

**DISTRICT OF COLUMBIA
COMMISSION ON HUMAN RIGHTS**

In the Matter of)
)
CYNTHIA WILLIAMS)
)
Complainant,)
)
v.)
)
SAINT JOHN’S COMMUNITY SERVICES)
)
Respondent.)

**Docket Number 04-227-P (CN)
Final Decision and Order**

BEFORE

**Commissioner Warner Session
Commissioner Monica Palacio
Commissioner Michael Woodard**

Hearing Examiner Dianne S. Harris

For the Complainant

**Lawrence Sherman, Esquire
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For the Respondent

**Diane A. Seltzer, Esquire
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DISTRICT OF COLUMBIA
COMMISSION ON HUMAN RIGHTS

In the Matter of:

CYNTHIA WILLIAMS

Complainant,

v.

Docket Number 04-227-P (CN)

ST. JOHN'S COMMUNITY SERVICES

Respondent.

_____ /

FINAL DECISION AND ORDER ON RESPONDENT'S
MOTION FOR SUMMARY JUDGMENT

Respondent filed a motion for summary judgment requesting the Commission to find there is no genuine issue of material fact present in the Complainant's claims, and that the Respondent is entitled to a judgment as a matter of law. The Complainant responded by filing an opposition to Respondent's motion for a summary judgment stating there are significant material facts that are at issue. The Hearing Examiner found that there was no material fact in issue and issued a Proposed Decision And Order granting the Respondent's Motion for Summary Judgment. Complainant filed Exceptions to the Proposed Decision and Order. Respondent filed a Response. The Commission replies to the exceptions as follows.

At the outset, the Commission notes that many of the Complainant's exceptions are conclusive allegations. In keeping with *Beard v Goodyear and Rubber Co.*, 587 A.2d

195 (D.C. 1991) citing *Mosely v. Second New St. Paul Baptist Church*, 534 A.2d 346, 349 (D.C. 1987) the Court held conclusive allegations by the non-moving party are insufficient to establish a genuine issue of material fact or to defeat the entry of summary judgment.

1. Exception is taken to the statement of reason for termination attributed to the employer. The evidence in this case is clear and consistent that the Respondent informed the Complainant in a letter dated December 22, 2003 (See Exhibit #22) and in their written termination notice to her dated February 10, 2004 (Exhibit 28) that they had recently discovered during their annual audit of her accounts for the fiscal year October 2002 to October 2003 that she had a substantial backlog of monthly reconciliations dating back as far as six months to a year that she had not reported and for this reason they were terminating her services.

The Complainant was required as a part of her assigned duties to submit monthly financial closing statements to the Respondent indicating she had reconciled her accounts for the month in question. Additionally the Respondent had a written contract with the Complainant wherein they agreed to pay her a \$250.00 incentive bonus each time she completed her monthly closing by the 15th of the month. Through out the fiscal year at issue Complainant submitted vouchers to the Respondent on a monthly basis requesting bonuses for completing her financial closings in a timely manner. Based on these representations the Respondent paid the Complainant bonuses for every month during the fiscal year in question.

The Respondent later learned following an audit of Complainant's records the financial closings had not been done.. See page 28 lines 6 through 13, page 130 lines 15

through 17, page 217 lines 18 through 22 and page 218 lines 1 through 10 of Houston's testimony at deposition and page 14 lines 10 through 14 and page 22 lines 18 through 22 of Wilds' testimony at deposition. There is nothing in the record to reflect the Respondent has given other reasons than those stated to the Commission for the Complainant's dismissal from their employ. The exception is found to be a conclusive allegation and without merit. The Commission affirms the Hearing Examiner's findings on this issue.

2. Exception is taken to the statement the Complainant was on leave for medical reasons. The Commission modifies the decision to reflect that the Complainant was on authorized leave pursuant to the District of Columbia Family Medical Leave Act at the time of her dismissal and she had 12 more weeks of unused leave remaining when she was discharged.

3. Exception is taken to the description of the Complainant's job responsibilities. The Hearing Examiner based her findings on exhibit #2 which was made part of the record and was identified by the parties as a list of Complainant's job responsibilities for her position of director of accounting, the job she held at the time of her dismissal. It is duly noted that the document bears the Complainant's signature and is dated February 28, 2000. In her testimony at her deposition the Complainant could not recall whether the exhibit was accurate or not. See page 18 lines 11 to 17 of Williams' testimony at deposition. Nonetheless there is no dispute that the Complainant had a duty to do monthly reconciliations of her accounts, which is the job responsibility at issue in this matter and for which noncompliance led to her dismissal. See page 21 lines 3 through 22 of Williams' testimony at deposition, Exhibits J and K. The exception is found to be without merit. The Commission affirms the Hearing Examiner's findings on this issue.

4. Exception is taken to the description of the events preceding the initiation of the audit insofar as this narration fails to reflect the extreme job pressures resulting from Respondent's chronic failure to provide necessary resources, staffing and oversight of accounting operations – circumstances that contributed directly to the sudden and unexpected onset of the aforementioned psychiatric conditions. Exception is also taken to the implication that the Complainant abandoned her job and/or failed to request and to receive authorization to take the FMLA leave retroactive to the onset and continuing through and including the last day of her employment.

Complainant has failed to cite any evidence in the record to support a finding there was a chronic failure on the part of Respondent to provide necessary resources, staffing and oversight of accounting operations. On the contrary the undisputed evidence is Complainant's immediate supervisor, Paul Houston asked her if she needed any help and she replied she did not. See the page 117 line 20 through page 118 line 9 testimony of Williams at deposition, Exhibit K and page 75 lines 9 to 15 of Houston's testimony at deposition. The Complainant's contention that the Commission made an implication that she abandoned her job by her failure to come to work or call in for two days is not an accurate statement. The fact that the Complainant failed to come to work or call in for two days is undisputed and part of the record. See Exhibit F. The exceptions are found to be a conclusive allegation and without merit. The Commission affirms the Hearing Examiner's findings on this issue.

5. Exception is taken to the description of the events preceding the initiation of the audit insofar as this narration fails to reflect the fact that the backlog of work that existed prior to the audit would have required the complainant to work day and night alongside of the auditors in

order to make up for the lack of staffing and support needed to stay current.

