

COMMONWEALTH OF MASSACHUSETTS  
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION  
AGAINST DISCRIMINATION &  
RUTH DIAZ  
Complainant

vs.

DOCKET NO. 06-BEM-02822

CONCORD VALLEY TREATMENT  
CENTER, INC. & DR. MONICA LAMBERT  
Respondents

Appearances: Michael Manzi, Esq. & Gregory D. Oberhauser, Esq. for Complainant

DECISION OF THE HEARING OFFICER

I. PROCERDURAL HISTORY

On November 10, 2006, Complainant, Ruth Diaz, filed a complaint of discrimination against her former employer, Respondents Concord Valley Treatment Center, Inc., and Dr. Monica Lambert based on her gender/pregnancy. Complainant alleged that subsequent to announcing her pregnancy to Respondents, her hours were reduced, she was otherwise treated adversely and that after a further reduction in her hours, she was forced to leave her employment. The Investigating Commissioner found Probable Cause to credit the allegations of the complainant and the matter was certified for a public hearing. Counsel for Respondents withdrew his appearance prior to the scheduled pre-hearing conference, but forwarded the notice to Respondents and directed that all further notices be sent directly to them.

Respondents did not appear for the pre-hearing conference held on May 18, 2009. Notice of Hearing was duly served upon Respondents by certified mail at several last known addresses. A Public Hearing was held on August 3, 2009 before the undersigned hearing officer and Respondents did not appear. Pursuant to 804 CMR 1.21(8), a default was entered on the record and Respondents were sent written notice of the consequences of the default. A default hearing was held pursuant to 804 CMR 1.21(8)(c) and evidence was taken from the Complainant and her witness. Complainant's Pre-hearing Report with its attached exhibits was accepted into evidence. Respondents did not move to lift the default. Having reviewed the record of the hearing and the documentary evidence submitted by Complainant, I make the following findings of fact and conclusions of law.

## II. FINDINGS OF FACT

1. Complainant, Ruth Diaz, was hired to work as a secretary and translator at Respondent, Concord Valley Treatment Center, Inc. on February 3, 2006. Complainant was interviewed and hired by Respondent's office manager Angela Jaramillo and Dr. Monica Lambert, who told Complainant she was the CEO and owner of Concord Valley.
2. Concord Valley Treatment Center, Inc., also known as Concord Valley Counseling, was a psychiatric clinic in Lowell Massachusetts run by Dr. Monica Lambert. Complainant testified that Respondent had a total of eleven employees when she worked there. Complainant was hired to work 40 hours per week at \$10 per hour. Her duties were to book appointments, check patients in and verify their insurance, help with filing and copying and assist with translation for the clinic's

many Spanish speaking clients. Jaramillo testified that 97% of the Respondents' patients were Hispanic and non-English speaking.

3. Shortly after she was hired, Complainant became pregnant and she notified Angela Jaramillo that she was pregnant. Dr. Lambert was out of the country at the time on an extended vacation. According to Complainant and Jaramillo, who also testified, Jaramillo informed Lambert of Complainant's pregnancy. Jaramillo testified that she was also pregnant at the time and that when she notified Lambert of Complainant's pregnancy, Lambert became very angry and stated that she could not afford to have two employees pregnant. Jaramillo testified that Respondent Lambert instructed her to consult with Respondents' attorney regarding a way to fire Complainant, but the attorney advised them that Complainant could not be fired because of her pregnancy. Ms. Jaramillo was then instructed to contact a management consultant who also advised her that Respondents could not fire an employee because she is pregnant, but could document work infractions or poor performance. Jaramillo testified that Lambert then told her they needed to figure out a way "to get rid" of Complainant and considered using her husband's criminal record against her.
4. Complainant testified that all employees' hours were reduced to 35 hours per week within a few weeks after she was hired, because Dr. Lambert was in Argentina. However, within a week or so of notifying Respondents of her pregnancy, Complainant's hours were reduced to 28-30 hours per week and subsequently reduced again. Jaramillo told Complainant that Respondents had to cut her hours because there was less work. Meanwhile a 17 year old student was

hired to take over some of Complainant's duties, and Complainant testified that the clinic was busier and had more clients, was expanding to the second floor of the building, and was hiring more doctors. Jaramillo testified that there was no problem with Complainant's performance and she informed Lambert that Complainant had the skills to be the office manager.

5. Complainant testified that Respondents continued to reduce her hours until she then became an on-call employee. She claimed to have worked as little as four to eight hours toward the end of her employment.
6. In April of 2006, Jaramillo left precipitously because her baby was born and Elizabeth Guzman, who had been hired as a secretary after Complainant began working, became the new office manager. Complainant asked Guzman to give her more hours, because she could not survive on the few hours she was working, but Guzman told her Lambert refused to increase her hours because she was pregnant.
7. Complainant's last day of work with Respondent was May 11, 2006, when Complainant was forced to quit because she could not survive on the number hours of work Respondent was giving her. Complainant was only four months pregnant at the time. She collected unemployment for four months after leaving Respondent. There was no evidence regarding the amount of unemployment compensation Complainant received.
8. Documents submitted into evidence as Exhibits D and H show that Complainant worked the following hours and/or received the following amounts of pay for the pay periods at issue.

