



The Commonwealth of Massachusetts
Commission Against Discrimination
One Ashburton Place, Boston, MA 02108
Phone: (617) 994-6000 Fax: (617) 994-6024

JUL 03 2013 - **DISMISSAL and NOTIFICATION of RIGHTS** -

To: Michael P. Gately <small>G.L.c. 4, § 7(26)(c)</small>  <small>G.L.c. 4, § 7(26)(c)</small> 	Case: Michael P. Gately v. Town of Tisbury - Tisbury Police Department MCAD Docket Number: 12BEM00151 EEOC Number: 16C-2012-00752 Investigator: Sarah Biglow
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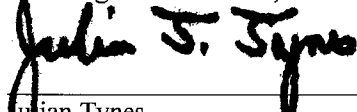
Your complaint has been dismissed for the following reasons:

- The facts alleged fail to state a claim under any of the statutes the Commission enforces.
- Respondent employs less than the required number of employees.
- Your complaint was not timely filed with the Commission, i.e. you waited too long after the date(s) of the alleged discrimination to file. Because it was filed outside the time limit prescribed by law, the Commission cannot investigate your allegations.
- You failed to provide requested information, failed or refused to appear or to be available for necessary interviews/conference, or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your complaint. You have had more than 30 days in which to respond to our written request.
- The Commission's efforts to locate you have been unsuccessful. You have had at least 30 days in which to respond to a notice sent to your last known address.
- The Respondent has made a reasonable settlement, offering full relief for the harm you alleged. 30 days have expired since you received actual notice of this settlement offer.
- The Commission issues the following determination. Based upon the Commission's investigation, the Commission is unable to conclude that the information obtained establishes a violation of the statutes. This does not certify that the Respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this complaint.
- Other (briefly state)

- NOTICE of APPEAL -

If you wish to appeal the dismissal of your complaint and believe that the above stated reason for dismissal is incorrect, you may appeal to this Commission within 10 days after receipt of this notice. You or your attorney must make your appeal of the dismissal in writing to the appeals clerk of this Commission. **Attention: Nancy To.**

All employment complaints, where applicable, were filed by the MCAD with the Equal Employment Opportunity Commission. Our finding, which will be forwarded to its area office, JFK Federal Building, Boston, MA will be given substantial weight provided that such findings are in accordance with the requirements of Title VII of the Civil Rights Act of 1964, the ADEA, and/or the ADA, as amended.



Julian Tynes
Investigating Commissioner

Date

6.28.13

Cc:

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Town of Tisbury - Tisbury Police Department
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INVESTIGATIVE DISPOSITION

Case Name: Michael P. Gately v. Town of Tisbury - Tisbury Police
Department
MCAD Docket No.: 12BEM00151
EEOC Docket No.: 16C-2012-00752
No. of Employees: 20 +
Investigator: Sarah Biglow, Compliance Officer
Recommendation: **Lack of Probable Cause**

Introduction

On January 25, 2012, Complainant filed a charge against Respondent, alleging discrimination based on age (60) and retaliation in violation of MGL c.151B section 4, paragraphs 1B, 4, the Age Discrimination in Employment Act of 1967 and Title VII of the Civil Rights Act of 1964.

Complainant's Allegations

Complainant was hired as Patrolman by Respondent in or about 1987 and at the time of filing his complaint was 60 years old. Complainant alleges he was named as a witness in the sexual harassment complaint made by another officer which was filed with MCAD in or about April 2009. Complainant also alleges that since he was the union steward, he was present during any meetings the other officer had with superiors. Complainant also alleges that as retaliation for his involvement in the other case, he was passed over for promotion to Acting Chief in or about May 2009. Complainant alleges a less qualified individual was put in the position. Complainant also alleges he was subjected to scrutiny by his superiors and spoken to in an accusatory manner.

Complainant alleges in or about July 2011, he was called to a domestic abuse scene and that a fellow responding officer was investigated and terminated regarding the incident. Complainant alleges that officer was also a witness in the sexual harassment complaint. Complainant alleges he was given a written reprimand regarding the July 2011 incident on December 19, 2011. Complainant also alleges on December 27, 2011, he was passed over for another promotion to Acting Sergeant for a less qualified individual. Finally, Complainant alleges during the course of his employment, he was subjected to a hostile environment regarding his age. Complainant alleges his superiors would call him "old man" and "grumpy old man" on a monthly basis, continuing through the time he filed his complaint. Complainant alleges he was constantly asked when he was going to retire and what his post-retirement plans were. Complaint also alleges he was repeatedly given retirement pamphlets and information.