The exception the Complainant is raising is not relevant to the issues in this case. Complainant incurred a backlog over a period of six months to a year unbeknownst to anyone in management with the Respondent's organization. She failed to inform her supervisor of her backlog or indicate she needed assistance despite inquiries from him asking her if she needed help in carrying out her duties as assigned. During the period of time that the Complainant incurred the backlog she submitted vouchers monthly to her supervisor for payment of bonuses she claimed she was entitled to for having completed her monthly financial closings of her assigned accounts in a timely manner. The exception is found to be a conclusive allegation and without merit. The Commission affirms the Hearing Examiner's findings on this issue.

6. Exception is taken to the description of the events relating to efforts by the Complainant to assist the auditors in completing the audit insofar as this description fails to reflect the overly great sense of responsibility that the Complainant felt toward the organization and the pattern of harassment that SJCS in an effort to force her resignation.

Whether the Complainant felt an overly great sense of responsibility toward the Respondent or not is not an issue here and therefore is considered irrelevant. Respondent gave her an assignment to do in an effort to accommodate her disability and she failed to complete it or offer an explanation as to why. There is nothing in the record to support a finding the Complainant was being harassed by the Respondent. The exception is found to be a conclusive allegation and without merit. The Commission affirms the Hearing Examiner's findings on this issue.

7. Exception is taken to the description of the events relating to efforts by the

Complainant to perform work on behalf of SJCS on a part time basis in order to assist the auditors because the narrative fails to reflect the fact that SJCS discontinued the arrangement after eleven working days and informed the Complainant that it did so in order to allow her to focus on recovering her health.

The exception is not relevant where the Complainant had indicated to the Respondent that she only wanted to work until December 31, 2003 and then go out on total disability. Respondent chose to conclude the arrangement a week early because there was not enough time for the Complainant to complete another assignment. Additionally there is nothing in the record to refute a finding that one of the factors in the Respondent's decision to terminate their accommodation arrangement was their desire to allow the Complainant an opportunity to focus on getting well. Based on the record the decision to end the accommodation was agreed upon by both of the parties. See page 85 lines 4 through 13, page 147 lines 11 through 16 and page 149 lines 15 through 22 Houston's testimony at deposition. The exception is found to be without merit. The Commission affirms the Hearing Examiner's findings on this issue.

8. Exception is taken to the recasting on statements made by the Complainant, who was still suffering from an acute psychiatric disorder, in which she took responsibility for systemic and resource failings after being severely criticized for her work performance notwithstanding the highly laudatory performance appraisal that she had just received.

Complainant did not deny taking responsibility for her backlog at her deposition nor did she offer medical evidence to establish she was incapacitated at the time the statement was prepared and/or prone to making statements that did not accurately reflect her beliefs or sentiments. See page 118 line 10 through page 119 line 15 Williams' testimony at deposition.

The exception is found to be without merit.

9. Exception is taken to the recasting on actions taken and statements made by the President of SJCS during a meeting held on February 3, 2004. Exception is also taken to the Hearing Examiner's acceptance at face value of the self-serving justifications advanced by SJCS for effectively failing to impose disciplinary action against CFO Houston and altogether declining to impose disciplinary action against SJCS President Wilds based on their respective abdications of management oversight and supervisory responsibility.

The paragraph the Complainant is referring to in this exception is three and not two. The record reflects that Mr. Wilds, Mr. Houston and the Complainant all testified at their respective depositions that the audit findings for fiscal year 2003 and the Complainant's future with the organization were discussed at the February 3, 2004 meeting. See page 217 line 14 through page 218 line 10 testimony of Houston at deposition, page 13 line 21 through page 14 line 14 testimony of Wilds at deposition and page 121 lines 7 through 11 testimony of Williams at deposition. Louis Minor stated at his deposition he did not recall what was discussed at the meeting except for the fact pleasantries were exchanged and the Complainant did not resign. See page 22 lines 8 through 19 testimony of Minor at deposition. The exception is found to be without merit.

Complainant's second exception in Exception #9, that the Respondent took no disciplinary action against Mr. Houston or Mr. Wilds is not correct. Both employees were verbally warned. See page 32 line 22 through page 33 line 22. The exception is found to be without merit. The Commission affirms the Hearing Examiner's findings on this issue.

10. Exception is taken to the Hearing Examiner's recasting of heretofore unprecedented

and after-the-fact request by SJCS for its outside auditor, Michael Benoudiz, to provide a special report in which he obligingly attributed sole responsibility to the Complainant for systemic, broad-based and longstanding failures at an organizational and management level.

The Complainant fails to present any evidence that the paragraph that they are taking exception to is inaccurate and it is therefore considered without merit. The Commission affirms the Hearing Examiner's findings on this issue.

11. Exception is taken to the Hearing Examiner's failure to discuss the necessary effect of the precipitous termination of the Complainant's employment to make her the scapegoat and thereby divert attention away from the respective failures on the part of the SJCS's President and CFO to exercise necessary management authority and control.

The Complainant has failed to provide any evidence to support a finding that she was fired in order to make her the scapegoat or divert attention from the shortcomings of Mr. Wilds and Mr. Houston. The exception is found to be conclusive and without merit. The Commission affirms the Hearing Examiner's findings on this issue.

12. There was no exception made in this paragraph and the Complainant simply stated her disagreement with the decision in general. The Commission affirms the Hearing Examiner's finding on this issue.

13. Exception is taken to the recitation of legal principles governing the elements of a prima facie case of disability discrimination because these principles do not apply to a situation in which the Complainant has a record of impairment and/or is regarded as having a record of impairment that limits one or more life activities. The Complainant has failed to cite a case or a law that supports her contention the legal principles governing the elements of

a prima facie case of disability discrimination do not apply to a situation in which the Complainant has a record of impairment, because none exists. Her exception is completely without merit. The Commission affirms the Hearing Examiner's findings on this issue.

14. Exception is taken to the finding that Respondent terminated the Complainant's employment based on legitimate, nondiscriminatory reasons. The Complainant fails to establish through the evidence in the record that the finding was not based on undisputed facts set forth by the testimony of the witnesses and the exhibits and accordingly the exception is found to be without merit. The Commission affirms the Hearing Examiner's findings on the issue.

15. Exception is taken to the finding that the Complainant was unable to perform the essential duties of her position during the relevant time period and that this deficiency constituted the reason that the Respondent terminated her employment.

