

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

---

MCAD and PATRICIA A. MCNAMARA,  
Complainants

v.

Docket No. 07 BEM 01302;  
07 BEM 01303

THE GENERAL HOSPITAL CORPORATION,  
Respondent

---

For Complainant McNamara: Michael M. McArdle, Esq. and G. Gregory Howard, Esq.  
For Respondent: Herbert L. Holtz, Esq., Eugene J. Sullivan, Esq. and Amie Geary, Esq.

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On May 14, 2007, Patricia A. McNamara (“Complainant”) filed a complaint with the Massachusetts Commission Against Discrimination (“MCAD”) charging that the General Hospital Corporation (“MGH” or “Respondent”), Partners Healthcare Systems, Inc., Bulfinch Temporary Service Inc., and individually-named employees Jennifer Walker and Julie Brenman discriminated against her on the basis of: 1) disability by failing to accommodate her visual impairments caused by a prosthetic eye and 2) retaliation by declining to re-hire her in violation of M.G.L. c. 151B, section 4, subsections (4), (4A), and (16) after she resigned and executed an Agreement with Respondent on March 27, 2006 relative to her resignation. Complainant was originally hired in February of 2003 as a temporary patient services coordinator (PSC) by Bulfinch

Temporary Service, Inc., an in-house temporary staffing agency for MGH and its Partners Healthcare Systems affiliates.

On July 31, 2008, the Commission issued a Finding of Split Decision, dismissing Complainant's claim regarding Respondents' alleged failure to provide requested accommodations in the Orthopedic Oncology Department as barred by the Statute of Limitations and by her March 27, 2006 Agreement with MGH, dismissing Partners Healthcare Systems, Inc. and Bulfinch Temporary Service, Inc. as Respondents and finding Lack of Probable Cause in relation to the individually-named Respondents Jennifer Walker and Julie Brenman. The Commission found probable cause for disability and retaliation claims against MGH in regard to subsequent unsuccessful attempts to be rehired. The Commission certified the case for public hearing on August 13, 2009.

A public hearing was conducted on February 23 and 26, 2010, March 3, 2010, April 2, 2010, and July 27 and 28, 2010. The following individuals testified at the public hearing: Complainant, Robert A. Rosenthal, Dr. Michael Jenike, Susan Horan, and Jennifer Walker. The parties introduced thirty-seven (37) joint exhibits into evidence, and Complainant submitted an additional thirty-seven (37) exhibits into evidence.

Based on all the relevant, credible evidence and the reasonable inferences drawn therefrom, I make the following findings and conclusions.

## II. FINDINGS OF FACT

1. Complainant was born in 1957. In 1981, she injured her right eye in an accident. Following the accident, Complainant's right eye was enucleated (removed). Complainant wears a prosthetic right eye. She also suffers from a variety of health issues including colitis, heartburn, depression, a cataract in her left eye, and flat

feet. Joint Exhibits 10 and 26.

2. Complainant began to work as a medical secretary/administrative assistant in 1978 and held various positions in the medical support field until 2006. In those jobs Complainant scheduled appointments, accepted referrals, obtained pre-approvals, processed insurance, handled co-payments, typed, filed, and engaged in computer activities. She became a Certified Medical Assistant in May of 1997.

Complainant's Exhibit 3.

3. Respondent MGH is a teaching hospital in Boston, MA that is affiliated with Harvard Medical School. It is the third largest hospital in the United States and is open 24 hours per day, 365 days per year.
4. Respondent operates an in-house temporary employment service for the hospital and its Partners Healthcare Systems affiliates. Transcript IV at 13, 88. The service is known as Bulfinch Temporary Service ("Bulfinch"). Transcript IV at 88. Bulfinch's Manager is Susan Horan, who reports indirectly to MGH's Director of Human Resources. *Id.* at 88, 91, 94. Bulfinch employs ten people: Horan, three staffing specialists/recruiters, three human resource assistants, a front desk assistant, a courier, and two part-time staff. Transcript IV at 18.
5. Bulfinch provides temporary staff on an emergency basis to MGH departments and to the following Partners affiliates: Spaulding Rehabilitation Hospital, Brigham and Women's Hospital, and Cape Cod Hospital. Transcript V at 89. Bulfinch makes, on average, 2,000 temporary placements per year. Transcript IV at 17, 89. The placements range from a minimum of four hours to twelve weeks or longer. Transcript IV at 25. Temporary workers supplied by Bulfinch do not receive

medical benefits or vacation benefits. Transcript IV at 25-26. In or around 2006, Bulfinch maintained a pool of approximately 1,600 candidates for temporary employment.

6. One of the positions filled by Bulfinch is Patient Service Coordinator (PSC). Bulfinch maintains a pool of approximately 200 candidates for temporary placement into PSC positions. The position description of a PSC lists the following job responsibilities: greet and direct patients, collect co-pays, answer the phones, schedule appointments, track referrals, file, and update medical records. Joint Exhibit 5. One of the job qualifications for the position is literacy in Microsoft Office applications. Id. The position of PSC has three levels: I's, II's, and III's. The higher two levels perform more complex activities and may supervise lower-level positions.
7. Out of the pool of 1,600 on-call temporary employees maintained by Bulfinch, approximately 1,000 work in a given week. Transcript IV at 26. According to Bulfinch Manager Susan Horan, if a member of the Bulfinch pool does not receive work from MGH or a Partners affiliate, the pool member is not paid but is eligible to collect unemployment benefits. Transcript IV at 26, 166. Bulfinch limits the number of people in its pool to an amount which will meet hospital needs but will not create unnecessary administrative and training costs. Transcript IV at 27. In 2006, individuals were not permitted to remain in the Bulfinch pool for more than six months without working. Transcript IV at 47; Joint Exhibit 6.<sup>1</sup> Candidates for temporary employment who are accepted into the Bulfinch pool must be available

---

<sup>1</sup> The six-month policy was subsequently changed to a year in Joint Exhibit 6, a document published in February of 2007. Transcript IV at 47.

to work from 8:00 a.m. to 5:00 p.m. on Mondays through Fridays, willing to move from position to position, and have the appropriate skill sets. Transcript IV at 30, 33; Transcript V at 14-15, 31-32; Transcript V at 15. According to Horan, placement in one assignment does not guarantee placement in future assignments nor does it give the candidate a preference for future assignments. Transcript IV at 28, 48. If a department requests a particular person to fill a temporary spot, Bulfinch will comply with the request provided the person is available and active in the Bulfinch pool. Transcript IV at 28-29.

