

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MCAD and OANA BABU,
Complainants

Docket No. 10 WEM 00914
11 WEM 01886

v.

ASPEN DENTAL MANAGEMENT, INC.,
Respondent

Appearances: Paul Nevins and Ilir Kavaja, Esqs. For Complainant Babu
John Doran and Eric Mack, Esqs. For Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On April 20, 2010, Complainant Oana Babu filed charges of national origin discrimination and retaliation against Aspen Dental (re-designated as Aspen Dental Management Inc. to conform to the evidence). Complainant alleges that she was subjected to harassment because of her Romanian accent and to retaliation for voicing an objection to the "sexualized behavior" of her office manager towards male patients. On July 26, 2011, Complainant filed a second charge of discrimination based on her national origin and retaliation arising out of her termination for allegedly using a dental drill inside a patient's mouth, which she denies having done. On April 30, 2012, Complainant amended her 2011 complaint.

A probable cause finding was issued on both charges and the matters were certified for a consolidated public hearing.

A public hearing was held on December 19, 20, and 21, 2016; January 27, 2017; February 27, 2017 and May 23, 2017. The following witnesses testified at the hearing: Complainant, Dr. Paul Ala, Ricci Perla, Sarah Doyle, Adrienne LaFond, Dr. Amparo David, Ovidiu Babu, Joseph Lee, Dr. Kimberly Haynes, Lori D'Anna, Suzanne Decker, Susan Hugenberg, and dental patient "CC." Complainant submitted forty (40) exhibits and Respondent submitted exhibits A-Q.

Based on all the credible evidence that I find to be relevant to the issues in dispute and based on the reasonable inferences drawn therefrom, I make the following findings and conclusions.

II. FINDINGS OF FACT

1. Complainant Oana Babu was born in Romania and came to the United States when she was twenty-three years old. Transcript I at 26. She is a trained dental assistant. Transcript I at 27.
2. Respondent Aspen Dental Management, Inc. is a management company which provides administrative support such as marketing, payroll, billing, insurance, and staff supervision for independently-owned dental practices.¹ Respondent does not employ dentists but hires and manages dental staff. Respondent has grown from overseeing twenty-two practices in 2000 to currently overseeing approximately six hundred practices nationally. Transcript V at 974, 977. Respondent was Complainant's employer.

¹ The dental practices managed by Aspen Dental Management, Inc., although called "Aspen Dental" are independent from Respondent. For instance, the Leominster dental practice at issue in this case was owned by an out-of-state dentist during the relevant time frame. Transcript VI at 1099.

3. In October 2001, Complainant commenced employment at an Aspen Dental practice in Brockton, MA as a dental assistant. Transcript I at 28. Dental assistants take impressions, set up and break down rooms, and sterilize instruments. Transcript V at 859; VI at 1165. Complainant was promoted to lead dental assistant while working at the Brockton office. Transcript I at 29.
4. In 2002 and 2003, Complainant received an “exceeds expectations” for her annual performance reviews in the Brockton and Framingham offices of Aspen Dental. Complainant’s Exhibits 2 & 3. Framingham Office Manager Tracie Hart commented in the 2003 evaluation that Complainant was “a wonderful addition to our team.” Complainant’s Exhibit 3.
5. In 2004, Complainant began to work for the Leominster office of Aspen Dental as lead dental assistant. Complainant’s Exhibit 4. In her 2004 performance evaluation, the clinical director of the practice described Complainant as a “great asset to our office” and the office manager described Complainant as an “exceptional Head Assistant who is always willing to help and improve the quality of care given to our pts.” *Id.* Complainant’s 2005 performance evaluation describes her as “extremely knowledgeable” and a “valuable employee and asset to Aspen and this office.” Complainant’s Exhibit 5. Her 2006 evaluation rates her as exceptional in nine out of ten categories of performance. Complainant’s Exhibit 6. Her 2007 evaluation rates her as exceptional in ten out of ten categories and describes her as a “very dedicated, reliable and valuable asset to this office.” Complainant’s Exhibit 8. Complainant’s 2008 evaluation rates her as exceptional in all categories and describes her clinical and

interpersonal skills as “top notch.” Complainant’s Exhibit 9. Complainant did not receive any evaluations after October 3, 2008. Transcript I at 64.