The Complainant's statement made in Exception #15 is inaccurate. The Hearing Examiner stated the Complainant failed to perform a major job responsibility reconciling her accounts on a monthly basis. At no time did the Hearing Examiner state in the Proposed Decision and Order the Complainant was "unable to perform essential duties of her position." The record is clear that the undisputed facts are that the Complainant failed to carry out a major job duty, reconciling her accounts for over a 12 month to 6 month period that led the Respondent to incur a half million dollar loss to their organization. Her disability's onset date was November 10, 2003 (See Exhibit 19), after her backlog had accumulated. Accordingly the disability Complainant was suffering from at the time of her discharge cannot be regarded as a cause of her backlog. The exception is without merit. The Commission affirms the Hearing Examiner's

findings on this issue.

16. Exception is taken to the implicit finding that the Complainant failed to apply for and/or receive authorization from SJCS to remain on DCFMLA leave during the entire period that she was absent from work prior to her unlawful termination. The Complainant's exception is totally without merit. The paragraph she is referring to on page 9 is two and not three as stated in her exception. This paragraph states,

“The Complainant failed to prove that the Respondent's legitimate, non-discriminatory reason for terminating her was a pretext for unlawful discrimination. She charges that the Respondent fired her because she applied for and was granted leave under the Family Medical Leave Act. The record does not support such a finding. The Respondent was fully cooperative and supportive of the Complainant's request to take time off from work for health issues. They even made a good faith effort to accommodate her illnesses by allowing her to work part-time and from her home.”

The Hearing Examiner made no implications in this paragraph. Additionally the statement that the employer made threats to force the Complainant to resign prior to the expiration of FMLA leave status and before she could apply for and obtain LTD is patently incorrect. There is no evidence in the record that the Respondent threatened the Complainant. Mr. Wilds gave her a chance to resign in an attempt to protect her from having an involuntary separation of employment due to discharge listed on her personnel record. See page 14 lines 10 through 22 testimony of Wilds at deposition. Furthermore the Respondent actively assisted the Complainant in her efforts to secure LTD benefits. See Exhibit 25. The Commission affirms the Hearing Examiner's findings on this issue.

17. Exception is taken to the implicit finding that the Complainant was not a model employee prior to her taking of FMLA leave and to the explicit finding that Ms. Williams was personally responsible for the accounting backlog, made accounting errors as opposed to

omissions due to a crushing workload and had engaged in a pattern of fraud.

The undisputed facts in the record support a finding that the Complainant was personally responsible for the substantial backlog in her workload (dating back a year to six months), had made serious accounting errors that were a result of her failure to reconcile her work in a timely manner which would have allowed her to catch errors and inconsistencies and engaged in a pattern of fraud (receiving bonuses for work she knew she had not done). See page 34 lines 4 through 17, page 47 line 18 through page 48 line 15, page 68 lines 10 through 13, page 71 line 3 through page 72 line 4 and page 119 line 5 through 15 testimony of Williams at deposition; page 41 line 13 through page 42 line 3, page 64 line 16, page 69 line 17 through page 70 line 10, page 81 line 16 through page 82 line 6, page 93 line 16 through page 94 line 20 testimony of Houston at deposition; page 112 line 5 through 17 testimony of Wilds at deposition and page 13 line 8 through 14 line 21, page 15 line 18 through page 16 line 21 and page 38 line 15 to page 39 line 6 testimony of Benoudiz at deposition and Exhibits 2, 7, J, K, and P. The exception is found to be without merit. The Commission affirms the Hearing Examiner's findings on this issue.

18. Exception is taken to the finding that the Complainant failed to inform her supervisor of her inability to complete reconciliations due to her varied and increased workload and responsibilities. This exception is contrary to the undisputed facts in the record. Both the Complainant and her supervisor have clearly and unequivocally testified at their respective depositions that the Complainant did not inform Mr. Houston that she was unable to complete the reconciliations. See page 47 line 10 through page 48 line 15 testimony of Williams at deposition and page 64 lines 1 through 6 testimony of Houston at deposition. The exception is

found to be without merit. The Commission affirms the Hearing Examiner's findings.

19. Exception is taken to the discrediting of the Complainant's account of her efforts to inform her supervisor of the situation following her FMLA leave as well as to take corrective action based on these communications and/or to exercise managerial and supervisory authority to identify and address ensuing problems associated with the Complainant's extended absence from work.

Complainant bases her exception 19 on page 9, ¶ 6 and page 10, ¶ 1 of the Proposed Decision that quotes page 35, ¶ 3 and page 36, ¶ 1 of Complainant's Memorandum of Law in Opposition to Respondent's Motion for Summary Judgment,

“ . . . she would not be able to return to work to catch up on the accumulated backlog and/or perform needed accounting work during the annual audit cycle. Despite this communication and his own opportunity to assess the situation, CFO Houston failed or refused to perform these duties on an interim basis. This high management official also conspicuously refrained from hiring temporary or substitute staff to address a significant work backlog that had now been severely compounded by Ms. Williams [sic] past and anticipated extended absence. Mr. Houston refrained from asking the auditors to address the work backlog and related needs until after the auditors had made clear the need for immediate substitute performance.”

There is absolutely nothing in the record to substantiate the Complainant's argument. On the contrary the record establishes that the Respondent first learned about the backlog when the auditors reported to their worksite to audit the Complainant's work in November 2003. Mr. Houston took immediate action and by the end of November, one week later temporaries began working to clear up the Complainant's backlog. See page 20 line 6 through 12 testimony of Benoudiz at deposition. The exception is found to be a conclusive allegation and without merit. The Commission affirms the Hearing Examiner's findings on this issue.

20. Exception is taken to the finding emphasis [sic] that the Hearing Examiner elected

to place on the Complainant's performance of monthly closing responsibilities (Page 10 ¶2) when, in fact, these activities constituted such a minor aspect of the Complainant's job duties that they were not listed in her position description or referred to in her most recent annual performance appraisal.

The paragraph of the Proposed Decision and Order Complainant refers to states,

“In closing the Complainant claimed in her Opposition that she was unaware that doing monthly reconciliations was a major part of the preparation of her monthly financial closing reports. This argument is not found to be plausible in view of her written job description, the signed contract she had with the Respondent and the Personnel Action Forms she filled out each month that listed completing reconciliations as one of her main duties in doing monthly financial closings”.

