

COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

MASSACHUSETTS COMMISSION
AGAINST DISCRIMINATION and
STEPHEN SAVAGE,
Complainants

v.

DOCKET NO. 10-BEM-02259

MASSACHUSETTS REHABILITATION
COMMISSION
Respondent

Appearances: Howard Mark Fine, Esq. for Complainant
Michael A. Capuano, Esq. for Respondent

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

On August 31, 2010, Complainant Stephen Savage filed a charge of discrimination alleging that he had been subjected to employment discrimination by his former employer, Respondent, Massachusetts Rehabilitation Commission on the basis of disability (Dyslexia and Attention Deficit Disorder) The Investigating Commissioner found probable cause to credit the allegations of the complaint and conciliation efforts were unsuccessful. The matter was certified for a hearing. After the close of discovery, Respondent moved for summary judgment. The matter was remanded to the Investigating Commissioner for reconsideration of the probable cause finding and the Motion was denied. A public hearing was held before the undersigned hearing officer on October 13, 14, 15 and 22, 2015. The parties submitted post-hearing briefs in

February of 2016. Based on a review of the record before me and the post-hearing submissions of the parties, I make the following Findings of Fact and Conclusions of Law.

II. FINDINGS OF FACT

1. Complainant, Stephen Savage, suffers from Dyslexia, an impairment which affects his rate of learning, ability to process information and writing ability. Complainant also suffers from Attention Deficit Disorder (ADD) which is manifested by symptoms such as distractibility and difficulty maintaining focus on a particular subject. Complainant also has a history of chronic depression. (Testimony of Complainant; Robert Savage; Jt. Exs. 74-76, 103, 104, 107)

2. Complainant received special education services throughout his elementary school years. After graduating high school, Complainant attended a program at Curry College for two years to prepare students with learning disabilities such as Dyslexia to succeed in college. (Testimony of Complainant; Robert Savage) Complainant subsequently took some evening courses at Boston College and later matriculated at the college and graduated with a degree in Economics. (Testimony of Savage; Jt. Ex. 1, 13, 17)

3. Complainant has an employment history that includes working in social services and has significant educational and work experience in Vocational Rehabilitation. He was employed as a direct service provider at Charles River Association for Retarded Citizens, assisting clients transitioning from group homes to more independent living situations. In 2002, Complainant earned a Master of Education (Rehabilitative Counseling) from UMass. His course work included vocational rehabilitation and analysis, history of disability rights and group and individual counseling. (Savage Testimony, Jt. Exs. 13, 14) Complainant is also certified as a Rehabilitation Counselor. Prior to working at Respondent, he was employed part-time by the New England Center for Homeless Veterans, first as an activities coordinator and later as a

Rehabilitation Counselor. (Savage Testimony, Joint Ex 1, 16) He also worked as a Residential Counselor at the North American Family Institute, as a Vocational Counselor at the Community Healthlink Program of Assertive Community Treatment, and as an Extended Community Counselor for Gould Farm. (Savage Testimony, Jt. Ex. 1)

4. Respondent Massachusetts Rehabilitation Commission (MRC) is a state agency servicing individuals with disabilities. The Division of Disability Services (DDS) reviews and processes some 80,000 to 85,000 initial claims for federal disability benefits per year. The DDS division of MRC is funded through the Social Security Administration which mandates regulations and protocols. (Cutting testimony)

5. In July of 2009, Complainant applied for a position as a Vocational Disability Examiner (VDE) which was advertised on Respondent's website, by electronically forwarding his cover letter and resume. On his application, Complainant checked the box indicating that he chose to self-identify as a person with a disability. Complainant was interviewed by the Director of Respondent's Division of Disability Services, John Reilly, Lori Stevens, MRC/DDS Director of Case Processing and Johnnie Williams, former regional director at MCR/DDS. MCR's selection committee rated Complainant on his ability to "perform the job function" with the highest score on the scale which was "outstanding." (Stipulated Facts; Jt. Ex. 18)

