Maine Human Rights Commission

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INVESTIGATOR'S REPORT
E15-0361
June 30, 2017

Kenneth R. Artkop (Searsmont)

v.

State of Maine/Department of Inland Fisheries & Wildlife (Augusta)

Summary of Case:

Complainant was offered and accepted a position as a Carpenter for Respondent, a state agency. Respondent rescinded the job offer after Complainant disclosed physical limitations and mentioned possibly needing accommodations. Complainant alleged disability discrimination (denial of reasonable accommodations and failure to hire) and retaliation by Respondent. Respondent denied discrimination and claimed Complainant could not perform the job's duties and later declined to attend a meeting to discuss whether reasonable accommodations could be provided. The Investigator conducted a preliminary investigation, which included reviewing all of the documents submitted by the parties and requesting supplemental information. Based upon all of this information, the Investigator recommends that the Commission find reasonable grounds to believe Complainant was discriminated against on the basis of disability, both by being denied reasonable accommodations for a disability and by having the job offer withdrawn, and reasonable grounds to believe Complainant was retaliated against for protected MHRA activity.

Jurisdictional Data:

1) Dates of alleged discrimination: 10/1/2014.

2) Date complaint filed with the Maine Human Rights Commission ("Commission"): 7/24/2015.

3) Respondent employs approximately 294 individuals and is required to abide by the non-discrimination provisions of the Maine Human Rights Act ("MHRA"), the Americans with Disabilities Act, and state and federal employment regulations.

4) Complainant is represented by Roberta L. de Araujo, Esq. Respondent is represented by Assistant Attorney General Kelly L. Morrell, Esq.

IV. Development of Facts:

1) Complainant provided the following in support of his claims:

He has a disability related to a [redacted] in his dominant [redacted] Complainant was qualified for and

able to perform the essential functions of the Carpenter job for Respondent, and accepted the job when it was offered to him. As soon as he mentioned to Respondent possible accommodations he might request in the future, Respondent immediately withdrew the job offer "due to [his] disability" and offered the job to someone else. After Complainant pleaded with Respondent to reconsider, it said no. Later on, after Complainant contacted Respondent's Human Resources ("HR") professionals, HR offered to meet with him to discuss the essential functions of the job. Complainant initially agreed to this meeting but later decided not to attend due to Respondent's blatant discrimination.

2) Respondent provided the following in support of its position:

Complainant applied for the Carpenter position, which requires frequent use of heavy hand-operated machinery, without telling Respondent about his known work limitations. After being offered the job, Complainant told HR and then the carpenter position's supervisor ("Supervisor") about the limitations. Once Complainant told Supervisor about his work limitations, Supervisor concluded that Complainant could not perform the Carpenter job, so he consulted with HR and then withdrew the job offer and offered the job to another applicant. Even so, Respondent put the other applicant's offer on hold when Complainant went to HR again, and arranged to meet with Complainant to talk about the job and possible accommodations, but Complainant canceled the meeting at the last moment. Complainant was not able to perform the job, and ended the interactive dialogue about accommodations offered by Respondent.

3) The Investigator made the following findings of fact:

a) Complainant ha[redacted] in 2012, and his use of the [redacted] continued to be impaired.

b) Complainant applied for a Carpenter position with Respondent on August 16, 2014. The Carpenter's position involved many varied tasks, including supervising and participating in general project planning and design, supervising subordinate staff and volunteers, reading blueprints, estimating work materials, acting as work leader and training workers, and operating "trucks, tractors, backhoes, bulldozers, power, and building equipment" and "power driven woodworking machinery". See Exhibit A attached.

c) Complainant was interviewed for the position on September 16, 2014. Supervisor was one of the interviewers. Following interviews, Complainant was selected as one of the top two candidates and was asked to perform a Physical Agility Test ("PAT"), which was the next step in the hiring process.

d) On 9/26/2014, Complainant successfully performed the PAT tasks: fabricate a set of stair stringers using a framing square, circular skill saw and hand saw; set up and operate a 20-lb. chainsaw to remove a tree on the ground; start and operate an excavator to remove the tree; set up and use a transit level; and start an old fork truck.

e) On 9/29/2014, Supervisor called Complainant and offered him the Carpenter position,[9] to start on the following Monday, October 6, 2014. Complainant accepted, and also asked about pay and benefits, so Supervisor gave him contact information for HR.