No where in the paragraph does the Hearing Examiner discuss whether the monthly closing responsibilities were a major or minor aspect of the Complainant's duties as Director of Accounting. The best illustration of how important doing the reconciliations of her accounts was would be the fact that Complainant's failure to carry out these duties for over a six month to twelve month period allowed major accounting errors to go undetected for months, led the Respondent to spend money they did not have and ultimately resulted in the organization losing over half a million dollars. See page 197 lines 6 through 13 of testimony of Houston at deposition. The exception is found to be without merit. The Commission affirms the Hearing Examiner's findings on this issue.

21. Exception is taken to the finding that the totality of the evidence establishes that Respondent acted for legitimate, non-discriminatory reasons and without pretext. The Complainant has failed to present evidence from the record to support her contention the Hearing Examiner was in error. The exception is found to be without merit. The Commission affirms the Hearing Examiner's findings on this issue.

22. Exception is taken to the finding that the Complainant failed to establish a causal connection between her taking of authorized FMLA leave and the Respondent's termination of her employment. The Complainant raises two arguments in this exception that she contends establishes a causal link between her being on FMLA leave and her dismissal. The first contention was that her supervisor had given her an excellent performance appraisal just before she went out on leave. The evidence in the record however clearly indicates that the evaluation was made before the Respondent had knowledge that the Complainant had a backlog of work dating back six months to a year. Mr. Houston had been led to believe that the Complainant was current in her work by the monthly financial closing reports she submitted where she listed she had done the work in question, which was not the case. Based on these representations her supervisor gave her a favorable performance appraisal. See page 64 line 10 through 16, page 67 lines 3 through 6, page 72 line 2 through page 73 line 5 and page 93 line 12 through page 94 line 20 testimony of Houston at deposition.

The second argument is that the Respondent made threats to the Complainant. There is not evidence in the record to support such a finding. This exception is found to be a conclusive allegation and without merit. The Commission affirms the Hearing Examiner's findings on this issue.

23. Exception is taken to the finding that Respondent had a legitimate basis to rely on the results of the audit to punish the Complainant for having legitimately taken FMLA leave and/or to justify its termination of her employment at a time when she was still in a protected status under this enactment. The Complainant has failed to offer any evidence to establish that the Respondent's decision to fire her was punitive in nature. In fact the Respondent held off

Complainant's termination until she could file for Long Term Disability. See Exhibit #25.

Complainant's argument suggests that that the Family Medical Leave Act "immunizes her from any legitimate disciplinary action taken by her employer for reasons unrelated to the employee's [protected] leave." Pursuant to *Chang v. Institution for Public-Private Partnerships, Inc., et al.*, 846 A. 2d 318, 329 (D.C. 2004), 29 U.S.C. §2614(a)(3)(B) and 29 C.F.R. §825.216(a). This exception is found to be without merit. The Commission affirms the Hearing Examiner's findings on this issue.

24. Exception is taken to the adverse findings made by the Hearing Examiner regarding evidence of pretext proffered by the Complainant and inaccurately described as "defenses" asserted by the Complainant to her firing. The Commission understands the Complainant's exception to the term "defenses" and as such will modify the decision to substitute the word "arguments". The remainder of the exception is a broad and vague statement of the Complainant's disagreement with the decision citing the discussion in the decision to be based on distorted deposition testimony and improperly drawn inferences and offers no specific arguments to be addressed. Other than the finding that the term "defenses" will be substituted with the word "arguments" the exception is found to be without merit.

25. Exception is taken to the finding that the lack of any dispute over material facts justifies the granting of summary judgment and, further, that the record affirmatively supports a finding that St. John's dismissed the Complainant from her position for legitimate, non-discriminatory reasons. The Complainant has failed to demonstrate that there is one material fact at issue in this matter and the exception is found to be without merit. Therefore the Commission adapts the Hearing Examiner's findings of fact and conclusions of law with some modifications.

STATEMENT OF THE CASE:

Complainant has contended that the Commission has not considered the entire record by not considering the statements and exhibits offered at the District of Columbia Office of Human Rights. The law in this jurisdiction unequivocally says contested cases that are before the Commission of Human Rights are de novo proceedings and the only testimony, documents and filings that can be considered are those that are a part of the official record in this office. See the District of Columbia Official Code §2-1509 (2001 Edition). In accordance with this statute the Commission cannot consider the record before the Office of Human Rights.

Respondent, St. John's Community Services, is a non-profit human service agency operating in the District of Columbia and providing services to individuals with special needs and disabilities. The organization provides early intervention, special education and recreational services to children and housing, career and job opportunities to adults that qualify to participate in their program.

Complainant, Cynthia Williams was hired on May 27, 1997 as a staff accountant for the Respondent. During her tenure with the Respondent she was promoted twice, first to the position of financial officer and second to the job of director of accounting. On February 10, 2004 she was terminated from her position of employment with the Respondent for failure to carry out one of her major duties, monthly reconciliation of her accounts and dishonesty.

At the time of her dismissal, Complainant was out on leave for medical reasons. Her treating physician had diagnosed her as suffering from severe depression and anxiety. The written description for the job of Director of Accounting, at the time the Complainant held the

position, was:

“To ensure that the accounting department functions efficiently and effectively to provide the information required for the anticipated growth of the organization, and its continued welfare and development. Areas of particular concern are: internal controls, record keeping, reporting, internal audits, and interfacing with external auditors.”

The written job duties for the Director of Accounting included:

1. Supervise the Payroll and Accounts Payable staff and function
2. Coordinates Quality Systems with Program Directors
3. Prepares Financial Statements for distribution, including monthly journal entries
4. Maintains Fixed Asset Schedule
5. Prepares quarterly New Jersey Expense Report, including any budget modifications
6. Prepares quarterly New Jersey Audits
7. Reconciles Consumer Bank Accounts periodically
8. Reconciles General Ledger Accounts monthly
9. Assists Accounting Staff with required reconciliations and reports during crunch.
10. Performs miscellaneous projects as assigned by the CPO
11. Works with CPA firm on audited financial statements and audit.
12. Coordinates the Medicaid audit of CLS-DC
13. Prepares budget forms after discussions with Senior Managers
14. Coordinates annual Budget process
15. Special Projects, as directed by CFO
16. Other duties as assigned

Complainant's predecessor to the position of director of accounting had also been fired for not completing his work assignments in a timely manner. He did not have a known disability during his tenure with Respondent. When the Complainant took on the position the Respondent instituted an incentive program where the Complainant would receive a \$250.00 bonus check for each month she finished her monthly financial closing statements by the 15th of that month. This agreement was reflected in a contract dated December 28, 2000 and signed by the parties. Listed in the document were the three key areas to be completed in preparing the monthly financial closing: journal entries, review and reconciliations. In order to receive the bonus for completing her reports in a timely fashion Complainant was required to complete a document known as a Personnel Action Form (PAF) and submit it to Paul Houston, her immediate supervisor for his approval. Once Mr. Houston gave his approval a check would be issued to her by the Respondent. During the fiscal year of October 2002 – October 2003 the Complainant received a monthly bonus check of \$250.00 for every month in that year.

