

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
KATHLEEN M. STEFANI,
Complainants

v.

DOCKET NO. 03-BEM-01428

MASSACHUSETTS DEPARTMENT
OF STATE POLICE,
Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Betty E. Waxman in favor of Respondent Department of State Police. Complainant filed a charge against Respondent claiming that she was subject to gender discrimination. Complainant alleged that her demotion to Captain from the rank of Major in March 2003 was motivated by discriminatory animus based on her gender. Following an evidentiary hearing, the Hearing Officer determined that Respondent's actions were not motivated by gender discrimination in violation of M.G.L. c. 151B, §4(1) and dismissed the complaint. Complainant has appealed to the Full Commission challenging the Hearing Officer's Decision.

STANDARD OF REVIEW

The responsibilities of the Full Commission are outlined by statute, the Commission's Rules of Procedure (804 CMR 1.00 *et. seq.*) and relevant case law. It is the duty of the Full Commission to review the record of proceedings before the Hearing

Officer. M.G.L. c. 151B, §5. The Hearing Officer's findings of fact must be supported by substantial evidence, which is defined as "...such evidence as a reasonable mind might accept as adequate to support a finding...." Katz v. Massachusetts Comm'n Against Discrimination, 365 Mass. 357, 365 (1974); 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. Massachusetts Comm'n Against Discrimination, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). The Full Commission's role is to determine whether the decision under appeal was rendered in accordance with the law, or whether the decision was arbitrary or capricious, an abuse of discretion, or was otherwise not in accordance with the law. See 804 CMR 1.23.

SUMMARY OF THE FACTS

Complainant began her employment with the Massachusetts State Police in 1978. She advanced in rank over the years, earning successive promotions. In 1999 she was appointed by Colonel/Superintendent (Colonel) John DiFava to the rank of Major, becoming the first female to attain the rank of Major with the State Police. Candidates above the rank of Captain are appointed by the Colonel who is the overall commanding officer of the State Police. In June of 2000, Colonel DiFava assigned Complainant to the position of Commander of Troop H¹ which had responsibility for covering metropolitan Boston and areas south. These responsibilities included covering major sporting, entertainment, commercial and community events in the geographic area, including the Boston Marathon, Gillette Stadium football games and Boston's

¹ The State Police Field Services are organized into Troops, which generally are associated with specific geographic areas. See MA State Police Transition Report, 1/6/03; Public Hearing Joint Exhibit (Joint Ex.) 24.

Fourth of July Esplanade celebration. Complainant's duties as Troop H Commander included planning and overseeing security at these events, overseeing its barracks and managing overtime costs. In general, Troop H incurred overtime expenses in excess of other troops for a number of reasons. Many special events in the geographic area required overtime and Troop H was staffed with many senior troopers who accrued higher levels of vacation time requiring greater levels of overtime to be paid for coverage. Troop H also experienced a higher level of activity (e.g. arrests, court time and motorcycle escorts) than other troops. Due to these considerations, Troop H was allotted more overtime hours than other troops.

Following Colonel DiFava's retirement, a number of individuals applied for the position of Colonel including Complainant, Thomas Foley, and Bradley Hibbard. In December, 2001 Thomas Foley was appointed as Colonel by then acting Governor Jane Swift. Within two months of his appointment, Foley removed two high ranking male officers from his command staff. Colonel Foley appointed Bradley Hibbard as his Deputy Superintendent. Complainant remained on Colonel Foley's command staff, however, she testified that he rebuffed and ignored her during the 18 months she served on his staff. Complainant received a positive performance appraisal for the period from November 2, 2001 through April 18, 2002 from her immediate supervisor, Lieutenant Colonel John Kelly, co-signed by Deputy Superintendent Hibbard.

Complainant was the Incident Commander for the July 4th Esplanade event in 2002, the first July 4th Esplanade event under Colonel Foley's command, and the first after the terrorist attacks of September 11, 2001. Colonel Foley and Deputy Superintendent Hibbard remained at or near the command post throughout the afternoon and evening of July 4th. Colonel Foley met with Complainant shortly after he arrived, and told her that he wanted to be notified of any incidents. Shortly before 11:00 p.m. on the evening of July 4th, Complainant was advised by

MBTA police that radiation dosimeters had been set off at the Charles Street MBTA station and a woman was reported to be unconscious on the platform. Complainant issued an order to raise the threat level from code yellow to code orange, without first talking with Colonel Foley. She also dispatched motorcycle officers and the National Guard Civil Support Team to the station. The Civil Support Team learned that the woman had recently received radiation treatment for cancer, and determined that she was releasing radioactive material at a sufficiently high level to set off the dosimeters. Approximately twelve minutes after receiving the MBTA police call, Complainant returned the threat level back to code yellow from code orange.

