



Maine Human Rights Commission
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INVESTIGATOR'S REPORT
E10-0337

April 27, 2012

[REDACTED]

v.

[REDACTED]

I. Complainant's Charge:

Complainant [REDACTED] ("Complainant") has alleged that Respondent [REDACTED] ("Respondent" and/or "Company") failed to provide him with reasonable accommodations (two-week notice and job transfer) and terminated him because of his physical disability (epilepsy).

II. Respondent's Answer:

Respondent has denied any disability discrimination. Respondent did not know of his disability or need for accommodations. During a disagreement with his supervisor, Complainant gave notice of resignation, which Respondent in turn had accepted as effective immediately.

III. Jurisdictional Data:

- 1) Date of alleged discrimination: October 22, 2009.
- 2) Date complaint filed with the Maine Human Rights Commission: June 25, 2010.
- 3) Respondent employs over 500 and is subject to the Maine Human Rights Act and the Americans with Disabilities Act, as well as state and federal employment regulations.
- 4) Complainant is represented by [REDACTED]. Respondent is represented by [REDACTED], Esq.
- 5) This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of reasonable grounds or no reasonable grounds.

IV. Development of Facts:

- 1) The parties and issues in this case are as follows:
 - a) Since 2007, Complainant worked for Respondent as a loss prevention agent at different stores in Portland, Maine.

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- b) Respondent is part of a nationwide drugstore chain and operates various stores throughout Maine.
 - c) Important third parties: Supervisor KE ("Supervisor") was the Loss Prevention Manager for Respondent's Southern Maine District and directly supervised Complainant. Store Manager KL ("Store Manager A") managed the Portland Congress Street store ("Store #3298"), where Complainant primarily worked. Store Manager FF ("Store Manager B") managed the store where Complainant last worked.
 - d) Complainant has alleged that Respondent failed to provide reasonable accommodations by not engaging, in good faith, in the interactive process and terminated him because of his physical disability.
 - e) Respondent has denied any disability discrimination. Complainant did not inform management of his disability and need for accommodation. He gave notice to quit his job for personal reasons during a disagreement with his supervisor. His resignation was considered effective immediately.
- 2) Undisputed Facts:
- a) On December 10, 2005, Complainant was initially hired as a part-time cashier/clerk. On September 16, 2007, he was promoted to full-time loss prevention agent.
 - b) Supervisor hired Complainant for the position of loss prevention agent. As Complainant's direct supervisor, Supervisor conducted Complainant's annual performance evaluations. Complainant was a competent employee.
 - c) Complainant was assigned primarily to work at Store #3298. He was assigned also to work in other stores sometimes. Store Manager A at Store #3298 was responsible for monitoring Complainant's attendance and compliance with human resources requirements, among other things.
 - d) On December 9, 2008, Complainant was working at Store #3298. After following a suspect out into the store's parking lot, he was aggressively assaulted by the suspect ("Assault"). He was injured in the head and his left hand and wrist. After his shift that evening, Complainant was treated at Maine Medical Center (Brighton First Care) for his injuries.
- 3) Complainant provided the following:
- a) Supervisor and Complainant had little direct contact beyond weekly reports that Complainant would fax to Supervisor showing the number of stops or arrests and the amount and value of any merchandise recovered.
 - b) In September 2009, he suffered a blackout and was treated at Brighton First Care. On October 1, 2009, neurologist JKS ("Neurologist") diagnosed him with epilepsy. On November 9, 2009, the Neurologist wrote that he believed the head injury Complainant sustained at work from the Assault in December 2008 caused his epilepsy.