6. Complainant earned \$21.65 an hour in 2009. Transcript I at 149; Complainant’s Exhibit 22.
7. In the summer of 2009, Adrienne Lafond took over as office manager in the Leominster office. Transcript I at 65, III at 572. In that role she reported to Regional Manager Sarah Doyle. Transcript III at 579. As office manager, Lafond supervised Complainant. Transcript III at 573.
8. Complainant testified that in late November or December 2009, she confronted Lafond about flirting with a patient (“JL”) in the dental office, about unbuttoning her shirt to expose her cleavage when JL came into the office, and about allegedly making sexual comments in the office about JL. Transcript I at 85-86, 222, 225-227; Complainant’s Exhibit 22. I credit Complainant’s testimony in this regard.
9. According to Complainant, after the conversation about flirting, Lafond, in early December, 2009, started picking on Complainant’s accent, said she could not understand Complainant, stated that Complainant’s accent was driving her crazy, accused Complainant of coming from a third-world country, and asked Complainant if she had picked her husband out of a mail-order magazine. Transcript I at 87-89, 93; II at 350, 352. I credit that Lafond made disparaging comments about Complainant’s accent and commented in a demeaning way about Complainant’s ethnic background.
10. Lafond denies that she ever flirted with a patient at work or that Complainant cautioned her about having a flirtatious relationship at work, although she admits that she became friends with dental patient JL after she met him at work and that it led to their “hanging

out” outside of work. Transcript IV at 782-785, 791-792. Respondent’s records indicate that Lafond received a counseling notice of a “first verbal warning” for texting JL on a personal device in regard to a dental procedure he had at the office about which he subsequently complained and refused to pay. Complainant’s Exhibit 36; Transcript III at 616; IV at 786-791.

11. Lafond denies that she made any comments about Complainant’s accent and heritage other than saying that Complainant’s pronunciation of a single word was “cute.” Transcript 611, 616. This denial is not credible. I find that after Complainant warned Lafond in late November/early December 2009 about flirting at work, Lafond began to make comments about Complainant’s accent such as saying that patients had difficulty understanding her and that they sometimes considered her rude as a result of her accent.
12. On December 10, 2009, Complainant conducted an annual inventory of office materials. Transcript I at 95; II at 437-439; Complainant’s Exhibit 10. On the next day, Lafond, and possibly Regional Manager Sara Doyle, had a conversation with Complainant about the existence of an excessive number of large-sized gloves and compound sticks in the storage room. Transcript I at 99; II at 405, 416, 443-448. Complainant was blamed for the over-stocking of gloves. Complainant testified credibly that the excess of extra-large gloves at the end of 2009 was due to the needs of a previously-employed doctor and that when she asked Lafond if the gloves should be returned for a credit or exchanged, Lafond said to keep them. Transcript I at 105. Complainant maintains that the discussion was an informal discussion and denies that she was informed at the end of the conversation that there would be disciplinary consequences for the inventory overage. Complainant’s Exhibit 17; Transcript I at 102;

II at 449, 459. I credit her testimony that the conversation was an informal discussion and not a disciplinary matter.

13. The job description for lead dental assistant states that incumbents should be “capable of entering the dental supply order into the requisition system for management review.” Complainant’s Exhibit 11. Complainant credibly testified that despite this reference in the job description, she was never trained about how to place dental supply orders into the computerized requisition system. Instead, she made lists of needed items identified by their item numbers and prices which she gave to the office manager who entered the items into the computer. Complainant’s Exhibit 11 & 22; Transcript I at 75-79, 105; II at 288, 336-338, 404-405, 488. Office Manager Lafond acknowledged that she input orders for dental supplies into the computer system based on a spreadsheet filled out by Complainant. Transcript III at 588. Lafond testified that if the spreadsheet indicated an “abundant” amount of a certain item, she would look to see if the amount was really needed. Transcript III at 589. I find that Office Manager Lafond was responsible for entering inventory orders into the computer and for ensuring that the Leominster office stayed within budget. Transcript II at 488-490, 506; IV at 801, V at 941-942. Despite her role in the inventory process, Lafond was not written up for allowing excessive inventory to accumulate in the Leominster office in 2009. Transcript IV at 801.
14. On or around December 18, 2009, Complainant began a two-week vacation. She returned to work on January 4, 2010. Transcript I at 101.
15. When Complainant returned from vacation on January 4, 2010, she received a document designated as a “second warning” which stated that she was being demoted from lead dental assistant to dental assistant. Complainant’s Exhibit 14. The document

was signed by Office Manager Adrienne Lafond. Id. It lists three infractions: 1) unacceptable customer service (patient complaints that they were spoken to rudely/disrespectfully); 2) unsatisfactory work performance (over-ordering of dental supplies); and 3) safety/health compliance violation (“failed to complete weekly spore testing ... no documentation for at least five months”). Id. The document states that a previous “warning” had been given on December 10, 2009. Transcript II at 459, 498-499. I do not credit the characterization of the December 10, 2009 conversation as a “first warning.”