Colonel Foley learned about the raised threat level when it was broadcast over the State Police radio. He described Complainant's handling of the situation as an over-reaction and asserted she lacked the authority to raise the threat level. Complainant testified that Colonel Foley berated her publicly at the command post for raising the threat level and failing to contact him before doing so. Deputy Superintendent Bradley Hibbard testified that Complainant did not have the authority to raise the threat level and said he was "shocked" that the threat level had been raised without consulting the Colonel. He testified that he was concerned about Complainant having raised the threat level because of the potential for "mass hysteria" on the Esplanade if the news leaked out to the crowd. Colonel Foley did not take any further disciplinary action against Complainant as a result of this incident.

In September of 2002, Complainant was contacted by Joan Gardner from Mass-GAP, a non-profit group that promotes the advancement of women in government. At Ms. Gardner's request, Complainant forwarded her resume to Mass-GAP, but did not then inform Colonel Foley that she had done so. Following the gubernatorial election in the Fall of 2002, Ms. Gardner, who was co-chair of the public safety committee reviewing resumes for Governor-elect

Romney's transition team, sought to recommend Complainant for a number of positions in public safety including Colonel of the State Police and Secretary of Public Safety. According to Complainant, after being urged by a colleague to notify Colonel Foley of her intentions, Complainant emailed Colonel Foley on November 18, 2002 notifying him that she was planning on forwarding an official copy of her resume for consideration by the transition team.² She received no response from Colonel Foley, and sent a cover letter with her qualifications to Governor-Elect Romney on November 19, 2002. (Complainant's Ex. 1).

Colonel Foley testified that Complainant's email informed him that Complainant had already submitted her resume for positions within the Governor-elect's administration, and he understood that these positions included his own (Colonel of the State Police) and Secretary of Public Safety. Yet, he had already been informed by someone at the Secretary of Public Safety's office or the Governor's office that Complainant had submitted her resume. He testified that he was disappointed with Complainant, and thought it was discourteous that, as a member of his command staff, Complainant had not informed him sooner.

After Complainant applied for the position of Colonel with the transition team, questions about her Troop's overtime use increased. Colonel Foley characterized Complainant's attitude about controlling overtime costs as "dismissive," and indicated she was unwilling to work to lower overtime costs. He testified that he was very upset that Complainant was purportedly not implementing his policies to reduce overtime costs, and viewed this as being in contravention of his direct orders. In particular, he was concerned about Troop H's Operations Officer being allowed to take time off, while seeking compensation for court time on the same date at the rate of time and a half since he was not on his regular shift (if the Operations Officer had been

² The email of November 18, 2002 to Colonel Foley reflects that Complainant's resume had already been forwarded to the transition team. Joint Ex. 18.

working a regular shift, his court time would be paid at a regular rate). After learning of this incident from Deputy Superintendent Hibbard in January of 2013, Colonel Foley testified that he directed Troop H not to allow this to happen again. Colonel Foley was notified by Deputy Superintendent Hibbard that it happened again with the Troop H Operations Officer on February 13, 2003, and was attempted again on February 25, 2003. Colonel Foley testified that he then decided to remove Complainant from her position as commanding officer of Troop H. Complainant was demoted to the rank of Captain effective March 23, 2003.

Complainant was not notified of the demotion decision by Colonel Foley. She was informed of the decision by telephone on Monday, March 10, 2003 at approximately 5:30 p.m. by Deputy Superintendent Hibbard. According to Complainant, Deputy Superintendent Hibbard said that there were going to be changes in the command staff and that her services would no longer be needed as a Major. During the remainder of the work week of March 10 -14, 2003, Complainant had communications about the demotion with a Captain who was her subordinate, but did not communicate with Colonel Foley or Deputy Superintendent Hibbard. Colonel Foley testified that he directed Deputy Superintendent Hibbard to communicate through the subordinate Captain because Complainant was not returning the Deputy Superintendent's telephone calls. Communications were hampered by the fact the Complainant left for a pre-scheduled vacation outside the country on the morning of Friday, March 14, 2003. The personnel order announcing Complainant's demotion to the rank of Captain, effective March 23, 2003, was issued through the "Doc-U-Share" system on Friday, March 14, 2003. Deputy Superintendent Hibbard directed the subordinate Captain to advise Complainant that she would be given until Wednesday, March 19, 2003 to retire as a Major in lieu of demotion.³ Complainant advised that she would not make

