

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

M.C.A.D. &
VAUNZELLA HILLAIRE,
Complainants,

v.

DOCKET NO. 09-BEM-03146

CITY OF BOSTON &
LINDA PERCY,
Respondents

Appearances:

Soraya Sadeghi, Esquire for Vaunzella Hillaire
Dawn M. Beauchesne, Esquire for the Respondents

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On December 7, 2009, Vaunzella Hillaire filed a complaint with this Commission charging Respondents with unlawful retaliation, in violation of M.G.L. c.151B, sec. 4(4). Specifically, Complainant alleges that Respondents denied her access to attend a professional development workshop because she had filed a prior complaint against Respondents alleging discrimination on the basis of her race and color. (Docket No. 09-BEM-02805)¹ The sole issue before me is whether Respondents' refusal to grant Complainant permission to attend a training session on December 9, 2009 constituted unlawful retaliation. The Investigating Commissioner issued a probable cause determination, attempts to conciliate this matter failed and the case was certified for public hearing. A public hearing was held before me on May 7 and 8, 2013. After

¹ The previous complaint was dismissed for lack of probable cause and the lack of probable cause determination was upheld on appeal.

careful consideration of the record before me and the post-hearing submissions of the parties, I make the following findings of fact, conclusions of law and order.

II. FINDINGS OF FACT

1. Complainant Vaunzella Hillaire, who is African-American, has worked for the Mayor's office of the City of Boston since 2001 as a staff assistant to the Administration and Finance Manager, Linda Percy, a position Percy held until her retirement in March 2011. Complainant's duties included processing the payroll for the Mayor's office, collecting time sheet from employees, entering payroll data into the computer system, printing out the payroll for Percy's signature, maintaining employees' leave balances, and typing all hiring forms and related matters. In addition to those duties, Complainant occasionally served as a receptionist, answered phones, and received, distributed and picked up mail from the mailroom. Complainant was the only employee who reported to Percy. (Testimony of Complainant; Testimony of Percy)

2. Linda Percy worked for the City of Boston from February 1984 until her retirement in March 2011. Percy functioned as the personnel manager and budget officer for the Mayor's office proper, the Mayor's press office, the Office of Neighborhood Services and the Mayor's 24-hour service. Percy developed budgets and monitored all expenses for those departments, testified before the City Council, met with various department heads about budget issues, supervised all personnel aspects of those departments, including meeting with new employees, meeting with retiring employees and disseminating various policy changes. Percy reported to the Mayor's chief of staff. (Testimony of Percy)

3. Complainant and Percy had a strained working relationship from 2003 until Percy's retirement. Complainant has filed internal complaints about Percy with the City's Human

Resources Department alleging various actions by Percy were motivated by racial animus.

Complainant also made numerous internal complaints regarding having to perform work outside her job duties. The city found no racial discrimination by Percy. By 2009, their relationship had become so poor that the Human Resources Department arranged for a voluntary mediation between them in hopes of improving their communication. (Testimony of Kessler)

4. William Kessler is the City's Assistant Director of the Office of Human Resources. Kessler reports to Vivian Leonard, the Director of Human Resources. Leonard testified that Complainant frequently came to her office on work-related business, and also to complaint about incidents such as Percy's requiring her to perform duties she perceived to be outside her existing job and statements by Percy she felt were inappropriate. Leonard would listen to Complainant's concerns and, if necessary, refer her to Kessler. (Testimony of Leonard)

5. Jennifer Wexler is a Human Resource Manager for the City of Boston. She assists in the development of human resource policy, investigates complaints of discrimination, harassment, retaliation and workplace violence, designs and conducts trainings for supervisors, managers and employees and conducts mediations and mediation trainings. (Testimony of Wexler)

6. The City of Boston offered several types of workshops for employees. Basic skill-building workshops help employees in their professional growth, such as "Business Writing" and "How to Present Ideas in a Meeting." A series of workshops such as "Strengthen Your Financial Future Initiative" are for employees' personal enrichment. There are also job specific workshops which are mandated for employees in certain jobs; for example, all payroll officers attend trainings pertaining to changes in the payroll process. (Testimony of Percy)

7. During Complainant's employment, Percy approved Complainant's attendance at numerous workshops and denied her attendance at others. Percy allowed Complainant to go to all basic skill building workshops and workshops related to personal enrichment. Percy permitted Complainant to attend for the second time a workshop entitled "Expressing Yourself, Presenting Your Thoughts and Ideas," because she believed Complainant could benefit from such skills and allowed her to attend a workshop entitled "Arrest Your Stress." (Testimony of Percy; Testimony of Complainant)

8. After several internal complaints about Percy by Complainant, William Kessler recommended they engage in a voluntary mediation session in an attempt to resolve their differences. A voluntary mediation session was scheduled for September 17, 2009 with Jennifer Wexler. (Testimony of Wexler; testimony of Kessler)

9. On September 16, 2009, Percy permitted Complainant to attend a training entitled "Managing Employees Effectively and Lawfully"² even though Complainant did not manage employees. Percy testified credibly that she allowed Complainant to attend this conference because it was the day before their scheduled mediation session and because it was sometimes easier to say yes to Complainant than to deal with the "fallout" from her complaining to the Human Resources Department, which was time-consuming for all involved.