6. Respondent offered Complainant a VDE position in its DDS Boston office, which he accepted. Respondent determined that Complainant was eligible to receive a recruitment rate at a higher grade and above the entry level rate of compensation. Complainant began his employment with Respondent on October 13, 2009 at the age of 51. (Stip. Facts; Jt. Ex. 19; Ex. R-136A) Complainant testified that he was excited to join MRC as he believed the agency was

tops in helping people with disabilities. His career goal was to eventually provide one-on-one rehabilitation counseling services to MRC's clients with disabilities. (Testimony of Savage)

7. Pursuant to a Collective Bargaining Agreement, VDE's are on probation for the first six months of their employment. During this period they have no vested union right to grieve whether management's reasons for an adverse personnel action, including termination of employment, are for just cause. Entry level VDE's are required to successfully complete an in-house training program lasting approximately 12 weeks. On October 13, 2009, Complainant commenced training with nineteen other probationary employees in Boston and eight other trainees who participated off-site via video conferencing. The training ended the week of December 28, 2009. (Stip. Facts; Jt. Ex. 24)

8. At all times material to Complainant's employment, Genevra Cutting was Respondent's Training Director. She served in this position from 1998 until 2007 when she retired from MRC, and reported to DDS Director, John Reilly. Cutting began her career with MRC in 1985 as a VDE and transferred to the training department in 1998. She testified that she and another employee redesigned the training program to be computerized and for trainees to work on live cases. The training included instruction in the computer software system known as AS 400. (Cutting and Connelly Test; Jt. Exs. 93, 113) According to the job description of Training Director, the primary responsibility is:

“...to design and implement an agency training and development plan that defines systems and policy and procedure requirements to provide employees at all levels with the skills, knowledge and attitudes needed to develop claims and conduct vocational analysis to determine if a claimant is unable to work and is eligible for benefits...”

(Jt. Ex. 8)

9. The general nature of the VDE position is to determine initial and continued eligibility of Massachusetts applicants for federal SSI and SSDI public benefits. An entry level VDE works under the supervision of a higher level VDE and is responsible for obtaining, reviewing, analyzing, and evaluating medical evidence and vocational profiles of applicants for benefits; and conferring with medical consultants to evaluate diagnoses to determine a claimant's ability to work, the need for further testing, and eligibility for social security disability benefits. (Savage and Cutting Testimony; Exs. 4-6) Entry level VDE's receive ongoing review of their work and on-the-job training. (Jt. Ex. 6) Cutting testified that it takes between two to four years for a VDE to master the duties and responsibilities of the position.

10. Complainant testified that he had basic computer skills and experience using Microsoft Word. At the time Complainant was hired, neither the job description for the VDE position nor the VDE class specification published by the Massachusetts Human Resources Division, listed as an essential function of the VDE position the use and or operation of Respondent's AS 400 computer system for tracking and processing development of a case. Nor was there any requirement that the applicant possess sophisticated knowledge of computer software. (Jt. Exs. 4-6; 26)

11. The training class outline for the Fall of 2009 shows that trainees were instructed through lectures and hands-on training on the definition of and identifying disabilities, including mental impairments, use of the AS400 computer system, and how to prepare "day 1 development." (Jt. Ex. 24; 27) Respondent uses the term "day 1 development" to connote the steps taken to gather and review medical information about a claimant's purported disability in order to adjudicate whether he or she is eligible for benefits. (Savage and Cutting Testimony) The majority of the training focused on teaching probationary VDE's how to adjudicate claims in

a computer lab environment. Trainees were provided with voluminous training manuals, (See e.g. Jt. Ex. 26) access to the internet, access to an electronic dictionary, check-lists on work procedures, and access to a folder noting the most requested sections of the various manuals. Trainees were evaluated using periodic quizzes to test their knowledge of the subject matter taught and a two-part Federal Test, all of which Complainant successfully passed. (Savage and Cutting Testimony; Jt. Exs 24-28; R. Ex. 117)

