



Maine Human Rights Commission  
# 51 State House Station | Augusta ME 04333-0051

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**INVESTIGATOR'S REPORT**  
**MHRC No. E11-0648**

November 13, 2012

[REDACTED] [REDACTED]  
v.  
[REDACTED] [REDACTED]

**I. Complainant's Complaint:**

Complainant [REDACTED] ("Complainant") alleged that his employer terminated him because he was regarded as having, or likely to develop, a physical disability (back pain/kidney).

**II. Respondent's Answer:**

Respondent [REDACTED] ("Respondent" or "Company") denied any unlawful disability discrimination. Other than the work related injury (back sprain) after which Complainant was released to full duty work, Respondent was unaware he had any other medical issues. He was terminated because of his poor job performance.

**III. Jurisdictional Data:**

- 1) Date of alleged discrimination: February 28, 2011.
- 2) Date complaint filed with the Maine Human Rights Commission: November 3, 2011.
- 3) Respondent employs 40 employees and is subject to the Maine Human Rights Act and the Americans with Disabilities Act, as well as state and federal employment regulations.
- 4) Respondent is represented by Keith R. Jacques, Esq. Complainant is unrepresented.
- 5) Investigative methods used: A review of the written materials provided by the parties. Based on this review, this complaint has been identified for a brief Investigator's Report, which summarizes the allegations and denials in relationship to the applicable law but does not fully explore the factual issues presented. This preliminary investigation is believed to be sufficient to enable the Commissioners to make a finding of "reasonable grounds" or "no reasonable grounds" in this case.

**IV. Development of Facts:**

- 1) Complainant worked for Respondent as a Sheet Metal Fabricator/Welder from March 22, 2010, to February 24, 2011.
- 2) Complainant's notarized Charge of Discrimination ("Complaint"):
  - a) On January 20, 2011, Complainant injured his back at work. He informed his supervisor and a co-worker and sought medical treatment through work.<sup>1</sup> The examining doctor advised him to go home that day and rest his back over the weekend. After a follow up visit on the following Monday, Doctor returned him to light duty work for one week. Subsequently, he was approved for regular duty with normal lifting restrictions of 50 pounds.
  - b) Within two weeks of returning to full duty work, foreman PN ("Foreman") issued Complainant a written warning for not doing an assigned project correctly. Foreman informed him that a project had to be reworked, but he was not shown any mistakes. He learned later that other employees were not held to the same standards as he was.
  - c) During the same period, Complainant was treated for kidney stones. His lead man DJ ("Lead Supervisor") was aware of his ongoing medical condition and treatment. Complainant informed Lead Supervisor of his condition and even showed him several pieces of kidney stones at work.
  - d) On February 28, 2011, one week after his first warning, Complainant received another written warning for not doing an assigned project correctly. Again, he was not told or shown what was done incorrectly. He was dismissed summarily on that same day.
- 3) Respondent's Response:
  - a) The Company did not have any information about Complainant's physical disability other than a workers' compensation claim involving thoracic strain/spasm. He was treated for a back strain which occurred on January 20, 2011. (Resp. Ex. A – Copies of Workers' Compensation Practitioner's Report and Occupational Injury and Illness Report.) He was on modified duty for approximately one week and returned to regular duty on January 31, 2011.

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<sup>1</sup> It was unclear whether Complainant was also claiming that Respondent terminated him in retaliation for having filed a workers' compensation claim. While this might be grounds for a claim under the Maine Workers' Compensation Act ("WCA"), this alternative claim would not in and of itself violate the MHRA. The MHRA prohibits retaliation because of an employee's "*previous* assertion of a claim or right under former Title 39 or Title 39-A." 5 M.R.S.A. § 4572(1)A(emphasis added). An employee is potentially protected under the MHRA if he/she filed workers' compensation claims against prior employers, but does not have a MHRA claim against the employer against whom he filed the workers' compensation claim. See 5 M.R.S.A. § 4572(1)A(1)("This paragraph does not apply to discrimination governed by Title 39-A, section 353"). The WCA itself prohibits discrimination by the employer against whom the workers' compensation claim was made. See 39-A MRSA § 353.