- c) When diagnosed with epilepsy, Complainant informed Store Manager A of his epilepsy and the cause of his condition. He also filled his anti-seizure prescriptions at Store #3298, where he worked primarily.
 - d) On October 22, 2009, after an incident with a store customer suspected of theft, Complainant spoke with Supervisor over the telephone in the store. Complainant stated that because of his headaches and seizures, he did not want to continue his work in the loss prevention department and needed to leave his existing position for various reasons, including stress and its effects on his epilepsy.
 - e) Complainant further stated that he wanted to return to cashier work, which he did in his first two years with Respondent. He gave his two weeks' notice until he could arrange a transfer to a cashier position. He had discussed his intention and need to return to his previous cashier position because of his disability with other store managers. These managers assured him that he could return to his previous position as cashier.
 - f) On October 22, 2009, Supervisor terminated Complainant immediately and refused to discuss any accommodations with him.
- 4) Respondent provided the following:
- a) As a loss prevention agent, Complainant had a good working relationship with his fellow employees, supervisors and customers, with the exception of the customer with whom he interacted on October 22, 2010, and perhaps other customers and employees whom he confronted regarding shoplifting.
 - b) On October 22, 2009, Complainant was assigned to work at Store Manager B's location. He was involved in a dispute with a customer ("Customer") suspected of theft. Customer accused him of harassing her. The police was called to the store. Complainant stated to Store Manager B that he wanted Customer to be banned from the store. Store Manager B disagreed and indicated that she did not believe Customer had done anything wrong.
 - c) Store Manager B then contacted Supervisor, who apologized to the customer and issued a gift card to her. When Supervisor subsequently spoke with Complainant over the phone, Complainant was shouting and swearing at Supervisor and indicated that he was quitting his job. The reasons given were that "No one backs him up" including Respondent and the police, and that he was sick of doing his job. He did not state to Supervisor that he had a disability or that he needed any accommodations.
 - d) Afterward, Supervisor contacted the appropriate company personnel to memorialize Complainant's separation from employment. About half an hour later, Supervisor contacted Store Manager B to make sure that the customer who had been offended by Complainant's behavior was satisfied. Store Manager B then informed Supervisor that Complainant was still at the store. Supervisor spoke to Complainant again to ask why he was still there, and Complainant responded that he was continuing his work during his two weeks' notice. Supervisor then advised him that he had already quit, that his employment had been terminated

officially, and that he should leave the store. Supervisor informed both Complainant and Store Manager B that Complainant "did not need to work out his notice."

- e) After October 22, 2009, Supervisor does not recall any subsequent conversations with Complainant. Complainant never discussed with Supervisor any intention and need to return to his previous position as cashier for any reasons, including disability. Supervisor never refused to discuss an accommodation with Complainant. Complainant also did not discuss with any store manager that he did not feel comfortable continuing his job in the loss prevention department because of health conditions or need for accommodations.
 - f) Respondent had no documentation of the alleged injury of December 9, 2008, until the commencement of the Maine Human Rights charge of discrimination and the Maine workers' compensation claim. On May 7, 2010, Complainant's attorney provided Complainant's medical records to Respondent's insurance company following his assertion of a workers' compensation claim. Respondent's counsel obtained a copy on September 16, 2010. The medical records were not in the possession of any employees who were managing his work before May 7, 2010.
 - g) Complainant did not request any accommodation at any time. No paperwork for any leave of absence was generated because he never submitted a request for a leave of absence, including leave under the Family Medical Leave Act. Respondent was never aware of any changes in restrictions, limitations or accommodation requests at any time until it received the workers' compensation claim in May 2010 and the charge of discrimination in August 2010.
 - h) With respect to any verbal or written reprimands, warnings, or disciplinary actions issued to Complainant in the year before his separation, Supervisor previously spoke to him about the Company's dress code and hygiene on one occasion. Respondent has not yet located any written evaluations of Complainant's work.
 - i) After Complainant's separation, he then applied for re-employment as a cashier. He did not mention any health conditions, disabilities or need for accommodation. Complainant did not inform any store managers that he had been diagnosed with epilepsy and that he had been diagnosed with a work-related injury.
- 5) Complainant's rebuttal (12/8/2010):
- a) Complainant was well-regarded in his work that other stores would request him when they were experiencing loss prevention difficulties. Being assigned to different stores indicates management's trust and confidence in his performance as a loss prevention agent. Store managers where he worked frequently would provide positive feedback about his performance and skills in identifying and preventing theft.
 - b) On December 9, 2008, when he resumed work after the Assault, employees AH and AS as well as Store Manager A noticed his injuries. A co-worker who noticed bleeding on his head urged him to get medical treatment.
 - c) Since the Assault, Complainant had suffered several blackouts and seizures. Within weeks of the Assault, Complainant suffered his first blackout/seizure, driving off the road into a snow

bank. He informed Store Manager A of this incident at work that same day. A few months later, Complainant experienced another blackout/seizure while driving to work and hit a parked truck as a result. He also informed Store Manager A of the incident at that time.