³ Since retirement income is based upon the last year's salary, immediate retirement as a Major rather than accepting a demotion to Captain and earning lower pay for a year until retirement could increase Complainant's pension.

a decision until she returned from vacation. Deputy Superintendent Hibbard subsequently informed the subordinate Captain that Complainant could have until she returned from vacation to retire as a Major. After Complainant returned from vacation, the subordinate Captain informed Complainant that her resignation would be accepted as late as Friday, March 28, 2003, allowing her to retire as a Major, but after that date it could not be accepted due to the state's payroll system. Complainant did not contact Deputy Superintendent Hibbard or Colonel Foley. Complainant's demotion to Captain remained in effect as of March 23, 2003. Following her demotion, Complainant became a Captain in the Department of Standards and Training, a position she found demeaning relative to her prior role. Complainant retired effective September 10, 2004.

The subordinate Captain testified that he spoke with Colonel Foley and Deputy Superintendent Hibbard the evening of March 10, 2003 and initiated a discussion regarding the Complainant's removal from the Colonel's command staff. He testified that Colonel Foley said words to the effect of "it is all about loyalty." Colonel Foley testified that the subordinate Captain raised the issue of loyalty, and he responded to the Captain's inquiries about the removal by saying there were "a number of reasons why Kathy is being removed." With respect to loyalty, the minutes of a command staff meeting on February 25, 2003, reflect statements of Colonel Foley that "he stressed the need for members of the Command Staff to work together as a team, be loyal to the Department and to him." Complainant's Ex. 15 (emphasis added). Colonel Foley testified that he "may have said" these words at the command staff meeting.

On the same date as the March 14, 2003 Personnel Order announcing the demotion of Complainant to the rank of Captain, Colonel Foley issued a Personnel Order announcing the retirement of a male Major who was in command of Troop A. In addition, Colonel Foley issued

a Personnel Order promoting two officers, one male and one female, to the rank of Major. The female officer was placed in command of Troop A. Colonel Foley testified that three male Majors under his command were notified of their impending demotions, and chose to retire instead of accepting demotions. As noted above, one such retirement was announced on March 14, 2003; another was announced May 28, 2002, and a third announced on July 1, 2003. In addition, as described previously, in early 2002 after Colonel Foley's appointment, two male members of the command staff retired. (Joint Ex. 3 and 4). Colonel Foley testified that he told both of these command staff members that he was not happy with the way things were going between them and that he intended to make some changes.⁴ These individuals retired at their rank of Lieutenant Colonel.

Colonel Foley testified that he decided to remove Complainant from her position because he had lost confidence in her and due to the ongoing abuse of overtime by the Troop H Operating Officer. He denied that the Complainants' decision to submit her resume to the Governor-elect's committee had anything to do with his decision to demote her. The Hearing Officer did not credit this testimony. Nonetheless the Hearing Officer concluded that Respondent did not act with discriminatory intent or state of mind based on Complainant's gender, but rather acted out of resentment that Complainant took steps to advance her career at his expense. After evaluating the entire record, the Hearing Officer concluded that there was insufficient credible evidence to establish that Complainant's demotion was motivated by gender bias and dismissed the complaint.

⁴ G.L. 22C §3 provides the Colonel of the State Police with broad powers over the administration and organization of the department, including discretion to appoint and demote those officers constituting his command staff. Greaney v. Colonel, Dept. of State Police, 52 Mass. App. Ct. 789, 793 (2001), *aff'd* on rescript, 438 Mass. 1008 (2002). This broad discretion does not include the authority to discriminate in violation of G.L. c.151B.