16. Accompanying Complainant’s demotion was a reduction in her pay from \$21.50 per hour to \$18.50 per hour. Complainant’s Exhibit 14.

17. Complainant wrote to Aspen’s HR Department on January 4, 2010 to protest her demotion and reduction in pay on the basis that: 1) she had been instructed not to continue every-other-day spore testing after 2006 because it was superseded by the weekly biological spore tests required by “OSHA” (Occupational Safety and Health Administration) for determining the effectiveness of sterilization procedures; 2) she was told by Lafond to retain extra inventory items; 3) she was never issued a prior warning; 4) she treated all patients with respect and dignity and 5) her \$21.50 hourly rate resulted from annual raises based on seniority not from her position as lead dental assistant so that being demoted should not have impacted her hourly rate.

Complainant’s Exhibits 17 & 18; Transcript II at 346, 426.

18. Despite Complainant’s protest, her hourly rate of \$21.50 was not reinstated. I find that this was due, at least in part, to Lafond’s resentment that Complainant had received \$21.50 per hour as a lead dental assistant whereas she (Lafond) was received \$15.00 an

hour as a lead dental assistant when hired in 2007 and only \$19.00 an hour when promoted to office manager in the Leominster office in mid-2009. Transcript II at 461; III at 571-672, 632,-638.

19. Spore testing is the process by which it is determined whether there are any live bacteria in the “autoclave” -- the machine which sterilizes dental instruments by killing bacteria. Transcript II at 425. Spore testing involves placing of strips paper inside the autoclave and observing whether they turn the proper color to indicate that the sterilization process has been successfully completed. Transcript II at 314-315, 408-409. I credit Complainant’s testimony that testing on an every-other day basis was discontinued in the Leominster office after the introduction of weekly Pelvue sterilization pouches.² Complainant’s Exhibits 17 & 18; Transcript I at 72; II at 408-413. Every other-day spore testing is not required by OSHA, although it is useful in detecting if there are false positives in weekly spore tests. Transcript II at 433.
20. Regional Manager Sarah Doyle disagreed with Complainant’s assertion that every-other day testing was no longer required after the introduction of weekly OSHA spore testing, stating that the two types of spore testing were conducted simultaneously because positive results on the weekly tests could be diagnosed as “false positives” if the every-other day test results were negative. Transcript II at 431-433. Doyle’s testimony in this regard is not as credible as Complainant’s. Respondent’s 2003 SOP (standard operating procedure) states that dental assistants are only responsible for

²The witnesses contradicted one another about whether “SPS” testing referred to weekly or every-other day spore tests. Transcript II at 408. It is not necessary to resolve this matter.

running spore strips through the sterilizer *weekly*. Respondent's Exhibit H (revised in 2004).

21. Complainant asserted that it was the duty of office manager to make sure the OSHA-mandated weekly spore tests were done and submitted to "corporate" in an office tote bag for transmission to an outside company, although the actual testing could be done by any dental assistant. Transcript I at 67, 70-71, 103; II at 329-333, 410-411.

Regional Manager Doyle acknowledged that any dental assistant could perform spore tests, that the ultimate responsibility for logging-in and sending weekly spore test results to corporate headquarters for submission to OSHA belonged to her and, secondarily, to the office manager, and that the lack of reports indicated a dereliction on her part and Lafond's. Transcript II at Transcript II at 430-435, 451-452, 488, 496-497. Nonetheless, Doyle maintains that Complainant was responsible for a "bunch" of missing spore test results in the Leominster office. Transcript II at 433-434, 451, 455-456. I do not credit Doyle's testimony in this regard.

22. Office Manager Lafond acknowledged that she was not written up for failure to complete the spore tests even though it was her job to ensure compliance with OSHA and regulatory practices, including spore testing. Transcript III at 668-669; IV at 800-801.

