MCAD & Joyce v. CSX Transportation, 39 MDLR 85, 91 (2017). Given these

¹⁶ There was no evidence that any of Mr. Keefer's health conditions rendered him incapable of making a request for an accommodation, which would have obviated a need for him to request an accommodation. Leach v. Commissioner of the Mass. Rehabilitation Comm'n., 63 Mass. App. Ct. 563, 566-567 (2005); Forest v. Wal-Mart, 23 MDLR 110, 117 (2001) (employer liable for failure to provide a reasonable accommodation even though there was no request for an accommodation by an employee with intellectual disabilities); Reed v. LePage Bakeries, Inc., 244 F.3d 254, 261 n. 7 (1st Cir. 2001) (where employee's disability prevents employee from requesting an accommodation, or where employee's need for an accommodation is obvious, different rules apply).

factors, Fathers & Sons was not on notice, nor would a reasonable employer have been on notice, that Mr. Keefer needed an accommodation.

To conclude, Mr. Keefer did not request (or need) a reasonable accommodation. Fathers & Sons was not on notice (nor should a reasonable employer in its position have been on notice) that Mr. Keefer needed an accommodation. For these independent reasons, I dismiss the claim that Fathers & Sons failed to reasonably accommodate Mr. Keefer's disabilities.

B. DISABILITY DISCRIMINATION

1. Nature of the Allegations

Mr. Keefer alleges that Fathers & Sons discriminated against him on the basis of his disabilities by terminating his employment on July 18, 2022. It is an unlawful practice for an employer to “dismiss from employment ... 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). Fathers & Sons' explanation for terminating Mr. Keefer was that it received numerous complaints from customers and employees, including Mr. Keefer's direct supervisor, about the way they were treated by Mr. Keefer.

This type of disability-based disparate treatment claim is a “pretext case.” Gannon v. City of Boston, 476 Mass. 786, 793-795 (2017).¹⁷ To prevail in a pretext case, Mr. Keefer must show that: (1) he is a member of a protected class, (2) he was subject to an adverse employment action;

¹⁷ A pretext case is a type of disability discrimination case where, as here, the employer denies that the employment action was motivated by the employee's disability and contends that the action was based on other conduct by the employee, such as insubordination, poor job performance or chronic tardiness. Gannon v. City of Boston, 476 Mass. 786, 793 (2017).

(3) the employer bore “discriminatory animus” toward the disability; and (4) animus was the reason for the action. Adams v. Schneider Electric USA, 492 Mass. 271, 280 (2023), citing Bulwer v. Mount Auburn Hosp., 473 Mass. 672, 680 (2016), quoting Lipchitz v. Raytheon Co., 434 Mass. 493, 502 (2001).¹⁸ This claim must be dismissed because Mr. Keefer has failed to prove animus and causation.

2. Analyses as to Discriminatory Animus and Causation

For the following reasons, I find that Mr. Keefer has not sustained his burden of proving that Fathers & Sons had disability-related discriminatory animus toward him, or that his termination was caused by such animus.

I was unable to determine the precise time and date that Fathers & Sons made the decision to terminate Mr. Keefer. Mr. Keefer argues that the decision to terminate was made at some point after the July 12 Email. Even assuming, without deciding, that the decision to terminate was made after Mr. Keefer’s disclosure of his disabilities in the July 12 Email and the Certification, that does not prove disability-related animus or causation when viewed in the context of the *other* events that occurred prior to and close in proximity to the termination. The termination was made one day before the close of Mr. Keefer’s 90-day probationary period. During the 90 days, Fathers & Sons received three written complaints from angry customers who described Mr. Keefer as argumentative, accusatory, and unwilling to listen. Also, during the brief probationary period, Fathers & Sons received complaints from two of Mr. Keefer’s direct reports that Mr. Keefer was rude and argumentative, and information from his supervisor that she found Mr.

¹⁸ I have not utilized the McDonnell Douglas burden-shifting construct, as this case is before me as the ultimate factfinder, rather than on motion for summary judgment. Adams v. Schneider Electric, 492 Mass. 271, 281 n. 5 (2023).