- b) Complainant's previous performance evaluation (10/2010) noted quality issues. He received two written warnings regarding the quality of his work in addition to multiple verbal warnings before his termination.
  - c) On February 11, 2011, Complainant received a written warning regarding substandard work quality. He also received repeated verbal warnings from Foreman regarding poor performance. The quality of his performance did not improve subsequently.
  - d) On February 25, 2011, he was terminated. The Company's president ("President") and Foreman were involved in the decision to terminate Complainant. He was dismissed because of an unacceptable amount of scrap and rework required of his assigned projects. At that time, the Company was unaware of any ongoing medical condition or physical disability. The Company was unaware of any such claim of disability until it received a copy of the Complaint dated November 2, 2011.
  - e) On February 28, 2011, the Company hired another worker, JE, to replace Complainant. JE had a prior back injury (unrelated to his employment) that occasionally required him to miss work.
- 4) Complainant's Rebuttal:
- a) During his employment, Complainant worked the second shift, Monday-Thursday, 3 p.m. to 1 a.m. (10-hour day). Contrary to President's affidavit, Complainant was terminated after he punched in on Monday, February 28, 2011. His regular work week had ended on the previous Thursday (February 24<sup>th</sup>), and he did not work on Friday (February 25<sup>th</sup>). Foreman was the first shift supervisor and did not supervise his work.
  - b) On February 24, 2011, Complainant completed his last assigned project. Between Friday (2/25/2011) and Sunday (2/27/11), Lead Supervisor and Shop Supervisor never informed him that he performed any work incorrectly. None of the shift supervisors indicated any fault with his work at that time.
  - c) When he returned to work after the weekend, Complainant asked the Paint Shop Worker and other employees in the previous shift regarding his assigned projects. They had painted the parts he prepared on Monday morning and shipped the parts that afternoon before he arrived for his first workday at 3 p.m.
  - d) There had never been any "excessive scrap" from his work. His assigned projects were acceptable and were shipped to customers without any delay or rework. No workers on the first shift had to rework his parts, and no parts had to be discarded.
  - e) In his first year of employment, he did not receive any single written warning for poor quality. It was only after the injury in January 2011 that he began to receive written warnings within a 3-week period and was abruptly terminated.
  - f) The Company was aware that he had begun treatment for his kidney condition and that he had a medical appointment on February 25, 2011, the day after his last work night. He kept Lead Supervisor regularly informed of his treatment. His appointments were always scheduled before his regularly scheduled shift and never interfered with his work hours. He also showed

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Lead Supervisor the jar of small kidney stones for weeks before his termination. President also knew that he had begun treatment for kidney stones, later diagnosed to be cancerous.

- g) On February 28, 2011, Complainant was not reprimanded and was allowed to punch in for his new shift. He spent an hour preparing his tools and safety equipment. Lead Supervisor said nothing about any work issues. Complainant was shocked to receive the final written warning and was dismissed summarily by Foreman.
- h) Management had his phone number to notify him of any issue regarding the assigned projects he had completed. In the past, they would call Lead Supervisor at home whenever there was any work mistakes.

5) Relevant Documents:

- a) The Company's Employee Handbook (Last Updated 3-28-06) (Resp. Ex. 4.) – Various sections, including "Separation from Employment" (along with subsection "Termination With Cause") and "Disciplinary Procedure," indicate a progressive discipline policy unless an offense is severe enough to warrant immediate termination.
- b) Copies of warnings and Notice of Termination. (Collectively attached as Resp. Ex. B, attached herein as Exhibit 1.) – The Termination Report (2/25/2011) indicates the reason for termination is "Incompetence" with the explanation "unacceptable (*sic*) amount of scrap (rework)." Complainant last worked on February 24, 2011, and did not sign the Notice. The Step-By-Step Employee Warning Report indicates "Rework" under "Type of Violation." The section "Timetable for Improvement" shows "Immediate" and further states that failure to improve will result in "Suspension." Complainant signed the Report, which contains conflicting dates (2/10/2011 and 2/11/2011).
- c) Employee Performance Evaluation (2/17/2011) (Resp. Ex. B, attached herein as Exhibit 2.) – Under the section entitled "Job Performance," Complainant received the overall rating of "S" for satisfactory, but the Evaluation noted "Quality Issues" without further explanation. The section "Cooperation" indicates "Complaining." Complainant did not sign the Evaluation, and President acted as the Reviewing Officer.
- d) Affidavit of President (2/2/2012).
- e) Lists of employees in Complainant's department, including name, any disability status, date of hire and separation, and reason for separation (1/1/2010-Present & 10/2010 – 10/2011) (Resp. Exhs. 6 & 20.) – Complainant was the only employee separated for "poor job performance."
- f) M-1 Practitioner's Report, State of Maine Workers' Compensation Board, Initial Report, faxed to Respondent on 1/21/2011: "Back strain. . . work related. . . no lifting > 10 lbs x 1 wk. No work above head x 1 wk."

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- g) M-1 Practitioner's Report, State of Maine Workers' Compensation Board, undated<sup>2</sup> but follows examination on 1/24/2011: "Date of this examination: 1/24/2011 . . . treatment to continue . . . modified duty . . . occasional twist/bend, No overhead work[.] No lifting more than 20 # or push/pull."
- h) M-1 Practitioner's Report, State of Maine Workers' Compensation Board, undated but follows final examination on 1/31/2011: "Thoracic strain/spasm-resolved. . . W/C Follow Up needs a lifting limit secondary to non occupational medical condition. In process of getting a note from pcp... Work Capacity: Regular Duty . . . 40lb lifting limit for non-occ medical condition."
- i) Initial Evaluation, transcribed 1/24/11 (by Nurse Practitioner who completed the second two Practitioner's Reports): "Diagnosed abdominal aortic aneurysm, he states just below the right kidney. He feels he needs permanent lifting limit. I have asked him to speak with Dr. [] about that, if a permanent limit needs to be put into place, and I would need that in writing."

**V. Analysis:**

- 1) The Maine Human Rights Act ("MHRA") provides that the Commission or its delegated investigator "shall conduct such preliminary investigation as it determines necessary to determine whether there are reasonable grounds to believe that unlawful discrimination has occurred." 5 M.R.S.A. § 4612(1)(B). The Commission interprets the "reasonable grounds" standard to mean that there is at least an even chance of Complainant prevailing in a civil action.
- 2) The MHRA provides, in part, that it is unlawful employment discrimination to terminate an employee because of physical or mental disability. 5 M.R.S.A. § 4572(1)(A).
- 3) Here, Complainant alleges that Respondent terminated his employment because he was regarded as having a physical disability relating to his back sprain and kidney condition.
- 4) Because here there is no direct evidence of discrimination, the analysis of this case will proceed utilizing the burden-shifting framework following *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973). See *Maine Human Rights Comm'n v. City of Auburn*, 408 A.2d 1253, 1263 (Me. 1979).
- 5) First, Complainant establishes a prima-facie case of unlawful discrimination by showing that: (1) he belonged to a protected class, (2) he performed his job satisfactorily, (3) his employer took an adverse employment decision against him, and (4) his employer continued to have his duties performed by a comparably qualified person or had a continuing need for the work to be performed. See *Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46, 54 (1<sup>st</sup> Cir. 2000); *Cumpiano v. Banco Santander Puerto Rico*, 902 F.2d 148, 155 (1st Cir. 1990); cf. *City of Auburn*, 408 A.2d at 1261.
- 6) The MHRA further defines "physical or mental disability," 5 M.R.S.A. § 4553-A, in relevant part, as follows:

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<sup>2</sup> The Maine Workers' Compensation Act requires that medical reports be provided to the employer within 5 days of treatment. See 39-A M.R.S. § 208(2)(A, C).

