

THE NEW HAMPSHIRE COMMISSION FOR HUMAN RIGHTS  
Cheryl Bedell v. Dartmouth Hitchcock Medical Center  
16D – 2009 – 00096  
ED – 0099 – 09

Decision on the Merits After Public Hearing Held September 14, 2011

Procedural Background

Cheryl Bedell filed a Charge of disability discrimination in employment against Dartmouth-Hitchcock Clinic on April 13, 2009. The Charge was amended on February 28, 2011 to correct Ms. Bedell's address and the name of the Respondent to Dartmouth Hitchcock Medical Center ("DHMC").

After investigation, based on document production, interviews, and legal analysis, on March 28, 2011, the Investigating Commissioner found sufficient evidence had been produced to find probable cause that discrimination had occurred. The issues to be determined at hearing were: 1) Did DHMC know Ms. Bedell suffered from a disability; 2) Did DHMC engage in the interactive process with Ms. Bedell regarding accommodations for her disability; and 3) Did DHMC terminate her employment in violation of NH RSA 354-A while she was on disability-related leave?

Ms. Bedell moved to amend the charge before the Public Hearing. DHMC objected. By Order of the Commission Panel Chair David Cole, Esq., dated September 11, 2011, retaliation was added to the allegations. See Order.

Commissioner David Cole, as Chair, Commissioner Joshua Boynton, and Commissioner Catherine Hackett were assigned to hear this case at a Public Hearing held on September 14, 2011. Attorney Douglas Grauel appeared on behalf of Ms. Bedell; Attorney Edward Kaplan appeared on behalf of DHMC.

Agreed Facts

1. The parties agree Ms. Bedell was a Unit Secretary employed by DHMC beginning on or about November 3, 2008.
2. The parties agree Ms. Bedell was terminated from her employment at DHMC on February 9, 2009.

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NH COMMISSION  
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## Decision on the Merits

The Commission panel (the "Commission") found that Ms. Bedell satisfied her burden of proof that she had made DHMC aware she was a person with a psychological disability as defined by NH RSA 354-A and the Americans with Disabilities Act, as amended ("ADAAA")<sup>1</sup>. The Commission did so on the basis that Ms. Bedell had produced a doctor's note to her supervisor dated 12/16/08 indicating she suffered from "stress related symptoms..." Ex. 1, DHMC Response to Charge, and a second note dated 2/2/09 with the diagnosis "[a]nxiety". Ex. 2 Response to Charge.

The Commission found that Ms. Bedell satisfied her burden of proof that she requested an accommodation for her disability to change her work schedule based on a 12/16/08 doctor's note that said, "Please allow pt to work 3 – 11 shift as better manages symptoms –" Ex. 1, Response to Charge. This triggered DHMC's duty to engage in an interactive process with her as required by law. RSA 354-A:2 IV-b. The Commission found that DHMC sufficiently engaged in this process with Ms. Bedell.

The Commission found that Ms. Bedell satisfied her burden of proof that DHMC had knowledge she was out of work on disability-related leave when it terminated her employment on February 9, 2009. The 2/2/09 doctor's note Ms. Bedell submitted said, "2 week leave of absence return 2/23/09" Ex. 2, Response to Charge, FMLA Request.

Because Ms. Bedell satisfied her burden to prove the *prima facie* elements of a disability discrimination case, a presumption of discrimination arises. At that juncture the burden shifted to DHMC to prove a legitimate, nondiscriminatory business reason for terminating Ms. Bedell's employment while she was absent on disability-related leave.

The Commission concluded that DHMC satisfied its burden of proof that it ended Ms. Bedell's employment based on her deficient performance, not for an unlawful discriminatory reason. DHMC management had determined that Ms. Bedell was lacking in the areas of communication, judgment, and an ability to work under highly stressful conditions. The Commission found DHMC's witness testimony and documentation credible and persuasive on these issues.

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<sup>1</sup> Under the 2009 amendments to the ADA, the definition of who is protected as a person with a disability does not demand extensive analysis. 29 C.F.R. §1630.4(i)(1)(i). Psychological disabilities are covered under both statutes. See RSA 354-A:6 and 29 C.F.R § 1630.2(h)(2). Under the ADAAA, Major Life Activities now include major bodily functions. Major bodily functions applicable to the issues in this case include: sleeping, concentrating, communicating and interacting with others. 29 C.F.R. §1630.2(i)(1)(i). The NH Supreme Court frequently looks to and follows federal law when interpreting antidiscrimination statutes. See, e.g. *Madeja v. MPB Corp.* 149 N.H. 371 (2003).

At this point the burden of proof shifted back to Ms. Bedell to show that the reason for termination offered by DHMC was a pretext, or cover up, for disability discrimination, not for a legitimate business reason. Based on the testimony and documents considered by the Commission, the Commission found that Ms. Bedell failed to sustain her burden to introduce facts showing that DHMC's proffered reason for termination was unlawfully discriminatory.

Ms. Bedell presented no evidence of retaliation. Therefore, the Commission makes no rulings on that issue.

**COMPLAINT DISMISSED. NEITHER PARTY IS ENTITLED TO ATTORNEY FEES OR COSTS.**

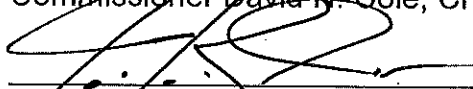
SO ORDERED.

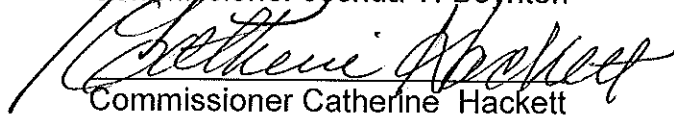
11/28/2011  
Date

11/14/11  
Date

11/19/11  
Date

  
Commissioner David N. Cole, Chair

  
Commissioner Joshua P. Boynton

  
Commissioner Catherine Hackett