

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION &
ROBERT F. MURPHY III,

Complainant,

v.

DOCKET NO. 08-BEM-02933

TOWN OF WILMINGTON,

Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Betty Waxman. Following an evidentiary hearing, the Hearing Officer found that Respondent Town of Wilmington was not liable for discrimination against Complainant Robert F. Murphy III on the basis of a disability/perceived disability when it terminated him from his position as a police cadet during his training at the Police Academy. The Hearing Officer determined that Complainant failed to make out a prima facie case of disability discrimination because he did not establish that tendonitis in his knees rendered him disabled within the meaning of M.G.L. c. 151B or that he was terminated because he was perceived as an individual with a disability. The Complainant has appealed to the Full Commission.

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 conclusion...." 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 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 (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's appeal to the Full Commission asserts that the Hearing Officer erred in concluding that Complainant, who experienced tendonitis in his knees, was not a handicapped individual within the meaning of M.G.L. c. 151B and therefore, was not discriminated against based on disability. Specifically, he contends that the Hearing Officer erred in finding that

Respondent did not perceive him as disabled due to his tendonitis in his knees or terminate him based on the perception that he was a liability. He further argues that certain findings made by the Hearing Officer are misleading and incomplete. 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. Substantial evidence is such evidence that a "reasonable mind" would accept as adequate to form a conclusion. M.G.L. c. 30A, § 1(6); Gnerre v. MCAD, 402 Mass. 502, 509 (1988). 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 findings of fact that are misleading and incomplete. Complainant argues that the Hearing Officer did not give proper weight to the evidence and failed to credit the testimony of specific witnesses in making certain findings of fact. This argument is unpersuasive and ignores our standard of review. Absent an abuse of discretion, error of law, findings unsupported by substantial evidence 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. The Hearing Officer is in the best position to observe Complainant's testimony and demeanor, and her credibility determinations generally should not be disturbed. See Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005). 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. We will not disturb the Hearing Officer's findings of fact, where, as here, they are fully supported by the record.

Complainant next argues that the Hearing Officer erred in concluding that Complainant was not perceived by Respondent as a handicapped individual based on his tendonitis in both knees. Complainant argues that Respondent perceived him as a handicapped individual and terminated him based on Respondent's belief that he would become a liability. The Hearing Officer correctly determined that the evidence failed to support a conclusion that Complainant was terminated based on Respondent's perception that he was a handicapped individual. We find no error in the Hearing Officer's analysis.

M.G.L. c. 151B, § 4(16) prohibits discrimination against "a qualified handicapped person." The statute defines a handicapped individual as one who has a physical or mental impairment which substantially limits one or more major life activities, has a record of impairment, or is regarded as being impaired. M.G.L. c. 151B, § 1(17). The determination as to whether a person is a "handicapped person" within the meaning of M.G.L. c. 151B is an "individualized inquiry." Ocean Spray Cranberries, Inc. v. MCAD, 441 Mass. 632, 637 (2004).

The Hearing Officer found that Complainant developed tendonitis in both knees on or around June 3, 2008, which was an injury of short duration that, by Complainant's own admission, was resolved on or around June 20, 2008. While Complainant's injury may have temporarily prevented him from participating in physical training at the Police Academy for several weeks, it did not impair his ability to perform major life activities and there was no evidence that he suffered from a chronic or residual disability. Complainant testified that he was able to return to physical training on or around June 30, 2008, about three weeks after his injury.

Complainant alleges that Respondent perceived him as handicapped and terminated him

based on its belief that he would be a liability. Specifically, Complainant argues that Respondent knew he had a serious impairment prior to his termination and believed he was so impaired that he could not finish the Police Academy. However, the Hearing Officer correctly found that there was no evidence to support Complainant's assertions that Respondent perceived him to be handicapped.

The Hearing Officer found that Respondent sought records of Complainant's injury, not to designate him as impaired, but to assess when he could return to the physical activities required by the Academy's training curriculum. The Academy had very specific rules and guidelines that all cadets were asked to follow with respect to reporting injuries sustained during physical training. The Complainant did not follow these rules, as he failed to timely report his injury and submit required paperwork concerning his injury. The Hearing Officer credited Respondent's testimony that other cadets were injured at the Academy and were temporarily unable to engage in the rigorous training, but were not dismissed from the Academy, so long as they observed the rules regarding notification of injury. A fellow cadet, who contemporaneously suffered an injury while in training, managed to graduate from the Academy because of his compliance with the rules regarding the paperwork and timely notification required to report an injury. The Hearing Officer found that Complainant was terminated because he failed to follow directives related to reporting an injury and failed to submit paperwork regarding his injury in a timely manner. In addition, there was witness testimony credited by the Hearing Officer that Complainant drafted memos to Academy staff that were insubordinate and was evaluated by Academy staff to be lazy and disrespectful.


Given these facts, the evidence supports the Hearing Officer's determination that Complainant was not perceived as disabled, but was terminated for insubordinate conduct

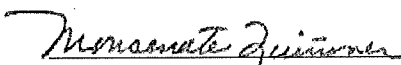
because he did not follow Respondent's directives regarding reporting injuries and submitting paperwork in a timely fashion. This was exacerbated by the information from staff at the Academy concerning their evaluation of Complainant. We conclude that the Hearing Officer did not err in determining that Complainant was not discriminated against on the basis of disability.

ORDER

For the reasons above, Complainant's appeal to the Full Commission is hereby denied and the order of dismissal is affirmed. 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 the 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 6th day of December, 2018


Sheila A. Hubbard
Commissioner


Monserrate Quiñones
Commissioner

¹ Commissioner Sunila Thomas George was the Investigating Commissioner for the initial complaint, so did not participate in the deliberations of the Full Commission pursuant to 804 CMR 1.23.