8. Horan testified that some temporary positions become permanent. When that happens, the Bulfinch employee filling the MGH position on a temporary basis must apply for the job through the hospital's regular application process. Transcript IV at 43-44. Between April and December of 2006, 42 Bulfinch employees in temporary administrative positions such as PSCs, staff assistants, administrative assistants, and human resource assistants transitioned into permanent positions. Joint Exhibit 19.
9. In January of 2003, Complainant submitted her resume to Bulfinch. Transcript I at 61. Complainant had positive evaluations from previous work at the Beth Israel Deaconess Medical Center. Complainant's Exhibits 4, 5 & 6. A Bulfinch recruiter interviewed Complainant, tested her, and signed her on as a member of the Bulfinch pool of temporary employees. Complainant secured a temporary position earning \$19.09 per hour. Transcript I at 61-63. Between February of 2003 and March of 2004, Complainant filled 15 temporary PSC positions at MGH. Complainant's Exhibit 7; Transcript I at 68-69. According to Bulfinch Manager Susan Horan,

Complainant's eye condition was accommodated while she was on temporary assignments by the provision of a large computer screen and a glare monitor.

Transcript IV at 51. Complainant received positive evaluations in the 15 temporary PSC assignments. Complainant's Exhibit 8; Transcript IV at 52. Complainant testified that she hoped that she would "fall into" a permanent job from a temporary position. Transcript I at 65.

10. In March of 2004, Complainant accepted a permanent position as a PSC II in MGH's Orthopedic Oncology Department earning \$23.00 per hour. Transcript I at 74; III at 206-207; Complainant's Exhibit 37, p. 5.<sup>2</sup> The Department Head was Dr. Francis Hornicek.

11. As a PSC II in the Orthopedic Oncology Department under Dr. Hornicek, Complainant reported initially to "Lauren" and after November of 2004, to Julie Brenman, the Department's administrative manager. Complainant's Exhibit 37, p. 5, para. 11. Complainant testified that she scheduled patients, made travel arrangements for the medical staff, worked with pharmaceutical representatives, helped prepare for conferences, and located CAT scans and MRIs. Transcript I at 75. Complainant testified that she took the train to work, carpooled with friends, and/or used taxis. Transcript I at 77. She described her attendance as "very, very good." Id.

12. Dr. Hornicek wrote Complainant a letter of recommendation dated November 14, 2005. Complainant's Exhibit 9.

13. Over a period of time, Complainant's relationship with Brenman deteriorated.

---

<sup>2</sup> Complainant's Exhibit 37 was accepted de bene at the public hearing. After due consideration, it will be admitted for substantive purposes as well as for impeachment.

Complainant testified that she began to consider leaving the Orthopedic Oncology Department because Brenman's expectations were not consistent with Dr. Hornicek's and because Brenman was asking her to do her own job plus additional work created by other staff who were leaving. Transcript I at 84-85. Around February of 2006, Complainant began to experience job-related stress which caused her to have visual problems and pains in her arm and hand. Id. at 85; 93; Complainant's Exhibit 10. Complainant described her mental and emotional state at that time as "awful," with issues involving her eye, emotional stress, and pain in her arms. Transcript III at 166. Complainant testified that she told the hospital's human resource representative Marc Fournier, that she felt pulled in different directions and that it was causing her severe medical issues in her eye. Transcript I at 87.

14. Dr. Michael Jenike, Complainant's psychiatrist since 1981, testified at the public hearing that Complainant became severely disabled and unable to work as of January 15, 2006. Transcript II at 115-119; Joint Exhibit 23.
15. Complainant took a medical leave of absence commencing on February 2, 2006. Transcript III at 188. In order to initiate the leave, Complainant filled out a Leave of Absence Request Form stating that visual problems and stress were the reasons for her leave. Complainant's Exhibit 11 & 13. The form specifies that, "there is no guarantee of re-employment following an inactive leave of absence." Id. Nonetheless, Complainant testified that she expected to take off time in order to deal with medical issues and then return to another position at MGH or go back into Bulfinch's temping pool. Transcript I at 88-89, 95.

16. Complainant contacted an attorney in late February of 2006 to pursue legal action relating to claims against MGH's Orthopedic Oncology Department for alleged disability and age discrimination. Complainant, through counsel, charged Respondent with disability discrimination in correspondence of March 1, 2006. The parties reached an "Agreement" on March 27, 2006. Joint Exhibit 1. The Agreement states that Complainant resigned from her position as an Administrative Assistant in the Department of Orthopedic Oncology effective March 10, 2006, that she would receive severance pay, that MGH would not contest Complainant's application for unemployment benefits, that MGH HR representative Marc Fournier would provide Dr. Hornicek's letter of recommendation to prospective employers,<sup>3</sup> that Complainant could, in the future, re-apply for employment with MGH and its affiliates including temporary employment, and that Complainant agreed to release MGH from any and all claims arising out of her employment by MGH and its termination including disability and age discrimination claims. Id. The Agreement did not contain a promise of re-employment in the future. Transcript III at 110-111.
17. A short time after the Agreement was signed, Fournier left MGH. Complainant was not informed that Fournier had left Respondent's employ. Id. at 107.
18. No one at Bulfinch at any time during the relevant events in this case had any knowledge about Complainant's Agreement with MGH. Complainant's Exhibit 37, p. 7, para. 22 and p. 9, para. 25; Transcript IV at 54, 204; V at 36, 126, 218.
- Bulfinch Manager Susan Horan testified that it was not until Complainant filed her MCAD complaint that Horan learned about Complainant's resignation from the

---

<sup>3</sup> The Hornicek letter attached to Joint Exhibit 1 is dated March 16, 2006. It is identical to the letter, dated November 14, 2005, that Complainant provided as Complainant's Exhibit 9.



Orthopedic Oncology Department in March of 2006. Transcript IV at 205.

Bulfinch recruiter Jennifer Walker testified that she was unaware that Complainant had taken a leave of absence from MGH in 2006, that she never discussed Complainant's prior employment with Oncology Department Manager Julie Brenman, and that she never discussed Complainant's Agreement with HR Manager Mark Fournier or HR Generalist Alan Greene. Transcript V at 36, 127, 139-140; Complainant's Exhibit 37.