The preparation of the monthly financial closing statements of the Respondent's accounts entailed that the accounts first be reconciled in order to give an accurate summary of the amounts of money listed in the statements. If the accounts were not accurately and timely reconciled that could lead the Respondent to assuming they had more money than they actually had and result in severe financial losses to the organization.

Respondent has an annual audit of their operations performed by independent contractors at the conclusion of their fiscal year. Complainant's department was audited in 2001 and 2002 without any problems. Mr. Thomas Wilds, the Respondent's Chief Executive Officer and President characterized Complainant's 2002 audit as "squeaky clean". See page 28 line 17

through 19 testimony of Wilds deposition.

Prior to the Respondent's 2003 audit, a pre-audit meeting was held on September 17, 2003. Complainant and one of lead auditors were in attendance. The purpose of the session was to discuss the importance of having "accurate and adequate records in keeping with related internal control structure policies and procedures ..." (Respondent's Exhibit 30). The auditors stressed to those employees present the importance of taking responsibility for reconciling all balance sheet, income and expense accounts.

The 2003 audit was set to begin on November 10. When the auditors assigned to do the audit arrived on the day in question they were told that the Complainant and the billing and revenue manager for Respondent were not ready to go forward and were requesting additional time to prepare. It was agreed by the parties that the auditors would return Monday, November 17, 2003 to start their audit of the Billing and Revenue Office and on that following Monday, November 24, 2003 they would begin their audit of the Complainant's office.

Complainant last reported to work on Sunday, November 16, 2003. She failed to report to work as scheduled or call in November 17 and 18, 2003. That Wednesday, November 19, 2003 she left a message on her immediate supervisor's voice mail stating she was unable to work and was requesting a leave of absence. She did not specifically ask for leave under the Family Medical Leave Act at that time.

Mr. Houston sent an e-mail to the Complainant's residence the next day asking her to contact Cheryl Wesley, Director of Human Resources for the Respondent to obtain further information on the proper procedures for taking leave. A few days later, Ms. Wesley mailed Complainant a Family Medical Leave application and information packet with instructions to

return the completed forms to her within fifteen days.

On November 21, 2003 the Complainant was hospitalized for depression and anxiety. She was released from the hospital on November 24, 2003. That next day she informed the Respondent by e-mail that she had been hospitalized, released and was presently under the care of a psychiatrist. In the meantime, the auditors reported to the Complainant's office on November 24 2003 as planned and immediately discovered that they could not proceed with the audit due to the fact the majority of her accounts had not been reconciled. Respondent was forced to hire workers from a temporary agency to come in and do the reconciliations of the Complainant's accounts.

In December of 2003 the auditors discovered substantial errors and instances of dereliction of duty in the Complainant's work. The auditors found that from October 2002 up to the date of the audit the Complainant had failed to do monthly bank reconciliations for payroll. As of March 2003, it was determined Complainant had failed to do monthly bank reconciliations for the prepaid and certain payroll liability accounts. Additionally she had not done monthly account reconciliations for liability accounts, including accounts payables, accrual payables and debt. It was learned that Complainant posted monthly payroll entries against reduced expenses that should have been posted as cash in the payroll account. This mistake resulted in a \$100,000.00 loss to the Respondent. Complainant entered a \$280,000.00 deposit in the Operation Account twice leading the Respondent to believe they had more income than they actually had. Her combined errors resulted in a total loss to the Respondent of \$578,809.00.

Although the Complainant had submitted financial closing statements for each month in fiscal year 2003 the information she had listed on the documents was inaccurate because she had

failed to reconcile the cited figures to the financial records (i.e. subsidiary schedule, bank statement or some form of record). Her supervisor had not reviewed her work, because he believed her representations that she had followed the steps required on doing a financial closing statement, which included doing reconciliations of accounts.

Complainant contacted Ms. Wesley in early December 2003 to advise her that she had seen her treating physician on December 1 and that Respondent should be in receipt of her completed Family Medical Leave forms shortly. She also requested permission for special accommodation, being allowed to work from home on a part-time basis up until December 31, 2003. After that date, the Complainant stated, she wanted to go out on total disability up until the time she was released by her doctor to return to work.

After receiving this communication, Ms. Wesley sought further clarification from Doctor Vincenzo Perkins, M.D., Complainant's treating physician. Doctor Perkins replied December 8, 2003 that the Complainant was able to work according to what she felt comfortable doing, but he could not predict that in a month from that date she would be unable to work. He explained that for this reason he would not indicate on the Health Care Provider form, a part of the Family Medical Leave Act application, the Complainant was totally disabled until she decided what work-related duties she was capable of doing. Ms. Wesley responded that based on Doctor Perkins' statement, Complainant's request for total disability as of December 31 was premature and a decision could be made when the time came.

Shortly thereafter Ms. Wesley contacted the Complainant concerning her request for accommodation. Arrangements were made for the Complainant to work from her home between 10 to 20 hours a week. She was given access to Citrix, Respondent's on-line database system

through her home computer to carry out her assignments.

Complainant's treating physician sent Respondent a medical statement dated December 16, 2003 that authorized her to work part-time. He listed the onset date of the Complainant's depression and anxiety as November 10, 2003 and listed her prescribed treatment as medication and psychotherapy. He stated that the complainant's condition affected her cognitive skills and abilities particularly memory and concentration and the ability to handle the stress of working in an office environment.

After the accommodation agreement was reached, Mr. Houston gave the Complainant two assignments that included: (1) define the steps she went through each month in reviewing the payroll journal entry and posting the payroll journal entry and (2) take the payroll journal entry for October 2003 and reconcile it to the payroll reports. Although the Complainant was given access to all the materials she needed to complete the assignment, she never finished it.

