



# Maine Human Rights Commission

# 51 State House Station, Augusta, ME 04333-0051

Physical location: 19 Union Street, Augusta, ME 04330  
Phone (207) 624-6290 ▪ Fax (207) 624-8729 ▪ TTY: Maine Relay 711  
[www.maine.gov/mhrc](http://www.maine.gov/mhrc)

Amy M. Sneirson  
EXECUTIVE DIRECTOR

Barbara Archer Hirsch  
COMMISSION COUNSEL

## INVESTIGATOR'S REPORT

MHRC No. E18-0346

September 19, 2019

Cynthia Lambert (Norridgewock)

v.

Town of Norridgewock (Norridgewock)

### I. Summary of the Case:

Complainant alleged that Respondent discriminated against her when it discharged her because it perceived her to be disabled<sup>1</sup> and retaliated against her for filing a discrimination complaint.<sup>2</sup> Respondent denied discrimination and retaliation, and replied that Complainant was never discharged but simply did not return to work after a miscommunication regarding her work capacity. The Investigator conducted a preliminary investigation, which included reviewing the documents submitted by the parties, an Issues and Resolution Conference ("IRC"), a witness interview, and requests for additional information. Based upon this information, the Investigator recommends a finding that there are reasonable grounds to believe that Respondent discriminated against Complainant based on disability and no reasonable grounds to believe that Respondent retaliated against Complainant.

---

<sup>1</sup> Complainant had a work-related injury as well as [REDACTED]. Complainant asserted she was discriminated against when she was "regarded as" disabled after she took time off for her work related injury. An individual is "regarded as" disabled under the Maine Human Rights Act ("MHRA") only when they are perceived as having or likely to develop a condition that would qualify as a physical or mental disability within the meaning of the MHRA. *See* 5 M.R.S. § 4553-A(1)(D) (perception must be that the individual is or is likely to develop a disability as defined by the MHRA); *cf.* 42 U.S.C. § 12102(3) (same definition under ADA). It is not enough that the individual is, for example, injured or in need of medical leave, as these conditions may be transitory. Rather, the employer must harbor a perception that the individual's condition is or could be a disability.

<sup>2</sup> Complainant amended her complaint to add a claim of retaliation based on her filing the initial complaint. This claim was based on certain tasks Complainant was asked to perform that she felt were assigned to her because of her complaint. Respondent credibly replied that these were typical jobs done in the winter and they were new to Complainant because she had never previously worked in the winter. This was confirmed by Complainant in the IRC and no further evidence was presented to suggest a retaliatory motive. Her retaliation claim fails and will not be analyzed in the report.

## **II. Jurisdictional Data:**

- 1) Date of alleged discrimination: June 25, 2018
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): September 20, 2018.
- 3) Respondent has 26 employees and is subject to the MHRA, the Americans with Disabilities Act, as well as state and federal employment regulations.
- 4) Respondent is represented by Frederick Costlow, Esq. Complainant is represented by Chad Hansen, Esq.

## **III. Development of Facts:**

- 1) Complainant provided the following in support of her claim:

Complainant was a seasonal worker for Respondent in its public works department. In the summer of 2018, she inquired about her usual summer position and was told the jobs had been given to an independent contractor. Instead, Respondent created a job for her doing gardening, painting, and other projects. In June, she suffered a work-related injury and took some time off to recover. When she returned to work, she filed workers' compensation paperwork and went to begin her job duties. She was no longer in pain and felt able to work. Later in her shift, the Director of Public Works ("Director") told her to go home because the Town Manager ("Town Manager") thought she was a liability. Later in the evening Complainant called Director and asked if she was fired, and he replied that her "career with the town was over." Complainant believed her employment was terminated. Complainant later contacted Respondent through counsel requesting documents related to her termination from employment. Respondent replied that Complainant's employment had not been terminated and she was free to return to her position. Complainant returned to work in October 2018 but resigned shortly thereafter when she believed she was being retaliated against.

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

Complainant was an excellent employee and when Complainant's previous seasonal job was given to a contract company, Respondent created a position for her. Complainant performed her job well. In June 2018, Complainant reported she was in pain and went home. Subsequently she requested some additional time off to move. When she returned to work, Director told Town Manager that Complainant looked like she was in pain. Town Manager told Director to go check with Complainant and tell her she would be paid for the day if she was unable to work. Complainant went home. Town Manager never fired Complainant and believed she went home because she was in pain. Her job was flexible, and he assumed she would return to work when she was feeling better. When Respondent received a request from Complainant's counsel for documents related to the termination of her employment, it realized the miscommunication and offered Complainant her job back. Complainant returned to work but then resigned shortly thereafter because she did not like the winter job duties.