Keefer angry and defensive whenever she tried to coach him about the feedback she received from customers and employees.

Seven days before the termination, on July 11, 2022, Fathers & Sons received its third written customer complaint from the daughter of an elderly customer – one which sounded a note that echoed the previous complaints, i.e. that Mr. Keefer failed to provide appropriate customer service resulting in the submission of an angry written customer complaint. Reviewed contextually - and in conjunction with the complaints by two of Mr. Keefer's subordinates, concerns by Mr. Keefer's supervisor and the three written customer complaints about Mr. Keefer – a decision to terminate Mr. Keefer, even if made after the submission of the July 12 Email and Certification, with the actual termination occurring six days after the submission is insufficient to prove that the decision was motivated by disability-related animus. Instead, the record supports Fathers & Sons' position that its decision to terminate Mr. Keefer was based on his difficult interpersonal interactions with customers, his supervisor and his direct reports during his brief employment as a probationary employee

In finding that Mr. Keefer failed to prove discriminatory animus or causation, I have considered the following evidence, but as detailed below, find it insufficient to prove discriminatory animus or causation: (1) Fathers & Sons did not issue any written feedback to Mr. Keefer about his job performance; (2) Ms. Cantoni sent him two appreciative texts; (3) Mr. Keefer received bonuses; (4) Ms. Cantoni sent a text to Mr. Keefer on July 11, 2022 effectively allowing Mr. Keefer to book a hotel for training and permitted Mr. Keefer to borrow a car for the training; (5) the positive comment by Robert Cartelli, Damon Cartelli's father, regarding Mr. Keefer's management of the Service Department; and (6) the differences in the Separation Form

retained by Fathers & Sons in Mr. Keefer's personnel file and the Separation Form issued to Mr. Keefer at the time of termination.

First, Mr. Keefer's argument that Fathers & Sons did not have legitimate concerns about Mr. Keefer's work performance because it did not issue a written warning to him or document these concerns in a performance evaluation is not persuasive. Fathers & Sons received three written complaints from customers, all of which raised specific concerns about the poor customer service they experienced from Mr. Keefer. Each of these complaints would cause a reasonable employer serious concerns about its employee, let alone a recently hired, probationary employee. The fact that these concerns were not *further* documented by way of a written warning or a performance evaluation does not undermine Fathers & Sons' reasonable concerns about Mr. Keefer's performance. Moreover, the absence of a written warning or performance evaluation is explained by Fathers & Sons' policy not to issue written feedback, including written warnings or performance evaluations, during its employees' probationary period. While Mr. Keefer testified that he was unaware that Fathers & Sons had any concerns about his performance, I have found this denial lacking in credibility.

Second, Ms. Cantoni's encouraging June 20 and June 30, 2022 texts do not undermine Fathers & Sons' contention that the complaints it received caused it concern leading to the decision to terminate Mr. Keefer. These texts were not an endorsement of Mr. Keefer's work performance but rather, quick, reassuring texts, sent before Ms. Cantoni became aware of the second and third customer complaints and before her unsettling interaction with Mr. Keefer on July 7, 2022 about his cell phone use. Further, the June 20, 2022 text was sent when Ms. Cantoni was in an emotionally vulnerable state.

Third, Mr. Keefer's receipt of a bonus does not contradict Fathers & Sons reasons for terminating Mr. Keefer as I have found that the bonus was not based on Mr. Keefer's individual performance, but rather, department-wide success.

Fourth, I address the evidence regarding training. Ms. Cantoni's response to Mr. Keefer's email regarding booking a hotel appears to demonstrate that at the time it was sent (July 11, 2022), Ms. Cantoni expected that Mr. Keefer would be going to the training the following week. This is consistent with the fact that Ms. Cantoni had not yet received the Daughter/Mother Complaint which was received later that same day and which, even taken alone, was a strong indication of Mr. Keefer's lack of satisfactory job performance. It is puzzling that Fathers & Sons did not retrieve the "loaner" car (that it permitted Mr. Keefer to borrow between July 11, 2022 and July 13, 2022) prior to termination. However, this does little to advance Mr. Keefer's contention that the reason that Fathers & Sons terminated him was because he disclosed his disabilities on July 12, 2022.