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[9] Respondent provided a narrative of events in its answer to the Complaint, but no sworn statements addressing the allegations in Complainant's sworn Complaint. Respondent's narrative stated that the job offer to Complainant was conditioned on his passing a physical exam. There is no other documentary evidence to support this statement, and Complainant denied that the offer was conditioned in this way in his reply.

f) On 10/1/2014, the following events likely occurred:

i. Complainant contacted HR to ask questions about benefits, and in the conversation also indicated that at some point he might need accommodations for his [redacted] in his position.[10] HR said he could not help Complainant, that Complainant needed to disclose his disability to Respondent upon being offered employment, and that he should discuss accommodations with Supervisor.

ii. The same day, Complainant called Supervisor to tell him that he might potentially need accommodations in the Carpenter position, describing his latest medical evaluation and restrictions (which Complainant explained were neither recent[11] nor conclusive), and telling Supervisor that since that exam he had increased his [redacted] and other activities. According to Complainant's reply submission, Supervisor did not ask him about his disability or discuss potential accommodations.

iii. After this conversation, Supervisor contacted HR. According to Respondent, "[b]ased on the information that the complainant had provided regarding his restrictions, and [Supervisor's] knowledge of the job duties of the Carpenter's position,[12] the Department initially concluded that the complainant would not be able to perform the essential functions of the job."

iv. Later that day, Supervisor called Complainant and told him that Respondent was rescinding the job offer. The parties offered different descriptions of this conversation:

A. Complainant alleged in his sworn Complaint that Supervisor stated that the job was withdrawn "due to [Complainant's] disability". Supervisor claimed that Carpenters use chainsaws "all the time." Complainant pointed out that he used a chainsaw at home without trouble, but Supervisor responded that Respondent would not offer the position because Carpenters use jackhammers "all the time", which Complainant would be unable to do with his "disability". Respondent did not provide sworn testimony to contest these quotes, or otherwise address them in its answer to the Complaint.

B. Respondent's narrative stated that Supervisor explained that the job "included lifting heavy materials, power tools, and brush, and also involved long periods of operating equipment weighing more than 10 pounds, such as chainsaws, handheld jackhammers, rotary cutters, and other heavy equipment." According to Respondent, Complainant told Supervisor that "although he had successfully operated the chainsaw during the PAT, he had been nervous about it prior to doing it" and that he "would not be able to operate a jackhammer" and that, as a result, Supervisor rescinded the "conditional job offer". Respondent's narrative noted that Complainant told Supervisor that he was fine with the decision because he did not want to take a job that he was not able to perform.

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[10] Complainant suggested that he might need a steering ball, ergonomic handles for some tools, or additional breaks. According to Respondent's narrative, Complainant said he could lift up to 10 lbs. and had limited ability to push and pull.

[11] Complainant did not submit documentation of the medical condition, but said his last medical evaluation on his [redacted] was in November 2013. During the investigation, Complainant was asked to provide a copy of all medical restrictions that were in place at the time the job offer was made. Through his attorney, Complainant declined to provide this information, claiming that it was "outdated," and irrelevant, since he had allegedly increased his [redacted] strength since his last exam.

[12] According to Respondent's narrative, Supervisor's "knowledge of the job duties of the Carpenter's position" included: "The carpentry division consists of a four-person crew ... [that] performs a wide array of duties beyond carpentry, including using 20+pound chainsaws in logging, operating excavators, bulldozers and dump trucks, shoveling, lifting and pouring concrete, repairing cracks in fish hatcheries, which includes hand jackhammering old concrete to pour new forms, moving office furniture, roofing, and repairing vehicles. Specifically, the complainant would have been required to lift more than 10 pounds on a continuous basis while using chainsaws and power tools, including the handheld jackhammer."

g) On 10/2/2014, the following events likely occurred:

   i. According to Complainant's sworn complaint, the next morning, on 10/2/2014, he called Supervisor to ask him to reconsider, as Complainant was able to perform the PAT without accommodation, and believed that he could perform all necessary job duties. Supervisor informed Complainant that the position had already been offered to someone else. Complainant asked Supervisor if he could talk to someone in HR and Supervisor gave him two names in HR.
   ii. Still in the morning on 10/2/2014, Complainant contacted HR to ask Respondent to reconsider its rescinded job offer. According to Respondent's narrative of events, Complainant stated that he could do the Carpenter job with some extra breaks. According to Complainant's sworn complaint, HR replied that the Department could not offer him a position because of his restrictions, because it was "a small crew of three guys and we need them all to be able to perform the essential functions of the job" and Carpenters used chainsaws and jackhammers "all the time", and HR suggested that Complainant apply for other state jobs.
   iii. Later that day, Complainant contacted the State's Equal Employment Opportunity Officer ("EEO Officer"), and another HR official for Respondent ("HR Director"), about the situation. HR Director was one of the names Supervisor had given Complainant that morning. HR Director admitted that Respondent "did not follow proper practices and skipped an important step in the hiring process" and stated that Respondent "was willing to put on hold the hiring of the individual who had accepted the job and meet with" Complainant.

