

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
TIA,

Complainants

DOCKET NOs. 14-BEM-00559
15-BEM-01486

v.

HERB CHAMBERS 1186, INC.,
Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision by Hearing Officer Betty E. Waxman, dismissing the complaint filed by Complainant Tia¹ (“Complainant”) against Respondent Herb Chambers 1186, Inc., (“Respondent”), alleging employment discrimination based on creed, sex, sexual harassment, and retaliation. Following an evidentiary hearing, the Hearing Officer found that Respondent was not liable for discrimination under M.G.L. c. 151B, § 4(1), (4), and (16A). Complainant appealed to the Full Commission.² 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 Complainant uses the single appellation “Tia” as both her first and last name.

² Complainant, without assistance of counsel, submitted a hand-written petition for review on August 19, 2019, pursuant to 804 CMR 1.23 (1999), the regulations in effect at the time of the filing. Complainant was represented by counsel at the public hearing.

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

Based on a broad reading of the petition for review, Complainant has appealed the decision on the grounds that the Hearing Officer’s findings were arbitrary, capricious, and not supported by substantial evidence. Complainant contends that the Hearing Officer erred by crediting Respondent’s witnesses and disregarding evidence presented by the Complainant. Complainant also asserts that the Hearing Officer abused her discretion by applying improper weight to evidence regarding a complaint that Complainant filed with the state Board of Registration of Physician Assistants in late 2011/early 2012 against a Physician Assistant employed by Harvard Vanguard. Finally, on appeal of a hearing decision, Complainant attempts to introduce evidence of conciliation efforts, including alleged settlement offers, in an effort to bolster her credibility claims.

Complainant argues that the Hearing Officer erred by crediting the testimony of Respondent's witnesses while disregarding evidence she presented. Complainant alleges broadly that the witnesses for Respondent were untruthful in general and does not cite to any specific findings of fact as unsupported by material evidence.³ With respect to Complainant's contentions that the Hearing Officer, in general, did not credit Complainant's evidence, 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. 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's decision documented evidence that she found significant, and when she made a finding where there was contradictory evidence in the record, she addressed the contradictory evidence in her decision. "While we must consider the entire record, and must take into account whatever in the records 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." Duggan v. Board of Registration in Nursing, 456 Mass. 666, 673-674 (2010) (citations omitted). This standard of review does not permit us to substitute our judgment for that of the Hearing Officer in considering conflicting evidence and deciding 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.

³ Complainant identifies only two specific instances where she alleges Respondent's witnesses lied: Complainant alleges that Susan Tarquini "got [Complainant] the job w[ith Respondent] then lied about it" and that Ms. Tarquini was, in fact, present when Complainant was terminated. Complainant has not identified any corresponding findings of fact that relate to these two allegations. These facts are not material to the complaints of discrimination and, therefore, the Hearing Officer did not make any corresponding findings of fact.

Complainant likewise alleges that the Hearing Officer applied improper weight to evidence presented by Respondent regarding the Administrative Hearings Counsel's findings following a formal adjudicatory hearing into a complaint that Complainant filed with the state Board of Registration of Physician Assistants (the "Board") in late 2011/early 2012 against a Physician Assistant employed by Harvard Vanguard. With respect to the complaint filed with the Board, the Hearing Officer carefully considered the information presented. The Hearing Officer determined that the findings of the Board regarding Complainant's lack of credibility aligned with her personal observations about Complainant's lack of credibility during the public hearing. These credibility determinations must be accorded deference as the Hearing Officer was in the best position to make judgments about the veracity and reliability of witness testimony. See Ramsdell, 415 Mass. at 676.

Finally, in her petition for review, Complainant attempts to introduce evidence regarding conciliation efforts, including alleged settlement offers, to support her credibility. The Commission's procedural regulations specifically prohibit the introduction of this type of evidence. See 804 CMR 1.18(1)(e) (1999) (relevant procedural regulation in effect at the time of public hearing in this matter) and 804 CMR 1.09 (8) (2020). Indeed, it is well-established that Hearing Officers are required to assess the credibility of witnesses based on their demeanor and testimony at public hearing and may not rely on information or evidence presented during conciliation efforts. See Wash v. First Realty Associates, et al., 34 MDLR 139 (2012). Moreover, the Full Commission's review of a hearing decision is confined to the record of the proceedings, and it does not consider new evidence. 804 CMR 1.23 (8) (2020); 804 CMR 1.23(9) (2020).

After careful review of Complainant's grounds for appeal and the record in this matter we find no material errors of fact or law with respect to the Hearing Officer's findings and conclusions of law. We find the Hearing Officer's conclusions were supported by substantial evidence in the record, and we defer to the Hearing Officer's determinations of credibility.

ORDER

We hereby affirm the decision of the Hearing Officer dismissing the case. 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 ORDERED⁴ this 5th day of July, 2023.



Neldy Jean-Francois
Commissioner



Monserrate Rodríguez Colón
Commissioner

⁴ 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).