10. Wexler testified that the mediation tried to address the issues of respect, communication and trust and to improve the relationship between Complainant and Percy, which had become strained. During the mediation, Complainant emphasized the importance she attached to her professional development and her desire to do well at her current job and to seek other employment with the city. (Testimony of Wexler)

² This training was sponsored by the Law Department and Kessler was unaware of it.

11. The session resulted in a written mediation agreement dated September 17, 2009 which stated, “There will be no derogatory comments, racial epithets, offenses or hurtful comments made.” The agreement was structured so that if Percy could not come to agreement with Complainant on an issue, she would consult with someone in the office of Human Resources. The agreement stated that when Complainant wished to attend a workshop that would further her career development, she would seek Percy’s permission. The mediation agreement stated that, for the next 60 days, Percy was to consult with Human Resources regarding training about which she and Complainant could not agree. After 60 days, Percy was no longer required to consult with Human Resources, however she continued to do so. The other aspects of the agreement were to go on in perpetuity. (Testimony of Percy; Testimony of Wexler; Testimony of Kessler; Ex. C-3)

12. On September 17, 2009, Kessler notified managers of a training scheduled for October 1, 2009, about “job posting” on a new electric job application system. The electric job board was a new on-line system that replaced the process of applying for city jobs on paper. The training was intended for employees who created job postings and who performed hiring and related matters and space was limited. However, the Mayors’ office, where Complainant and Percy worked, did not use the new electronic job board and its use had no application to Complainant’s current position. Therefore, Percy notified HR that she and Complainant would not be attending the training session. (Testimony of Percy)

13. Despite the mediation agreement’s requirement that Complainant obtain Percy’s permission before attending any training, she did not seek Percy’ permission to attend the “job posting” training. Complainant was aware of Percy’s decision that neither she nor Complainant should attend the “job posting” training. She nonetheless went directly to William Kessler to

complain that Percy would not allow her to go to the training. Kessler testified credibly that after discussing the matter, the Human Resources Department decided Complainant should be allowed to attend, despite the workshop's lack of relevance to her job duties, in order to appease Complainant, to diffuse matters between Percy and Complainant and to prevent them from "arguing about everything." Kessler testified that the training could potentially be relevant to jobs that Complainant might seek in other city departments that did utilize the electronic system.

14. On October 1, 2009, after returning from the job posting workshop, Complainant observed water on the floor of Percy's office. She asked Percy what had happened and, according to Complainant, Percy responded with a remark that she perceived to be racial stereotyping but which Percy denied saying.

15. On October 9, 2009, Complainant filed her first complaint with this Commission alleging discrimination on the basis of her race. That complaint referenced the alleged racially-tinged remark on October 1, 2009, as well as several other incidents involving Percy dating back to 2003 that Complainant perceived to be motivated by racial animus. That complaint was dismissed for lack of probable cause on August 12, 2010 and the dismissal was affirmed on appeal on December 20, 2010.

16. Complainant was permitted to attend workshops, such as "Strengthen Your Financial Future," on October 27, 2009 and "Weatherizing Your Residence," on November 17, 2009. These workshops were related to personal growth enrichment and were offered to all employees regardless of their work function. (Testimony of Percy)

Hiring and Retirement Best Practice Workshop

17. On November 23, 2009, Complainant learned of a 90 minute workshop entitled "Hiring and Retirement Best Practice" to take place on December 9, 2009, and emailed Percy for

permission to attend the workshop because she believed it was related to her job and would benefit her career development. (Testimony of Complainant; Ex. C-4)

18. Percy responded via email "...per the mediation agreement entered into on 9/17/09, could you please tell me how you think this HR training/workshop is important to your professional growth. Complainant responded that it would allow her "to better understand how the termination process works....and it would give [her] the opportunity to learn how all these different hiring and retirement practicing practices work." Complainant further responded: "Besides, the email didn't state retirement heads, managers, or supervisors only. It said colleagues. Am I not a colleague?" (Testimony of Complainant, Ex. C-6)

19. Percy testified credibly that she did not believe the workshop was relevant to Complainant's position, which had nothing to do with the preparation of budget amendments, executive orders or the retirement process. However, in order to avoid the appearance of retaliation and to follow the terms of the mediation contract, Percy sought direction from William Kessler, who helped coordinate the training and was to be a presenter at the "Hiring and Retirement Best Practice" workshop.