- 3) The Investigator made the following findings of fact:

- a) Complainant had worked for Respondent on the summer public works crew from 2009-2014. In 2018, she called Director to ask about a summer position. Director told her the whole team had been outsourced. Director spoke with Town Manager who created a position for Complainant where she would pick up any odd jobs that needed to be done. Complainant started work on May 8, 2018.
- b) Complainant has [REDACTED]. She never requested an accommodation for either condition and neither interfered with her ability to perform her essential job functions until June of 2018.
- c) Complainant's schedule was flexible, and she worked roughly 24 hours a week. When she arrived at work, she would ask the Director what tasks she should work on. Occasionally she got work directly from Town Manager, but it was mostly through Director. Director was in charge of supervising Complainant's daily work.
- d) On June 1, 2018, Complainant hurt her [REDACTED] during work. On June 13, 2018 she was experiencing pain at the site of the injury and told Director she was in pain and went home. Complainant asked for some additional time off in the following weeks in order to recover. Complainant provided in the IRC that she requested additional time off to move, but it was her injury that was making the move more difficult. Complainant also provided that her [REDACTED] and [REDACTED] were a factor in her recovery.
- e) On June 25, 2018, Complainant returned to work. She brought workers' compensation forms to the Deputy Treasurer and went to work her shift. She felt well and was medically cleared to work. Her paperwork listed "bear weight as tolerated for 2 weeks" as her only restriction. Respondent provided that Complainant was visibly in pain and having physical difficulties. Complainant denied she was in any pain.
- f) That morning, Director and Town Manager had a conversation about Complainant. Director and Town Manager remembered this conversation differently. Town Manager stated at the IRC that Director told him Complainant's [REDACTED] was giving her trouble and he did not know if Complainant could perform her job. Town Manager then provided he told Director to go speak with Complainant and offer to pay her for the day if she needed to go home. Director recalled that he reported to the Town Manager that Complainant could not do the work and Town Manager directed him to send Complainant home.
- g) After that conversation, Director approached Complainant and told her that Town Manager had told him to send her home. Director reportedly told her that Town Manager thought she was a "liability." Director confirmed in an interview that Town Manager said "something" about it being a liability to have Complainant work injured. Town Manager denied calling Complainant a "liability." Complainant was upset but went home as directed.
- h) Complainant called Director later that day to ask about her job and he reportedly told Complainant that her "career with the town was over." Director recalled this conversation and replied that he may have said it would be hard to believe her career was over because she had been there so long, but that if she didn't heal it was a possibility. He also provided he told her to speak with the Town Manager. Complainant provided two statements from witnesses who

heard the phone call and confirmed Director told Complainant her "career with the town was over."

- i) Complainant then called to speak with the Town Manager, but he was unavailable and Complainant did not leave a message. Town Manager provided at the IRC that he was never told Complainant tried to reach him and he never reached out to her because he assumed she would return to work when she was able. Director also provided that it was his belief that Complainant would return when she was able.
- j) Once Respondent was made aware of Complainant's claim of disability discrimination based on her discharge, it reached out to communicate Complainant had not been discharged and was free to return to work. Complainant returned to her position in October 2018 and resigned shortly thereafter.

#### IV. Analysis:

- 1) The MHRA requires the Commission to "determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 Maine Revised Statutes ("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.
- 2) The MHRA provides that it is unlawful to discharge an employee because of physical or mental disability. *See* 5 M.R.S. § 4572(1)(A).
- 3) Because here there is no direct evidence of discrimination, the analysis of this case will proceed 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).
- 4) First, Complainant establishes a prima-facie case of unlawful discrimination by showing that: (1) she belonged to a protected class, (2) she performed her job satisfactorily, (3) her employer took an adverse employment decision against her, and (4) her employer continued to have her duties performed by a comparably qualified person or had a continuing need for the work to be performed. *See Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46, 54 (1<sup>st</sup> Cir. 2000); *Cumpiano v. Banco Santander Puerto Rico*, 902 F.2d 148, 155 (1<sup>st</sup> Cir. 1990); *cf. City of Auburn*, 408 A.2d at 1261.
- 5) Once Complainant has established a prima-facie case, Respondent must (to avoid liability) articulate a legitimate, nondiscriminatory reason for the adverse job action. *See Doyle v. Department of Human Services*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54; *City of Auburn*, 408 A.2d at 1262. After Respondent has articulated a nondiscriminatory reason, Complainant must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse employment action. *See id.* Complainant's burden may be met either by the strength of Complainant's evidence of unlawful discriminatory motive or by proof that Respondent's proffered reason should be rejected. *See Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16; *City of Auburn*, 408 A.2d at 1262, 1267-68. In order to prevail, Complainant must show that she would not have suffered the adverse job action but for

membership in the protected class, although protected-class status need not be the only reason for the decision. *See City of Auburn*, 408 A.2d at 1268.