Fifth, Robert Cartelli's compliment to Mr. Keefer on his management of the Service Department does not contradict Fathers & Sons' position that over time, it developed a serious concern about Mr. Keefer's communication style with customers, supervisor and employees.

Finally, the differences in the two Separation Forms (Exhibits 8 and 9) do not evidence inconsistent reasons for the termination of Mr. Keefer's employment. Nor do the differences between Exhibits 8 and 9 reflect an effort to cast blame on Mr. Keefer, or cover up the real, discriminatory reason why Mr. Keefer was terminated. Had Fathers & Sons changed records to describe the reason for the termination as "performance" based, that would have constituted the type of inconsistency that may prove pretext for discrimination, i.e. changing a form which previously stated no reason for termination to state a reason for the termination in alignment with

the employer's ("false") reason. See Adamson v. Walgreens Co., 750 F.3d 73, 79 (1st Cir. 2014) ("pretext can be shown by such weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in the employer's proffered legitimate reasons for its action that a reasonable factfinder could rationally find them unworthy of credence and hence infer that the employer did not act for the asserted non-discriminatory reasons"); Mkparu v. Boston Medical Center, 100 Mass. App. Ct. 1129 *5 (2022) (1:28) (pretext for discrimination may include evidence of "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions **in the employer's proffered legitimate reasons for its action**" (citation omitted) (emphasis added); Locklear v. Argenx US, Inc., 105 Mass. App. Ct. 1115, *4 (2025) (1:28). This is not the case. The differences between Exhibits 8 & 9 appear to reflect poor record-keeping, potentially, due to the change in computer systems – but not inconsistencies that cast doubt on the reasons Fathers & Sons has offered for terminating Mr. Keefer's employment. Both Exhibits 8 and 9 state the reason for the termination was "other." I reject Mr. Keefer's argument that the discrepancies between Exhibits 8 and 9 prove that Fathers & Sons was attempting to disguise a discriminatory motive for the termination or reflect animus.

Further, Mr. Keefer did not offer comparative evidence, e.g. Fathers & Sons' retention of a non-disabled probationary employee in a similar position to Mr. Keefer's – i.e. who also received multiple written customers complaints, verbal complaints from subordinates, and similarly clashed with his supervisor. Matthews v. Ocean Spray Cranberries, Inc., 426 Mass. 122, 129 (1997) (most probative means of establishing that the termination was a pretext for discrimination is to demonstrate that similarly situated employees were treated differently). In addition, there was no evidence of any employee at Fathers & Sons expressing hostility toward Mr. Keefer's disabilities or individuals with disabilities. On the contrary, there was evidence that

Fathers & Sons accommodated and treated favorably Mr. Keefer's predecessor (who was disabled), had at least one other employee with a disability who Fathers & Sons had accommodated, and accommodated Mr. Keefer when he sustained serious injuries in a car accident prior to his start date by agreeing to delay his start date more than 7 weeks.

There was no evidence that Fathers & Sons departed from past practice. Fathers & Sons terminated other employees in their probationary period, and it terminated employees due to customer complaints.

For all these reasons, I find that the reason for the termination was not the disclosure of Mr. Keefer's disabilities in the July 12 Email and Certification, but instead, genuine concern regarding the multitude of complaints that Fathers & Sons had received regarding the way Mr. Keefer treated customers, fellow employees and Mr. Keefer's supervisor – all of which were received in less than three months. For these reasons, Mr. Keefer has not established disability-related animus or causation, and I dismiss the claim that Fathers & Sons is liable for disparate treatment disability discrimination when it terminated Mr. Keefer.

