

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
TANZANIA WILSON,
Complainants

v.

DOCKET NO. 10-BEM-00782

MASSACHUSETTS DEPARTMENT
OF TRANSITIONAL ASSISTANCE,
Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us following a decision of Hearing Officer Judith E. Kaplan in favor of Respondent Massachusetts Department of Transitional Assistance. Following an evidentiary hearing, the Hearing Officer concluded that Respondent was not liable for discrimination based on race and color. The Hearing Officer further concluded that Respondent was not liable for retaliation. Complainant has appealed to the Full Commission. For the reasons provided 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 *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. 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); MCAD and 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).

BASIS OF THE APPEAL

Complainant has appealed the Hearing Officer’s decision on the grounds that the Hearing Officer erred and abused her discretion by failing to credit Complainant’s testimony and instead crediting the testimony of Respondent’s witnesses. Complainant asserts that the Hearing Officer erred and abused her discretion in determining that Respondent was not liable for discrimination based on race and color and retaliation.¹ After careful review we find no material errors with respect to the Hearing Officer’s findings and conclusions of law. We properly defer to the

¹ Complainant further asserts that the Hearing Officer made “offensive, evil, hateful, and insensitive” remarks in her decision, based her decision on her emotions and personal feelings, and misunderstood the facts of the case and intentionally ignored the law. We disagree with these assertions. The Hearing Officer properly considered the entire record in this matter and did not abuse her discretion in reaching her decision.

Hearing Officer's findings as they are supported by substantial evidence in the record. See Quinn v. Response Electric Services, Inc., 27 MDLR at 42.

Complainant first argues that the Hearing Officer erred and abused her discretion by discrediting Complainant's testimony and instead crediting the testimony of Respondent's witnesses. We disagree. The Full Commission defers to the Hearing Officer's credibility determinations and findings of fact, absent an error of law or abuse of discretion. 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 a witness'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 of review does not permit us to substitute our judgment for that of the Hearing Officer in considering conflicting evidence and testimony, as it is the Hearing Officer's responsibility to weigh the evidence and decide disputed issues of fact. Here, the Hearing Officer specifically discredited Complainant's testimony finding it to be "evasive, contradictory and disingenuous in so many respects as to cast doubt on her credibility in general." The Hearing Officer concluded that Respondent's witnesses' testimony was "credible and consistent with the documentary evidence of record." We will not disturb the Hearing Officer's credibility determinations, where, as here, the Hearing Officer did not err or abuse her discretion.

Complainant argues that the Hearing Officer erred in concluding that Respondent was not liable for discrimination based on race and color. Specifically, Complainant argues that the Hearing Officer ignored substantial evidence that Complainant was subjected to a racially hostile working environment and disparate treatment. We disagree with Complainant's assertions. Although Complainant alleged that her co-workers refused to call her by her name and instead

called her “the black girl” or “the new black girl”, the Hearing Officer did not find Complainant’s testimony to be credible. Instead, the Hearing Officer credited the testimony of Respondent’s witnesses that Complainant was called by her name and was never referred to as “the black girl” or “the new black girl.” We reiterate that it is the Hearing Officer’s responsibility to consider conflicting evidence and testimony and her credibility determinations generally should not be disturbed. See Quinn v. Response Electric Services, Inc., 27 MDLR 42 (2005). Complainant also alleged that there were several instances where her co-workers made other offensive statements that created a hostile work environment. The Hearing Officer found that the only statements that were substantiated were that a co-worker once referred to a trainer, whose name she did not know, as “the black trainer” and on another occasion the same co-worker was overheard referring to a movie character as having a “big black butt.” The Hearing Officer found that other than these stray comments, which were not directed at Complainant, there was no evidence to support Complainant’s allegations of racial intolerance or hostility in the office. See Clark County School Dist. v. Breeden, 532 U.S. 268, 271 (2001) (providing that “simple teasing, offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the ‘terms and conditions of employment’”); Prader v. Leading Edge Products, Inc., 39 Mass. App. Ct. 616, 619 (1996) (providing that a few isolated remarks over a period of time are generally insufficient to meet the pervasiveness standard).

Further, Complainant alleged that she was subjected to disparate treatment because her supervisors excessively and unjustifiably returned her work for corrections or by-passed her and performed the corrections themselves based on racial animus. The Hearing Officer found that there was no evidence in the record that Complainant’s work was singled out for corrections or returned to her more frequently than her co-workers or that the return of her work had anything

to do with her race and color. The Hearing Officer did not err or abuse her discretion in determining that Respondent was not liable for discrimination based on race and color.

Complainant argues that the Hearing Officer erred in concluding that Respondent was not liable for retaliation. Specifically, Complainant alleges that, after making her internal complaint of discrimination and filing an MCAD complaint, Complainant's supervisors returned her work for corrections more frequently. Although the Hearing Officer found that Complainant engaged in a protected activity, the Hearing Officer determined that there was no credible evidence of any causal connection between the Complainant's complaints of discrimination and the amount and frequency of her work being returned to her for corrections. The Hearing Officer noted that Complainant did not establish that her work was returned for corrections more frequently after she filed her complaints. The Hearing Officer also recognized that the frequency with which Complainant sought new supervisors suggested that Complainant's performance was a genuine issue which needed to improve. There was no error in the Hearing Officer's determination that Respondent was not liable for retaliation.

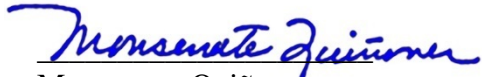
On the above grounds, we deny Complainant's appeal and affirm the Hearing Officer's decision.


ORDER

For the reasons set forth above, we hereby affirm the decision of the Hearing Officer. 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 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 ORDERED² this 13th day of July, 2020


Monserrate Quiñones
Commissioner


Neldy Jean-Francois
Commissioner

² Chairwoman Thomas George was the Investigating Commissioner, so did not take part in this Full Commission decision. See 804 CMR 1.23(6)(2020).