

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
LEE MORRISON,
Complainants

v.

DOCKET NO. 15-BEM-00714

WILDER BROTHERS TIRE CO.,
Respondent.

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Eugenia Guastaferrri dismissing Complainant, Lee Morrison’s complaint charging Respondent, Wilder Brothers Tire Co. (“Wilder Brothers”), with disability discrimination after he was terminated from Respondent. Following an evidentiary hearing, the Hearing Officer concluded that Respondent was not liable for discrimination on the basis of disability in violation of M.G.L. c.151B, § 4(16). Complainant appealed to the Full Commission. For the reasons provided 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. When determining if a

decision is supported by substantial evidence “we must consider the entire record, and must take into account whatever in the records detracts from the weight” of the Hearing Officer’s determinations. Duggan v. Board of Registration in Nursing, 456 Mass. 666, 673-674 (2010).

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 (2020).

BASIS OF THE APPEAL

Complainant has appealed the decision on the grounds that the Hearing Officer’s findings were arbitrary and capricious, and not supported by substantial evidence. Complainant also contends that the Hearing Officer’s findings in regards to 1) Complainant’s failure to appear for a scheduled work shift on a busy weekend without notice could be considered egregious misconduct and 2) Respondent’s failure to engage in an interactive dialogue, were contrary to applicable law. After careful review 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. This 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 and by crediting the testimony of Respondent's witnesses while disregarding evidence presented by the Complainant. 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 addressed contradictory evidence in her findings. Complainant's disagreement with the Hearing Officer's determinations does not mean that the Hearing Officer misinterpreted, misconstrued, or ignored evidence presented, even if there is some evidentiary support for that disagreement. Duggan v. Board of Registration in Nursing, 456 Mass. 666, 673-674 (2010) ("While we must consider the entire record, and must take into account whatever in the record detracts from the weight of the [Hearing Officer's decision]...as long as there is substantial evidence to support the findings...we will not substitute our view of the facts.") After review of the record, including contradictory evidence, we find that the Hearing Officer's findings of fact are fully supported by the record; therefore, we will not disturb the Hearing Officer's findings.

Complainant also contends that the Hearing Officer's reasoning that Complainant's failure to appear for a scheduled work shift on the sales tax holiday without notice could be

considered egregious misconduct was contrary to applicable law. Complainant's grounds for appeal fails to account for ample precedent in Massachusetts that disciplinary action of a disabled employee is not discrimination, within the parameters of G.L. c. 151B, where the employer demonstrates that it would have disciplined a non-disabled employee for the same behavior. Mammone v. President and Fellows of Harvard College, 446 Mass. 657, 667 (2006) (“[n]othing in c. 151B suggests a legislative intent that a lower standard of qualifying conduct should apply to handicapped employees than applies to those without handicap.” citing Garrity v. United Airlines, Inc., 421 Mass. 55 (1995). The argument also fails to consider that the Hearing Officer reasoned that this final event – failing to provide notice to Wilder Brothers that Complainant would not work on the tax-free weekend – was the “last straw.” She did not consider the failure to show up for work as the only basis for the termination decision; it was a culmination of continuing deterioration in Complainant’s performance and attitude. The nature and extent of the employee's misconduct is an issue for the fact finder to determine. Mammone, 446 Mass. at 680. We find no error of law in the Hearing Officer’s conclusions which were supported by substantial evidence.

Complainant also avers that the Hearing Officer’s conclusion that Respondent was no longer obligated to engage in the interactive process after its termination decision, and that “granting a further accommodation to Complainant in the form of a leave would have been an undue hardship” are contrary to applicable law. This argument fails to recognize the Hearing Officer’s findings relative to Complainant’s job performance prior to his final leave request. She credited Respondent’s testimony that the negative situation with Complainant was harming the business, morale and customer relations. She credited that prior to the leave request, Respondent had already determined that Complainant’s ongoing failure to satisfy his job requirements and

his no-call, no-show behavior on the tax weekend justified his termination. She recognized that Complainant's performance in 2014 could result in a finding that Complainant was no longer an otherwise "qualified handicapped person" within the meaning of G.L. c.151B, an element required to prevail upon a claim of failure to accommodate. See, Mammone v. President and Fellows of Harvard College, 446 Mass. 657, 666-667 (2006) (egregious workplace misconduct may preclude determination that an employee is "qualified" for a particular job, even with a reasonable accommodation). She determined that Respondent demonstrated that Complainant had become incapable of managing Respondent's operations at the level required given the "demands and dysfunction of his personal life." After determining that Respondent was no longer obligated to make accommodations, the Hearing Officer further concluded that due to the circumstances, granting a further accommodation would have been an undue hardship on Respondent. She recognized that the Complainant's position carried a great deal of responsibility, and the success of the small, family-owned business's day to day operations depended on him. She was persuaded that granting a further accommodation in the form of leave would have been an undue hardship and unreasonable given the importance of his position relative to the Respondent's operations. Since the Hearing Officer's findings are supported by substantial evidence and consistent with Massachusetts law, we will not disturb these 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 applicable standard of review. 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.

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 ORDERED¹ this 24th day of June, 2020


Monserrate Quiñones
Commissioner


Neldy Jean-Francois
Commissioner

¹ 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(6)(2020).