

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
CYNTHIA LEWIS,
Complainants

v.

DOCKET NO. 09-BEM-00394

MASSACHUSETTS DEPARTMENT
OF CORRECTION,
Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Judith Kaplan in favor of Respondent Massachusetts Department of Correction. Following an evidentiary hearing, the Hearing Officer concluded that Respondent was not liable for discrimination based on race, color, and gender in violation of M.G.L. c. 151B, § 4(1). Complainant has appealed to the Full Commission. For the reasons discussed below, we affirm the Hearing Officer's decision.

STANDARD OF REVIEW

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

finding....” Katz v. MCAD, 365 Mass. 357, 365 (1974); M.G.L. c. 30A, § 1(6).

It is the Hearing Officer’s responsibility to evaluate the credibility of witnesses and to weigh the evidence when deciding disputed issues of fact. The Full Commission defers to these determinations of the Hearing Officer. See, e.g., School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). Fact-finding determinations are within the sole province of the Hearing Officer who is in the best position to judge the credibility of witnesses. See Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005); MCAD and Garrison v. Lahey Clinic Medical Center, 39 MDLR 12, 14 (2017) (because the Hearing Officer sees and hears witnesses, her findings are entitled to deference). It is nevertheless the Full Commission’s role to determine whether the decision under appeal was supported by substantial evidence, among other considerations, including whether the decision was arbitrary or capricious or an abuse of discretion. 804 CMR 1.23(1)(h).

BASIS OF THE APPEAL

Complainant has appealed the Hearing Officer’s decision on the grounds that the Hearing Officer’s findings were not supported by substantial evidence. Specifically, Complainant contends that the Hearing Officer ignored evidence in the record that established a racist and sexist work environment and that the Hearing Officer erred in determining that Respondent was not liable for discrimination on the basis of race and gender. After careful review we find no material errors with respect to the Hearing Officer’s findings and conclusions of law. We properly defer to the Hearing Officer’s findings as they are supported by substantial evidence in the record. See Quinn v. Response Electric Services, Inc., 27 MDLR at 42.

Complainant argues that the Hearing Officer erred by failing to conclude that Respondent was liable for discrimination on the basis of race, color, and gender. Specifically, Complainant

argues that the Hearing Officer's determination is not supported by substantial evidence in the record.¹ We disagree.

The Hearing Officer determined that Complainant failed to establish that similarly situated co-workers not in her protected class were treated differently than she was. The Hearing Officer found that the evidence did not establish that Complainant was subjected to harsher discipline than similarly situated white male officers; instead it showed that white male officers received comparable discipline for similar instances of misconduct. This finding is supported by substantial evidence in the record, specifically the spreadsheet showing the discipline imposed on Respondent's employees from 2006 through 2009 (Complainant's Exhibit 19), the disciplinary records of white male officers who received discipline for rule violations similar to the rules violated by Complainant (Respondent's Exhibit 55), and the credited testimony of Respondent's witnesses about the discipline they received for their misconduct.

The Hearing Officer further determined that Respondent articulated legitimate non-discriminatory reasons for the disciplinary actions it took against Complainant, and Complainant did not show that these reasons were pretext. Respondent asserted that it disciplined Complainant in the following ways: a one-day suspension for Complainant's insubordination, a three-day suspension for Complainant's false allegations about and repeated misuse of the off-site parking tardiness system, and a thirty-day suspension for her failure to respond to an

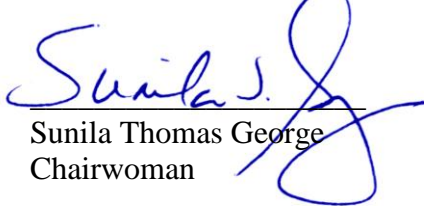
¹ To the extent that Complainant argues that the Hearing Officer erred by making findings of fact that are not supported by substantial evidence, failed to give certain evidence substantial weight, and improperly credited the testimony of some witnesses over others in making her findings of fact, we reiterate that absent an abuse of discretion, error of law, or a determination that the decision was arbitrary or capricious, the Full Commission defers to the Hearing Officer's credibility determinations and findings of fact. School Committee of Chicopee v. MCAD, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007 at 1011. This standard does not permit us to substitute our judgment for that of the Hearing Officer when there is conflicting evidence and testimony, as it is the Hearing Officer's responsibility to weigh the evidence and decide disputed issues of fact. See O'Brien v. Director of Employment Security, 393 Mass. 482, 486 (1984). We will not disturb Hearing Officer's findings of fact, where, as here, they are fully supported by substantial evidence in the record.


emergency situating involving an officer in need of assistance and her refusal to obey an order to assist. The disciplinary actions taken by Respondent against Complainant were supported by evidence in the record regarding the severity of Complainant's misconduct and evidence that Respondent took similar disciplinary actions against white male officers for similar misconduct. There was no evidence to suggest that Respondent's imposition of discipline was motivated by discriminatory animus based on race or gender. The Hearing Officer did not err or abuse her discretion in determining that Respondent was not liable for discrimination based on race, color, or gender.

ORDER

For the reasons set forth above, we hereby affirm the decision of the Hearing Officer. 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 ORDERED² this 7th day of June, 2019


Sunila Thomas George
Chairwoman


Neldy Jean-Francois
Commissioner

² Commissioner Monserrate Quiñones did not participate in the Full Commission deliberations concerning this matter. The Investigating Commissioner, Chairwoman Sunila Thomas George, participated in this matter in order to create a quorum. See 804 CMR 1.23(1)(c).