**1. Physical or Mental Disability, defined.** Physical or mental disability” means:

A. A physical or mental impairment that:

- (1) Substantially limits one or more of a person’s major life activities;
- (2) Significantly impairs physical or mental health; or
- (3) Requires special education, vocational rehabilitation or related services;

...

D. With respect to an individual, being regarded as having or likely to develop any of the conditions in paragraph A . . .

**2. Additional terms.** For purposes of this section:

A. The existence of a physical or mental disability is determined without regard to the ameliorative effects of mitigating measures such as medication, auxiliary aids or prosthetic devices; and

B. ”Significantly impairs physical or mental health” means having an actual or expected duration of more than 6 months and impairing health to a significant extent as compared to what is ordinarily experienced in the general population.



- 7) Once Complainant has established a prima-facie case, Respondent must (to avoid liability) articulate a legitimate, nondiscriminatory reason for the adverse job action. *See Doyle v. Department of Human Services*, 2003 ME 61, ¶ 15, 824 A.2d 48, 54; *City of Auburn*, 408 A.2d at 1262.
- 8) After Respondent has articulated a nondiscriminatory reason, Complainant must (to prevail) demonstrate that the nondiscriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about the adverse employment action. *See id.* Complainant’s burden may be met either with affirmative evidence of pretext or by the strength of Complainant’s evidence of unlawful discriminatory motive. *See City of Auburn*, 408 A.2d at 1262, 1267-68.
- 9) In order to prevail, Complainant must show that he would not have suffered the adverse job action but for membership in the protected class, although protected-class status need not be the only reason for the decision. *See City of Auburn*, 408 A.2d at 1268.
- 10) Here, Complainant has established a prima-facie case by demonstrating that (1) he was regarded as disabled (Complainant allegedly kept Lead Supervisor apprised of his back sprain and kidney condition<sup>3</sup> and related medical treatment; the final M-1 Practitioner’s Report reflects that Complainant had an ongoing 40-pound lifting restriction associated with a non-occupational injury); (2) he performed his job satisfactorily (he had no verbal/written warnings or suspension during his employment except for the disputed warnings leading to termination), (3) he was reprimanded and terminated, and (4) another employee subsequently replaced him.
- 11) Respondent offered a performance-based reason for terminating Complainant, namely, that he was performing poorly. The quality of his assigned projects required rework.

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<sup>3</sup> The cancer diagnosis occurred after termination and could therefore not have been considered by Respondent.

- 12) The facts support an inference that Respondent's non-discriminatory reason is pretextual or irrelevant and that unlawful discrimination brought about Complainant's termination based on the following analysis:
- a) The proximity of the termination to the back injury, then-existing kidney condition, and M-1 Practitioners' Reports, supports an inference of a discriminatory animus. Complainant's termination came approximately three weeks after the M-1 Practitioner's Report indicating that he had an ongoing 40-pound lifting limit associated with a non-occupational medical condition.
  - b) The documentation provided indicates an apparent rush to judgment and termination after a long period with no documented problems communicated to Complainant. The documents tend to support Complainant's contention of unlawful discrimination.
    - i. Complainant's only performance evaluation apparently was prepared near or at the time of the warnings and is unsigned by him. The evaluation identifies work quality as a concern but does not state any performance deficiencies requiring immediate improvement or termination. Before February 2011, the Company failed to identify or provide any documentation of specific concern or complaint by any supervisors or co-workers.
    - ii. The Notice of Termination cites the reason for termination, but it is unclear if this document was prepared with Complainant's knowledge and whether he was given an opportunity to correct the alleged work deficiencies, if any.
    - iii. It is undisputed that Complainant was not informed nor shown any of the alleged work deficiencies. Even if performance deficiencies existed, the Company failed to address any in accordance with its established progressive discipline procedure (Resp. Ex. 4.). This failure to follow the standard procedure undermines the Company's credibility.
    - iv. Except for the two written warnings (the second of which was also the Notice of Termination), the Company could not specify any previous performance deficiencies so severe as to warrant any disciplinary actions. The Company's reason for termination is not credible given the lack of documentation of any progressive discipline before his work-related injury and treatment for another existing medical condition.
  - c) The Company's alleged lack of knowledge of any other medical condition or impairments is contradicted by Complainant's contention that he fully informed his immediate shift supervisor of his kidney condition.
  - d) Further, the Company provided no evidence that other employees were disciplined for the same or similar reasons to Complainant. There is no other comparative evidence to indicate how other employees were disciplined with respect to quality issues. The Company's proffered explanation of the adverse actions taken against Complainant is not persuasive given its questionable documentation of how Company discipline policy was implemented/applied.
- 13) Given the noticeable timing relationship between Complainant's back and kidney conditions, as well as the reference to a non-occupational "medical condition" requiring a 40-pound lifting restriction, and Respondent's subsequent adverse employment actions, and given the "even

