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April 20, 2018

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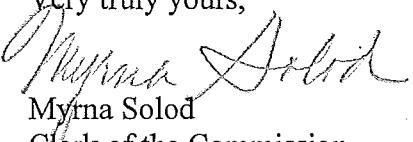
RE: MCAD and Laurel Radwin v. Massachusetts General Hospital
MCAD Docket Number: 10-BEM-01145 EEOC No. 16C-2010-01509

Dear Counsel:

Enclosed please find a copy of the Decision of the Full Commission ("Decision") issued in the above-referenced matter. Any party aggrieved by this final determination may appeal the Commission's decision by filing a Complaint in Superior Court, along with a copy of the transcript of the public hearing, seeking judicial review. Such Complaint must be filed within 30 days of service of this Decision and must be filed in accordance with M.G.L. c. 30A, c. 151B, § 6, and Superior Court Standing Order 1-96 (Amended). Please note that you are obligated to provide a transcript, or portions thereof, to the Superior Court if alleging that the Decision is not supported by substantial evidence or is arbitrary or capricious, or is an abuse of discretion.

All requests for acquiring a transcript of the MCAD public hearing shall be directed to the Hearings Clerk, Yudelka Pena, at 617-994-6122.

Please note that the any penalty imposed in the Decision is owed to the Commonwealth of Massachusetts and should be directed to the attention of the Clerk of the Commission.

Very truly yours,

Myrna Solod
Clerk of the Commission

Enclosure

CERTIFICATE OF SERVICE

I, Myrna Solod, hereby certify that I have served the attached Decision of the Full Commission on the following parties by mailing a copy thereof by:
Certified Mail, Return Receipt Requested.

Laurel Radwin
44 High Street
Chelmsford, MA 01824

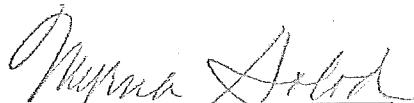
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April 20, 2018

Date



Myrna Solod
Clerk of the Commission

**COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION**

THE MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
LAUREL RADWIN,
Complainant

v.

DOCKET NO. 10-BEM-01145

MASSACHUSETTS GENERAL HOSPITAL,
Respondent

DECISION OF THE FULL COMMISSION

This matter comes before us on appeal of a decision by Hearing Officer Eugenia Guastaferri dismissing Complainant Laurel Radwin’s (“Radwin”) complaint charging Respondent Massachusetts General Hospital (“MGH”) with discrimination on the basis of religion and retaliatory termination. Radwin, who is Jewish, alleged in this matter that her termination by MGH’s Munn Center for Nursing Research (“Munn Center”) was motivated by religious discrimination and was retaliation in response to her protests that certain events at MGH between 2007 and 2009 were scheduled during the Jewish high holidays. MGH denied the allegations and asserted that Radwin was terminated after she had been repeatedly counseled about her conduct toward her colleagues and members of the administrative support staff at the Munn Center, as well as her difficulties with document preparation relating to certain grant proposals and her inability to appropriately resolve workplace stress and disputes. Following a public hearing, the Hearing Officer concluded that MGH was not liable under M.G.L. Chapter 151B section 4(1) for discrimination on the basis of religion or section 4(4) for retaliatory termination. This appeal followed.

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 the 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.

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). The Full Commission's role is to determine whether the decision under appeal was rendered in accordance with the law, or whether the decision was arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with the law. See 804 CMR 1.23.

LEGAL DISCUSSION

Radwin believes the evidence in her case was not fairly assessed, and asks us to remand the case because her evidence was "largely ignored" by the Hearing Officer. This request for relief is exhaustively laid out in a lengthy petition for review of the decision in this case, but Radwin's argument, in short, is that the Hearing Officer ignored or improperly weighed certain evidence and thus abused her discretion in issuing a decision in favor of MGH. She requests a remand of the case to a different hearing officer so that the evidence can be fairly assessed.¹

¹ Radwin invokes our authority to take this action under 803 CMR 1.23(1)(h), which does not provide for substituting one fact finder for another on remand from the Full Commission. It is not clear whether Radwin is

The public hearing in this case lasted nine days, and the voluminous record includes a “Mutual Chronological Index” of 197 exhibits. The Hearing Officer’s decision itself is quite lengthy, and contains 50 findings of fact spanning 28 of its pages. We note at the outset that no matter how comprehensive and lengthy a Hearing Officer’s decision is, it cannot be expected to discuss more than 197 pieces of documentary evidence and nine days’ worth of testimony in their entirety. Instead, the Hearing Officer must provide a written decision that contains all of the findings of fact and conclusions of law that are necessary to address each and every issue certified to public hearing and to support the decision. See 804 CMR 1.21(18); M.G.L. c. 151B, §5; M.G.L. c. 30A, §11(8). Upon review, the Full Commission cannot ignore evidence that fairly detracts from the weight of the evidence upon which the fact-finder relied in determining whether a decision is based on substantial evidence. See MCAD and Kogut v. The Coca-Cola Company, 37 MDLR 180 (2015). Mindful of these obligations, it is nevertheless the case that the vast majority of Radwin’s arguments inaccurately characterize the Hearing Officer’s credibility determinations as a matter of improperly ignoring testimonial evidence favorable to her case. We defer to the Hearing Officer’s credibility determinations and the resulting weight she accorded to certain testimonial evidence and therefore decline to address with specificity each of Radwin’s arguments on appeal challenging the Hearing Officer’s evidence-based findings.