20. Kessler testified credibly that he reviewed Complainant's job description and determined that the workshop would not be beneficial for Complainant's professional growth because it was very specifically focused on the role of personnel officers in the employment process.³ Kessler informed Percy, via email, that the workshop was not appropriate to Complainant's job. (Testimony of Kessler) Percy forwarded Kessler's response to Complainant.

³ The agenda for the workshop is as follows: 10:00 a.m.-10:30 a.m. Welcome and Overview, When is an Executive Order required vs. a Budget Amendment, New Employee Hire Process, Your Role in the Retirement Process: 10:30 a.m.-11:25 a.m. Interactive Discussion & Exercise Processing New Hires/Terminations" 11:25-11:30 a.m. Evaluation & Wrap up

Complainant responded on December 3, 2009 that Percy's denial of her request to attend the workshop was "very disappointing." (Ex. 6)

21. On December 7, 2009, Complainant filed her complaint of retaliation with this Commission.

22. Percy testified credibly that her working relationship with Complainant was as difficult after the mediation and the filing of Complainant's first discrimination complaint as it had been before these incidents. Percy testified that, as a result of the difficult relationship, she was always very guarded in her dealings with Complainant and communicated with her primarily via email so as to avoid misunderstandings.

III. CONCLUSIONS OF LAW

Complainant alleges that Respondents' denying her time off to attend a 90-minute training course was in retaliation for her having filed a prior complaint of discrimination with this Commission. In order to establish a prima facie case of retaliation, Complainant must show that she engaged in protected activity, that Respondents were aware of the protected activity and subjected her to an adverse action and that a causal connection existed between the protected activity and the adverse action. Mole v. University of Massachusetts, 58 Mass.App.Ct. 29, 41(2003).

Under M. G. L. c. 151B, sec. 4(4), a complainant has engaged in protected activity if "she has opposed any practices forbidden under this chapter or . . . has filed a complaint, testified or assisted in any proceeding under [G. L. c. 151B, sec. 5]." While proximity in time is a factor, "...the mere fact that one event followed another is not sufficient to make out a causal link."

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).

Complainant filed her first complaint of discrimination with this Commission on October 9, 2009. By filing her complaint, Complainant engaged in protected activity under G.L. c. 151B sec. 4(4). Respondents acknowledged having received that complaint prior to denying her permission to attend a training session on November 29, 2009. Assuming that the denial of training constitutes an adverse action, Complainant must establish a causal connection between her protected activity and the adverse action. Complainant argues that Percy's referring to the expired mediation agreement in denying Complainant's training request is evidence of retaliatory animus. I do not agree. Her reference to the mediation agreement does not establish a causal connection. Throughout her employment, Complainant was required to obtain approval from Percy for trainings; however, prior to the agreement, Complainant sometimes circumvented Percy and went to straight to human resources for approval. The agreement simply allowed Percy to exercise her discretion as well as to consult with Human Resources whenever there was a disagreement between her and Complainant. The fact that she continued to refer to the agreement after 60 days is not evidence of retaliatory animus; rather it evidences Percy's taking a prudent approach with respect to her interactions with Complainant.

The evidence at public hearing established that Complainant endeavored to attend numerous trainings, no matter how tenuous their connection to her job or her professional growth. When she was not happy with her supervisor's decisions, Complainant played her supervisor against the Human Resources department in order to get her way. Respondents' inconsistency in granting Complainant permission to attending certain trainings and not others was not evidence of retaliatory animus. On the contrary, Respondents bent over backwards to

avoid entanglements with Complainant by sometimes acquiescing to Complainant's unreasonable requests to attend irrelevant trainings. The credible evidence showed that Respondents were not acting out of retaliatory animus in denying Complainant's permission to attend the Hiring/Termination Best Practice Workshop, which they demonstrated was tailored for a particular group of employees and was irrelevant to Complainant's job. I conclude that Complainant has failed to provide sufficient evidence to establish a causal link between the filing of her first MCAD complaint and being denied the ability to attend that workshop. I therefore conclude that Respondents did not engage in unlawful retaliation in violation of G.L. c. 151B s. 4(4) and determine that this matter shall be dismissed.

IV. ORDER

For the reasons stated above, the complaint in this matter is hereby dismissed.

This constitutes the final decision of the hearing officer. Any party aggrieved by this order may file a Notice of Appeal to the Full Commission within ten days of receipt of this order and a Petition for Review with the Full Commission within 30 days of receipt of this order.

SO ORDERED, this 21st day of November, 2013

JUDITH E. KAPLAN
Hearing Officer