# TERMINATION REPORT

EMPLOYEE NAME (Last) 		(First) 		(MI)
DEPARTMENT Fabrication	TODAY'S DATE 2/25/11	TERMINATION EFFECTIVE DATE	LAST DAY WORKED 2/24/11	
JOB TITLE Fabricator	TERRITORY	CLOCK NO.	EMPLOYEE NO. 279	
TYPE OF SEPARATION (Check One)				MAIL CHECK?
<input type="checkbox"/> Resignation (attach letter of resignation) <input checked="" type="checkbox"/> Dismissal <input type="checkbox"/> Retirement <input type="checkbox"/> Mutual Agreement <input type="checkbox"/> Layoff <input type="checkbox"/> Other _____				<input type="checkbox"/> Yes <input type="checkbox"/> No
REASON FOR TERMINATION				
<input type="checkbox"/> Absenteeism/Tardiness <input type="checkbox"/> Job Change <input type="checkbox"/> Insubordination <input type="checkbox"/> Reduction In Force <input type="checkbox"/> Health <input checked="" type="checkbox"/> Incompetence <input type="checkbox"/> Family <input type="checkbox"/> Company Shut Down <input type="checkbox"/> Other _____				
UNEXCEPTABLE amount OF Scrap (rework)				

Employee Evaluation (check appropriate boxes)

	Unsatisfactory	Fair	Satisfactory	Good	Excellent
Attendance				✓	
Cooperation		✓			
Initiative		✓			
Job Knowledge		✓			
Quality of Work	✓				

Recommendation:     Without Reservation     With Some Reservation     Would Not Recommend  
 Rehire?     Yes     No    If No, Reason: \_\_\_\_\_

ADDITIONAL COMMENTS

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EX 1

Signed  Date 2/25/11

**FOR OFFICE USE ONLY**

Benefits Cancelled:

Life \_\_\_\_\_ Hospital \_\_\_\_\_ Other \_\_\_\_\_ Personnel Approval \_\_\_\_\_ Date \_\_\_\_\_



# STEP-BY-STEP EMPLOYEE WARNING REPORT

Employees receiving this warning report are hereby put on notice of a violation of our organization's rules and/or standards of employee conduct. Further violation(s) of such conduct may result in further disciplinary action, including the possible termination of employment.

Employee's Name [REDACTED] Date 2/11/11  
 Employee # 279 Department Fab Shift 2nd  
 Copy Forwarded to:  Employee  Employee Representative  Supervisor  Human Resource/Personnel File  Other

## VIOLATION KEY

A	Attendance	C	Carelessness	I	Insubordination
L	Lateness Early Quit	PV	Violation of Company Policies or Procedures	SV	Violation of Safety Rules
UA	Unauthorized Absence From Work Area	WD	Willful Damage to Material/Equipment	PM	Working on Personal Matters
WO	Substandard Work Quality	V	Threatening or Engaging in Violence	UB	Unsatisfactory Behavior Towards Others
DD	Drinking/Drugs While at Work	UD	Unfit for Duty	O	Other

## TYPE OF VIOLATION:

Date of Violation 2/10/11 Time: \_\_\_\_\_ AM/PM  
 Date of Disciplinary Report 2/10/11 Time: \_\_\_\_\_ AM/PM  
 Describe Employee's Response no work

## ACTION

Warning  Suspension  Dismissal  
 Other \_\_\_\_\_

## TIMETABLE FOR IMPROVEMENT

Immediate  30 days  60 days  
 Other \_\_\_\_\_

## CONSEQUENCES

Failure to improve will result in:  Warning  Suspension  Dismissal  Other \_\_\_\_\_  
 I have read this Employee Warning Report and understand it.  Employee declined to sign this form.