19. Shortly after Complainant left her permanent job in the Orthopedic Oncology Department in early 2006, Complainant began to look for an apartment near a train station so that when she re-commenced working, she would be able to commute to work without having to drive. Transcript I at 112. In April of 2006, she found a rental unit in a house in Andover, MA that was located near a train station.<sup>4</sup> Transcript I at 112-113, 134.

20. Complainant testified that her physical problems involving stress and her eyes improved while she was out on leave in early 2006 and that in April of 2006, she sought to work again. Transcript I at 113, 137; III at 168. Complainant contacted Bulfinch in April or May of 2006 relative to finding a temporary position. Transcript III at 168. Complainant also attended career counseling sessions at Valleyworks Career Center, a work program affiliated with the Massachusetts Division of Unemployment Assistance, networked with friends and acquaintances, looked for jobs online and in newspapers, worked for a period of time in 2006 in a

---

<sup>4</sup> The apartment into which Complainant moved was sold several months after Complainant's rental began and the new owner forced Complainant to move prior to expiration of her lease. Complainant had to relocate into a residential hotel in Methuen, which led to a lawsuit against her former landlord. Complainant obtained a monetary settlement in March of 2007. Transcript I at 135-136, 160-161, 167; III at 11-12.

temporary position at Beth Israel Hospital, signed up with other temporary staffing agencies, and looked for jobs outside the medical field. Transcript I at 114; 126-127; II at 20-23.

21. While Complainant looked for employment in 2006, she collected unemployment compensation. Transcript I at 127. Complainant estimates that she collected half of her previous salary, which she estimates to have been approximately \$49,000.00 per year. Id. at 128.

22. Jennifer Walker was a Bulfinch staffing specialist from 2005 through August of 2006. Her job consisted of screening resumes of potential candidates for Bulfinch employment and assigning selected candidates to fill temporary vacancies in response to requisitions from hospital departments. Transcript V at 93. She placed individuals into administrative support jobs such as PSC positions, medical secretary positions, and office assistant positions. Transcript V at 13. According to Walker, 80% of the positions she filled were PSC slots. Transcript V at 18. The job description for PSC lists the following as the first two job responsibilities: “Greet and direct patients ... [and] Collect Co-payments...” Joint Exhibit 5. It lists the following as its first two job qualifications: “Outstanding customer service skills [and] Computer literacy in Microsoft office applications.” Id. Walker testified that she looked for applicants who were flexible, reliable, available from 8:00 a.m. through 5:00 p.m. on Mondays through Fridays, had strong customer service skills, and were proficient in Microsoft Office and IDX computer programs. Id. at 14-15, 22. Walker conducted approximately ten interviews a day. Id. at 16. In the eighteen months that she worked at Bulfinch, Walker twice won “Partners in

Excellence” awards, hired two disabled employees, and made accommodations available for employees with disabilities. Transcript V at 81-84.

23. Walker interviewed Complainant in person during April of 2006<sup>5</sup> for approximately thirty to forty-five minutes. Transcript V at 16-17, 108-109. According to Walker, Complainant demanded an hourly rate of \$23.00, sought to limit her work week to thirty hours or less, did not wish to interact with patients at the front desk, wanted to avoid processing patient co-pays, needed to leave early every Tuesday, requested time off for doctors’ appointments on an as-needed basis, required a large computer monitor, said that she had weak computer skills, indicated that it would be difficult for her to come to work in the rain, snow, or dark, said that she couldn’t lift more than 10 to 15 pounds, described herself as lacking proficiency in transcription and scheduling software such as IDX, and said that she could not work on a computer continuously for eight hours a day. Transcript V at 18, 24, 27-28, 30, 34, 52; Joint Exhibit 3.

24. Walker testified that she could have arranged for MGH to accommodate Complainant’s requests for a large computer screen and for time to stand and stretch, but she could not satisfy Complainant’s demand for an hourly rate of \$23.00 because Bulfinch only paid \$9 to \$14 per hour for PSC I positions, \$12 to \$17 per hour for PSC II positions, and did not place candidates into a temporary PSC III positions. Transcript V at 19-20; Complainant’s Exhibit 37, p. 8. Walker

---

<sup>5</sup> Complainant testified that she previously met Walker in 2002, while applying for medical secretary positions at Brigham and Women’s Hospital. At the time, Walker was working as a recruiter for “Staffing Solutions,” the hospital’s temporary staffing arm. Transcript I at 54-55. According to Complainant, Walker interviewed her, tested her, and arranged for her to be interviewed by supervisors in the Surgery Department where she was offered a position as a surgical coordinator/medical secretary. Transcript I at 55-56. Complainant left the position after about three months because it wasn’t a “good fit.” *Id.* Walker testified that she doesn’t recall placing Complainant in a position at Brigham & Women’s Hospital. Transcript V at 141.

maintained that there were some temporary administrative vacancies that could have accommodated Complainant's need for time off to go to doctors' appointments, but that there were no vacancies that could have accommodated Complainant's requests to be excused from greeting patients, handling co-pays, working only 30 hours a week or less, or allowing her attendance be weather-dependent. Transcript V at 29-34, 36, 49, 110, 136; Joint Exhibit 3. Walker testified that she had never hired a person for a temporary PSC position who did not interact with patients, handle co-pays, work full-time, and have proficiency in scheduling software. Transcript V at 25, 27, 30, 35, 152.

25. Bulfinch Manager Susan Horan testified that PSC positions are front-line positions staffed by individuals with outstanding customer service skills who meet and greet patients, have computer literacy in Microsoft Office applications, and are available to work between 8:00 a.m. and 5:00 p.m. Transcript IV at 39-42, 59-60; Complainant's Exhibit 37, p. 8 n. 6. Horan testified that there were no temporary PSC assignments in 2006 that were 30 hours per week or less or staffed by individuals who did not meet and greet patients. Transcript IV at 35, 192-194. Although some temporary administrative assignments designated by Job Code 968 had pay rates up to \$50.00 per hour in 2006, Horan testified that hourly rates for administrative positions of \$23.00 or more pertained to specialized positions such as development associate, grants manager, and HR assistant for which Complainant lacked the necessary qualifications. Transcript IV at 63.
26. Complainant denied at the public hearing that she informed Bulfinch personnel in 2006 of her requirements for part-time work, no patient contact, and no front office

duties. Transcript III at 123, 124. However, Complainant also testified at the public hearing and in her deposition that when she first sought to return to MGH, she only wanted part-time work, that she was not fluent in Microsoft Office skills, that she couldn't drive at night or in inclement weather, that she couldn't work all day on a computer, that she did not know coding, and that she didn't want to function in a front office capacity with patients. Complainant attempted to resolve these discrepancies at the public hearing by asserting that her computer skills were "adequate," that she could take breaks from her computer, that she could arrange for transportation to work, and that her reference to limited patient contact was only a preference, not a requirement. Transcript III at 99-100, 103, 115, 117-118, 120-122, 123, 128-129, 191. I do not credit Complainant's explanations.