- 6) The MHRA defines "employer" as, "any person in this State employing any number of employees, whatever the place of employment of the employees, and . . . any person acting in the interest of any employer, directly or indirectly." 5 M.R.S. § 4553(4). It further provides that, "[in] determining whether a person is acting as an agent or employee of another person so as to make such other person responsible for that person's acts, the question of whether the specific acts performed were actually authorized or subsequently ratified is not controlling." 5 M.R.S. § 4553(10)(E).
- 7) The MHRA defines "physical or mental disability" as including "being regarded as having or likely to develop" a disability within the meaning of the MHRA.
- 8) Complainant established her prima facie case of disability discrimination by establishing that she was regarded as disabled,<sup>3</sup> she performed her job well, her employer told her to go home and that her "career was over" and there was a continuing need for the work to be performed. Respondent argued that the actions by Director cannot create liability for an "employer" but that argument fails for the following reasons:
  - a. Complainant reported to Director in order to know what jobs and projects she should perform and to organize her schedule.
  - b. Director supervised Complainant's daily tasks and directed her job tasks. Town Manager was the only person with authority to discipline or discharge Complainant, but Director communicated to Complainant that his actions were at the Town Manager's direction. An employer under the MHRA includes anyone "acting in the interest of an employer directly or indirectly."
  - c. Though Town Manager disputes that he directly told Director to send Complainant home or ever called her a "liability" (which was disputed by Director's interview) he did have Director go and speak with Complainant about whether she could remain at work. He delegated that responsibility to Director who then acted as the employer's agent in sending her home.
  - d. Finally, Complainant had no reason to believe, and it was not effectively communicated to her, that Director's comments during their phone call were not also at the direction of the Town Manager. Director provided he told Complainant to speak with Town Manager but Complainant had been sent home by Director, and reasonably assumed his statements accurately reflected her job status.
- 9) Respondent then provided the legitimate non-discriminatory reason that it did not discharge Complainant. Respondent believed Complainant to be in pain and sent her home with pay so that she could recover. There was a miscommunication regarding her return, but her position was always open to her.

---

<sup>3</sup> Respondent's statements that Complainant was a "liability," her "career with the town was over," and the reference to her [REDACTED] are enough to establish that Complainant was being regarded as someone whose limitation was severe and/or expected to have a long duration as required by the definition of "regarded as" under the MHRA.

10) Complainant succeeds in the final stage of analysis by showing that Respondent's proffered reason is irrelevant and/or false and that her perceived disability was the reason for her discharge, with reasoning as follows:

- a. Respondent's argument rests on that fact that it cannot be held liable for Director's actions because the Town Manager retained the authority to discharge an employee.
- b. As discussed above in Complainant's prima facie case, Director's actions were taken on behalf of Respondent, whether or not directly dictated by Town Manager. He was therefore "acting in the interest of the employer" when he went to go speak with Complainant.
- c. Respondent further argued that the statements made by Director do not amount to discrimination. First, it argued that the statement "your career with the town is over" is ambiguous. However, this statement, on its face, is unambiguous. Complainant reasonably perceived she was discharged. Second, it argued the description of Complainant as a "liability" is only a statement of fact regarding an injury, not disability discrimination. While it is not sufficient to amount to direct evidence of discrimination by itself, in the context of questioning Complainant's work capacity and the other comments made, the comment lends strong support to Complainant's belief that she was being discharged because Respondent perceived she was not physically able to perform her job.
- d. Respondent considered Complainant an excellent employee, but on June 25, 2018, it did not believe she could perform her job and took actions that Complainant reasonably interpreted as ending her employment. Respondent's intent behind its actions is irrelevant if they reasonably resulted in a discriminatory effect on Complainant. Complainant has provided enough evidence to establish an even chance that she was subjected to disability discrimination.

11) Discrimination on the basis of disability is found.

## **VI. Recommendation:**

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

1. There are **Reasonable Grounds** to believe that the Town of Norridgewock discriminated against Cynthia Lambert on the basis of disability, and conciliation of this claim should be attempted in accordance with 5 M.R.S. § 4612(3); and
2. There are **No Reasonable Grounds** to believe that the Town of Norridgewock retaliated against Cynthia Lamber for engaging in MHRA-protected activity; and this claim should be dismissed in accordance with 5 M.R.S. § 4612(2).

  
Jane O'Reilly, Investigator