

**COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION**

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MASSACHUSETTS COMMISSION AGAINST  
DISCRIMINATION and ROSA SILVA,  
Complainants

v.

DOCKET NO. 17NEM00192

ACUSHNET COMPANY, MICHELLE MEDEIROS,  
RICHARD STROZYK, RONALD ROUILLARD,  
DAN GENDREAU, AND KENNETH RIALI,  
Respondents

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**DECISION OF THE FULL COMMISSION**

This matter comes to us following the November 7, 2022, decision by Hearing Officer Jason Barshak in favor of Respondents Acushnet Company, Michelle Medeiros, Richard Strozyk, Ronald Rouillard, Dan Gendreau, and Kenneth Riall (“Respondents”). Complainant Rosa Silva (“Complainant”) filed a complaint alleging violations of M.G.L. c. 151B, §§ 4(1), (1B) and (4)<sup>1</sup> claiming she was subjected to a hostile work environment and disparate treatment based on her age and gender, and was fired from her job, among other allegedly retaliatory actions, after complaining about discrimination at work. Respondents offered evidence at public hearing that Complainant was terminated after she received repeated counseling and discipline pursuant to Respondent Acushnet Co.’s progressive discipline policy for violations of the organization’s hairnet policy, for failure to notify a supervisor concerning quality control issues, and ultimately, for insubordination. After a lengthy public hearing, the Hearing Officer determined that Complainant failed to prove her hostile work environment claims based on age and gender, and

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<sup>1</sup> Additional claims for liability under M.G.L. c. 151B, §§ 4(4A) and (5) against the individual Respondents were included after certification to public hearing pursuant to 804 CMR 1.04(9)(a) (2020) and 804 CMR 1.12(5) (2020). See also 804 1.04(8)(a) (2020).

those claims were dismissed. Complainant also failed to prove her disparate treatment claims, as the Hearing Officer did not ultimately believe that Respondents' disciplinary conduct was discriminatory, but instead found it to be in line with Respondent Acushnet's policies. The Hearing Officer also determined that there was credible evidence of poor job performance as the reason for the termination. Complaint's retaliation claims failed for these same reasons. Complainant filed a Petition for Review alleging factual errors, and Respondents filed a brief in intervention. For the reasons set forth 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 (2020)), 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, §§ 3 (6), 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); 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(10) (2020).

### LEGAL DISCUSSION

Complainant's appeal attacks the Hearing Officer's myriad factual findings and credibility determinations, generally disputing their evidentiary support and arguing that he abused his discretion in making those findings. Complainant argues that her multiple suspensions at work amounted to a hostile work environment, but we will not address that argument as it is without citation to any legal authority. See 804 CMR 1.23(1)(b)4. (2020). While Complainant also does not cite legal authority in her argument as to why the evidence she presented at public hearing was sufficient to prove her discrimination and retaliation claims, the gravamen of her appeal is that if her evidence had been properly credited and Respondents' evidence had been properly discredited, the fact that Respondents were motivated by discriminatory animus in the actions they took against her, up to and including her termination, would be inescapable. We will engage with her factual argument regarding discriminatory animus to a limited degree.

A complainant bringing an employment sex discrimination claim under M.G. L. c. 151B, § 4(1) (multiple protected classes including sex) must prove that: (1) they are a member of a protected class; (2) they were subject to an adverse employment action; (3) the employer bore discriminatory animus in taking that action; and (4) discriminatory animus was the reason for that action (i.e., causation). Bulwer v. Mount Auburn Hospital, 473 Mass. 672, 680 (2016), citing Lipchitz v. Raytheon Co., 434 Mass. 493, 502 (2001). The same proof is required for an age discrimination case under M.G. L. c. 151B, § 4(1B). Adams v. Schneider Elec. USA, 101 Mass. App. Ct. 516, 524, review granted, 490 Mass. 1108 (2022), and aff'd, 492 Mass. 271 (2023). It was not in dispute that Complainant is a member of a protected class due to her age and sex, or

that she was subject to adverse employment actions in the form of disciplinary measures and termination. To prove the third and fourth elements in the face of evidence from Respondents showing legitimate reasons for its actions, Complainant ultimately needed to prove that “the respondent[s’] facially proper reasons given for its action against [her] were not the real reasons for that action.” Wheelock College v. Massachusetts Comm’n Against Discrimination, 371 Mass. 130, 139 (1976). Further, “whether the reason given was the real reason or merely pretextual, may involve questions of credibility.” Id. at 136-37.

The Hearing Officer credited Respondents’ evidence over Complainant’s evidence on the question of discriminatory animus and the reasons for Complainant’s discipline and termination, and those findings were based on credibility determinations and how the evidence was weighed. 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 commissioner and not for the reviewing court, and deference to the hearing commissioner’s fact-finding role). The Full Commission defers to the credibility and fact-finding determinations of the Hearing Officer supported by the record. See Quinn, 27 MDLR at 42; Garrison, 39 MDLR at 14 (because the Hearing Officer sees and hears witnesses, her findings are entitled to deference). Furthermore, a 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. TIA v. Herb Chambers, 1186, Inc., 45 MDLR 53 (2024).