27. Walker asked Complainant in April of 2006 to fax her an updated resume but Complainant did not respond until late June of 2006 and when she did, she sent a rough draft. Transcript V at 42; Joint Exhibit 2. Walker testified that she sought an updated resume in case Complainant decided to narrow her list of demands. Transcript V at 37-38, 46-47.

28. On June 2, 2006, Complainant called Bullfinch Manager Susan Horan to complain that she had been unable to reach Jennifer Walker despite leaving repeated messages and that Walker had not followed through on a promise to forward her application to another person who supposedly handled upper-level PSC positions at Bullfinch. Walker denies ever telling Complainant that another staffing specialist placed individuals from Bullfinch's pool into PSC II positions or that she would forward Complainant's application materials to another recruiter. Transcript V at

46-48.

29. Horan testified that she was surprised by Complainant's complaints because Walker was good at returning phone calls and because Walker was the sole recruiter for PSC positions. Transcript IV at 53, 120, 122. Horan emailed Walker after the telephone conversation and asked, "What's the scoop with her? Is she someone we do not want to hire?" Joint Exhibit 3; Transcript IV at 53, 121.
30. On June 3, 2006, Walker emailed Horan that she: 1) spoke to Complainant in April of 2006; 2) did not hear back from Complainant until "this week" (i.e., the week of May 29 - June 2, 2006); 3) that during their April conversation, Complainant said that she wanted \$23.00 pr hour, wanted to work 20-30 hours per week if possible, needed time off for doctors' appointments, didn't want to work at a front desk, couldn't drive in the dark or rain so her attendance would be weather-based, couldn't work a computer 8 hours a day, could only work from 8:00 a.m. to 4:30 p.m., and had left 2 previous jobs. Joint Exhibit 3. Walker stated in her email that, "She [Complainant] tells me what she 'wants' but not what she's willing to do ... = headache for me." Joint Exhibit 3; Transcript V at 48-54. Walker wrote Horan that she would call Complainant in case her restrictions had changed. Id.
31. After reading Walker's June 3, 2006 email, Horan concluded that Walker was handling the matter appropriately. Transcript IV at 57, 61. Horan did not communicate with Complainant again. Transcript IV at 138
32. Walker called Complainant on June 5, 2006 and took notes about their conversation on a paper which contained an email trail between herself and Horan. Joint Exhibit 3. According to Walker's testimony and notes, Complainant said that she was

trying to manage an eye socket infection, that she needed a large computer screen as an accommodation, that she was willing to accept full-time employment although only from 8:00 a.m. to 4:30 p.m., that she couldn't drive in the rain but that others could transport her, that she wanted a permanent job but would consider a temporary position, that she had a standing medical appointment on Tuesdays for which she would need to leave early, that she still didn't want to work at the front desk or handle co-pays, and that she still demanded \$23.00 as a minimum hourly rate. Transcript V at 38-40, 55-67. Walker described Complainant's concessions as a "work in progress," but she said that she still felt "stuck" by Complainant's refusal to greet patients and collect co-pays. Transcript V at 39, 58, 64.

33. Walker had another conversation with Complainant on June 12, 2006 about which she made additional notes. Transcript V at 68-75; Joint Exhibit 3. Walker testified that during this conversation, Complainant agreed to work from 8:00 a.m. to 5:00 p.m., said she could get rides to work even though she couldn't drive in the dark or rain, and indicated that she needed a large computer screen because she was having work done on her right eye. According to Walker, Complainant remained firm about the hourly wage she was seeking, about not wanting to work with patients at the front desk, and about not collecting co-pays. Id.; Transcript V at 39-40.
34. Complainant asserts that Walker told her during their June 12, 2006 phone call that she [Complainant] would have to locate a temporary vacancy and find a doctor who wanted to hire her before she could qualify as a Bulfinch "temp." Transcript I at 116. Complainant claims to have found such an opening in the Neurosurgery Department of MGH even though a 2004 evaluation of Complainant by

Neurosurgery administrator Mary Piggott states that she (Piggott) would not request Complainant for another temporary assignment. Complainant's Exhibit 8, p. 125.

35. After the June 12, 2006 phone call, Walker concluded that Complainant's demands precluded Bulfinch from hiring her into the Bullfinch pool. Transcript V at 78.

36. The Radiology Department was the sole entity which requested Complainant as a temporary employee in 2006. Transcript IV at 63-64, 157-158. It submitted a fax requisition to Bulfinch in August of 2006 requesting Complainant as a temporary, full-time employee. Id. Horan informed the Radiology Department that Complainant was not in the Bulfinch pool but that Bulfinch had active pool members who could meet the Radiology Department's needs. Transcript IV at 163, 174-175. According to Horan, the Radiology Department accepted a candidate sent over by Bulfinch. Transcript IV at 63-65, 175; Complainant's Exhibit 37. Horan testified that if a department requests a specific individual who is not a current member of the Bulfinch pool, the person, even if qualified, would not be added to the Bullfinch pool unless no active pool member was qualified to fill the job. Transcript IV at 176-177. Horan testified that Bulfinch gives priority to active pool members in order to minimize the impact of unemployment costs. Transcript IV at 180.

37. Complainant describes her emotional state in late summer/early fall of 2006 and beyond as "frantic," "depressed," "anxious," and "stressed out" over her inability to get a job and that her emotional state exacerbated her visual problems and numbness in her arm. Transcript II at 24. She testified that she felt she had lost her "whole identity" when she could not find employment. Transcript I at 137; II at 24.



Complainant had to borrow money from friends and receive assistance from the St. Vincent DePaul Society. Transcript I at 136, 160. Complainant described her circumstances as upsetting and humiliating. Id. at 136-137.