Respondent subsequently decided to remove Complainant's access to Citrix for two reasons: (1) given the Complainant's stated intention of going out on total disability effective December 31 (one week away from the date the decision was made) there would not be enough time for her to complete another assignment and (2) the auditors had advised Respondent that due to the large number of deficiencies found in her work they had concerns that some fraudulent activity may have taken place. In the interest of prudence they recommended Complainant's access to Respondent's files be removed until they were able to rule that possibility out.

On December 22, 2003 Ms. Wesley sent the Complainant a letter advising her of the auditors' findings and putting her on notice that in view of this information the Respondent would be making a decision in the matter in the near future. Complainant responded to Ms.

Wesley's letter on December 31, 2003. In her response she took full responsibility for the reconciliations not having been completed and offered to repay the Respondent for the bonuses she had received for the fiscal year 2003. Citing family problems as the reason for not doing the reconciliations, she conceded she had not told her immediate supervisor she needed help.

Complainant, her husband, Mr. Houston and Mr. Wilds met on February 3, 2004 to discuss the audit findings and her future with the Respondent. On February 10, 2004 the Respondent sent the Complainant a termination letter. Respondent verbally reprimanded Mr. Houston and Mr. Wilds for not verifying the Complainant's reports were accurate. Both were still employed by the Respondent as of the date of his deposition in this case. In their decision to retain Mr. Houston's employment, the Respondent cited the factors (1) he was unaware Complainant had not reconciled her accounts and (2) based on her having successfully gone through two previous audits Mr. Houston had good cause to believe she was doing the reconciliations of her accounts in a timely manner.

Upon being informed of the major discrepancies in the Complainant's work Mr. Wilds asked Michael Benoudiz, the lead auditor to put his findings in writing. In keeping with this request, Mr. Benoudiz issued a report dated February 26, 2004 where he noted the following two key areas caused a 45-day delay in completing the audit. The first area was the Complainant's failure to complete reconciliations of her cash/operating and payroll accounts. The auditors found she had not reconciled her payroll cash account for one entire year. They also discovered she had not done reconciliations of her operating account and certain state bank accounts in six months. The second area was her failure to reconcile accounts payable and accrued expenses on the general ledger. There were no reconciliations or schedules provided to the auditors for their

2003 audit of the Complainant's office.

STANDARD OF REVIEW:

A Summary Judgment is granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Celotex Corporation v. Catrell*, 477 U.S. 317 (1986). In deciding summary judgment motions, courts view the evidence in the light most favorable to the non-moving party. *Anderson v. Liberty Lobby Incorporated*, 477 U.S. 242 (1986). In order to prevail upon a motion for summary judgment, the moving party must clearly demonstrate that there is no genuine issue as to any material fact and that they are entitled to judgment as a matter of law. *Beard, supra*, 587 A. 2d 195 (D.C. 1991). The Commission will grant a summary judgment only if the moving party is entitled to judgment as a matter of law upon facts not in dispute. *Ferguson v. Small*, 225 F. Supp.2d 31 (D.D.C. 2002).

If a moving defendant has made an initial showing that the record presents no genuine issue of material fact, the burden shifts to the non-moving party to show that such an issue exists. *Beard, supra* citing *Landow v. Georgetown-Inland West Corporation*, 454 A.2d 310 (D.C. 1987). The moving party's initial showing can be made by pointing out there is lack of evidence to support the non-moving party's case. *Beard, supra*, citing *Celotex Corporation v. Catrell*, 477 U.S. 317 (1986).

In opposing a summary judgment, a party may not rely on vague allegations but instead must present specific facts showing that there is a genuine issue for trial. *Graff v. Malawar*, 592 A.2d 1038 (D.C. 1991). The non-moving party must do more than simply “. . .show that there is some metaphysical doubt as to the material facts.” *Jones v. Blake Construction Company, Incorporated*, 2002 U.S. District LEXIS 17032 (September 10, 2002). Conclusive allegations by

the non-moving party are insufficient to establish a genuine issue of material fact or to defeat the entry of summary judgment *Beard*, supra, 587 A.2d 195 (D.C. 1991) citing *Mosely v. Second New St. Paul Baptist Church*, 534 A.2d 346 (D.C. 1987). Furthermore, the “existence of a factual dispute [will not] defeat a summary judgment motion when the dispute does not concern a genuine issue of material fact.” *Anderson*, supra at 247. To be material, the fact must be capable of affecting the outcome of the litigation; to be genuine the issue must be supported by admissible evidence sufficient for a reasonable finder of fact to decide in favor of the nonmoving party. *Id.* Thus an adverse party must set forth facts showing that there is a genuine issue for trial. *Beard*, supra at 199. In keeping with these principles, the Commission will examine Respondent’s Motion for Summary Judgment.

ISSUES BEFORE THE HEARING EXAMINER:

1. Whether the Respondent subjected Complainant to disparate treatment on the basis of her disability (depression and anxiety) when they terminated her from their employ?

Complainant states she was discriminated by the Respondent on the basis of a disability which violated the Americans with Disabilities Act, 42 U.S.C. §12112 (2001) and the District of Columbia Human Rights Act, District of Columbia Code § 2-1402.11(a) (2001 Edition). The District of Columbia Human Rights Act makes it unlawful to “. . . discriminate against any individual with respect to . . .” disability has also been included as a protected category.

The Act also declares that it shall be an unlawful discriminatory practice for an employer to discriminate against an individual in the terms and conditions of employment or to discharge that individual on the basis of a disability. See District of Columbia Code §2-1402.11(a) (2001 Edition). In analyzing discrimination cases brought under the Human Rights

Act, the Commission on Human Rights and the District of Columbia Court of Appeals follow the legal framework set out by the United States Supreme Court in reviewing cases under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000 *et seq.* *McDonnell Douglas Corporation v. Green*, 411 U.S. 792, 802, 36 L. Ed. 2d 668, 93 S. Ct. 1817 (1973), *Atlantic Richfield Company v. District of Columbia Commission on Human Rights*, 515 A.2d 1095 (D.C. 1986) and *Wisconsin Avenue Nursing Home v. District of Columbia Commission on Human Rights*, 527 A.2d 287 (D.C. 1987). This standard requires the employee prove by a preponderance of the evidence a prima facie case of discrimination.