12. Mary Connelly was Respondent's Director of Diversity/ADA Coordinator/Human Resources Liason. Connelly testified that part of her role was to explore and assist in providing reasonable accommodations to Complainant and other disabled employees. On October 22, 2009, Connelly emailed Complainant that it had come to her attention belatedly that he desired to voluntarily self-identify as a person with one or more disabilities. (Connelly Testimony ; Jt. Ex. 20) Complainant testified that he did not seek any specific accommodation at the time of his application or interview because he no advance knowledge of the challenges he would encounter in learning the IBM AS 400 computer system, because it was important to him to be perceived by his employer as competent and because he wanted to fit in and be treated the same as his fellow employees. (Savage Testimony Jt. Exs. 18, 25)

13. Complainant's training was primarily delivered by Cutting and her subordinates, Pat Dickson and Sheila Buckley. According to Cutting, Complainant's class size was fairly large. (Cutting Testimony) The Training Department's computer lab where most of the training occurred was a noisy environment, which posed a significant distraction to Complainant, given his ADD. (Savage Testimony) Soon after he began his training, it became apparent to the Training Department that Complainant was falling behind other students in the class. (Jt. Ex. 30; Ex. R-88A; Ex. R-98) On November 9 and 18, 2009, Cutting wrote terse emails to Complainant

demanding that he pay attention to the lecturer. In the first email she wrote, "What are you doing? You need to pay attention..." In the second email she wrote, "I don't want to see this again. I don't want to have to tell you to pay attention again." Complainant testified that Cutting's tone was curt and rude and upset him. According to Complainant, he understood vocational analysis and the other subjects covered in training and had no trouble processing the substantive material. However, due to the rapid pace of instruction, his keyboarding and computer skills, his Dyslexia and ADD, and the noise level in the training room, Complainant was unable to accurately enter information into the computer system at the same speed as the instructors spoke, relative to the other trainees in the class. (Savage Testimony; Jt. Ex. 33) Jt. Exs.

14. On November 13, 2009, Cutting wrote a fake email purportedly from Complainant stating that he wanted to resign from DDS, and she replied to him in a fake email that she was sorry he wanted to resign and would pass his email on to HR. Cutting testified that this was all a joke and something she often did to remind trainees of the importance of locking their computers if they were away from their station, because of the confidential material being handled. (Jt. Ex. 29) Complainant was not appreciative of Cutting's attempt at humor and seemed befuddled by the incident. He confronted Cutting telling her that he did not intend to resign and the email was not authentic. He testified that it left him distraught and shaken up for the entire day. (Savage Testimony) I find that Cutting's action was an insensitive and an inappropriate way to convey this concept to Complainant given that he was clearly fragile and sensitive about his disabilities.

15. On November 17, 2009 Cutting sent an email to John Reilly, Lori Stevens and Johnnie Williams entitled, "Stephen Savage is having a hard time" detailing some of the errors Complainant had made, and indicating that he tests well and scores well on his tests but "we

have concerns about his ability to manage the computer.” (Jt. Ex. 30) On November 18, 2009, Cutting met privately with Complainant and told him she noticed he was struggling with the material. Cutting testified that Complainant did not disclose the nature of his disability to her, nor did he discuss his functional limitations or the need for a particular accommodation.

(Cutting Testimony) Notwithstanding, Cutting stated it was obvious to her that Complainant’s job performance issues [e.g., easily distracted, not paying attention, not following instructions, not processing material as quickly as other trainees, etc., (see Jt. Exs. 41, 46, 48)] might have been attributable to a mental impairment, possibly ADD. She stated that she offered Complainant one-on-one instruction and asked him to narrow down the subjects he was having trouble with on the AS 400 computer system, and what Respondent could do to help him.