38. In or around November of 2006, Complainant applied for public assistance and for emergency food stamps from the Commonwealth of Massachusetts and for Social Security Disability Income (“SSDI”) from the Social Security Administration (“SSA”). Transcript I at 137-139; III at 177-178. Complainant supplied information for a Social Security Administration Disability Report which states that she was unable to work beginning in February of 2006. Joint Exhibit 10 at 7-057. Complainant attributed her inability to work to having a prosthesis and infection in her right eye socket, a cataract and pain in her left eye, depression, abdominal pain, and colitis diarrhea, emotional distress, and flat feet. Joint Exhibit 9; 10(7-057); Transcript II at 56; III at 27.
39. While applying for various forms of public assistance, Complainant learned that she had been misclassified by MGH as having been “terminated” rather than having resigned and was misclassified as continuing to have health insurance through MGH which prevented her from receiving Mass. Health coverage. Transcript I at 139, 141-142, 148-150; Complainant’s Exhibit 17. The mistakes were subsequently corrected.
40. Complainant continued to look for work at or around the time she applied for SSDI benefits. Transcript II at 52. She signed up for the “Ticket to Work” program sponsored by the SSA in order to get back into the workforce. Transcript II at 57.
41. In August of 2006, the SSA determined that Complainant was completely disabled

as of February of 2006 and began, in April of 2007, to issue her monthly checks in the amount of \$1,299.00.<sup>6</sup> Joint Exhibit 8; Joint Exhibit 13 (7-190). Complainant was awarded disability income based on a psychiatric diagnosis of major depression rather than a diagnosis pertaining to her physical condition. Transcript II at 50 -51. Complainant continued to receive SSDI checks through the date of the public hearing. Joint Exhibit 8; Transcript III at 50.

42. Approximately a year later in July of 2007, Complainant informed an employment counselor at Valleyworks Career Center that she did not want to jeopardize her SSDI benefits by accepting full-time employment. Joint Exhibit 15; Transcript III at 130.

43. Complainant has taken medication for depression for approximately thirty years. Transcript II at 16. She testified at the public hearing about the “lasting trauma” from the accident in which she lost her eye but also the emotional distress caused by an abusive boyfriend, the death of her father, her mother taking out a restraining order against her, her brother’s incarceration, being forced to relocate from her apartment in Andover to a residential hotel which was broken into while she slept, and the theft of her car. Complainant’s Exhibit 19; Transcript I at 135, 161-162; III at 8-12.

44. Complainant testified that in October of 2007, she was hired to work as office manager by Dr. Paula Muto, a surgeon, with offices in North Andover and Lawrence. According to Complainant, after working for approximately three weeks, Dr. Muto told her that she wasn’t needed even though she had done a

---

<sup>6</sup> Complainant testified that a deduction was made from her initial award of SSDI to pay back the money that she had received from the Department of Transitional Assistance. Transcript II at 45-46.

“terrific job.” Id. at 169. Complainant earned \$4,158.75 working for Dr. Muto. Transcript II at 18; Complainant’s Exhibit 24.

45. Complainant testified that she was so stressed out and sick in 2008 that she experienced high blood pressure, decreased vision and, in September of 2008, was hospitalized after passing out. Transcript II at 26-27; Complainant’s Exhibit 26. Complainant was re-hospitalized in February of 2009 for high blood pressure, numbness, decreased vision, and a flare-up of her colitis. Transcript II at 27; Complainant’s Exhibit 28.

46. In 2009, Complainant worked for Dr. Adam Beck ten hours per week at \$10.00 per hour until November of 2009. Transcript II at 20. Complainant estimates that she earned a total of \$1,800.00 during that year.

47. Complainant’s treating psychiatrist, Dr. Michael Jenike, is a professor at Harvard Medical School. Transcript II at 92. He has treated Complainant since 1981. Transcript at 93. Dr. Jenike testified that Complainant functions well when she has a job, a car, and relationships, but when stressed, she develops physical symptoms such as pain, headaches, and diminished vision. Dr. Jenike characterized Complainant’s physical symptoms as a “conversion reaction.” Transcript II at 96-99. He testified that when Complainant contacted him in 2006 about pain, vision problems, and eye infections resulting from job stress, he recommended that she get another job where she felt comfortable and less stressed. Transcript II at 100, 101. On March 2, 2007, he submitted to the SSA a diagnosis of Complainant’s emotional state as a “major depression.” Transcript II at 113; Joint Exhibit 23. Dr. Jenike assessed Complainant’s depression to be “largely situational due to loss of

her job.” Transcript II at 105-106. According to Dr. Jenike, when Complainant works, she does “much, much better.” He also testified that Complainant was severely disabled and unable to work up through the date of public hearing.

Transcript II at 115-119, 124; Joint Exhibit 23.

48. Professor Robert A. Rosenthal has a Ph.D. in economics from Boston University, is a full professor of economics at Stonehill College, and characterizes himself as a forensic economist. Complainant’s Exhibit 32; Transcript II at 62, 67. Professor Rosenthal concluded that Complainant’s back pay losses amounted to \$260,000.00 and that her front pay losses would amount to \$500,000.00 for a total of \$768,000.00 in lost income. Transcript II at 76; Complainant’s Exhibit 33.

Professor Rosenthal based these calculations on Complainant’s alleged earnings record of \$60,000.00 in years 2004 and 2005, a projection that she would have earned \$64,000.00 had she continued to remain employed by Respondent in 2010 and beyond, a fringe benefit package at MGH of approximately 25% of her earnings, actual earnings of approximately \$10.00 per hour working part-time, a projection that Complainant would be able to return to full-time employment at a rate of \$15.00 per hour by 2012, and earnings of \$30,000.00 per year from 2012 through a projected retirement at age 62. Transcript II at 74-75.

49. On cross-examination, Dr. Rosenthal stated that he was unaware that MGH does not offer fringe benefits to temporary employees, that he did not have information about the duration of MGH temporary assignments, and that he assumed that Complainant would have been able to work half-time from 2009 to 2012 at \$10.00 per hour and full-time from 2012 to retirement at \$15.00 per hour, notwithstanding

the SSA determination that Complainant was totally disabled. Transcript II at 82-83. Based on the inadequacies of the information provided to Dr. Rosenthal and flaws in his analysis, I do not accept his projections about Complainant's lost income.