- d) After his diagnosis, Complainant filled his prescriptions for medications at Store #3298, where he was based. He was anxious about his diagnosis and the impact of his work on his epilepsy. He sought to transfer to a less demanding job, such as cashier, in light of the stress of the demanding job in loss prevention and its effects on his medical condition.
- e) On September 30, 2009, he was treated at the Maine Medical Center Emergency Department for his most severe seizure up to that time. (*File*, Resp. Tab 7 - Complainant's medical records.) He was also undergoing tests and was treated with new medication.
- f) On October 1, 2009, neurologist JKS ("Neurologist") diagnosed him with convulsive epilepsy and treated him with various medications. The Neurologist attributes his epilepsy to the assault at work. (*File*, Comp. Ex. 2 – medical notes.) After his doctor's visit, he informed Store Manager A of his diagnosis, provided details of his medical visit, and expressed frustration at his medical expenses.
- g) In October 2009, he was sent to work at a store experiencing a rise in thefts. Store Manager B was in charge. He followed a customer suspected of theft into the parking lot. Customer accused him of harassing her and blowing cigarette smoke into her face. Store Manager B called Supervisor and allegedly verified Customer's claim with Supervisor. Contrary to the customer's claim, Complainant had followed her out of the store after confronting her about theft. Further, he was working in the store where smoking is not allowed and would not have a lit cigarette then to blow smoke into her face.
- h) Supervisor spoke with Complainant over the telephone about the confrontation with Customer. Complainant expressed his frustration with his job and felt unappreciated. Complainant did not yell or swear at Supervisor at any time during the telephone conversation in the store. He stated that "I can't afford to have epilepsy on my pay in loss prevention" given his medical expenses. He stated that he could not continue as a loss prevention agent any longer and needed to leave the position. He gave his two-week notice to work until he could arrange a transfer. He informed Supervisor that he had already discussed with a store manager in Gorham about transferring to a cashier position there.
- i) After the telephone call, Complainant resumed working. Store Manager B then informed him that Supervisor had called her again and asked that she inform Complainant that he was terminated effective immediately. He then telephoned Supervisor in the store. He raised his voice but did not yell or swear. He asked Supervisor, "Is that the way it's gonna be? You gonna make [Store Manager B] fire me and make me leave?"
- j) When terminated, Complainant had asked Supervisor to confirm that he was eligible for rehire as a cashier at another store. Supervisor informed him that "It's not like that at all, you are eligible for rehire – I've already put you in the computer for re-hire." Supervisor stated that he did not want an employee not totally committed to his job and it was best if he was done immediately.

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- k) Having been terminated without the opportunity to complete his two weeks' notice, Complainant immediately contacted a store manager at the Allen Avenue location to be rehired as cashier. He was told that the Company's computer system indicated that he was not eligible for rehire. Complainant also contacted the Gorham store manager who had previously stated that he could transfer there. The Company's computer system indicated then that he was not eligible for rehire. He then contacted many other stores of the Company and was told he was not eligible for rehire.
- 6) Additional information provided at the Issues and Resolution Conference (January 18, 2012):
- a) Complainant described that he informed Supervisor that he needed to change to another job due to stress for various reasons. During the calls with Supervisor, Complainant stated that the stress of the job due to his epilepsy condition was too much and that he could not perform his job as a loss prevention associate any longer.
 - b) After the calls, he tried but could not get work at other stores. The store managers could only tell him that he was not eligible for rehire.
 - c) Supervisor denied any knowledge of Complainant's disability. Complainant did not say anything about accommodations during the calls.
- 7) Relevant documents include the following:
- a) Copy of certain sections of Respondent's personnel policy which addresses nondiscrimination and grounds for termination (Resp. Tab 4.) – Section 1.2, "Nondiscrimination," provides that "[w]hen necessary, the Company also makes reasonable accommodations for disabled . . . who request accommodations, with the advice of their healthcare providers." The section, "Standards of Conduct," addresses discusses violations of [Respondent's] standards which will result in corrective actions, up to and including discharge. A partial list of infractions that may result in corrective action includes harassing a customer and using abusive or vulgar language.
 - b) Job description for Loss Prevention Agent (Resp. Tab 5.) – As a lost prevention agent, Complainant was responsible, among other things, for preventing shoplifting and recovering stolen merchandise.
 - c) Copy of Incident Report by the Portland Police Department (12/9/2008) (Comp. Ex. 1.) – The police investigated and issued an incident report describing the Assault on December 9, 2008. Complainant gave a witness statement as the store's security guard, and the store's VHS security tape was provided as evidence.
 - d) Copy of Complainant's medical records (Resp. Tab 7.) – Complainant reported being hit on the head and left hand. On December 9, 2008, Complainant was treated for head lacerations and a fractured ring finger.
 - e) Statement of Supervisor (10/14/2010) (Resp. Tab 12.) – Supervisor stated he was not informed by anyone of Complainant's work-related injury and hospital treatment. He was not informed of Complainant's need for time off or need for accommodations due to any physical or mental condition. Further, he did not receive any doctor's note regarding Complainant's work injury