BASIS OF THE APPEAL

Complainant's appeal is based upon the assertion that the Hearing Officer failed to consider the significance of allegations that prior to, and in the process of, her demotion Respondent treated Complainant differently than similarly situated males. She argues that the Hearing Officer failed to make findings as to whether the alleged differential treatment was an adverse employment action based on gender, and that the failure to consider the totality of the record resulted in the erroneous determination that Respondent was not motivated by discriminatory animus. Complainant recognizes that it is the responsibility of the Hearing Officer as fact-finder to determine the credibility and weight of conflicting evidence. She argues, however, that the Full Commission should reconsider the weight of the evidence by taking into account whatever in the record detracts from the Hearing Officer's findings and, in that light, to consider whether her findings are supported by substantial evidence. The Full Commission has undertaken this review.

Complainant appears to assert that the following material facts or allegations⁵ detract from the weight of the evidence relied upon by the Hearing Officer and support a determination that the Hearing Officer's findings are not supported by substantial evidence.

(1) That Complainant was the first female to attain the rank of Major in the State Police and was the only female Major throughout her tenure.

(2) That the Massachusetts State Police is a paramilitary organization which operates by strict chain of command, and that command staff's actions of bringing complaints about overtime abuse at Troop H to her subordinate, rather than to her, or her superiors, were indicative of gender bias.

⁵ Review of the Public Hearing record reveals that several of these "facts" are based primarily upon Complainant's testimony, reflect her opinion and were not corroborated by other evidence.

(3) That Colonel Foley rebuffed Complainant's attempts to obtain additional staffing for Troop H to reduce overtime costs and did not implement her proposals in this regard.

(4) That sometime prior to October of 2002 Colonel Foley ignored her recommendations that Troop H receive an additional 26 officers due to its staffing and overtime needs. Troop H received only 8 officers, while Troops B and C which were headed by males, and had far lower activity, received a higher number of officers.

(5) That during the July 4th incident, Colonel Foley publically berated Complainant for raising the event threat security level, pointed his finger at her face and chest, and was red faced and practically spitting at her. She asserts that this behavior contravened the practice that supervisors engage in criticism privately in order to maintain morale and respect for the chain of command.

(6) That instructing a subordinate officer to contact Complainant regarding her demotion and the option to retire in lieu of demotion was demeaning and ignored the chain of command structure.

(7) That Complainant's demotion was implemented in a rushed manner and not in accordance with the chain of command, unlike the demotion of other males, one of whom was informed by his direct supervisor and the other who was directly informed by Colonel Foley and allowed to announce his own retirement. In contrast, Complainant's demotion Order was posted via a Doc-U-Share computer system which could be accessed by the entire staff of the Massachusetts State Police.

(8) That according to one witness, the issue of "loyalty" could not be separated from Complainant's membership in the National Association of Women in Law Enforcement (NAWLEE) dedicated to advancing the careers of women in law enforcement.

DISCUSSION

We have carefully reviewed Complainant's Petition and the record in this case and have weighed the objections to the decision in accordance with the standard of review summarized above. We affirm the credibility determinations of the Hearing Officer and properly defer to her findings which are supported by substantial evidence in the record. Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005); School Committee of Chicopee v. Massachusetts Comm'n Against Discrimination, 361 Mass. 352 (1972); Bowen v. Colonnade Hotel, 4 MDLR 1007, 1011 (1982). We find no material errors of fact or law and affirm the Hearing Officer's Decision.

In her Petition, Complainant asserts that the Hearing Officer failed to consider that she was the first female to attain the rank of Major and remained the only female at the rank of Major throughout her tenure. The Hearing Officer recognized that Complainant was the only female holding the rank of Major when she was appointed in 1999. (Decision, p. 3, ¶5.) While this fact is an acknowledgement of Complainant's accomplishments, and speaks to the difficulties female officers historically faced in rising through the ranks of the State Police, it does not alter Complainant's burden to prove that Colonel Foley's adverse actions were motivated by gender bias. Colonel Foley, who had the authority to appoint his own command staff, also initiated the demotion of male officers from the position of Major within the same approximate time period. He also promoted a woman to the position of Major on the same date he demoted the Complainant. The fact that Complainant was the first female to attain the rank of Major is significant but it does not, in and of itself, make it more probable than not that Colonel Foley was motivated by gender bias in demoting Complainant. We conclude that the Hearing Officer's failure to grant more weight to these facts does not materially detract from the weight of the other evidence supporting her conclusions.