h) At some point later, HR Director called Complainant to ask him to meet with her and EEO Officer. According to Respondent's narrative of events, the purpose of the meeting was "to determine whether a reasonable accommodation could be provided to allow the complainant to perform the duties of the Carpenter position", and HR Director "placed the filling of the position on hold until the Department could determine whether reasonable accommodations could be provided to the complainant."

i) Complainant's meeting with EEO Officer and HR Director was set for 10/9/2014. That morning, Complainant emailed that he decided not to attend the meeting "given the patently discriminatory conduct engaged in by both [Supervisor] and [HR] in immediately rescinding the offer over the telephone ... I see no future for me at DIF&W."[13]

j) The Carpenter position was filled with the alternate candidate.

V. <u>Analysis:</u>

1) The MHRA requires the Commission in this investigation to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S. § 4612(1)(B). The Commission interprets this standard to mean that there is at least an even chance of Complainant prevailing in a civil action.

Disability Discrimination – Reasonable Accommodations

2) In this case, Complainant alleged that he was offered and accepted a job on 9/29/2014 and that on 10/1/2014 he told Respondent about possible work limitations/accommodations that would help him do the job.

[13] Complainant claimed that other factors in the decision to decline the meeting were that he might be overly scrutinized due to the disclosure of his disability and need for accommodation, and that awarding him the job would result in the position being taken away from the innocent individual to whom the position had already been offered after him.

3) The MHRA provides that "[i]t is unlawful employment discrimination . . . for any employer to fail or refuse to hire or otherwise discriminate against any applicant because of . . . physical or mental disability." 5 M.R.S. § 4572(1)(A). Unlawful discrimination includes "[n]ot making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless the covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity." 5 M.R.S. §4553(2)(E).

4) To establish this claim, it is not necessary for Complainant to prove intent to discriminate on the basis of disability. *See Higgins v. New Balance Athletic Shoe, Inc.*, 194 F.3d 252, 264 (1st Cir. 1999). Rather, Complaint must show (1) that he was a "qualified individual with a disability" within the meaning of the MHRA; (2) that Respondent, despite knowing of Complainant's physical or mental limitations, did not reasonably accommodate those limitations; and (3) that Respondent's failure to do so affected the terms, conditions, or privileges of Complainant's employment. *See id.*

5) The term "qualified individual with a disability" means "an individual with a physical or mental disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires." 5 M.R.S. § 4553(8-D). Examples of "reasonable accommodations" include, but are not limited to, making facilities accessible, "[j]ob restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, [and] the provision of qualified readers or interpreters. . . ." 5 M.R.S. § 4553(9-A).

6) In proving that an accommodation is "reasonable," Complainant must show "not only that the proposed accommodation would enable him to perform the essential functions of [the] job, but also that, at least on the face of things, it is feasible for the employer under the circumstances." *Reed v. Lepage Bakeries, Inc.*, 244 F.3d 254, 259 (1st Cir. 2001). It is Respondent's burden to show that no reasonable accommodation exists or that the proposed accommodation would cause an "undue hardship." *See Plourde v. Scott Paper Co.*, 552 A.2d 1257, 1261 (Me. 1989); Me. Hum. Rights Comm'n Reg. Ch. 3, § 13(1)(F)(1) (Sept. 24, 2014). The term "undue hardship" means "an action requiring undue financial or administrative hardship." 5 M.R.S. § 4553(9-B).

7) Complainant did establish a claim for denial of reasonable accommodations, with reasoning as follows:

   a. Complainant was a "qualified individual with a disability" under the MHRA:

      i. Complainant alleged that he had a disability, in that his impairment significantly impaired his physical health. 5 M.R.S. § 4553-A(1)(A)(2). A condition "significantly impairs physical or mental health when it "ha[s] an actual or expected duration of more than 6 months and impair[s] health to a significant extent as compared to what is ordinarily experienced in the general population." 5 M.R.S. § 4553-A(2)(B). Given Complainant's sworn testimony on this matter, it is assumed that his impairment rises to this level. [15]
      ii. Complainant provided specific, sworn testimony that Supervisor and HR specifically referenced his "disability" when deciding to withdraw the job offer. Respondent did not counter those specific allegations in any credible way.