Once the employee has established a prima facie case of discrimination the burden of proof then shifts to the Respondent to present a legitimate, non-discriminatory reason for the adverse action. The employer can satisfy its burden by producing admissible evidence from which the deciding official [can] rationally conclude that the employment action [was not] motivated by discriminatory animus. *Atlantic Richfield*, supra at 1099-1100. If the Respondent is able to establish a legitimate, non-discriminatory reason for the employment action “the burden shifts back to the Complainant to prove that the Respondent’s justification for its action was not its true reason but was in fact merely a pretext to disguise discriminatory practice.” *Arthur Young & Co. v. Sutherland*, 631 A.2d 354, 361 (D.C. 1993) “[A]though the *McDonnell Douglas* presumption shifts the burden of production of evidence to the defendant the ultimate burden of persuading the fact finder that the defendant intentionally discriminated against the plaintiff remains with the plaintiff. *St. Mary’s Honor Center v. Hicks*, 509 U.S. 502, 507 (1993).

In establishing a prima facie case for disability the Complainant must establish the

following:

- a. She had a disability for which reasonable accommodation can be made;
- b. She was satisfying the normal requirements of her job;
- c. She was adversely treated; and
- d. Others not in the same protected class were treated more favorably.

See American University v. District of Columbia Commission on Human Rights, 598 A.2d 416, 422 (D.C. 1991).

The District of Columbia Human Rights act defines disability as a “physical or mental impairment that substantially limits one or more of major life activities of an individual, having a record of such an impairment; or being regarded as having such an impairment.” District of Columbia Code § 2-1401.02(5A) (2001 Edition).

The Commission’s Employment Guidelines at 5 DCMR § 599.1 (1995) states, “Physical handicap – a bodily or mental disablement which may be the result of injury, illness or congenital condition which does not preclude the capacity to perform a particular job and for which reasonable accommodation can be made. Physical or mental disablement means any . . . mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities. The term physical or mental disabilities, includes, but is not limited to, such diseases and conditions as . . . emotional illness.”

Although neither the Act nor the regulation define the term “disablement”, the Commission looks to the Rehabilitation Act of 1973, 29 U.S.C. § 791 (1973), the Americans with Disabilities Act (“ADA”) 42 U.S.C. § 1202 (1992) and the Regulations set forth in 29 CFR §1630 (i), 701 et seq. that say that for a disability to qualify as major life activity there is a requirement pursuant to *Toyota Motor Manufacturing Kentucky, Incorporated v. Williams*, 534 U.S. 184, 195 (2002) that the impairment be substantial.

The Complainant has established the first element of her prima facie case by demonstrating

she had a disability under the Act for which accommodation can be made. According to her physician, Complainant has established that she has a mental disablement for which an accommodation can be made. Complainant was diagnosed as suffering from depression and anxiety with an onset date of November 10, 2003. These ailments were substantial enough to affect one of her major life activities: working. Based on her doctor's statement, Complainant's depression and anxiety, substantially affected her reasoning skills and ability to work in an office setting but permitted her to perform the essential functions of her job for no more than 20 hours a week from her home.

The Complainant has not established the second element of a prima facie case, that she was satisfying the requirements of her job at the time of her separation from employment. She admits it was her responsibility to reconcile her accounts monthly and that in her final year of employment with the Respondent these tasks for the most part were not done. She further acknowledges she did not inform the Respondent of her failure to reconcile these accounts. In fact she submitted monthly financial closing statements where she indicated that the accounts had been reconciled and submitted paperwork to obtain monthly \$250.00 bonus checks issued by the Respondent for doing the reconciliations in a timely manner. Complainant's neglect of duty and dishonesty were not related to her disability as they occurred well before November 10, 2003, the onset date of her illnesses.

The third element of a prima facie case is met as there was an adverse action taken against the Complainant. Respondent fired her.

There is nothing in the record to support a finding that others not in the Complainant's protected class received more favorable treatment than she. Her predecessor, who did not have a

disability, was also fired for failure to complete his work duties in a timely manner. Therefore the fourth element of a prima facie case is not met.

For the sake of argument if the Complainant was able to establish a prima facie case of discrimination based on disability the burden then shifts to the Respondent to show the adverse action was the result of a legitimate, non-discriminatory reason. The undisputed facts in this case establish there was as legitimate, non-discriminatory reason for the Complainant's discharge. She failed to perform a major job responsibility, reconciling her accounts on a monthly basis, and engaged in dishonesty, knowingly submitting reports that contained falsified information. Complainant argues the Respondent's defense that they discharged her for a legitimate, non-discriminatory reason is "patently inconsistent with the evidence". See page 33 of Memorandum of Law in Opposition to Respondent's Motion for Summary Judgment. She maintained that her failure to reconcile accounts and her submission of inaccurate reports was not her fault noting that it was her immediate supervisor and upper management's responsibility. It was her argument that as managers they should have exercised better oversight in their monitoring her work performance. This reasoning is not found to be persuasive given the fact the Complainant as the Director of Accounting was responsible for handling these responsibilities autonomously and without close supervision.

The Complainant failed to prove that the Respondent's legitimate, non-discriminatory reason for terminating her was a pretext for unlawful discrimination. She charges that the Respondent fired her because she applied for and was granted leave under the Family Medical Leave Act. The record does not support such a finding. The Respondent was fully cooperative and supportive of the Complainant's request to take time off from work for health issues. They

even made a good faith effort to accommodate her illnesses by allowing her to work part-time and from her home.

Complainant's contention that Mr. Houston's approval of her bonus check requests negated her culpability in receiving bonuses she was not entitled to is found to be without merit. Complainant knew her immediate supervisor was unaware that she had not reconciled her accounts and had presumed her monthly financial closing reports were an accurate reflection of the work she had done. See Williams' deposition page 48.

Complainant claims she was considered a model employee, prior to her taking leave, and had received several excellent performance appraisals and bonuses for outstanding work performance. Although the Respondent acknowledges this statement to be true, it was also noted that these performance ratings and awards took place prior to the auditors' discovery of her substantial backlog, accounting errors and dishonesty.

Complainant states in her Opposition to Respondent's Motion for a Summary Judgment, "It is beyond dispute that CFO Houston was fully aware of Ms. Williams' inability to complete the monthly reconciliations due to her varied and increased workload and responsibilities". There is no evidence in the record to support such a finding. The claimant, by her own admission did not inform her immediate supervisor that she was overburdened with work responsibilities and therefore could not complete monthly reconciliations and other accounting duties. In fact she consistently submitted monthly reports indicating she was doing the work in a timely manner. It was Mr. Houston's undisputed testimony that he did not review the Complainant's monthly financial closing statements. When asked if she told her immediate supervisor about the fact she had not done the reconciliations the Complainant responded "Of course not!"