## II. CONCLUSIONS OF LAW

### Statute of Limitations

Complainant signed an Agreement with Respondent on March 27, 2006 which severed her employment relationship with the Orthopedic Oncology Department but permitted her to re-apply for employment in the future. During the spring and summer of 2006, Complainant contacted Bulfinch Temporary Service in an attempt to re-join its pool of candidates for temporary employment. Complainant's efforts to become a member of the Bulfinch pool proved unsuccessful, however, and on May 14, 2007, Complainant filed a charge of discrimination with the MCAD. Respondent asserts that the charge was filed 339 days after Complainant's last communication with Bulfinch on June 12, 2006 and, thus, her filing is barred by M.G.L. c. 151B, section 5, which requires that complaints be filed within 300 of the last alleged discriminatory action.

The crux of Respondent's statute of limitations claim is that after June 12, 2006, the parties ceased to communicate and thereby ended any possibility of continued retaliation. This assertion is not convincing, however, given Complainant's allegation that she maintained a continued dialogue with Bulfinch over the summer of 2006 and given her ongoing, albeit unsuccessful, attempts to secure temporary placements throughout the summer of 2006. Although Bulfinch Recruiter Jennifer Walker may have concluded by June 12, 2006 that Complainant's demands precluded her acceptance into the pool of

Bulfinch temporary employees, there is no evidence that she communicated this decision to Complainant or that Complainant shared her understanding. To the contrary, Walker testified that she left the door open to a reconsideration of Complainant's qualifications and that Complainant's status was a "work in progress." Complainant's efforts to secure a temporary Bulfinch placement in the summer of 2006 are evidenced by a fax from the Radiology Department to Bulfinch in August of 2006 requesting Complainant for a temporary assignment. Horan's response -- that Complainant was not a member of the Bulfinch pool but that other individuals were active pool members who were available to meet the needs of the Radiology Department -- is additional evidence that the alleged discriminatory acts continued beyond June 12, 2006. See Ocean Spray Cranberries, Inc. v. MCAD, 441 Mass. 632, 642-643 (2004) (continuing-violation doctrine applies where at least one discriminatory act occurs within the limitations period, the act has a substantial relationship to earlier acts, and the earlier violations did not trigger an awareness and duty to take action). Accordingly, there is sufficient evidence of an alleged continuing violation to withstand a Statute of Limitations defense.

#### Handicap Discrimination

On July 31, 2008, the Commission issued a Finding of Split Decision, dismissing Complainant's claim regarding Respondents' alleged failure to provide requested accommodations in the Orthopedic Oncology Department but finding probable cause for disability and retaliation claims against MGH in regard to Complainant's subsequent unsuccessful attempts to be rehired. The gravamen of Complainant's remaining handicap discrimination claim is that Respondent was unwilling to accommodate Complainant's

disabilities when it screened her in mid-to-late 2006 as a candidate for Bulfinch temporary employment.

M.G.L. c. 151B, sec. 4 (16) makes it unlawful for an employer to discriminate against a qualified handicapped person who can perform the essential functions of a job with a reasonable accommodation. A handicapped person is one who has an impairment which substantially limits one or more major life activities, a record of impairment, or is regarded as being impaired. See M.G.L. c. 151B, sec. 1 (17); Massachusetts Commission Against Discrimination Guidelines: Employment Discrimination on the Basis of Handicap – Chapter 151B, 20 MDLR Appendix (1998) (“MCAD Handicap Guidelines”) at p. 2.

There is no question that Complainant is a handicapped individual. She lost her right eye as a result of an accident in 19981, suffers from depression, and according to her treating psychiatrist, manifests physical symptoms as a result of job-related stress which adversely affect her remaining eyesight and eye health. In August of 2006, the Social Security Administration determined that Complainant was completely disabled retroactive to February of 2006.

To state a case of disability discrimination, Complainant must prove that she was a qualified handicapped person who could have performed the essential functions of a temporary PSC position in 2006, with or without reasonable accommodations, but was rejected as a Bulfinch temp because of her handicapped status. See Russell v. Cooley Dickinson Hospital Inc., 437 Mass. 443, 449 (2002); Hall v. Laidlaw Transit, Inc., 25 MDLR 207, 213-214, *aff'd*, 26 MDLR 216 (2004); Mazeikus v. Northwest Airlines, Inc., 22 MDLR 63, 68 (2000). A disability discrimination case based on a failure to

accommodate requires proof of the additional elements that Complainant sought reasonable accommodation(s) in order to perform the essential functions of a position and that the Respondent failed to provide the requested reasonable accommodations. Id.; Dartt v. Browning-Ferris Industries, Inc., 427 Mass. 1 (1998). After a lengthy hearing and the presentation of voluminous evidence, Complainant has failed to establish that she was a qualified handicapped applicant when she sought Bulfinch temporary employment in the mid-to-latter part of 2006 and that the accommodations she sought were reasonable.

The MCAD Handicap Guidelines at p.4 define a qualified handicapped individual as one who can perform the essential functions of a job with or without reasonable accommodations. The Handicap Guidelines define essential job functions as those which “must necessarily” be performed in order accomplish a position’s “principal objectives” rather than its “incidental or tangential” objectives. MCAD Handicap Guidelines, p. 5. Under the Handicap Guidelines, relevant considerations are whether a disputed function is performed regularly versus rarely, whether it could be removed without fundamentally changing the job, and whether it is contained within a written job description. Id.

The focus of Complainant’s suit is her unsuccessful effort in 2006 to qualify as a member of the Bulfinch temporary pool following her medical leave and resignation in March of 2006 from a permanent position as a PSC II in MGH’s Orthopedic Oncology Department. Complainant had previously been a Bulfinch temp in 2003 and 2004 prior to accepting a permanent position in the Orthopedic Oncology Department. In April of 2006, she endeavored to re-join the Bulfinch pool of temporary employees, sought placement into temporary PSC assignments, and sought a minimum hourly rate of



\$23.00. However, Complainant also made clear at the time that she did not wish to have interaction with patients, wanted to avoid processing patient co-pays, needed time off for every Tuesday afternoon for a standing appointment, needed additional time off for various medical appointments on an as-needed basis, sought to limit her work week to thirty hours or less, stated that it would be difficult for her to come to commute to work in the rain, snow, or dark, said that she couldn't lift more than 10 to 15 pounds, and described herself as lacking proficiency in transcription and scheduling software such as IDX.<sup>7</sup>

Much confusion pertains to whether Complainant's limitations were job demands, preferences, or requests for accommodations and whether Complainant's initial goals were modified during 2006 as she became increasingly anxious about her employment situation. Nonetheless, the evidence is persuasive that that Complainant never wavered in requiring an hourly rate of \$23.00, in seeking to avoid patient contact and co-pays, and in being unable or unwilling to cover temporary assignments on a full-time, five-day a week basis, from 8:00 a.m. to 5:00 p.m. In the face of these intransigent conditions, Bulfinch's PSC Recruiter Jennifer Walker and Manager Susan Horan reasonably determined that Complainant was not a qualified handicapped applicant capable of performing the essential functions of a PSC position with or without reasonable accommodations. See Godfrey v. Globe Newspaper Co., Inc., 457 Mass. 113 (2010) (claim of qualified handicap status fails where employee is unable to perform an essential function of his/her position or requires a light duty assignment where none had been previously been provided as an accommodation to others similarly-situated).