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[15] Complainant is also an "individual with a disability" because Respondent perceived him as disabled after he revealed his condition. 5 M.R.S. § 4553-A(1)(D). Respondent is not obligated to provide accommodations for a perceived disability. Me. Hum. Rights Comm'n Reg. Ch. 3, § 13(1)(F)(4) (Sept. 24, 2014).

iii. It appears that Complainant met the minimal qualifications for the position as listed in Respondent's job description. Many of the concerns raised by Supervisor and HR after Complainant brought up accommodation issues – needing to use jackhammers and chainsaws "all the time", the small nature of the crew – are not listed in the job description or supplemental questions related to the Carpenter position. Complainant's success at all PAT tasks indicates that he was able to do the job tasks that Respondent considered key to test before hiring him.

iv. Even if Respondent's concerns were well-founded, there is no reason to believe that Complainant could not have performed all essential functions of the Carpenter job with the reasonable accommodations he mentioned to HR and Supervisor. There also was no suggestion from Respondent that the accommodations Complainant mentioned were not feasible, let alone that they would have amounted to an undue burden.

v. Respondent's argument that it did not "have the opportunity to determine whether the complainant actually had a disability that would have entitled him to a reasonable accommodation" is unpersuasive. Supervisor did not ask about Complainant's disability, but presumed that he had one. Instead, Supervisor considered the information Complainant provided in two phone calls, and Supervisor's own "knowledge of the job duties of the Carpenter's position" (information that was not reflected on the job description or PAT), and summarily decided that Complainant was not qualified for the position. Respondent could very easily have asked Complainant to submit to a "fitness-for-duty" evaluation to get objective information about Complainant's ability to do the carpenter job, but instead decided to simply rescind the offer based on limited information.

b. Respondent, despite knowing of Complainant's physical limitations, did not reasonably accommodate those limitations. Complainant raised the issue of physical limitations and mentioned specific accommodations that would be helpful for him on the Carpenter job. Instead of engaging with Complainant about the possible accommodations, or seeking medical information from Complainant or a fitness-for-duty exam, Respondent simply withdrew its offer of employment.

c. Respondent's failure to do so affected the terms, conditions, or privileges of Complainant's employment.

i. Respondent withdrew Complainant's job offer based on his mentioning a possible need for accommodations. On 9/29/2014 and 9/30/2014, Complainant had a job. As of 10/1/2014, Complainant did not have a job.

ii. Respondent presented this a fluid situation in which the Carpenter job was still open for Complainant after 10/1. While it is understandable that they might consider the rapidly-unfolding events to be part of a single chain in which they offered to meet to discuss accommodations before anything was finalized, closer analysis reveals that this is not the case. . Complainant was told by Supervisor on 10/1 that the job offer was rescinded and that another person had been made and accepted an offer. Complainant was told by HR on 10/2 that the job was gone and Complainant should consider applying for other state employment. This was an adverse employment action – Complainant had no job. The fact that Respondent realized its mistake the next day, when Complainant contacted EEO Officer and HR Director, did not erase the prior day's action - Complainant still had no job. EEO Officer and HR Director answered Complainant's pleas only after the job offer had been fully and decisively withdrawn; this seems far more likely to have been an attempt by EEO Officer and HR Director to fix a messy hiring mistake than any actual discussion of the Carpenter position for Complainant.

8) It is found that Respondent denied Complainant a reasonable accommodation for what it regarded as a disability.

Disability Discrimination - Failure to Hire

9) Complainant alleged that Respondent rescinded its job offer because of his disability and/or perceived disability. Respondent denied any discrimination, and made three arguments: that Complainant had no disability, that he was not qualified for the position, and that he suffered no adverse action.

10) In this case, Complainant provided a sworn statement that Supervisor told him that "due to [his] disability" Respondent was rescinding its job offer, making several references to his "disability" in the conversation. Respondent did not dispute these allegations, either via sworn statement or generally in its narrative.

11) These statements can be considered "direct evidence" of unlawful discrimination. "Direct evidence" consists of "explicit statements by an employer that unambiguously demonstrate the employer's unlawful discrimination. . . ." *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 14, n.6, 824 A.2d 48, 54, n.6.