or medical restrictions. In October 2009, Supervisor recounted a telephone call from Store Manager B regarding Complainant's handling of a customer suspected of theft. Complainant was allegedly accusing her of theft, following her into the parking lot, and blowing smoke in her face. Store Manager B verified these actions. Supervisor spoke with Complainant over the telephone, and Complainant expressed his frustration with his job and how he felt unappreciated.

- f) Copy of Decision of the State of Maine Workers' Compensation Board (8/26/2011) –After considering the evidence and observing witness testimony at an administrative hearing, the hearing officer concluded that Complainant's ongoing seizure disorder was caused by the Assault on December 9, 2008. Complainant was found to have a work-related injury to his head and left hand, resulting in an ongoing seizure disorder.

V. Analysis:

- 1) The Maine Human Rights Act provides that the Commission or its delegated investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S.A. § 4612(1)(B). The Commission interprets the "reasonable grounds" standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The Maine Human Rights Act ("MHRA") provides that it is unlawful to terminate an employee because of physical or mental disability. 5 M.R.S.A. §4572(1)(A).
- 3) Here, Complainant has alleged that Respondent failed to provide reasonable accommodations by not engaging, in good faith, in the interactive process to determine and provide him with reasonable accommodations and then terminated him because of his physical disability. Respondent has asserted that it had no knowledge of Complainant's disability or need for accommodation. Complainant voluntarily resigned after a disagreement with his supervisor, and his resignation was considered effective immediately.
- 4) With respect to the termination claim, because 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).
- 5) 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 (1st Cir. 2000); *Cumpiano v. Banco Santander Puerto Rico*, 902 F.2d 148, 155 (1st Cir. 1990); cf. *City of Auburn*, 408 A.2d at 1261.
- 6) 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. Thus, Complainant can meet her overall burden at this stage by showing that (1) the circumstances underlying the employer's articulated reason are untrue, or (2) even if true, those circumstances were not the actual cause of the employment decision. *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16.

- 7) 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.
- 8) Pursuant to the MHRA, unlawful discrimination also 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.A. §§ 4553(2)(E), 4572(2).¹
- 9) 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 is 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.*
- 10) 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.A. § 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.A. § 4553(9-A).
 - a) 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 [his] 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. 3.08(D)(1) (July 17, 1999). The term

¹ Unlike the existence of such a claim under the federal Americans with Disabilities Act, there is no separate claim under the MHRA for a failure to engage in a good faith interactive process with a disabled employee to identify and make reasonable accommodations for that disability. *See Kezer v. Central Maine Medical Center*, 2012 ME 54, ¶¶ 26-27.

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“undue hardship” means “an action requiring undue financial or administrative hardship.” 5 M.R.S.A. § 4553(9-B).