Second, Complainant asserts that the Hearing Officer failed to consider that violation of the chain of command in the paramilitary structure of the State Police was evidence of gender bias. Complainant asserts that Respondent violated the chain of command when addressing issues related to overtime abuse in Troop H and in its communications with her subordinate officer regarding her demotion. Complainant claims that Deputy Superintendent Hibbard's communication with her subordinate officer and not her in February of 2003 regarding purported overtime abuse by the Troop H Operations Officer was evidence of gender bias. However, Deputy Superintendent Hibbard testified that he initially notified the Complainant's division commander (her immediate superior) and asked him to contact the Complainant when he learned about the officer's misuse of overtime in January 2003. In February of 2003, when it happened again, he testified that he contacted the subordinate officer and told him to "make sure it was brought to the attention of the Major and deal with it." Transcript at 430, 436. Also, Colonel Foley testified that in or around January of 2003, he had a meeting with Complainant to emphasize concerns about the budget and the expenditure of overtime. Colonel Foley described Complainant as very defensive in that meeting and very dismissive of his concerns about overtime. Transcript at 607 – 610. Given the direct communication from Colonel Foley to Complainant about this issue, we find the fact that Deputy Superintendent Hibbard discussed the matter with Complainant's subordinate does not impact the Hearing Officer's ruling on gender bias.

Specifically regarding her demotion, Complainant avers that neither Colonel Foley nor Deputy Superintendent Bradley Hibbard, made attempts to contact her between March 10 and March 14, 2003 and that Colonel Foley directed Deputy Hibbard to have Complainant's subordinate communicate with her about the demotion, only after signing the personnel order

demoting her. We find that the Hearing Officer did not disregard the command structure of the State Police in rendering her findings. (Decision, p. 2-3, ¶¶2, 3 and 4.) The Hearing Officer found that Deputy Superintendent Bradley Hibbard first notified Complainant of her demotion on March 10, 2003, and that during the week of March 10-14, 2003, Complainant chose to confer several times with her subordinate officer, but did not contact Colonel Foley or Deputy Superintendent Hibbard. Respondent asserts that Complainant did not respond to the Deputy Superintendent's attempts to contact her. The Hearing Officer credited Colonel Foley's testimony that there was no single protocol for effectuating a demotion. Respondent provided legitimate, non-discriminatory reasons for its decision to have a subordinate communicate with Complainant regarding her demotion. There was sufficient evidence to support the Hearing Officer's determination that the manner in which her demotion was communicated was not a significant consideration in the evaluation of Complainant's discrimination claim. The evidence suggests that Colonel Foley was angry at Complainant for what he viewed as lack of loyalty and undermining his position as Colonel, and this may explain why he chose not to communicate directly with her. The evidence does not show that he would have treated a male subordinate who engaged in the same acts as Complainant differently.

Third, Complainant asserts that she was rebuffed in her attempts to obtain staffing for her troop by Colonel Foley who refused to consider the issues unique to Troop H that required more overtime, and that more officers were assigned to Troops commanded by male officers. The evidence reveals that the Complainant indeed made requests for additional staffing to her superior officer, Lieutenant Commander Kelly (Complainant's Ex. 6, 9, 10, 11). However, the record does not reveal whether these requests were reviewed or rejected by Colonel Foley. Nor was he questioned about these requests during his testimony. We are not persuaded that the

failure to place more weight upon these allegedly rebuffed requests for staffing was error, nor that the alleged lack of response from Colonel Foley was motivated by gender bias. Further, the Hearing Officer specifically recognized that Troop H was required to incur overtime expenses in excess of other Troops, and was allotted more overtime hours. Hearing Officer Decision, ¶17. Importantly, the Hearing Officer discounted the overtime issue as the motivating factor in Respondent's decision.

Fourth, Complainant avers that Complainant Foley treated her differently than her male counterparts even before she applied for his position in November of 2003. Specifically, Complainant points to the July 4th incident and to the staffing issues discussed above. The evidence reveals that Colonel Foley believed that Complainant had not complied with his directive to contact him first if anything happened at her command post during this high profile event. Deputy Superintendent Hibbard testified that he was "shocked" that the Complainant raised the threat level absent consultation with Colonel Foley. While Respondent's general practice may have been not to dress down subordinates publically, there was no evidence to suggest that Colonel Foley treated Complainant differently than he would have treated a male counterpart given this high profile incident, its potential impact to public safety and security, and his perception that Complainant failed to follow his directives.