12) A mixed-motive analysis applies in cases involving direct evidence of unlawful discrimination.[18] *Id.* Where this evidence exists, Complainant "need prove only that the discriminatory action was a motivating factor in an adverse employment decision." *Patten v. Wal-Mart Stores East, Inc.*, 300 F.3d 21, 25 (1st Cir. 2002); *Doyle*, 2003 ME 61, ¶ 14, n.6, 824 A.2d at 54, n.6. Upon such a showing, in order to avoid liability, Respondent must prove "that it would have taken the same action in the absence of the impermissible motivating factor." *Id.*; *cf. Price Waterhouse v. Hopkins*, 490 U.S. 228, 276-77, 109 S. Ct. 1775, 1804 (1989) (O'Connor, J., concurring).

13) In this case, Complainant did establish that Respondent's perception of him as disabled was a motivating factor in rescinding his job offer. As noted above, Complainant provided a sworn statement that Supervisor called and informed him that "due to [his] disability" Respondent was rescinding its job offer, making several references to his "disability" in the conversation. Respondent did not dispute these allegations, either via sworn statement or generally in its narrative.

14) Respondent did not establish that it would have taken the same action in the absence of the information Complainant provided about possible physical limitations. The record here indicates the exact opposite, that if Complainant had not mentioned the possibility that he might need accommodations for his [redacted], his job offer would not have been revoked. The fact that Respondent took no action to determine what Complainant's actual physical limitations might be, either by requesting documentation from Complainant or a fitness-for-duty exam,[19] indicates that Respondent made its decision based solely on its belief that Complainant's physical limitations were a disability that rendered him unfit for the position.

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[18] The continued application of the mixed-motive analysis has been called into question as a result of the U.S. Supreme Court's decision in *Gross v. FBL Financial Services, Inc.*, 129 S.Ct. 2343, 2348 (2009), in which the Court held that the burden of persuasion does not shift to defendant even with "direct evidence" of unlawful discrimination in a federal Age Discrimination in Employment Act case. That decision did not interpret the MHRA, however, and the guidance from the Maine Supreme Judicial Court in *Doyle* will continue to be followed.

[19] The MHRA does not prohibit an employer from discharging or refusing to hire an individual with a physical or mental disability when the employer can show that the employee or applicant, "because of the physical or mental disability, is unable to perform the duties or to perform the duties in a manner that would not endanger the health or safety of the individual or others. . . ." 5 M.R.S. § 4573-A(1-B). The defense requires an individualized assessment of the relationship

15) It is found that Respondent discriminated against Complainant in hiring on the basis of disability.[20]

Retaliation

16) Complainant alleged that Respondent's rescinding the job offer also was unlawful retaliation against him for opposing Respondent's failure to consider providing him reasonable accommodations for a disability. The MHRA makes it unlawful for "an employer . . . to discriminate in any manner against individuals because they have opposed a practice that would be a violation of [the Act] or because they have made a charge, testified or assisted in any investigation, proceeding or hearing under [the MHRA]." 5 M.R.S. § 4572(1)(E).

17) In order to establish a prima-facie case of retaliation, Complainant must show that he engaged in protected activity, he was the subject of a materially adverse employment action, and there was a causal link between the protected activity and the adverse action, which may be proven by a "close proximity" between them. *See DiCentes v. Michaud*, 1998 ME 227, ¶ 16, 719 A.2d 509, 514; *Bard v. Bath Iron Works*, 590 A.2d 152, 154 (Me. 1991). Adverse actions are "material" when they are "harmful to the point that they could well dissuade a reasonable worker from making or supporting a charge of discrimination." *Burlington Northern & Santa Fe Ry. v. White*, 126 S. Ct. 2405 (2006).

18) The prima-facie case creates a rebuttable presumption that Respondent retaliated against Complainant for engaging in protected activity. *See Wytrwal v. Saco Sch. Bd.*, 70 F.3d 165, 172 (1st Cir. 1995). Respondent must then "produce some probative evidence to demonstrate a nondiscriminatory reason for the adverse action." *DiCentes*, 1998 ME 227, ¶ 16, 719 A.2d at 515. *See also Doyle*, 2003 ME 61, ¶ 20, 824 A.2d at