23. Complainant testified that when she asked about the accusation that she spoke rudely or disrespectfully to patients, Lafond said that because of Complainant's thick accent, patients might think she was being rude. Transcript I at 107. Prior to that communication, Complainant had not been informed that any patients thought she was rude. *Id.* Regional Manager Doyle testified that there were occasions when she

observed Complainant being “stern” with a patient, interrupting someone or walking away while another person was talking. Transcript II at 457. She acknowledged that she never put any patient complaints in writing because they weren’t “overly severe and because Complainant had very good clinical skills.” Id. at 458.

24. Complainant’s letter to Aspen Dental was typed up by her husband, Ovidiu Babu, in English based on what Complainant dictated to him in Romanian. Transcript IV at 725-726, 730. According to Complainant’s husband, Complainant was very upset after the January 4, 2010 meeting, cried at home, started keeping to herself, and became very quiet. Transcript IV at 723, 734. He testified that Complainant retreated from her family, didn’t want to go out anymore, stopped going to parent-teacher conferences and church, didn’t like talking anymore, gained a lot of weight, became anxious, started taking antidepressants and anti-anxiety medication, and started losing her hair. Transcript IV at 736-738. Complainant had previously taken antidepressant medication for about six months when her father died in 2005. Transcript IV at 757, 776-777.
25. On January 5, 2010, Complainant discussed her “second warning” and demotion with Regional Manager Sarah Doyle. According to Doyle, as part of the conversation she discovered that Complainant had not consistently performed every-other-day SPS testing as well as weekly testing. Transcript II at 463. Doyle issued a revised disciplinary notice on the same day by adding the accusation that Complainant failed to complete SPS testing three times per week, deleted the third alleged infraction pertaining to repeated patient complaints about rudeness, deleted the reference to a prior (but not current) warning regarding the over-ordering of supplies, and added a reference to an alleged previous disciplinary conversation about Complainant

performing procedures outside the scope of clinical permission. Complainant's Exhibit 15; Transcript II at 466. According to Vice President of Human Resources Suzanne Decker, the reference to patient complaints was "basically negated" in the second version of the warning/demotion. Transcript V at 999.

26. Doyle told Complainant that the added reference to performing procedures outside the scope of her clinical permission pertained to a prior "disciplinary conversation" arising out of an incident involving Aspen dentist Dr. Boppana two years previously; that weekly spore tests were missing for a few weeks in 2008 and 2009; and that she was paid too much in comparison with other lead dental assistants. Complainant's Exhibit 18; Transcript I at 115.

27. According to Doyle, the previous "disciplinary conversation" was a 2008 discussion involving herself, Complainant, and District Director Lori D'Anna arising out of a doctor's complaint that Complainant said "something" to a patient that the doctor felt she shouldn't have said which led to D'Anna telling Complainant that she couldn't tell doctors what to do or how to do it. Transcript II at 467-469, 471. D'Anna describes this as Complainant overstepping her role. Transcript V at 931-934. D'Anna testified that the concern was addressed in a verbal discussion, not through formal discipline. Transcript V at 934.

28. According to Complainant, the prior matter pertained to Dr. Boppana becoming upset with her because he mistakenly thought she had reported him to "corporate." Complainant testified that she was told by District Director Lori D'Anna and then-Regional Manager "Maura" not to question doctors but that she never before received any type of discipline. Transcript II at 361-363, 396. I credit this testimony.

29. Complainant met with Doyle and Lafond on the evening of January 5, 2010 to discuss LaFond's remarks about Complainant's accent. Complainant's Exhibit 18.
- Complainant accused Lafond of expressing hostility in regard to her accent as evidenced by comments such as, "your accent is driving me crazy" and "maybe [you] don't mean to be rude but [you're] accent is rude" whereas Lafond maintained that she considered Complainant's accent to be "cute." Id.; Complainant's Exhibit 25.
30. Complainant testified that after her demotion, she cried, was not able to sleep at night, had chest pain, and was given a prescription from her nurse practitioner for anxiety and depression. Transcript I at 166, 168; Complainant's Exhibit 22. Complainant asserts that she gained forty to forty-five pounds, lost hair, isolated herself from her family, and was no longer comfortable around American people who only spoke English. Transcript I at 168-169.
31. In February of 2010, Regional Manager Sarah Doyle reviewed Complainant's performance following her demotion and noted in writing that that there were "very positive results with patient interactions so far." Complainant's Exhibit 16. Doyle also noted that "we decided to split ordering responsibilities amongst DA [dental assistant] team ... Spore testing being completed weekly." Id. According to Complainant, Doyle offered to reinstate her old title and responsibilities but not her hourly pay, whereas Doyle testified that she did not consider restoring Complainant to her prior position at that time. Transcript I at 126; II at 477. I credit Complainant's version over Doyle's.
32. Complainant testified that following her demotion, Office Manager Lafond began to direct her, but not other dental assistants, to clean dental chairs with bleach, to clean office bathrooms including toilets and the sink, and to clean the office floor. Transcript