Period ending 2/11/06	1 week	39.45 hours	\$394.50
Period ending 2/25/06	2 weeks	70.28 hours	\$702.80
Period ending 3/11/06	2 weeks	37.03 hours	\$370.30
Period ending 3/25/06	2 weeks	56.13 hours	\$561.30
Period ending 4/8/06	2 weeks	63.83 hours	\$638.30
Period ending 4/22/06	2 weeks	50.77 hours	\$507.70
Period ending 5/6/06	2 weeks	52.72 hours	\$527.20
Period ending 5/20/06	1 week	4.15	\$ 41.50
Total Compensation			\$ 3,743.60

While the actual records do not show such a precipitous decline in her hours as Complainant professes, had she continued to work 35 hours per week as she was promised, she would have earned \$702.80 for the remainder of each 2 week pay period up until her final week of work for a total of \$4216.80. ( $\$702.80 \times 6$  pay periods = \$4216.80 – \$2646.30 (her actual earnings for those six pay periods) = \$1570.50. Complainant’s lost wages for the period she continued to work at Respondents with reduced hours are \$1570.50. I find that had her hours not been reduced, Complainant would have continued to work until at least September 11, 2006, the date she ceased receiving unemployment compensation and presumably was no longer eligible to look for work because of her pregnancy, a total of 8 additional pay periods. She would have earned a total of \$5622.40 for this period of time. Thus, Complainant’s total lost wages are \$7,192.90.

9. Complainant testified that because of her pregnancy, Lambert would not allow her to expand her duties or to become the office manager when Jaramillo left. Complainant also testified that Lambert did not allow employees to take regular breaks or to take lunch outside the office. Lambert told Complainant she was entitled to one hour for lunch, but on a number of occasions, she was not allowed to take a lunch break. On one occasion during her pregnancy, Complainant

became dehydrated and asked permission to leave work to see a doctor. Lambert denied her request and she was later taken to the emergency room of a hospital by ambulance and was out of work for 3 days.

10. Complainant received unemployment compensation for four months after her separation from Respondents. Her baby was born on October 23, 2006 and she was unable to work for three months after the baby was born, but then found a job at the Lowell Community Center. There is no evidence in the record regarding her future earnings.
11. Jaramillo testified that she notified Lambert that she intended to take a maternity leave when her baby was born and Lambert agreed to grant her a three month leave, but when Jaramillo applied for unemployment compensation, Lambert told the Division of Unemployment Assistance that she had quit her job. Jaramillo testified that she pursued the matter and ultimately received twelve weeks of unemployment compensation. She, too, has a discrimination complaint pending against Lambert at the MCAD. While it is unclear whether the clinic continues to operate, Jaramillo testified that Lambert no longer owns or operates the clinic.
12. Complainant testified that she suffered emotional distress as a result of her hours being cut back and being forced to quit her job. She stated that she sought psychiatric treatment for her distress, but there is no record of such treatment in evidence. Complainant was upset that her hours were reduced and that she was relieved of her duties solely on account of her pregnancy. She claims she felt stressed and cried frequently because Lambert made her feel she couldn't do anything, and even refused to speak with her and on at least two occasions,

ordering her to just go home. According to Complainant, she very much wanted to continue working and repeatedly requested additional hours. She stated that it was difficult to find another job because of her pregnancy and that the stress of not working negatively impacted her health and her pregnancy, although she offered no specific evidence in support of the latter claim.

### III. CONCLUSIONS OF LAW

Massachusetts General Laws prohibits discrimination based on gender which includes discrimination on account of pregnancy, which is a sex-linked characteristic. Actions by an employer which target an employee because of pregnancy or childbirth are considered sex discrimination under G.L. c. 151B. *See* MCAD Guidelines on the Massachusetts Maternity Leave Act (2000) *citing School Committee of Braintree v. MCAD*, 377 Mass. 424, 430 (1979) and *White v. Michaud Bus Lines, Inc.*, 19 MDLR 18, 20 (1997) *quoting Lane v. Laminated Papers, Inc.*, 16 MDLR 1001, 1013 (1994); *see also, Gowen-Esdaile v. Franklin Publishing Co.*, 6 MDLR 1258 (1984) (termination of complainant during troubled pregnancy because of fears of additional absences deemed unlawful sex discrimination).