Complainant attacks the Hearing Officer’s factual findings because certain witness testimony was inconsistent and should not have been credited, and portions of Complainant’s

testimony should not have been discredited. For example, Complainant argues it was an abuse of discretion for the Hearing Officer to find Respondent Medeiros' testimony credible because portions of her testimony concerning improper-fitting hairnets were inaccurate. However, as Complainant acknowledges in her Petition, the Hearing Officer expressly discredited that portion of Medeiros' testimony in light of other, more credible evidence. "The fact that the Hearing Officer discredited some of Complainant's testimony... does not render all of Complainant's testimony unworthy of credence." May v. The Parish Cafe, Inc. and Factotum Tap Room, Inc., 45 MDLR 35 (2023) quoting Anido v. Illumina Media, 35 MDLR 83, 84 (2013). Throughout the Hearing Officer's decision where there was contradictory evidence in the record, the Hearing Officer addressed the contradictory evidence in his decision, and, in turn, credited or discredited that evidence accordingly.

On the issue of the weight of the evidence, Complainant sought to prove discriminatory animus was the reason for her negative treatment through data concerning other employees counseled or otherwise disciplined by Respondent Medeiros. Demonstrating that similarly situated employees who were younger or who did not identify as female were treated more favorably would have been probative of discrimination. See Matthews v. Ocean Spray Cranberries, Inc., 426 Mass. 122, 129 (1997) citing Smith College v. Massachusetts Comm'n Against Discrimination, 376 Mass. 221, 228 (1978) (fact of discriminatory motive "can be inferred from differences in the treatment of [employees of different races]"). However, we agree with the Hearing Officer that this evidence was insufficient to prove discriminatory animus because it did not include important context about the incidents, what the employees were counseled or disciplined for, whether there were mitigating circumstances, or prior disciplinary records. Additionally, many of the individuals also supervised by Respondent Medeiros were over the age

of 40, and as such, are not helpful comparators to show age bias. The Hearing Officer also did not credit speculative testimony of three current Acushnet employees concerning gender bias. In contrast, the Hearing Officer found Respondents' reasoning to be consistent with their policies and was supported by substantial evidence. As demonstrated by Respondents' testimony, quality control is an important part of their business, and unstamped or otherwise flawed golf balls could have far-reaching consequences beyond aesthetics or branding when damaged or unmarked golf balls that are used in competition could cause a player to be disqualified. The record supports the conclusion that Respondent Acushnet's hairnet policy and emphasis on quality control informed their conduct as it related to the discipline Complainant received regarding hairnet non-compliance and the unstamped golf balls. With regard to the one-day suspension for hairnet infractions, Respondents established through testimony and supporting documentation that counseling for failure to comply with the hairnet policy was consistent with their progressive discipline protocols.

Complainant also argues that evidence that Medeiros "disliked" the Complainant is evidence of discriminatory animus. Dislike or personality clashes, alone, however, are insufficient to establish pretext or improper motive. See Lane v. Massachusetts Bay Transportation Authority, 22 MDLR 21, 23 (2000), *aff'd* 2001 WL 1805181 (2001) (Hearing Officer concluded complainant's disagreement with supervisor's exercise of managerial authority over complainant was not gender-based harassment). Further, regardless of Medeiros' purported dislike of Complainant, there was sufficient evidence that Medeiros' conduct was supported by documentation and repeated non-disciplinary counseling for workplace infractions and was not motivated by discriminatory animus.


We have carefully reviewed Complainant's Petition and the full record in this matter and have weighed the objections to the decision in accordance with the standard of review herein. To


the extent the Complainant claimed that the Hearing Officer erred in resolving witness credibility issues and weighing the evidence, we find the Hearing Officer's conclusions were supported by substantial evidence in the record and we defer to them. For these reasons, we agree with the Hearing Officer's decision and dismiss Complainant's appeal.

### ORDER

This Order represents the final action of the Commission for the purpose of judicial review pursuant to M.G.L. c. 151B, § 6 and M.G.L. c. 30A. Any party aggrieved by this Order may challenge it by filing a complaint in Superior Court seeking judicial review, together with a copy of the transcript of proceedings. Failure to provide a copy of the transcript may preclude the aggrieved party from alleging that the Commission's decision is not supported by substantial evidence, or is arbitrary or capricious, or is an abuse of discretion. Such action must be filed within thirty (30) days of service of this Order and must be filed in accordance with M.G.L. c. 151B, § 6, M.G.L. c. 30A, and Superior Court Standing Order 1-96. Failure to file a complaint 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 and M.G.L. c. 30A.

SO ORDERED this 6th day of November 2024.

  
Monserrate Rodríguez Colón  
Commissioner

  
Neldy Jean-Francois  
Commissioner