(Cutting Testimony; Jt. Ex. 36)

16. Complainant’s version of this meeting was strikingly at odds with Cutting’s. He testified that after sending him a caustic email reprimanding him for not contacting doctors as instructed, beginning with, “if you had bothered to read the whole note, you would have seen...” and then ordering him to comply with her directive. Complainant replied that he had written to the sources and his problem was with the computer system. (Ex. 35) Cutting then directed him to come to her office and Complainant claimed she had a temper tantrum, slamming her fists on the desk and proceeding to “ball out” Complainant, talking down to him, accusing him of slowing down the class, falling behind, not following instructions, and telling him he could not do the job. He testified he was afraid she was “going to hit me or something.” In an email to Reilly on November 18, 2009 Cutting stated “we have a problem” with Savage, and admitted that when she brought Complainant into her office to talk about why he refused to follow instructions, she was so frustrated, she thought she “was going to hit him over the head.” (Ex. R-

98 pp. 39-40) I credit Complainant's testimony about Cutting's behavior and that he was very intimidated by her. Complainant testified that in response to her tirade, he disclosed to her that he had Dyslexia and could not type as fast as other people, but Cutting denied any disclosure of his disability before mid-December 2009. (Savage Testimony; Cutting Testimony)

17. Complainant testified that while he had initially attempted to seek help in class by raising his hand to ask questions about a particular instruction, something trainees were encouraged to do, after a few days he noticed that Cutting and Buckley became, not only visibly impatient with him, but would also ignore him, and alternatively take turns reprimanding him and scolding him for asking questions or making mistakes. He also claimed that he was singled out in class and berated before his peers for making errors and was embarrassed and humiliated by the instructors noting that he was falling behind. (Savage Testimony) I credit Complainant's testimony that he was berated in class and felt belittled and humiliated by Cutting. This behavior is consistent with the tone and substance of Cutting's emails to Complainant and others, admonishing him as if he were a disobedient child and admitting that she had no patience with him. In her November 18, 2009 email to Reilly she noted problems with Complainant's computer skills, that he was falling behind and not catching up, and that she kept telling him he needed to pay attention to stop making so many mistakes. She also wrote to Reilly, "I am at my wits end with him....I'm going to pass him off to Eileen (Daly), maybe she has more patience with him than I do right now." (Jt. Ex. 35, 36, R. Ex 98 pp. 39-40)

18. After Complainant's meeting with Cutting on November 18, 2009, Complainant did not talk much with Cutting because he felt she was hostile to him. He stated that he "kept his mouth shut and worked as hard as he could, coming in early and leaving late, and followed instructions as best he could." After that meeting he also sent an email to Connelly to let her know that he

was struggling at work and asked her to resend the forms for Self-Identification and requests for reasonable accommodation she had sent on October 22, 2009, “in the event” that he needed reasonable accommodations. He also stated in that email that he had had a learning disability throughout his life and was currently having symptoms of attention deficit disorder. (Jt. Ex. 21) Complainant submitted the Self-Identification form to Connelly but did not request any specific accommodation.

19. On November 19, 2009, Cutting assigned Pat Dixon to work with Complainant to “help him get a better handle on the AS400.” Complainant thanked her and told her he thought this was a good plan, because he thought he would receive help learning the computer system. Complainant was directed to leave the training class at assigned times to attend one-on-one tutoring sessions with Pat Dixon. Respondent claimed that Complainant attended only a few tutoring sessions, and he admits he did not attend all of these sessions claiming that he did not find them helpful. Complainant asserted that he felt singled out and stigmatized for having to leave class and it resulted in his falling farther behind. He also claimed that Dixon was assisting him with Day 1 development something he claimed he was capable of doing, but not with understanding the computer system. (Jt. Ex. 33, Testimony Complainant) Complainant was not given remedial training on the AS400 computer system during or after his formal training ended; nor was he assigned to work on computer issues with Sheila Buckley, another trainer, who was the department’s computer expert on the AS 400 and understood the software better than anyone in the department. (Jt. Ex. 36; Ex. R-162, Cutting Testimony; Buckley performance evaluation)

