

## CLIENT ALERT: MCAD Finds Employer Liable for Discrimination and Constructive Discharge of Bipolar Employee

In March of 2010, a Massachusetts Commission Against Discrimination (“MCAD”) hearing officer awarded nearly \$1 million in damages to an employee suffering from bipolar depression and anxiety disorder after finding the employee to have been constructively discharged and discriminated against on the basis of his disability. After a public hearing, the MCAD hearing officer concluded that the employer had failed to properly engage in the interactive process after denying his request for a shift change to a less stressful schedule to accommodate his disorders.

In *Anderson v. United Parcel Service*, MCAD hearing officer Betty E. Waxman first determined that the employee’s bipolar and anxiety disorders were qualified “disabilities” under the Americans with Disabilities Act (“ADA”) and Chapter 151B because they restricted the employee from engaging in activities that are of central importance to his daily life, including his cognitive functions and interpersonal relationships. Specifically, Waxman found that the employee suffered from panic attacks, fatigue, decreased energy, inability to concentrate, difficulty sleeping and suicidal thoughts.

After concluding that the employee was “disabled,” Waxman held that the employer had failed to properly engage in the interactive process with the employee, and had therefore failed to reasonably accommodate his handicap. She noted that even though the employee had provided medical documentation to his employer in support of his requested shift change, “[r]ather than engage in an ‘open’ and ‘meaningful’ communication with Complainant, Respondent insisted that Complainant’s accommodation could only be evaluated after [his psychiatrist] filled out the company’s medical questionnaire.” As Waxman stated, “[t]he disagreement literally became a contest of form over substance.”

As a result of the employer’s “rigid and unyielding approach to the interactive process,” Waxman held that the employee was not properly given an opportunity to participate in the interactive process and therefore was denied the opportunity to be provided with a reasonable accommodation. The employer was further found to have constructively discharged the employee because its denial of his shift change request left him with no other choice but to leave his employment. Waxman noted that his “work environment was so detrimental to his health that he was forced to commence an unpaid leave of absence” which constituted a constructive discharge. In rendering her decision, the MCAD hearing officer awarded the employee \$143,970 in back pay, \$603,520 in front pay and \$125,000 in emotional distress damages.

This decision serves as a reminder to employers that mental health disorders may qualify as disabilities under the ADA and Chapter 151B. Moreover, the decision suggests that employers must remain diligent during the “interactive process” when assessing employees with physical or mental limitations. Ultimately, the employer was found liable *not* because it refused to explore accommodations with the employee, but rather because it was found to be inflexible by the manner in

which it engaged with the employee when evaluating his limitations and potential reasonable accommodations. It appears that it was this perceived rigidity in the employer's approach that served as the genesis of a significant damages award.

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