Fifth, Complainant contends that the Hearing Officer omitted the fact that Complainant testified that when she attempted to initiate conversation with Colonel Foley, both at social functions and at professional meetings, he would excuse himself and leave. We do not find this assertion sufficient to support a finding of gender bias. There is no evidence that Colonel Foley treated Complainant differently from her similarly-situated male peers or that he treated her this way due to her gender. We find no reversible error in the fact that while the Hearing Officer

considered this testimony (Hearing Officer Decision, ¶ 9), she did not make a finding of gender discrimination on this basis.

Sixth, Complainant contends that the manner in which Respondent communicated with her regarding her demotion and the short amount of time she was given to decide her options was evidence of gender bias. We note that the evidence shows that male officers holding the rank of Major were removed by Colonel Foley at about the same time as Complainant. These officers made the decision to retire, in lieu of being demoted. The Hearing Officer noted that the only evidence that the male Majors were given more time to decide whether to retire or to accept a demotion was Complainant's own testimony. Moreover, there were findings that Complainant chose not to return phone calls from or communicate with Deputy Superintendent Hibbard concerning the decision before her or to seek more time to make the decision. Hearing Officer Decision, ¶¶ 37, 38.

Even considering all of these facts in their totality, we conclude there is insufficient evidence to disturb the Hearing Officer's conclusion that Colonel Foley was motivated by a sense of betrayal and anger at Complainant for being disloyal and, in his view, seeking to undermine him by applying for his job. While the allegations cited in Complainant's petition might lead one to a contrary conclusion, we may only substitute our judgment for that of the fact-finder if it is unsupported by substantial evidence. O'Brien v. Director of Employment Security, 393 Mass. 482 (1984). A reviewing body may not ignore evidence in the record that fairly detracts from the weight of the evidence upon which the fact-finder relied. Cohen v. Bd. Of Reg. in Pharmacy, 350 Mass. 246, 253 (1966). However, just as a court on a G.L.c. 30A review is not permitted to "displace an administrative board's choice between two fairly conflicting views, even though the court would ... have made a different choice had the matter been before

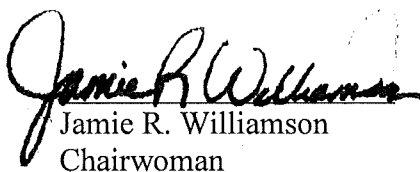
it *de novo*,” neither are we permitted to displace the Hearing Officer’s findings if they are supported by the evidence. Saint Elizabeth’s Hosp. v. Labor Relations Commission, 2 Mass App. Ct. 782, 783 (1975), *quoting* Labor Relations Commission v. University Hospital, Inc. 359 Mass. 516, 521 (1971).

We conclude that the Hearing Officer’s determination that there was insufficient credible evidence to establish that Complainant’s demotion was motivated by gender bias is supported by review of the evidence presented at the Public Hearing. Given Colonel Foley’s statements concerning loyalty, the credible testimony that after Complainant applied for the position of Colonel questions about her use of overtime increased, the political nature of high level appointments in the State Police and the hierarchical structure of the organization, the conclusion that Complainant’s demotion was primarily motivated by her perceived disloyalty and not because of her gender is well supported. Despite the Hearing Officer’s disbelief that the reasons Respondent articulated for its actions were the real reasons (i.e., purported concerns about Complainant’s judgment and overtime issues) she attributed Complainant’s demotion to a legitimate, non-discriminatory reason that is supported by the evidence. See Abramian v. Pres. & Fellows of Harvard College, 432 Mass. 107, 117-118 (2000) (although evidence that the articulated reason is untrue permits an inference of discrimination, jury (fact-finder) not compelled to find for plaintiff who shows that the employer’s reasons are untrue). Even if the articulated reason for the adverse action is untrue, there may be a finding of no discriminatory intent, or a finding that the employer’s action was based on a different, non-discriminatory reason. Id. The Complainant is still required to prove that Respondent acted with a discriminatory intent, motive or state of mind and that this animus was the determinative cause for the adverse decision. Lipchitz v. Raytheon Co., 434 Mass. 493, 504-505 (2001). In this case

the fact-finder's conclusion that Complainant failed to sustain her burden of proving that Respondent's adverse actions were the result of discriminatory animus was supported by substantial evidence.

Based on all of the above, we deny the Complainant's appeal and affirm the Hearing Officer's decision in its entirety.

SO ORDERED⁶ this 24th day of January, 2017


Jamie R. Williamson
Chairwoman


Charlotte Golar Richie
Commissioner

⁶ Commissioner 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