- b) Generally, Respondent is only required to provide a reasonable accommodation if Complainant requests one. *See Reed v. Lepage Bakeries, Inc.*, 244 F.3d at 261.
- 11) Complainant established a *prima facie* case with respect to the termination claim and the following with respect to the failure to accommodate claim:
- a) Complainant was diagnosed with epilepsy and had a record of his disability.² Under the MHRA, epilepsy is a *per se* disability. 5 M.R.S.A. §4553-A(1)(B).
 - b) Despite the short time between his diagnosis and separation of employment, Complainant has alleged sufficiently that he performed his job satisfactorily and is a “qualified individual with a disability” within the meaning of the MHRA. The facts indicate that he had worked in the same position, without any leave of absence, since the Assault until his last day of work on October 22, 2009. He could have continued working at the time he made his request for two weeks to seek a transfer to another position elsewhere within the company.
 - c) Here, the alleged failure to accommodate involves Complainant’s request to work two weeks as accommodation, so that he could seek a transfer to another position due to his physical condition. Respondent allegedly failed to interact with him in order to determine any reasonable accommodations. Upon his notice, Respondent initiated his separation of employment immediately and did not allow him to continue working as requested.
 - d) Complainant’s request to work his last two weeks prior to transfer is, on its face, reasonable, and there is no immediately obvious reason for Respondent to refuse his request.
- 12) Respondent provided a legitimate, non-discriminatory reason for its decision to terminate Complainant immediately and responds to the reasonable accommodation claim, as follows:
- a) Respondent did not claim that the two-week request for a transfer would constitute an undue hardship on its operations; rather, Respondent denied having had any knowledge of Complainant’s disability. According to Respondent, Complainant did not inform management of his work-related injuries or need for accommodations at any time, including asking for time off. Complainant allegedly did not inform any store managers of his diagnosis or need to leave his job because of a disability. Rather, he continued working until he resigned voluntarily on October 22, 2009.
 - b) On October 22, 2009, there was a confrontation between Complainant and a customer suspected of theft at a store managed by Store Manager B. The alleged purpose of the calls between Supervisor and Complainant was to discuss his performance in handling the situation. They were discussing in “frank and probably heated terms” his performance on this particular day. He quit for personal reasons in that he felt that he was not being “backed up” by

² Respondent has noted that Complainant’s disability has been assumed for purposes of the investigation. Although Respondent disputed whether Complainant’s medical condition was work-related, this separate issue was independently resolved in Complainant’s favor in the workers’ compensation claim.

management. Respondent contended that there would have been no reason for Complainant to raise the issue of his epilepsy during the telephone calls with Supervisor. He merely stated he was stressed and did not want his job anymore.

- 13) Complainant persuasively showed that Respondent knew or should have known, or at the very least was put on notice of, his condition during his employment:
- a) Complainant showed that other Respondent employees, including Store Manager A, witnessed his injuries after the Assault.
 - b) Complainant's medical documentation confirms his subsequent treatment for the seizures he suffered soon after the Assault and his diagnosis with epilepsy. Certain documents (including the Incident Report) contradict Respondent's denial of any knowledge of Complainant's physical condition.
 - c) Complainant also credibly asserted that Respondent was aware of his need for a different position for various reasons, including stress. Complainant was credible in talking about how he discussed his blackouts/seizures and treatment with Store Manager A. He filled his prescriptions at Store #3298, where he was based most of the time.
 - d) It is questionable that Respondent had absolutely no knowledge of Complainant's condition, and its assertion is not persuasive given the factual scenario. Even if Respondent disputed Complainant's disability as work-related, its alleged ignorance of any of his injuries stemming from the Assault is incomprehensible. Complainant allegedly informed Store Manager A of his diagnosis, and he filled his prescription at the same store where he was based. Respondent's insistence that no employees, including Store Manager A, were unaware of Complainant's physical condition strains credulity. Respondent's denial of any knowledge of the Assault (12/9/2008) and Complainant's subsequent treatment despite Complainant's apparent physical injuries right after the Assault and documentation to the contrary casts doubt on Respondent's credibility.
 - e) The evidence does not show conclusively that Respondent had knowledge of the specifics of Complainant's medical condition. That may be the case. However, there is sufficient evidence at this stage to support Complainant's claim of a failure to accommodate. There was no indication that he tried to hide his medical condition and treatment where he worked primarily. It seems as likely as not that Respondent was at least aware of, to some degree, the general nature of Complainant's medical condition before his separation.
- 14) There was also no objective reason for Respondent to summarily terminate Complainant's employment without granting his request for two weeks to seek a transfer to a new position:
- a) Complainant was a good employee and good at his job. Various store managers' requests that he be assigned to their stores indicate management's confidence in his performance as a loss prevention agent. Respondent also provided no written evaluations of Complainant's work regarding any disciplinary actions taken in the year before his separation. Supervisor had allegedly spoken to Complainant about the Company's dress code and hygiene on only one occasion.