I at 128-129, 214-216. Cleaning the office is not listed in the job specifications for either dental assistant or lead dental assistant. Transcript II at 421; Complainant's Exhibit 11; Respondent's Exhibit E. Lafond testified that nobody was "required" to clean toilets but that staff agreed to do so as well as to vacuum and to clean dental chairs because the cleaning crew only came in once a week and the staff needed to make sure that the office stayed clean. Transcript III at 620-621; IV at 821-822. I do not credit that employees volunteered to perform cleaning tasks but, rather, that multiple employees, including Complainant, performed such tasks at the direction of Lafond.

33. Complainant testified that Lafond started to require that she submit doctor's notes when she called in late, missed work for a scheduled doctor's appointment, or when she was absent due to sickness; gave her a hard time about vacation requests; and denied her two days of bereavement leave when her father-in-law died. Transcript I at 132-136, 150; Complainant's Exhibits 20-22.³ Lafond testified that everyone had to bring in notes if they were absent from work for being sick or for going to a doctor's appointment. Transcript IV at 818-819. Lafond's testimony is contradicted by the Company Handbook which states that in cases of *repeated* absences, such a note *may* be required. Respondent's Exhibit 1 [emphasis supplied]. I credit Complainant's assertion that Lafond started to require that she submit doctor's notes anytime she missed work. Transcript II at 301. I likewise credit that Lafond started to give Complainant a hard time about vacation requests.

³ Respondent asserts that it has no record of receiving Complainant's Exhibit 22. I credit Complainant's testimony that she faxed it to Respondent's Human Resource Office. Transcript I at 142-145.

34. On March 2, 2010, Complainant wrote to Respondent's Human Resource Managers Benjamin Laurel and Sue Decker, asserting that her problems at work began in November 2009 after she accused Lafond of flirting with a male patient. Complainant's Exhibit 22.
35. On April 20, 2010, Complainant filed with the MCAD charges of national origin discrimination and retaliation against Respondent alleging that she was subjected to harassment because of her Romanian accent and to harassment and retaliation for voicing an objection to the "sexualized behavior" of her office manager towards male patients. Complainant testified that after filing this complaint, instances of harassment diminished but they re-commenced at the end of 2010 when Lafond denied her the same two weeks of vacation in December that she had taken for the past six to eight years. Transcript I at 152.
36. Vice President of Human Resources Suzanne Decker testified that she recalls having conversations with Doyle about Complainant's charges of discrimination. Transcript V at 996. Decker testified that any MCAD complaint sent to Respondent would have been directed to her and that she would have contacted Regional Manager Sarah Doyle about the complaint Transcript V at 993, 995.
37. In December 2010, Complainant's hourly rate of pay increased from \$18.50 to \$19.05. Transcript I at 197-198.
38. In early January 2011, Dr. Paul Ala commenced employment at Aspen Dental in Leominster as an associate dentist. Transcript II at 234. During the approximately six-month period that he worked with Complainant, he found her work to be "excellent."
Id.

39. Complainant was terminated on July 25, 2011 for allegedly using a hand piece inside the mouth of a patient (hereafter referred to as "CC"). Complainant vehemently denies this accusation. Complainant's Exhibit 23; Transcript I at 156, 161; V at 1024.
40. The alleged incident involved a patient of Dr. Kimberly Haynes who was, at the time, the newly-appointed clinical director of the Leominster office. Dr. Haynes had recently finished her clinical training. Transcript I at 156. Dr. Haynes testified that at the time of the alleged incident, she was not aware that Complainant had filed a charge of discrimination in April 2010 against Aspen Dental. Transcript V at 861.
41. Patient CC testified at the public hearing that she always went to the Leominster location of Aspen Dental. Transcript VI at 1242-1243, 1274. She testified that on one occasion, an assistant "Sat me down ... asked me what I was there for. ... grabbed [what I assume was] a drill ... and started buzzing away ... for a minute or two, then stopped ... and the doctor came in and he picked up the same tool." Transcript VI at 1280.⁴ According to CC, the assistant worked on her tooth without Novocain but, inexplicably, the drilling did not hurt. Transcript VI at 1304, 1306, 1308. The patient testified that she asked the dentist if the assistant was "allowed to do that" and was told no. Patient CC stated that there was no further conversation about the incident. Transcript VI at 1280, 1303.
42. CC stated that the individual about whom she complained had dark hair, some "ethnicity" in terms of skin color but no accent and described her as slim and less than 5'7" tall. Transcript VI at 1281-1282. Complainant is blond, large-boned, stands