In order for Complainant to establish a prima facie case based on gender/pregnancy, she must prove that (1) she was a member of a protected class, (2) she was performing her job satisfactorily, (3) she was terminated or otherwise treated adversely, and (4) the adverse actions occurred under circumstances that would raise a reasonable inference of discrimination. *Sullivan v. Liberty Mutual*

*Ins. Co.*, 444 Mass. 34 (2005). The Complainant in this case has met all the elements of a prima facie case. She was a pregnant female, who was performing the duties for which she was hired adequately. Upon notifying Respondents of her pregnancy, her hours were progressively reduced until she became an on-call employee. The records document that she worked only four hours her last week of employment. The substantial reduction in Complainant's duties and hours over a period of several months for the stated reason that Lambert wanted her gone because she was pregnant, caused Complainant to be constructively discharged because she could no longer afford to work so few hours with so little compensation. I conclude that the significant reduction in her hours was effectively a termination. A constructive discharge occurs when an "employer's conduct effectively forces an employee to resign." *GTE Products Corporation v. Stewart*, 421 Mass. 22, 33-34 (1995). It is clear that Respondents' conduct was designed to force Complainant to leave her employment, and ultimately, Complainant had no recourse but to leave.

The Respondents did not appear at the public hearing to defend the claims against them, leaving Complainant's prima facie case un rebutted. Therefore I conclude that the reduction in Complainant's hours was because of her gender/pregnancy and that she was constructively discharged from her employment for the same reason, all in violation of G.L. c. 151B.

#### IV. REMEDY

The Commission is authorized to award damages and to order such other relief as will make an injured Complainant whole and effectuate the purposes of

the statute. Pursuant to G.L. c. 151B §5, the Commission may award damages for lost wages and benefits where appropriate and for emotional distress proximately caused by the acts of discrimination. *See Stonehill College v. MCAD*, 441 Mass. 549 (2004). An award of damages for emotional distress must be fair and reasonable and proportionate to the harm caused. There must be substantial evidence that the damages are causally connected to the unlawful acts of discrimination and of the nature and character of the alleged harm, the severity of the harm, the length of time the Complainant suffered or expects to suffer, and whether the Complainant has attempted to mitigate the harm. *Id.* at 576.

I conclude that Complainant is entitled to a very modest award of damages for emotional distress caused by Respondents unlawful actions. While there was some evidence that Complainant suffered emotional distress, there was no testimony regarding the duration or severity of the distress. Complainant testified generally that the stress of being treated unlawfully and the loss of her job caused her health to suffer and adversely impacted her pregnancy, but gave no details. She claimed to have sought psychiatric treatment for her distress, but offered no testimony or documentary evidence from a mental health or medical provider. She had worked for Respondent only four months at the time of her separation. Notwithstanding the above, I conclude that Complainant did suffer some emotional distress as a result of Respondents' unlawful treatment and the loss of her income. She testified that she cried frequently and lost confidence in her abilities, because Lambert made her feel helpless and not capable of performing her duties. The fact that she was told outright that her hours and her duties were

being reduced because of her pregnancy caused her distress. Her pregnancy made it much more difficult to find other work which was also stress inducing. I conclude that Complainant is entitled to an award of \$15,000 in damages for the distress she suffered as a direct consequence of Respondents' unlawful actions.

Due to the fact that Complainant's diminished hours resulted from discriminatory animus and that she was constructively discharged, she is also entitled to back pay for the period of time she remained employed working reduced hours, and for the period of time from when she left her employment until she ceased collecting unemployment compensation and presumably was no longer able to look for work, a period of four months. Complainant testified that although she was initially hired to work a 40 hour week at \$10 per hour, all employees had their hours cut to 35 hours approximately a week or so after she began her employment. Therefore her back pay award is based on the presumption that but for her pregnancy, she would have continued to work 35 hours per week. I conclude that Complainant is entitled to \$7,192.90 in damages for lost wages as calculated in the findings of fact.

#### V. CIVIL PENALTY

Finally, given the direct evidence of discriminatory animus based on pregnancy, the fact that Respondents ignored the advice of counsel and a management consultant and knew their actions were unlawful, and the demonstrated bad faith of their actions, I conclude that a civil penalty in the amount of \$10,000 should be assessed against Respondents.

VI. ORDER

The Respondents are hereby Ordered to:

1. Pay to the Complainant the sum of \$7, 192.90 for lost wages with interest thereon at the statutory rate of 12% per annum from the date the Complainant was filed, until such time as payment is made, or a court decision is rendered in this matter and post judgment interest begins to accrue.
2. Pay to the Complainant the sum of \$15,000 in damages for emotional distress with interest thereon at the rate of 12% per annum from the date the Complaint was filed until such time as payment is made, or a court decision is rendered in the matter and post judgment interest begins to accrue.
3. Pay to the Commonwealth a civil penalty in the amount of \$10,000.

This Order constitutes the final order of the Hearing Officer. Any party aggrieved by this Order may file a Notice of Appeal to the Full Commission pursuant to 804 CMR 1.23, within ten days of receipt of this Order and a Petition for Review to the Full Commission within thirty days of receipt of this Order. Complainant may submit a petition for attorney's fees within 10 days of receipt of this Order.

So Ordered this 2nd day of February, 2010.

Eugenia M. Guastaferr  
Hearing Officer