COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
PATRICIA SUOMALA,
Complainants

v. DOCKET NO. 13-SEM-00792

MASSACHUSETTS SOCIETY FOR
THE PREVENTION OF CRUELTY
TO ANIMALS, ANN MARIE MANNING,
and KATHLEEN COLLINS

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision by Hearing Officer Eugenia Guastaferri in favor of Respondents Massachusetts Society for the Prevention of Cruelty to Animals ("MSPCA"), Ann Marie Manning,[1] and Kathleen Collins ("Respondents"). Following an evidentiary hearing, the Hearing Officer found Respondents not liable for retaliation in violation of M.G.L. c. 151B, § 4(4). Complainant Patricia Suomala appealed to the Full Commission. For the reasons discussed 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,

[1] Respondent Ann Marie Manning is also referred to Ann Marie Manning Greenleaf throughout the record.

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 argues that the Hearing Officer erred by concluding that her termination was not in retaliation for engaging in the protected activity of reporting sexual harassment of one MSPCA employee by a Radiation Therapy Technician ("RTT"). In short, Complainant argues that the Hearing Officer erred in failing to find retaliation based on the very short amount of time between her protected activity and her termination, and by overlooking evidence that the Respondents' reasons for the termination were pretextual, including her good work performance and evidence undermining the credibility of Respondents' testimony. Complainant also argues that the Hearing Officer erred in finding that she failed to provide evidence that Respondents subjected another employee to retaliation following her (Complainant's) report of RTT's conduct.

Upon review of the record below, we find that the Hearing Officer's decision was neither arbitrary and capricious nor unsupported by substantial evidence.

It is unlawful under M.G.L. c. 151 B, § 4(4) to discharge any person who opposes discriminatory conduct forbidden by the statute. 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).

In order to prevail on a claim of unlawful retaliation, a complainant must prove that (1) she engaged in a protected activity; (2) respondents were aware that she had engaged in protected activity; (3) respondents subjected her to an adverse employment action; and (4) a causal connection exists between the protected activity and the adverse employment action. See Mole v. University of Massachusetts, 442 Mass. 582, 591-592 (2004). If respondents show legitimate, non-retaliatory reasons for the termination, the complainant must prove that those reasons are a pretext for discrimination in violation of M.G.L. c. 151B, § 4(4). Wheelock College v. Massachusetts Comm'n Against Discrimination, 371 Mass. 130, 134-136 (1976), citing McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). Complainant failed to persuade the Hearing Officer that Respondents' reasons for her termination were pretextual.

The Hearing Officer carefully considered both Complainant's evidence and Respondents legitimate reasons for her termination. Over Respondents' objection regarding the first element (protected activity), the Hearing Officer concluded that Complainant established a prima facie case. The Hearing Officer also inferred a causal connection between the protected activity and the

termination given the proximity in time between the two, i.e., Complainant's termination was just a week or so after she reported sexual harassment.

However, the Complainant ultimately failed to prove the requisite causal connection between the asserted protected activity and her termination. A factfinder may infer causation based on the proximity in time between a Complainant's protected activity and her employer's adverse action, but proximity in time, alone, does not require a finding of causation. MacCormack v. Boston Edison Co., 423 Mass. 652, 662 n.11 (1996), citing Prader v. Leading Edge Prods., Inc., 39 Mass. App. Ct. 616, 617 (1996). The burden remains on the complainant to prove causation in the face of any legitimate reasons for the adverse action given by the respondent. Loewy v. Ariad Pharmaceuticals, Inc., 42 MDLR 28, 30 (2020). "Were the rule otherwise, then a disgruntled employee, no matter how poor his performance or how contemptuous his attitude toward his supervisors, could effectively inhibit a well-deserved discharge by merely filing, or threatening to file, a discrimination complaint." Mesnick v. General Elec. Co., 950 F.2d 816, 828 (1st. Cir. 1991).

The Respondents testified that they terminated Complainant's employment due to her behavior and attitudes expressed at work over a period of time, including her actions in meetings with consultants and staff, her undermining of her superiors with subordinate staff, and her abdication of responsibility for her work. Complainant argues that she proved these reasons to be a pretext for retaliation because the fact that she received an annual raise of three percent in August 2012 constitutes proof that Respondents viewed her performance favorably prior to her protected activity.

