

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
RICHARD C. LACROIX,
Complainants

v.

DOCKET NOS. 08-BEM-03306
10-BEM-00259

HOLLISTON PUBLIC SCHOOLS and
BRADFORD JACKSON,
Respondents

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Betty E. Waxman in favor of Respondents Holliston Public Schools and Bradford Jackson. Following an evidentiary hearing, the Hearing Officer concluded that Respondents were not liable for discrimination based on disability (failure to provide a reasonable accommodation) or retaliation in violation of M.G.L. Chapter 151B § 4 (¶4) and (¶16). Complainant appealed to the Full Commission. For the reasons stated below, we affirm the Hearing Officer's decision.

STANDARD OF REVIEW

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

which is defined as “...such evidence as a reasonable mind might accept as adequate to support a finding...” Katz v. MCAD, 365 Mass. 357, 365 (1974). M.G.L. c. 30A.

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 Guinn 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). The role of the Full Commission is to determine whether the decision under appeal was based on an error of law, or whether the decision was arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with the law. See 804 CMR 1.23.

BASIS OF THE APPEAL

Complainant has appealed the decision on the grounds that he was unreasonably denied assistance in the form of a reasonable accommodation which would have allowed him to perform the essential functions of his job; that Respondents failed to participate in an interactive process regarding the requested accommodation; that the accommodation he received was a form of harassment; and that the Hearing Officer’s findings were factually and legally erroneous and not supported by substantial evidence. Complainant also argues that Respondents retaliated against him after he filed his complainant and following his appeal of the Commission’s initial finding of Lack of Probable Cause. After careful review of the record we find no material errors with respect to the Hearing Officer’s findings of fact and conclusions of law. We properly defer to the

Hearing Officer's findings that are supported by substantial evidence in the record. See Quinn v. Response Electric Services, Inc., 27 MDLR at 42. The standard does not permit us to substitute our judgment for that of the Hearing Officer even if there is evidence to support the contrary point of view. See O'Brien v. Director of Employment Security, 393 Mass. 482, 486 (1984).

Complainant argues that the Hearing Officer erred by making certain findings of fact that are not supported by substantial evidence, omitted facts, and should have credited his testimony over the testimony of respondents.¹ It is well established that the Hearing Officer is in the best position to judge the credibility of witnesses and to make determinations regarding the weight to give such evidence. Ramsdell v. W. Massachusetts Bus Lines, Inc., 415 Mass. 673, 676 (1993) (recognizing that credibility is an issue for the hearing officer and not for the reviewing court, and that fact-finder's determination had substantial support in the evidence). In this case, the Hearing Officer documented in her decision evidence that she found significant, and when she made a finding where there was contradictory evidence in the record she addressed the contradictory evidence in her findings. Complainant's disagreement 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. Id. (review requires deferral to administrative agency's fact-finding role, including its credibility determinations). The Full Commission defers to the determinations of the Hearing Officer. See Guinn 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

¹ Complainant makes several arguments concerning the Hearing Officer's ability to make determinations about his credibility and the Hearing Officer's findings regarding his request for an accommodation and the interactive process required by the MCAD regulations. Complainant argues that the Hearing Officer misconstrued the evidence and should have credited his testimony. We disagree. There is substantial evidence in the record to support the Hearing Officer's findings that the accommodation requested was not reasonable and that it was Complainant who declined to engage in the interactive process.

witnesses, her findings are entitled to deference). This standard of review does not permit us to substitute our judgment for that of the Hearing Officer in considering conflicting evidence and decide disputed issues of fact. We will not disturb the Hearing Officer's findings of fact, where, as here, they are fully supported by the record.