Date \_\_\_\_\_ Employee Acknowledgement of Receipt [Signature] Date 2/11/11 Supervisor/Manager Signature [Signature]

## FIRST DISCIPLINARY REPORT

### TYPE OF VIOLATION:

Date of Violation \_\_\_\_/\_\_\_\_/\_\_\_\_ Time: \_\_\_\_\_ AM/PM  
 Date of Disciplinary Report \_\_\_\_/\_\_\_\_/\_\_\_\_ Time: \_\_\_\_\_ AM/PM  
 Describe Employee's Response \_\_\_\_\_

### ACTION

Warning  Suspension  Dismissal  
 Other \_\_\_\_\_

### TIMETABLE FOR IMPROVEMENT

Immediate  30 days  60 days  
 Other \_\_\_\_\_

### CONSEQUENCES

Failure to improve will result in:  Warning  Suspension  Dismissal  Other \_\_\_\_\_  
 I have read this Employee Warning Report and understand it.  Employee declined to sign this form.

Date \_\_\_\_\_ Employee Acknowledgement of Receipt \_\_\_\_\_ Date \_\_\_\_\_ Supervisor/Manager Signature \_\_\_\_\_

## SECOND DISCIPLINARY REPORT

### TYPE OF VIOLATION:

Date of Violation \_\_\_\_/\_\_\_\_/\_\_\_\_ Time: \_\_\_\_\_ AM/PM  
 Date of Disciplinary Report \_\_\_\_/\_\_\_\_/\_\_\_\_ Time: \_\_\_\_\_ AM/PM  
 Describe Employee's Response \_\_\_\_\_

### ACTION

Warning  Suspension  Dismissal  
 Other \_\_\_\_\_

### TIMETABLE FOR IMPROVEMENT

Immediate  30 days  60 days  
 Other \_\_\_\_\_

### CONSEQUENCES

Failure to improve will result in:  Warning  Suspension  Dismissal  Other \_\_\_\_\_  
 I have read this Employee Warning Report and understand it.  Employee declined to sign this form.

Date \_\_\_\_\_ Employee Acknowledgement of Receipt \_\_\_\_\_ Date \_\_\_\_\_ Supervisor/Manager Signature \_\_\_\_\_

## THIRD DISCIPLINARY REPORT

EMPLOYEE'S COPY

EMPLOYEE'S COPY

EMPLOYEE'S COPY

# EMPLOYEE PERFORMANCE EVALUATION

EX 2

Employee Name [REDACTED]		Employee No. 279	Date Oct 2010
Department Fabrication		Job Title	
Date of Hire March 2010	Date of Last Review	Date Employee Began Present Position	Date of Next review Oct 2011
Check One: <input type="checkbox"/> 6 Month Review <input type="checkbox"/> Annual <input type="checkbox"/> Promotion <input type="checkbox"/> End of Introductory Period <input type="checkbox"/> Monetary <input type="checkbox"/> Non-Monetary <input type="checkbox"/> Other			

## KEY TO RATINGS

E: EXCELLENT - Individual performs all tasks in an exceptional manner.	S: SATISFACTORY - Individual performs all tasks satisfactorily.
G: GOOD - Individual performs many tasks well, and all other tasks adequately.	F: FAIR - Individual performs most tasks satisfactorily, but not all.
	U: UNSATISFACTORY - Individual fails to perform many tasks well.