---

<sup>7</sup> Complainant also had specialized needs relating to the size of her computer screen and the need to take periodic breaks from working at her computer. Since Respondent was willing to accommodate those needs, they need not be addressed.

A reasonable accommodation is defined as “any adjustment or modification to a job that makes it possible for a handicapped individual to perform the essential functions of the position and to enjoy equal terms, conditions and benefits of employment.” MCAD Handicap Guidelines, section 11(C); Ocean Spray Cranberries, Inc. v. MCAD, 441 Mass. 632, 648, n.19 (2004). The duty to provide a reasonable accommodation requires an employer to participate in an interactive process with a disabled employee who requests an accommodation. See MCAD Handicap Guidelines at VII; Mammone v. President & Fellows of Harvard College, 446 Mass. 657, 670 n.25 (2006).

Notwithstanding Complainant’s assertions of unreturned phone calls, the evidence establishes that there was a dialogue between Bulfinch personnel and Complainant, but that no amount of communication could bridge the gap between Complainant’s demands and Bulfinch’s requirements. Whereas Bulfinch sought flexible and reliable employees with computer proficiency and strong customer service skills to fill entry and mid-level PSC positions at hourly rates considerably below \$23.00, Complainant sought limited patient contact, time off on an as-needed basis, and an hourly rate of \$23.00 despite an acknowledged deficiency in computer skills. Jennifer Walker engaged in an ongoing dialogue with Complainant in the hope that Complainant’s requirements would change. Compare Doble v. Engineered Materials Solutions, 31 MDLR 133 (2009) (lack of interactive process where Respondent’s HR representatives abruptly shifted Complainant to new assignment, stated that there were no alternative positions, and provided no opportunity to discuss accommodations). To some extent, Complainant’s requirements did change, but she continued to be unyielding with respect to the hourly rate she demanded and the duties she would perform. Since Complainant’s specifications would

have imposed an undue hardship on Respondent, there came a point when continuing the dialogue proved fruitless. See Mass. Bay Transportation Authority v. MCAD, 450 Mass 327, 342 (2008) (no obligation to undertake interactive process if all conceivable accommodations would impose undue hardship); Gracia v. Northeastern University, 31 MDLR 1 (2008) (employer not required to participate in fruitless dialogue if clear that requested accommodations could not be satisfied without undue hardship).

Complainant points to her 2003-2004 participation in the Bulfinch pool as evidence that she was a qualified candidate whose needs could have been accommodated. Complainant's history as a satisfactory Bulfinch temp deserves consideration but, ultimately, is not persuasive given the fact that it preceded the events at issue by several years and does not take into account Complainant's more stringent job requirements in the mid to latter part of 2006. For instance, in April of 2006, Complainant began to demand \$23.00 per hour even though there is no evidence that Complainant ever earned \$23.00 when she previously temped for Bulfinch.<sup>8</sup> In addition, in mid-2006, Complainant specified that she needed to work part-time and required time off for medical appointments, even though there is no evidence she made such requests in 2003-2004. As Walker credibly testified, part-time work and regular time off do not lend themselves to temporary assignments which may last a mere four hours, a day, or a week in total. In short, the circumstances in 2003 and 2004 were significantly different than those in 2006.

Walker and Horan also convincingly explained that the necessity of maintaining a pool of candidates capable of moving from one assignment to another precluded Bulfinch

---

<sup>8</sup> Complainant was paid an hourly rate of \$19.09 during her earlier stints as a Bulfinch temp in contrast to the \$23.00 hourly rate she earned as a permanent PSC II in the Orthopedic Oncology Department.

from hiring individuals such as Complainant, who refused to perform generic functions such as reception work and handling co-pays. Since members of the Bulfinch pool are eligible for unemployment benefits if they do not receive temporary assignments, the number of pool members must be limited to individuals who are adaptable to multiple assignments in order to avoid unnecessary employment costs. The foregoing considerations rebut Complainant's assertion that in 2006 she was a qualified handicapped job applicant able and willing to perform the essential functions of various temporary PSC assignments. See Godfrey v. Globe Newspaper Company, Inc., 457 Mass. 113 (2010) (Employee must produce evidence that requested accommodations would allow for the performance of essential functions after which burden shifts to employer to establish that accommodations would impose undue hardship).

Finally, it is noteworthy that while Complainant was seeking to become a member of the Bulfinch pool in 2006, she was simultaneously submitting applications for SSDI and for state assistance in which she and her treating psychiatrist stated that she was totally disabled from working. Dr. Jenike, tried to reconcile these contradictory positions, but the impossibility of doing so is illustrated by his inconsistent statements at the public hearing that Complainant was not capable of working but would benefit from working. Complainant's own attempt to reconcile her contradictory statements led to the inaccurate assertion at public hearing that she only provided the SSA with a list of her physical symptoms but did not claim to be disabled. Complainant is likewise unconvincing in arguing that she could have functioned in various temporary assignments as a PSC if allowed the same accommodations she had previously been granted by the Orthopedic Oncology Department. This assertion ignores the fact that Complainant

resigned from the Orthopedic Oncology Department because of job-related stress, visual problems, and an emotional state she claims was “awful.”

It is not always the case that an individual who seeks disability benefits is estopped from claiming disability discrimination. See Labonte v. Hutchins & Wheeler, 424 Mass. 813 (1997) (no estoppel where law firm administrator with multiple sclerosis sought disability benefits after being terminated from the law firm); D’Aprile v. Fleet Servs. Corp., 92 F.3d 1 (1st Cir. 1996) (no estoppel where senior systems analyst with multiple sclerosis applied for disability benefits after she requested flexible, part-time schedule, her requested accommodation was denied, and she was terminated). Case law permits applications for disability income to stand alongside seemingly contradictory applications for employment where the applications can be reconciled through the provision of reasonable accommodations.