Radwin relies primarily on Al-Abbas v. Metro. Life Ins. Co., 52 F. Supp. 3d 288, 295 (D. Mass. 2014) for the proposition that a fact finder abuses her discretion if she fails to adequately address contrary evidence in the record and places undue weight on certain evidence. She contends that the Hearing Officer variously ignored or improperly weighed two categories of

asking for a different hearing officer to review the entire record or to re-hear the case in its entirety, but, either way, a disagreement with a hearing officer’s weighing of the evidence does not warrant the extraordinary request of substituting the fact finder on remand.

evidence—pretext evidence with respect to her disparate treatment claim and causation evidence with respect to her retaliation claim.² With respect to pretext evidence, Radwin argues that the Hearing Officer failed to properly take into account the five categories of evidence discussed in Bulwer v. Mount Auburn Hospital, 473 Mass. 672, 684-88 (2016)³ that would have belied MGH’s legitimate, non-discriminatory reasons for her termination. As for causation evidence, Radwin primarily argues that the Hearing Officer did not adequately weigh the temporal proximity between her protected activity and her termination.

First, the Hearing Officer did not ignore the types of pretext evidence described in Bulwer. In her decision, the Hearing Officer carefully addressed the disparity between Radwin’s professional reputation for excellent scholarship and the esteem within which various of her professional colleagues held her and, on the other hand, the history of her interaction with coworkers and her work performance at the Munn Center. The Hearing Officer also engaged with the evidence presented of stereotypical thinking, MGH’s treatment of Radwin versus that of other coworkers, and MGH’s alleged failure to follow written procedures. As this contrary evidence was in fact analyzed and addressed in the Hearing Decision, the Hearing Officer did not commit the abuse of discretion described in Al-Abbas. Moreover, we disagree that this case “bears a striking resemblance” to Bulwer, where the pretextual evidence was far more compelling. Here, Radwin’s evidence of pretext was not only properly engaged with but also

² “Pretext evidence” is evidence presented by an employee in an unlawful practice claim under M.G.L. c. 151B, §4(1) to rebut an employer’s proffered legitimate, non-discriminatory reasons for taking adverse action against them. See Lipchitz v. Raytheon, 434 Mass. 493, 504 (2001). Here, “causation evidence” is evidence of one of the three necessary elements for a retaliation claim under M.G.L. c. 151B, §4(4), i.e., the causal connection between the employee’s protected activity and the adverse employment action. See Mole v. Univ. of Massachusetts, 442 Mass. 582, 591–92(2004).

³ In Bulwer, the SJC determined there were at least five categories of evidence supported by case law from which, if taken together, a jury could infer the employer’s reasons for plaintiff’s termination were pretextual: (1) drastically conflicting performance evaluations; (2) plaintiff was treated differently than similarly situated coworkers; (3) employer’s history of treating those not in plaintiff’s protected class with leniency / tolerance of acts of bigotry; (4) stereotypical thinking; and (5) employer’s failure to follow written procedures. 473 Mass. at 684-88.

thin—for example, she presented little to no comparator evidence, no history of bigotry, and scant evidence of stereotypical thinking. Compare Bulwer at 684-88.

Similarly, the Hearing Officer did not ignore Radwin’s causation evidence with respect to her retaliation claim. To the contrary, she addressed the evidence head on, paid specific attention to the temporal proximity argument, and thoroughly analyzed the evidence as a whole before concluding there was no connection between Radwin’s protected activity and her termination.

In short, we have carefully reviewed Complainant’s grounds for appeal and the full record in this matter and have weighed all the objections to the decision in accordance with the standard of review as stated herein. As a result of that review, and as discussed herein, we find no material errors of fact or law with respect to the Hearing Officer’s findings of fact and conclusions of law. We find that the Hearing Officer’s conclusions were supported by substantial evidence in the record and we defer to them.

ORDER

For the reasons set forth above, we hereby affirm the decision of the Hearing Officer in its entirety and issue the following order. Complainant’s appeal to the Full Commission is hereby dismissed and the decision of the Hearing Officer is confirmed in its entirety. This order represents the final action of the Commission for purposes of M.G.L. c. 30A.

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 ORDERED this 19th day of April, 2018

Sheila A. Hubbard

Sheila A. Hubbard
Commissioner

Monserrate Quiñones

Monserrate Quiñones
Commissioner