20. From November 23, 2009 until December 4, 2009 Complainant attended private tutoring sessions with Dixon. (Cutting and Savage Testimony; Jt. Exs. 38, 42, 43, 46) Connelly testified that she was aware of this and supported the decision. Emails between Cutting and Dixon during

that time reflect ongoing concerns about Complainant's mistakes and failure to read computer messages that were sent to him, and his failure to send out requests to appropriate medical providers. It is clear that Complainant was having significant problems with not only the computer system, but also with Day 1 development and was failing to contact the appropriate medical professionals. (Jt. Exs. 37, 38, 39, 40, 44, 45, 46)

21. On December 3, 2009, Cutting emailed Reilly and urged him to terminate Complainant immediately. (Jt. Ex. 44) She stated that her staff was devoting too much time to Complainant at the expense of the other trainees' progress, contended that Complainant was unimaginably far worse than a previous probationary employee, and demanded a decision on Complainant's future employment at MRC, stating, "this has gone on long enough and either we need to act on this guy and let him go or resign ourselves that some poor supervisor will have to deal with him once he is on the floor." Id. Cutting concluded her remarks by asking "for some direction" on now to proceed and telling him that, "I don't want to waste my time telling him how concerned I am if nothing is going to happen... and that we need to act and cut him loose now." Id. Reilly emailed Cutting back immediately advising her to: "Counsel him to leave before we formalize the termination process," and Cutting abided by his instructions. (Cutting Testimony; Ex. R-98, bates no. 000087)

22. Connelly verified and confirmed Complainant's status as a disabled employee on December 9, 2009, the date Complainant returned the forms to her. (Jt. Ex. 47) He had communicated to her that he might need accommodations for his mental disabilities and hoped to avoid any problems by disclosing his disabilities. Connelly was also advised by the training staff that Complainant "struggled" with introductory type material and was having trouble with the computer. (Connelly Testimony) However, she claimed that it was a "long, long time" before

the precise nature of Complainant's disabilities was apparent to anyone at MRC. She stated that neither Reilly, nor Stevens nor Cutting ever communicated with her that Complainant's performance problems might be related to his learning disability of ADD and she had no knowledge of his motive for emailing her on November 18, 2009. (Connelly Testimony)

23. Connelly testified that she was not aware that Cutting had complained to Reilly that the training class was suffering because the staff spent so much time with Complainant. She also claimed not to be aware of the fact that Reilly and Cutting were discussing and considering terminating Complainant prior to December 28, 2009. She claimed that when she was investigating Complainant's internal civil rights complaint after his termination, no one mentioned any intent to terminate Complainant prior to the end of his formal training. (Connelly Testimony) She was also not aware of the fact that Cutting has expressed losing patience with Complainant and passing him off to be trained by other staff because she was at her wits end with him. Connelly also denied knowing that Cutting emailed Reilly in that same communication that she felt like hitting Complainant over the head. I credit Connelly's testimony that others were not entirely forthcoming with information to her despite the fact that she had approximately 50 email communications with Cutting regarding Complainant's employment. (Connelly Testimony; Ex. R-98)

24. Complainant recalled telling Dixon and Dixon confirmed in an email to Cutting on December 14, 2009 that Complainant told her that he had a learning disability, but did not state how his learning disability affects him. (Jt. Ex. 48) She also wrote that he is a bright, pleasant, enthusiastic trainee, but is not good on the computer and has some difficulty seeing. (Jt. Ex. 48) Dixon also wrote that she did not feel comfortable that Complainant could work independently and that he does not follow directives given to him by supervisors. (Jt. Ex. 48)

25. One day later on December 15, 2009, Cutting advised Reilly that she had just met with Complainant and told him that she had serious concerns about his ability to do the job and that she was prepared to start termination proceedings against him unless he tendered his resignation within 24 hours. (Savage Testimony; Jt. Ex. 49) She gave Complainant until 2:00 p.m. on December 16, 2009 to let her know his decision. (Id.) Complainant disagreed with Cutting's assessment and asked her to sign the documents she presented to him to justify her contemplated adverse personnel action, but she "refused to sign anything." (Jt. Exs. 49, 50; Savage Testimony) He testified that Cutting's ultimatum made him feel very panicked and like "his world was spinning out of control."