Complainant argues in her Opposition that she advised her immediate supervisor following her hospitalization of November 21, 2003 that “. . .she would not be able to return to work to catch up on the accumulated backlog and/or perform needed accounting work during the annual audit cycle. Despite this communication and his own opportunity to assess the situation, CFO Houston failed or refused to perform these duties on an interim basis. This high management official also conspicuously refrained from hiring temporary or substitute staff to address a significant work backlog that had now been severely compounded by Ms. Williams’ past and anticipated extended absence. Mr. Houston likewise refrained from asking the auditors to address the work backlog and related needs until after the auditors had made clear the need for immediate substitute.” There is no evidence in the record to support this claim. The Complainant in fact testified at her deposition that “I don’t remember any audit conversations from 2001.” Mr. Houston testified that he first learned of the Complainant’s excessive backload on November 24, 2003. Once Respondent was made aware the situation they took immediate steps to hire a temporary agency to clear up those accounts that had not been reconciled. See Paul Houston deposition page 83.

In closing the Complainant claimed in her Opposition that she was unaware that doing monthly reconciliations was a major part of the preparation of her monthly financial closing reports. This argument is not found to be plausible in view of her written job description, the signed contract she had with the Respondent and the Personnel Action Forms she filled out each month that listed doing reconciliations as one of her main duties in doing monthly financial closings. This finding is further buttressed by the undisputed testimony of Mr. Wilds at his deposition where he explained in great detail how a monthly financial closing statement is

done. See page 27 line 19 through page 28 line 19. He noted that the amounts listed on the financial closing statements had to be an accurate result of reconciling the accounts otherwise the information on the documents would be “bogus”. The carrying out of the monthly financial closing was a process where the Complainant was required to insure that all the accounts balanced out and there was true accounting for the amounts of money in each account. As an experienced accountant, who had performed her duties properly in previous years, she should have known failure to reconcile her accounts over a year was unacceptable and a serious dereliction of duty.

Based on the totality of the evidence in the record Respondent is found to have established a legitimate, non-discriminatory reason for terminating Complainant without pretext. Complainant has failed to meet her burden of proof in showing that the real reason for Respondent’s firing was due to discrimination on the basis of disability.

2. The second and final issue to be addressed is whether the Respondent retaliated against Complainant by terminating her employment with them because she had taken leave under the Family Medical Leave Act?

The District of Columbia Human Rights Act, District of Columbia Code § 2-1402.61 (2001 Edition) states, “It shall be an unlawful discriminatory practice to coerce, threaten, retaliate against, or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected under this chapter.”

Pursuant to the *Harrison v. Children’s National Medical Center* 678 A. 2d 572 (D.C. 1996). The District of Columbia Family Leave Act is designed to protect the employment rights and seniority of an employee who takes medical leave. To establish a prima facie case of

retaliation the Complainant must demonstrate: (1) the employee has utilized a protected right under the Family Medical Leave Act (2) the employer must have taken adverse action against the employee and (3) there must have been a causal connection between the adverse action and the employee's use of leave. *Chang v. Institution for Public – Private Partnerships, Incorporated, et al*, 846 A. 2d 318 (D.C. 2004).

Complainant is able to establish the first two elements, but she is unable to substantiate the third element, showing a causal connection between her taking leave under the Family Medical Leave Act and her discharge from employment. The record shows that the Respondent fully cooperated with the Complainant in assisting her file the necessary paperwork to apply for leave under the Act and even made accommodation for her to work at home on a part-time basis.

Independent of the Complainant's taking leave was the fact a routine audit revealed that Complainant had a serious backlog of accounts that had not been reconciled from six months to a year and that she had collected a year's worth of bonuses based on false representations she made to the employer. Due to her dereliction of duty, errors were not promptly discovered and Respondent incurred a financial loss of half a million dollars. For these reasons the Respondent made the decision to fire her.

Complainant raised a number of defenses to the charge she was justifiably fired for cause. She maintains she was overwhelmed by a heavy workload. Her argument is unsupported by the record. Her immediate supervisor repeatedly asked her if she needed assistance and she assured him that she did not. Additionally, she says the Respondent blamed her for its management failures, namely, Mr. Houston's failure to properly supervise her work. She argues that if she were terminated he should have been also. In making this argument the Complainant is ignoring

one important fact. While she had actual first hand knowledge the reconciliations were not being carried out as required, her supervisor did not. In her monthly financial closing statements, the Complainant stated she had reconciled her accounts and her supervisor believed her representations. Respondent did reprimand Mr. Houston for not monitoring the Complainant's work more closely, but the level of his culpability is not of the same magnitude as the Complainant, who knowingly failed to carry out major job responsibilities over a year to six month period of time and collected bonuses by making false misrepresentations her work had been done in a timely manner.

Another defense Complainant raised was the fact Respondent had requested the audit manager, Michael Benoudiz to prepare a special report "attributing blame to her for the systemic failings and deficiencies that Ms. Williams' ill-timed and extended FMLA absence undoubtedly compounded." This contention is not supported by the undisputed testimony of Mr. Wilds and Mr. Benoudiz at their depositions. Both men stated Mr. Wilds asked Mr. Benoudiz to prepare a report on his observations made while conducting an audit of the Complainant's department. There is nothing in the record to establish that Mr. Benoudiz was asked to attribute blame to the Complainant for any wrongdoing.

In conclusion there are no material facts in issue in this case. The undisputed evidence in the record firmly supports a finding that the Complainant was dismissed from her job with the Respondent due to dereliction of duty (not reconciling her accounts for a year to six months) and dishonesty (knowingly submitting monthly financial closing statements and PAFs that contained false information and resulted in her receiving bonuses for which she was not entitled). There is nothing in the case file to establish a prima facie case of either discrimination on the basis of

disability or retaliation. As a matter of law the Respondent is entitled to a summary judgment.

FINAL ORDER

Based on the foregoing, the Respondent's Motion for Summary Judgment is granted. So ordered this 6th day of November, 2006.

Dianne S. Harris
Hearing Examiner

For the Commission

Warner Session
Commissioner

Monica Palacio
Commissioner

Michael Woodard
Commissioner

Cc: All parties/ representatives
Office of Human Rights
Commission File