⁴ In another description of the same incident, Patient CC said that a dental hygienist or dental assistant "just came in and ... was drilling ... [and then] left." Transcript VI at 1249. The patient stated that she assumed the instrument was a drill because the dentist used the same instrument. Transcript VI at 1276.

5'11" without shoes and 6'1" wearing dental assistant clogs, and speaks with a discernable accent. Transcript VI at 1086-1088. The patient had the opportunity to view Complainant and did not recognize her. Transcript VI at 1256, 1298. CC testified that she complained immediately to a male dentist (whereas Dr. Haynes is female) about the assistant's alleged drilling on her natural tooth. Transcript VI at 1250, 1293. Based on the foregoing, I find that the patient's memory is not accurate.

43. Complainant testified that she made a temporary crown for a patient on Wednesday, July 20, 2011 at the request of Dr. Haynes and placed it inside the patient's mouth. Transcript V at 1024, 1032. She testified that the process she followed was to check the bite using blue "articulating" paper that shows blue marks if there are any high spots and if such marks appear, to take the temporary crown out of the patient's mouth and adjust it using a slow speed rotating instrument called an "adjustment bur" which makes a loud, vibrating noise and then reposition the temporary crown back in the patient's mouth. Transcript V at 1033-1035. I credit this testimony.
44. Complainant did not work on Thursday or Friday July 21 and 22, 2011. She returned to work on Monday, July 25, 2011. When she returned, she learned that CC had returned to the office complaining that her temporary crown had fallen off and that she (Complainant) was being accused of using a drill inside CC's mouth. Transcript I at 158-161. Complainant was terminated that day.
45. Dr. Haynes initially testified at the public hearing via skype from Texas that on July 20, 2011 she: 1) drilled the cracked tooth of CC in order to "reduce" it in preparation for fitting it with a temporary crown; 2) left CC with Complainant who placed a mold inside the patient's mouth and made a temporary crown from the impression; and 3)

returned to cement the temporary crown into the patient's mouth. Transcript V at 875-878. Dr. Haynes stated that when she returned to cement the crown, CC was red in the face, visibly upset, and reported that Complainant had placed a high speed dental instrument in her mouth and made adjustments to her tooth while Dr. Haynes was gone. Transcript V at 879, 890, 893. Dr. Haynes testified that she examined the tooth and saw that it had been modified and that "there were marks on the temporary crown" and "an actual hole in the temporary crown." *Id.* at 880, 904. This testimony is inconsistent with events described in CC's medical chart and was subsequently retracted by Dr. Haynes.

46. The patient's medical chart contains an entry on July 20, 2011 signed by Dr. Haynes which states that: "Temporary [was] completed by Oana." Complainant's Exhibit 39. The chart contains another entry two days later which states that the patient returned on July 22, 2011 because the temporary crown fell off due to the tooth not having been reduced enough by Dr. Haynes. According to the chart, the patient informed Dr. Haynes at the second visit that "the assistant was aware of the 'hole' in the temporary" and had reduced her tooth with a hand piece while making the temporary crown. *Id.*; MCAD Charge of Discrimination (7/26/11). Although the patient does not state when Complainant became aware of the hole and allegedly reduced the tooth, I conclude that the patient was referring to the visit of July 20, 2011 because Complainant was not at work during the second (July 22) visit. No rational explanation was offered for how a hole occurred in the temporary crown during the same visit at which it was made and for why the patient did not mention the hole until two days later.