26. On December 16, 2009 Complainant emailed Cutting and Connelly, notifying both of his decision not to resign. Earlier that day, Cutting had given him a job description for this position and asked him to consult with a physician so that Respondent could support him and help him succeed. (Jt. Ex. 50; 51) Complainant responded that he did not currently have a physician and was waiting for his health insurance to kick in. (Jt. Ex. 50) He indicated that he nonetheless planned to speak with a psychologist about his job, his dyslexia and her concerns about his abilities to do the job of VDE and sought his test results to present to his psychologist. Id. Cutting asked the name and address of his physician and the date of his appointment. Complainant indicated that he would see Dr. Eric Zeiff, his psychologist on December 18th and he was permitted to take the day off. Between December 15 and December 31, 2009, Cutting repeatedly asked Complainant for documentation from his medical provider describing his disability and listing any reasonable accommodations he required to do perform the work of a VDE. (Jt. Exs. 58, 59, 66, 69) Respondent did not ask permission of Complainant allowing them to solicit information directly from his medical provider for the type of information that might

help them understand the precise nature of his disability or to explain the nature of the job. Complainant testified that he did not trust Cutting to respect his privacy, and because he felt stigmatized and humiliated by her, he was resistant to provide her with confidential information about his mental health and decided to withhold Dr. Zieff's written recommendation from Respondent. Complainant felt that because he was seeking a reasonable accommodation for a medical versus a psychological condition, Respondent was not entitled to explore confidential information from Dr. Zieff concerning his mental health. He informed Cutting in an email on December 21, 2009 that the Dr. he saw had come up with a few strategies for helping him continue to work at DDS and satisfy Respondent's requirement. (Jt. Ex. 58)

27. Cutting continued to have concerns and to send emails to Reilly and Complainant about Complainant's ability to do the job. (Jt. Exs. 60, 61,62) On December 22, 2009, Complainant emailed Cutting and Connelly that he hoped to get a recommendation on how to proceed from someone with an open mind regarding the outcome of his employment. He noted that Cutting had asked for his resignation and on two occasions told him he did not have the ability to do the job. He felt that she was biased against him and that he would need to get help from a private party. (Jt. Ex. 66) That same day, Cutting emailed Riley to complain that the situation with Complainant was "nuts" and had "gotten out of control." She pleaded with Reilly for him to clarify how she should proceed, asking whether she should bring him into her office and reprimand him for not doing as he's told or "just let this stuff continue to build up?" (Jt. Ex. 60) Reilly instructed her not to do the work for Complainant, but to continue to demonstrate that he could not do the work and document her instructions. Id. On December 23, 2009, Cutting emailed Complainant that nothing had changed based on his "current job performance" and his "inability to process cases using the AS400." (Jt. Ex. 66)

28. On December 28, 2009, Connelly emailed Reilly and MRC's General Counsel that Complainant had just left her office having told her he had a letter from a psychologist attesting to the fact that he suffers from dyslexia and symptoms of attention deficit disorder. Connelly suggested he give his job description to his psychologist and ask that individual to write a letter detailing how his disabilities impact his ability to perform the essential job functions and any potential accommodations that might be helpful. She stated that he seemed receptive to her suggestions. (Jt. Ex. 67) Complainant told Connelly that the training department staff did not understand that people with his type of learning disability, Dyslexia, write more slowly and told Connelly he learns at a different rate than other people. He felt that he was making progress, liked the job, but was being pushed out the door. He expressed to Connelly that he thought his disability could be accommodated by adjusting the pace of the training and making a larger screen with larger fonts available to him since he was having trouble typing. He testified that Connelly told him she would speak to them (presumably Cutting and Reilly) about his concerns. Complainant assumed it was her responsibility as the ADA Coordinator for MRC to explore with Reilly and Cutting ways to accommodate his disability. (Savage Testimony; Jt. Ex. 67)