Complainant also argues that the Hearing Officer misrepresented his request for a reasonable accommodation as she stated that the request was "open ended, for an indefinite period of time with no accountability." We disagree with Complainant's assertions, as there is substantial evidence in the record that supports the Hearing Officer's findings. The Hearing Officer finds that the request was "open ended, for an indefinite period of time with no accountability" stating that "Complainant did not provide the amount of time he sought to work at home daily, did not address the length of time he wanted the modified schedule to remain in effect, and did not explain why writing reports at home would be less tiring than doing so at school" and "[r]ather than flesh out the parameters" of his proposed accommodation asserted that he was a "professional." Complainant's disagreement with the Hearing Officer's interpretation of his request and her determination that this request was not a reasonable accommodation in this case does not mean that the Hearing Officer misinterpreted or misconstrued the evidence presented. Instead, we find that the Hearing Officer's interpretation was supported by substantial evidence in the record. Thus, we will not disturb the Hearing Officer's factual findings where, as here, they are supported by credible testimony in the record.

Complainant also apparently argues that the Hearing Officer erred in finding that Complainant failed to engage in the interactive process because at the probable cause stage of this matter the Investigating Commissioner found that there was sufficient evidence that

Respondent failed to engage in the interactive process.² This argument fails to acknowledge the different standards applied at the consecutive stages of an MCAD administrative proceeding. For a claim to move forward past the investigation stage and be certified for a public hearing there must be a finding of probable cause. “A finding of Probable Cause shall be made when, after appropriate investigation, the Investigating Commissioner concludes that there is sufficient evidence upon which a fact-finder could form a reasonable belief that it is more probable than not that the respondent committed an unlawful practice. In making this determination, the investigating commissioner or designee thereof shall not resolve disputes involving genuine issues of material fact.” 804 CMR 1.15(7)(a). This is only a preliminary decision made before a Hearing Officer’s evaluation of the written evidence and testimony presented at public hearing. The probable cause finding is not dispositive and a Hearing Officer, after review of all the evidence, must make an independent finding regarding issues of material fact based on the evidence presented at the public hearing. In this case the Hearing Officer determined that “it was Complainant who prevented a meaningful discussion from taking place.” Respondent offered to discuss other ways to address Complainant’s condition but Complainant declined to meet to discuss alternatives, insisting that his request was reasonable. These findings are supported by sufficient evidence in the record; therefore, we will not disturb the Hearing Officer’s findings.

We have carefully reviewed Complainant’s grounds for appeal and the record in this matter and have weighed all the objections to the decision in accordance with the standard of review herein. As a result of that review, we find no material errors of fact or law with respect to the Hearing Officer’s findings of fact and conclusions of law. We find the Hearing Officer’s conclusions that Respondents did not deny a reasonable accommodation to Complainant or

² The Investigating Commissioner initially made a finding of lack of probable cause concerning Complainant’s first complaint, but reversed the finding following a preliminary LOPC appeal hearing.

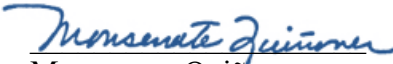
retaliate against him for the filing of a Commission complaint were supported by substantial evidence in the record and we defer to them. With regard to Complainant's challenges to the Hearing Officer's determinations of credibility, we reiterate that it is well established that the Full Commission defers to these determinations, which are the sole province of the fact finder. Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005).


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

ORDER

For the reasons set forth above, we hereby affirm the decision of the Hearing Officer. This Order represents the final action of the Commission for purposes of M.G.L. c. 30A. Any party aggrieved by this final determination may contest the Commission's decision by filing a complaint in superior court seeking judicial review, together with a copy of the transcript of proceedings. Such action must be filed within thirty (30) days of service of this decision and must be filed in accordance with M.G.L. c. 30A, c. 151B, §6, and the 1996 Standing Order on Judicial Review of Agency Actions, Superior Court Standing Order 96-1. Failure to file a petition in court within thirty (30) days of service of this Order will constitute a waiver of the aggrieved party's right to appeal pursuant to M.G.L. c. 151B, §6.

SO ORDERED³ this 22 day of November, 2019


Monserrate Quinones
Commissioner


Neldy Jean-Francois
Commissioner

³ Chairwoman Sunila Thomas George was the Investigating Commissioner in this matter, so did not take part in the Full Commission Decision. See 804 CMR 1.23(1)(c).