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between an employee or job applicant's physical or mental disability and the specific legitimate requirements of the job. *See Higgins v. Maine C. R. Co.*, 471 A.2d 288, 290 (Me. 1984); *Maine Human Rights Com. v. Canadian Pacific, Ltd.*, 458 A.2d 1225, 1234 (Me. 1983). The defense imposes upon the employer the burden of establishing that it had a factual basis to believe that, to a reasonable probability, the employee or job applicant's physical or mental disability renders him or her unable to perform the duties or to perform them in a manner that would not endanger the health or safety of the employee or job applicant or others. *See Canadian Pacific, Ltd.*, 458 A.2d at 1234. An employer cannot deny an employee or applicant an equal opportunity to obtain gainful employment on the mere possibility that a physical or mental disability might endanger health or safety. *See id.* Here, Respondent could easily have determined whether there was a factual basis to believe that Complainant had a disability that rendered him unable to perform the Carpenter position by requesting that he submit to a fitness-for-duty exam.

[20] Even if the mixed-motive analysis was not applied, the result would be same utilizing the burden-shifting framework following *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973). *See Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1263 (Me. 1979). Complainant established a prima-facie case of unlawful discrimination by showing that he belongs to a protected class, applied for and met the minimum objective qualifications for the job sought, and was rejected. *City of Auburn*, 408 A.2d at 1263. Respondent argued that Complainant did not have a disability under the MHRA, and that Complainant was not qualified to perform the essential elements of the Carpenter position, two contentions rejected above. Respondent also argued that Complainant did not suffer an adverse employment action, since Respondent put its plan to hire someone else for the Carpenter job on hold to meet with him; this is not persuasive. Supervisor withdrew the offer and HR confirmed its withdrawal. As noted above, the post-withdrawal agreement by EEO Officer and HR Director to meet with Complainant to discuss the job did not undo the withdrawal of the job offer. Respondent articulated a legitimate, nondiscriminatory reason for the adverse job action, as it believed that Complainant could not perform the essential elements of the position. *See Doyle v. Dept. of Human Services*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54; *City of Auburn*, 408 A.2d at 1262. Complainant would prevail because he demonstrated that the nondiscriminatory reason was pretextual or irrelevant and that unlawful discrimination brought about the adverse employment action. *See id.* Complainant showed that the job offer would not have been rescinded but Respondent's regarding him as disabled and unable to perform the Carpenter job. *See City of Auburn*, 408 A.2d at 1268.

56. If Respondent makes that showing, the Complainant must carry his overall burden of proving that "there was, in fact, a causal connection between the protected activity and the adverse action." *Id.* Complainant must show that he would not have suffered the adverse action but for his protected activity, although the protected activity need not be the only reason for the decision. *See University of Texas Southwestern Medical Center v. Nassar*, 133 S.Ct. 2517, 2534 (2013) (Title VII); *Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1268 (Me. 1979) (MHRA discrimination claim).

19) Complainant did establish a prima facie claim for retaliation: he did engage in protected activity by raising with his employer a possible need for reasonable accommodations; his job offer was rescinded; and there was a matter of hours between the protected activity and the job offer being rescinded.

20) Respondent provided a nondiscriminatory reason for withdrawing the job offer, namely that it did not believe that Complainant was able to perform the essential elements of the position.

21) In the final analysis, Complainant did show a causal connection between the withdrawal of the job offer and his protected activity. As noted above, Complainant would not have suffered the withdrawal of the job offer but for his raising the issue of a possible need for reasonable accommodations.

22) It is found that Respondent retaliated against Complainant for protected MHRA activity.

VI. Recommendation:

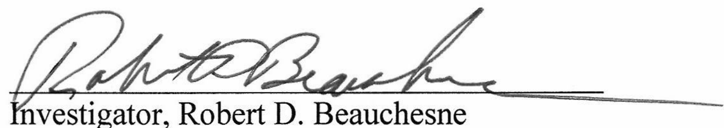
For the reasons stated above, it is recommended that the Commission issue the following finding:

1) There are **Reasonable Grounds** to believe that Respondent State of Maine/Department of Inland Fisheries & Wildlife unlawfully discriminated against Complainant Kenneth R. Artkop on the basis of disability (reasonable accommodations, failure to hire);

2) There are **Reasonable Grounds** to believe that Respondent State of Maine/Department of Inland Fisheries & Wildlife unlawfully retaliated against Complainant Kenneth R. Artkop for protected MHRA activity; and

3) The claims should be conciliated pursuant to 5 M.R.S. § 4612(3).

Amy M. Sneirson, Executive Director



Investigator, Robert D. Beauchesne