47. Dr. Haynes testified again via skype after reviewing the patient's medical record.

During her second day of testimony, Dr. Haynes modified her previous testimony to state that during CC's first visit on July 20, 2011, it was Complainant who cemented the temporary crown over the patient's reduced tooth, that she (Dr. Haynes) failed to reduce CC's tooth sufficiently during the first visit which caused a hole in the temporary crown and caused it to fall off, and that CC was upset during the *second* visit on July 22, 2011 at which time CC allegedly complained about Complainant drilling inside her mouth two days earlier. Transcript VI at 1149, 1163-1165, 1178, 1184-1185, 1230, 1234. Although I credit that CC returned for a second visit and complained about something that happened during her first visit, I do not credit that she identified Complainant as the culprit nor that she appeared upset and red in the neck about what happened two days earlier.

48. Dr. Haynes asserted that dental assistants are permitted to cement temporary crowns inside a patient's mouth, to remove excess acrylic cement from a temporary crown inside a patient's mouth, to remove excess acrylic cement from a temporary crown outside a patient's mouth with a hand piece and rotary bur, and to do anything else that is reversible. Transcript V at 859, 910; VI at 1165, 1179, 1226-1229.

49. According to Dr. Haynes, she spoke to Complainant within a day of the alleged incident at which time Complainant denied that she had drilled inside the patient's mouth. Transcript V at 883, 889. Dr. Haynes reported the patient's accusations to Office Manager Lafond who terminated Complainant per notice dated July 25, 2011. Complainant's Exhibit 23. Transcript V at 883.

50. Lafond did not speak to CC before Complainant was terminated. Lafond consulted with Regional Director Sarah Doyle and District Director Lori D'Anna, neither of whom spoke to CC. Transcript III at 624; IV at 824; V at 866, 934, 936. D'Anna testified that she authorized the termination after conferring with Doyle and Dr. Haynes. Transcript V at 968. The termination notice states that on July 20, 2011, Complainant made adjustments to the patient's temporary crown and to the tooth itself using a hand piece and that this was "not the first time that [Complainant] has received disciplinary action for working outside of her scope of practice." Complainant's Exhibit 23. An internal office memo about the incident states that it was Complainant's third disciplinary action. Id.

51. Dr. Ala testified that he was informed of Complainant's termination by Office Manager Lafond who attributed the termination to Complainant using a hand piece inside a patient's mouth and to a language barrier, although on cross-examination Dr. Ala stated that the language issue was only mentioned as a ground for Complainant's discrimination suit against Aspen Dental. Transcript II at 236, 250, 265-267. According to Dr. Ala, Lafond told him not to be concerned about Complainant's termination because he was being named by Complainant in a discrimination case. Id. at 239, 264; Complainant's Exhibit 31. I credit Dr. Ala's testimony on direct examination that Lafond considered Complainant to have a language barrier and that this perception was a ground for termination.

52. Dr. Ala testified that he was surprised that Complainant was being accused of using a hand piece inside a patient's mouth because he "never saw her express a desire or to do anything in that nature." Id. at 237. He said that if a patient complained about an

unauthorized practice, he would interview the patient, the accused assistant, and anyone else who had knowledge of the incident because patients don't "really understand a lot of what is going on and a lot of times, they're misled by their perception." Transcript II at 239-240.

53. On July 26, 2011, following her termination by Respondent, Complainant filed for unemployment compensation. Transcript II at 397-398. She collected unemployment for a year and four months. For the first six months she received \$493 per week and thereafter approximately \$450 a week. Transcript I at 186-189.
54. Complainant looked for other employment following her termination by Respondent. Complainant applied for dental positions on-line using Craigslist and Indeed.com. Transcript IV at 741; VI at 1065. She sent out resumes as e-mail and in regular mail. Complainant's husband, who helped her respond to dental openings, estimates that his wife applied to two or three jobs per week. Transcript IV at 754. I credit this claim.
55. Prior to receiving her current job, she received two interviews for dental assistant positions, one in Bolton, MA in September 2012 and one in Wellesley, MA in March 2013. Transcript I at 170. Complainant was interviewed by the Bolton office manager who asked her if she could return for a "working interview" to demonstrate her skills. Transcript I at 171. Complainant testified that she was never invited to return and was ultimately told that another individual had been hired. Transcript I at 172. From these facts, Complainant infers that Respondent gave the Bolton dental practice a bad reference about her. I do not credit this assertion. The owner of the Bolton practice, Dr. Amparo David, DMD, testified that she has no recollection of interviewing Complainant. Transcript IV at 701. Dr. David stated that she tells individuals who are