C. VETERAN STATUS DISCRIMINATION

Massachusetts law prohibits an employer "by himself or his agent, because of . . . status as a veteran of any individual to . . . discharge from employment such individual . . ." M.G.L. c. 151B, § 4(1). Fathers & Sons knew Mr. Keefer was a veteran when it hired him. Moreover, the hiring decision was motivated in part by Mr. Keefer's veteran status, and the positive attributes Fathers & Sons felt this experience would bring to the job. I do not infer from Ms. Cantoni's testimony that Mr. Keefer's body language when she coached him during the July 7, 2022 discussion made her uncomfortable and fearful that she viewed Mr. Keefer through "a lens of bias rooted in his veteran status" as Mr. Keefer argues in his post-hearing brief. I credit her testimony that she

selected Mr. Keefer in part, due to his military background and that she found Mr. Keefer angry and defensive when she coached him about the feedback she received from customers and employees. Additionally, I have found persuasive, the reasons detailed in Section II(B) that Fathers & Sons contends motivated the termination. As such, Mr. Keefer has not established that Fathers & Sons' terminated his employment because he was a veteran, and I dismiss the claim of veteran status discrimination.

D. RETALIATION

To succeed on a claim of retaliation under M.G.L. c. 151B, § 4(4), a person must prove that: (1) he reasonably and in good faith believed that the respondent was engaged in wrongful discrimination; (2) he acted reasonably in response to that belief through acts meant to protest or oppose such discrimination (protected activity); (3) a person took adverse action against him; and (4) the adverse action was a response to the protected activity.¹⁹ Verdrager v. Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, P.C., 474 Mass. 382, 405-406 (2016); Ambroise v. Law Office of Howard Kahalas & Howard Kahalas, 45 MDLR 67, 76, n. 13 (2023); Massachusetts Commission Against Discrimination Guidelines on Harassment in the Workplace, VIII.A. (July 2024).

At the time he sent the July 12 Email and Certification, Mr. Keefer could not reasonably and in good faith believe that Fathers & Sons was engaged in wrongful discrimination. Further, he did not engage in protected activity. Requesting a reasonable accommodation is protected activity. Moore v. Industrial Demolition LLC, 138 F.4th 17, 33 (2025), citing Wright v. CompUSA, Inc., 352 F.3d 472, 478 (2003); MCAD & Pereira v. JS International Inc. d/b/a JSI

¹⁹ This prong of retaliation has also been described as “causation” which requires a plaintiff to show “a causal connection between the protected conduct and the adverse action.” Psy-Ed Corp. v. Klein, 459 Mass. 697, 707 (2011); Mole v. University of Mass., 442 Mass. 582, 591-592 (2004).

Cabinetry, 42 MDLR 1, 6 (2020) (citations omitted). However, as demonstrated, Mr. Keefer did not request a reasonable accommodation, and therefore, did not engage in protected activity. For these independent reasons, his claim of retaliation fails.²⁰

V. ORDER

For the reasons detailed above, and pursuant to the authority granted me under Section 5 of Chapter 151B, I dismiss this Complaint in its entirety.

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 within 10 days of receipt of this decision and file a Petition for Review within 30 days of receipt of this decision. 804 CMR 1.23 (2020). If a party files a Petition for Review, the other party has the right to file a Notice of Intervention within ten days of receipt of the Petition for Review and shall file a brief in reply to the Petition for Review within 30 days of receipt of the Petition for Review. 804 CMR 1.23 (2020) All filings referenced in this paragraph shall be made with the Clerk of the Commission with a copy served on the other parties.

So ordered this 6 th day of November, 2025.

Simone Liebman

Simone R. Liebman
Hearing Officer

²⁰ Retaliation for “exercising any right to which such employee is entitled [under the PFMLA] or with the purpose of interfering with the exercise of any right to which such employee is entitled under [the PFMLA]” is unlawful. M.G.L. c. 175M, § 9(a). An employee or former employee aggrieved by a violation of this statutory prohibition “may, not more than 3 years after the violation occurs, institute a civil action in the superior court.” M.G.L. c. 175M, § 9(d). The MCAD does not have enforcement authority for the PFMLA.