A review of the record demonstrates that the Hearing Officer considered evidence of Complainant's positive performance and the fact that Complainant received a three percent annual raise in 2012. Moreover, the Hearing Officer acknowledged that the parties agreed that

Complainant performed well when she was initially hired as Director of Client Services and early in her tenure as Director of Inpatient services. Nonetheless, the Hearing Officer credited Manning's testimony that Complainant's performance deteriorated over time. The record evidence shows that on April 23, 2012, prior to Complainant receiving her annual raise (in August 2012), Manning issued Complainant an Oral Warning —the only formal discipline Manning ever issued to a Service Director—due to Complainant's unprofessional interactions with Human Resources staff. The record also shows that issues with Complainant's performance continued after she was given the oral warning by Manning. Indeed, in July 2012, following the oral warning, but prior to Complainant's annual raise, Manning became aware that Complainant made comments at a meeting with a consultant from Horizon Veterinary Services that some, including Manning, felt undermined management. The record further shows that after Complainant received the annual raise in August 2012, another employee reported to Manning that Complainant had made further inappropriate comments in a second meeting with the Horizon consultants on August 12, 2012. The Hearing Officer credited Manning's testimony that she found the comments "disrespectful" and that "she was angry that Complainant spoke negatively about her in front of her direct reports and the consultant." On September 11, 2012, after Complainant engaged in protected activity, Complainant engaged in further behavior that undermined Manning, this time with Manning present, at a meeting with leadership consultants from another consulting group. The record evidence shows that on September 12, 2012, the day after the meeting with this consulting group, Manning emailed Collins indicating that she was considering terminating Complainant's employment or asking her to resign. In short, after reviewing the record evidence regarding Complainant's performance and Manning's rationale for terminating her employment, we find that

the Hearing Officer's findings are supported by substantial evidence and Complainant failed to prove that the rationale for her termination was pretextual.

Regarding the argument that the Hearing Officer erred by finding Complainant failed to provide evidence that Respondents subjected a coworker, Silvia Coviello, to retaliation following the incident with the RTT, the argument misconstrues the hearing decision. It was not necessary for the Complainant to establish that Coviello was the victim of retaliation to prevail on her own retaliation claim, and the hearing decision does not indicate otherwise. As such, we find this argument unavailing.

Complainant also makes specific arguments that crediting some of Respondents' testimony was an abuse of discretion, citing three examples: 1) Respondent MSPCA's President Carter Luke signed the Respondents' Position Statement in this matter, but admitted under cross-examination that he "knew very little of this case at all;" 2) Manning testified that her compensation was not related to revenue generation, and that this had no bearing on her reluctance to terminate the RTT and her haste to terminate Complainant, but the MSPCA's 2012 tax return and testimony from the MSPCA President showed that Manning did receive compensation based upon revenue generation; and 3) Respondent Manning testified that she gave raises unrelated to job performance to everybody, but Complainant was one of only four out of the ten Service Directors to receive a raise in 2012.

The above points do not persuade us that the Hearing Officer abused her discretion in finding key Respondent testimony credible. Complainant's first point concerning MSPCA President Carter Luke signing the Position Statement is unavailing. The Commission's procedural regulations require that a position statement be signed, in the case of a corporate respondent, by "a principal of respondent, or a person, other than its attorney, authorized to act for the respondent."

See 804 CMR 1.05 (8)(d)(1) (2020). The Complainant has not provided any evidence to support its argument that Luke, as president of the MSPCA, did not have authority to sign Respondents' Position Statement. Luke testified that that he spoke with individuals with firsthand knowledge of the facts and arguments presented in Respondents' Position Statement prior to signing the document and believed the information to be true to the best of his knowledge. In any event, Luke's testimony was narrow in scope.

Second, Complainant's argument that Manning lied about her compensation and was reluctant to terminate the RTT appears to misstate the record. Manning did not testify concerning her compensation during public hearing. In support of this argument, Complainant cites solely to Luke's testimony concerning the MSPCA's 2012 tax return stating Manning received additional compensation that year. The 2012 tax return is not enough to support Complainant's argument or to disturb the Hearing Officer's finding of credibility.

Third, the Hearing Officer did not find that the raise Complainant received in August 2012 was indicative of Manning's satisfaction with her performance, crediting Manning's testimony that she typically budgeted for and approved a three percent increase each year for Service Directors including Complainant, so as not to punish employees for whom she did not complete evaluations. Accordingly, pay raises were not necessarily dependent or based on good performance.

For all these reasons, we find the Hearing Officer's conclusion that Respondents did not retaliate against Ms. Suomala is supported by substantial evidence and affirm the Hearing Officer's decision.

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 2nd day of October 2023.

Sunila Thomas-George Chairwoman	Monserrate Rodríguez Colón Commissioner	Neldy Jean-Francois Commissioner