29. Connelly understood that people with Dyslexia and ADD might learn at a different rate of speed and testified that these impairments would not automatically disqualify Complainant from being able to learn the VDE position. She also testified that Cutting and her staff could not lawfully ask Complainant about his disabilities if he did not disclose them. She stated that unless Complainant specifically disclosed the nature of his problems to MRC staff, Cutting could only ask how she could help him if she observed him struggling. (Connelly Testimony) Connelly also confirmed that Complainant had a difficult time articulating what his limitations were. She referred Complainant to a website called the Job Accommodation Network (JAN) to investigate

ways in which individuals with Dyslexia and/or ADD could be accommodated, but did not discuss or explore with Complainant how his disabilities might potentially be accommodated. (Connelly Testimony; Ex. C-1) During her tenure in State government since 1986 Connelly handled somewhere between six and ten reasonable accommodation requests from employees with learning disabilities and mental impairments and had dealt with less than an handful of such complaints while at MRC. Id.

30. On December 31, 2009, Cutting sent Complainant an email to inform him that he was expected to bring in a letter from his psychologist no later than January 8, 2010, with the information regarding his disabling condition, how it impacts his ability to do the job, and what type of accommodations he would need to support him so he could succeed in the job. Cutting further stated if he did not comply, she would proceed with termination. (Jt. Ex. 69) This email was copied to Riley, Connelly and the Assistant Commissioner of DDS, Barbara Kinney. One day earlier on December 30th, Cutting had asked Reilly if Complainant would report to someone or remain with the training team and she recommended he remain with the training team since she was to be responsible for his final "write up." (Jt. Ex. 69) Cutting never met with Complainant to discuss her final written evaluation of his performance.

31. On January 7, 2010, after the training had ended, Complainant provided Respondent with a three-sentence doctor's note from 1997 written by an internist, Dr. Mitchell Levine. (Jt. Ex. 103) The note stated that Complainant has a history of dyslexia and learning disability based on past testing and that he has symptoms of ADD with easy distractibility and difficulty with focus. (Jt. Ex. 103) Complainant sent an email addressed to the Training Department along with this letter suggesting some possible accommodations to assist him in working with the AS400 computer system. These included working collaboratively with management, having a

private cubicle to be free from distractions, the ability to place notes with reminders of work procedures on the wall, being allowed to use a tape recorder during meetings, receiving written instructions via email, and extending his employment beyond six months to provide him with a fair evaluation of his ability to work as a VDE. (Jt. Ex. 70) Complainant felt that six months was an insufficient time to evaluate his ability to perform the VDE job, given that his impairments affected his ability to learn the AS400 computer system. He expressed the hope that at the end of his six month probationary period, which was April 16, 2010, his employer would reevaluate his ability to perform the job and discuss his ability to succeed in the job. No one at MRC responded to Complainant's January 7, 2010 email. Complainant testified, "it was like a lost email."

32. At the Hearing, Respondent asserted that most of Complainant's suggestions for accommodations were provided to him. Cutting asserted that Complainant received written instructions from trainers and senior VDE's through notes placed in each case file via the AS400 computer system and that he disregarded or did not follow these instructions. Lists of work procedures were available in the training manuals he received. He was assigned to his own cubicle once the training was complete. While Respondent had the option to enter into an agreement with Complainant's union, Alliance, SEIU, Local 509, to extend Complainant's six-month probationary period under the CBA to provide management with additional time to evaluate his performance, Cutting testified that she was unaware of this ever having been done before. (Jt. Exs. 102, 113) Neither she nor anyone else at MRC discussed or explored this possible accommodation with Complainant after receipt of this letter or after the training session was completed. (Cutting Testimony; Savage Testimony) Cutting did not interpret