Respondent's Position

Respondent denies Complainant's discrimination allegations.¹

Summary of Investigation and Analysis

Age and Retaliation

Complainant alleged he was subjected to a hostile work environment based on his age and was retaliated against for assisting in another officer's sexual harassment complaint. Specifically, Complainant alleged he was called "old man" and "grumpy old man" on a monthly basis through December 2011 and that he was constantly asked when he was going to retire and given retirement pamphlets. Complainant also alleged he was passed over for promotion on two occasions, was subjected to additional scrutiny and given a written reprimand in December 2011 in retaliation for supporting another officer's sexual harassment complaint filed with the Commission.

Respondent stated that it was not aware of Complainant being involved in the other officer's MCAD sexual harassment complaint. Even if Complainant did cooperate with an MCAD investigation, Complainant failed to provide sufficient evidence to show that Respondent was aware of this cooperation and that it took disciplinary action against him based on retaliatory animus. Additionally, investigation reveals that Complainant was given a first round interview in 2006 for the Police Chief position and was not selected as a finalist based on answers given during the interview process. Additionally, Respondent asserts that in order to fill the position of Chief in May 2009 it selected one of the other finalists from the 2006 hiring committee. Additionally, at the time the Acting Sergeant position was filled, Complainant had just received discipline for his role in the July 2011 incident. Complainant fails to show the causal link between the failure to promote and his alleged protected conduct.

Complainant and other officers were involved in an incident during July 2011, for which they were later disciplined. Respondent provided copies of its domestic violence and sexual assault policies which lay out how officers should respond in such situations which were in place at the time of the July 2011 incident. Investigation reveals sufficient evidence to support that Complainant violated department policy regarding response to domestic violence, including when children are involved. While Complainant's initial grievance of his letter of reprimand was denied by the Town Administrator, Respondent stated that the Board of Selectmen later allowed the grievance in January 2012 and removed the letter from Complainant's file as a good will gesture towards Complainant..

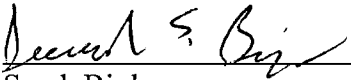
¹ On May 11, 2012, the Respondent's Position Statement and Exhibits were placed under Protective Order, and made unavailable for public inspection. Since this Investigative Disposition may be subject to public records requests, the Respondent's Position has been omitted.

Respondent stated that one officer in the late 1980s and into the 1990s would refer to Complainant as “grumpy” because of his personality but that it had nothing to do with his age. Complainant disputed this assertion but failed to provide any other evidence of age animus. Even if the statements were taken as true, they fail to rise to the level of severe or pervasive. Respondent provided documentation that it offered early retirement packages to all eligible employees with at least twenty years of service. At the time Complainant had been a member of the Police Department for 24 years.

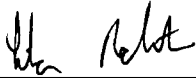
Respondent provided legitimate reasons for Complainant’s discipline and Complainant failed to show that any of the actions taken were either temporally or causally connected to any alleged protected conduct. Respondent also provided a legitimate reason why it sent retirement information to Complainant. Complainant fails to show that Respondent held either age bias or retaliatory animus towards him. Therefore, a finding of lack of probable cause is recommended.

Conclusion

A finding of Lack of Probable Cause is recommended against Town of Tisbury – Tisbury Police Department for discrimination based on age and retaliation.



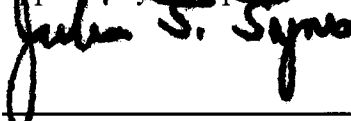
Sarah Biglow
Compliance Officer



Lila Roberts
Enforcement Advisor

Disposition

Pursuant to section 5 of M.G.L. c. 151B of the Massachusetts General Laws, and in conformity with the foregoing findings, I have this day determined that a **Lack of Probable Cause** is being rendered on this case. Complainant will be afforded the opportunity to appeal this decision.



Julian Tynes
Investigating Commissioner

6-28-13

Date