### 1. RESPONSIBILITIES *List the current status of overall job responsibilities.*


### 2. ACCOMPLISHMENTS *List major job related achievements since last evaluation.*


### 3. JOB KNOWLEDGE *Employee possesses a clear understanding of the responsibilities and tasks he or she must perform.*

OVERALL RATING: <i>(circle one)</i>	E	G	(S)	F	U	(see key above)
Comments:	None					

### 4. JOB PERFORMANCE *(QUALITATIVE) The neatness, thoroughness, accuracy and overall quality of the employee's work.*

OVERALL RATING: <i>(circle one)</i>	E	G	(S)	F	U	(see key above)
Comments:	Quality Issues					

### 5. JOB PRODUCTIVITY *(QUANTITATIVE) Employee demonstrates a commitment toward achieving results. Tasks are completed efficiently and effectively.*

OVERALL RATING: <i>(circle one)</i>	E	(G)	S	F	U	(see key above)
Comments:	Productivity lacks when doing jobs that he does not like to do					

### 6. DEPENDABILITY *Employee can be relied upon to complete assigned tasks, and is conscientious about his/her attendance and timeliness.*

OVERALL RATING: <i>(circle one)</i>	E	(G)	S	F	U	(see key above)
Comments:						

### 7. COOPERATION

Employee demonstrates a willingness to work with associates, subordinates, supervisors and others. Responds willingly to changes in procedure, process, responsibility and assignments.

<b>OVERALL RATING:</b> (circle one)	E	G	<b>S</b>	F	U	(see key on reverse side)
<b>Comments:</b>	Complaining					

### 8. INITIATIVE

Employee demonstrates an ability to think and act independently. Originates innovative ideas and methods to improve job or complete tasks better.

<b>OVERALL RATING:</b> (circle one)	E	<b>G</b>	S	F	U	(see key on reverse side)
<b>Comments:</b>						

### 9. WORK ENVIRONMENT AND SAFETY

Maintains a safe and pleasant work environment, follows safety regulations, and actively contributes towards a safe workplace.

<b>OVERALL RATING:</b> (circle one)	E	G	<b>S</b>	F	U	(see key on reverse side)
<b>Comments:</b>						

### 10. OVERALL PERFORMANCE

Overall appraisal of the employee's job performance.

<b>OVERALL RATING:</b> (circle one)	E	G	<b>S</b>	F	U	(see key on reverse side)
<b>Comments:</b>						

### ACTION PLAN

The above criteria is important to properly evaluate your performance. The following Action Plan describes your specific strengths and weaknesses, and what can be done to improve your position toward continued growth.

Major weak points are:

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These weak points can be strengthened by:

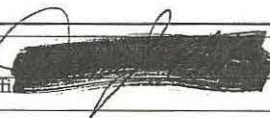
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Major strong points are:

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These strong points can be more effectively utilized by:

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Supervisor Signature \_\_\_\_\_ Date \_\_\_\_\_ Reviewing Office  Date 2/17/11

**Has this report been discussed with Employee?**  YES  NO

If "NO", Reason why: \_\_\_\_\_

If "YES", Employee's comments: \_\_\_\_\_

Supervisor Signature \_\_\_\_\_ Date \_\_\_\_\_

Employee Signature \_\_\_\_\_ Date \_\_\_\_\_

chance" standard at this preliminary investigation stage, it is found that there are reasonable grounds to believe discrimination occurred. Based on the existing record, Complainant has at least a 50 % chance of prevailing in court on a claim that he would not have been terminated but for his medical conditions (or Respondents' view of his medical conditions).

**VI. Recommendation:**

For the reasons stated above, it is recommended that the Maine Human Rights Commission issue the following finding:

1. There are **Reasonable Grounds** to believe that Respondent [REDACTED] terminated Complainant [REDACTED] employment because he was regarded as having a physical disability; and
2. Conciliation should be attempted in accordance with 5 M.R.S.A. § 4612(3).

  
\_\_\_\_\_  
Amy M. Sweirson, Executive Director

  
\_\_\_\_\_  
Domini Pham, Investigator