Notwithstanding the opportunity to explain what reasonable accommodations would have allowed her to function as a member of the Bulfinch pool in 2006, Complainant could not identify any such terms. See Cleveland v Policy Management Systems Corp., 526 U.S. 795, 806 (1999) (ADA plaintiff may not “simply ignore the apparent contradiction that arises out of the earlier SSDI total disability claim”); Russell v. Cooley Dickinson Hospital, Inc., 437 Mass. 443, 450 (2002) (“Courts are wary of allowing plaintiffs to play ‘fast and loose with the courts’ by claiming to be too disabled to perform the functions of a job and also claiming that they were terminated from their positions despite being able to perform those same functions.”) *citing* Labonte v. Hutchins & Wheeler, 424 Mass. 813, 816 (1997). Complainant’s inflexible job requirements did not permit accommodations to be made by Respondent.

Based on the foregoing, I conclude that Complainant was incapable of performing the essential functions of a Bulfinch temp in 2006, she was unwilling to perform the duties of a typical PSC position, and she was adamant about not accepting the going rate for a temporary PSC I or II in 2006, and that no reasonable accommodation would have altered the situation. Accordingly, Complainant's disability discrimination claim must be dismissed.

### Retaliation

Chapter 151B, sec. 4 (4) prohibits retaliation against persons who have opposed practices forbidden under Chapter 151B or who have filed a complaint of discrimination. Retaliation is a separate claim from discrimination, "motivated, at least in part, by a distinct intent to punish or to rid a workplace of someone who complains of unlawful practices." Kelley v. Plymouth County Sheriff's Department, 22 MDLR 208, 215 (2000), *quoting* Ruffino v. State Street Bank and Trust Co., 908 F. Supp. 1019, 1040 (D. Mass. 1995).

To prove a prima facie case for retaliation, Complainant must demonstrate that she: (1) engaged in a protected activity; (2) Respondent was aware that she had engaged in protected activity; (3) Respondent subjected Complainant to an adverse employment action; and (4) a causal connection existed between the protected activity and the adverse employment action. See Mole v. University of Massachusetts, 58 Mass. App. Ct. 29, 41 (2003); Kelley v. Plymouth County Sheriff's Department, 22 MDLR 208, 215 (2000). While proximity in time is a factor in establishing a causal connection, it is not sufficient on its own to make out a causal link. See MacCormack v. Boston Edison Co., 423 Mass.

652 n.11 (1996), *citing* Prader v. Leading Edge Prods., Inc., 39 Mass. App. Ct. 616, 617 (1996).

Under M.G.L. c. 151B, s. 4(4), an individual engages in protected activity if she “has opposed any practices forbidden under this chapter or ... has filed a complaint, testified or assisted in any proceeding under [G.L.c.151B, s.5].” Complainant asserts that she first engaged in protected activity when she sought accommodations between 2005 and 2006 while working as a PSC II in the Orthopedic Oncology Department. See Benoit v. Technical Mfg. Corp., 331 F3d 166, 177 (1<sup>st</sup> Cir. 2003) (requesting an accommodation without more is nonetheless behavior protected from an employer’s retaliation).

According to Complainant, the requested accommodations were never fully granted by Julie Brenman, which led to additional protected activity in the form of an FMLA leave, correspondence from her attorney to Respondent in early February of 2006 pertaining to alleged acts of handicap discrimination, followed by an Agreement with Respondent on March 27, 2006. The Agreement identified Complainant’s departure as a resignation, provided for a payment of severance, and permitted Complainant to re-apply for positions at MGH and its affiliates. Complainant charges that following the execution of the Agreement, Respondent subjected her to adverse employment action by refusing to re-hire her as a member of the Bulfinch pool.

Complainant has satisfied three of the four elements of a prima facie case of retaliation, to wit: a good faith assertion of protected activity of which Respondents were aware followed by an inability to obtain re-employment. Nonetheless, Complainant’s prima facie case fails to establish a causal connection between that protected activity and her failure to be hired as a Bulfinch temp in 2006 because the credible evidence in the

record establishes that neither Susan Horan nor Jennifer Walker were aware of Complainant's prior protected activity. Complainant's Agreement with MGH does not require notice to Bulfinch Temporary Services nor was there a business reason for it to have been informed of the Agreement. Paragraph 11 of the Agreement permits MGH to disclose the contract terms to those of its employees or agents who had a "legitimate business need to know [of its terms]." There was no such legitimate need for Bulfinch Temporary Services to know because Complainant was not granted any special consideration in the application process to become a member of its pool of temporary employees. Disclosure of the Agreement to Bulfinch, under such circumstances, would have undermined the goal of according Complainant neutral status as a candidate for employment. Since the credible evidence establishes that Bulfinch Manager Susan Horan and Recruiter Jennifer Walker were unaware of Complainant's prior protected activity, it stands to reason that the alleged adverse employment action which followed, i.e., Complainant's failure to be hired as a Bulfinch employee, cannot be causally related to the protected activity.

Rather than refuse to hire Complainant as a Bulfinch temporary employee because she had engaged in protected activity, the evidence establishes that Jennifer Walker declined to hire Complainant because she would not accept less than a \$23.00 hourly rate, sought a part-time schedule, did not want to work in a front office capacity, did not want to handle co-pays, was not proficient in Microsoft Office skills, and indicated that she would have difficulty commuting to and from work in inclement weather and in the dark. Some of Complainant's requirements such as a large computer screen and breaks from computer work were not an obstacle to employment as a Bulfinch



temporary employee in a PSC position, but the demands which dealt with her hourly rate, the types of duties she would perform, and the length of her work day and week directly conflicted with what were essential customer-service functions of the full-time PSC assignments she sought. Complainant's rejection as a member of the Bulfinch pool related to her employment demands, not to her prior protected activity.

Based on the foregoing, Complainant has failed to satisfy the elements of a prima facie case of retaliation and, accordingly, the claim of retaliation must be dismissed.

### III. ORDER

For the reasons set forth in this decision, the Complaint is hereby dismissed.

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 of this decision with the Clerk of the Commission within ten (10) days after the receipt of this Order and a Petition for Review within thirty (30) days of receipt of this Order.

---

Betty E. Waxman, Esq.  
Hearing Officer

So ordered this 8th day of February, 2011.