- b) With respect to the seminal October 22, 2009 separation from employment, there is no verifiable evidence (such as any report prepared by a disinterested third party) to support Store Manager B's or Supervisor's accounts of the events; they did not witness Complainant's actions independent of the disgruntled customer's allegations against him.
 - c) Given the absence of any serious performance issues, Supervisor appeared to have acted with great haste in response to Complainant's alleged resignation. He immediately contacted the personnel department allegedly to memorialize Complainant's resignation and refused to accept Complainant's request to work two weeks.
 - d) It is undisputed that Supervisor and Complainant had two telephone discussions before Supervisor made it clear that Complainant was no longer working and that he should leave the store. At this time, it seems likely that Complainant tried to communicate to some degree the nature of his condition and need for accommodations to Supervisor. The record is not clear whether Complainant had asked for accommodations before the day in question and during the calls with Supervisor. Even if he did, it is not clear whether the request was based on a disability or mere stress due to mounting medical expenses and his feeling of being unappreciated – this is the crux of the instant dispute.
 - e) Regardless of whether Complainant's medical condition was known and obvious, any interactive process between Supervisor and Complainant would not and could not have been initiated or continued in light of Complainant's summary separation and with which Supervisor stated that Complainant "did not need to work out a notice."
 - f) The alleged purpose of Supervisor's second call to Store Manager B was to ensure the disgruntled customer's satisfaction is suspect. It seems more likely that Supervisor wanted Store Manager B to make clear to Complainant that his separation was immediate. It is more likely that Supervisor did not want Complainant to remain in the store. This factual scenario tends to support Complainant's account of their exchange.
 - g) Supervisor's actions are suspect. It is not clear why Supervisor determined that Complainant not be allowed to work another two weeks, so that he could request and finalize a transfer to a different position. Respondent offered no documentation (including any exit interview, extemporaneous notes taken at the time of the calls between Supervisor and Complainant, or Supervisor's communications to the personnel department) to corroborate Supervisor's actions and why immediate separation was necessary at the time. No other personnel record exists except for Supervisor's statement contradicting Complainant's account of the events.
- 15) Despite Supervisor's statement to Complainant regarding his eligibility for rehire, the facts indicate otherwise: Complainant was told at every store that he was not eligible for rehire.
- 16) Given Complainant's work history (no performance issues) and the work-related injuries preceding his medical condition, his abrupt separation after the exchange with Supervisor is scrutinized closely. Supervisor's version of the day in question is not persuasive given their long working relationship without any documented issues. If Complainant's performance on October 22, 2009, warranted immediate discharge, there was no documentation in that respect. Supervisor's actions appear inconsistent with Respondent's policy on corrective actions.

- 17) In reviewing all of the circumstances here, neither party was substantially more credible than the other. Respondent's position is questionable at times given the factual scenario. Complainant's version seems incomplete given his various statements and written submissions. In light of the numerous conflicting factual allegations, it is as likely as it is unlikely that Complainant attempted at least to make a request for accommodation and to articulate the reasons as directly related to his physical condition. Based on the existing record, Complainant has at least an even chance of prevailing in court.
- 18) In the final analysis, it is reasonable to conclude that Complainant's medical condition played a role with respect to Respondent's decision to summarily terminate his employment and characterize him as ineligible for rehire.

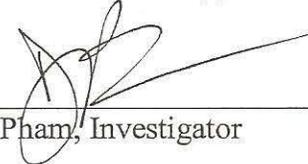
VI. Recommendation:

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

1. There are **Reasonable Grounds** to believe that Respondent [REDACTED] failed to provide reasonable accommodations and terminated Complainant [REDACTED] s employment because of his disability; and
2. Conciliation should be attempted in accordance with 5 M.R.S.A. § 4612(3).



Amy M. Sneirson, Executive Director



Domini Pham, Investigator