



Maine Human Rights Commission
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INVESTIGATOR'S REPORT

E14-0306

February 17, 2016

Marianne Sensale-Guerin (Windham)

v.

Synergent (Westbrook)

I. Complainant's Complaint:

Complainant Marianne Sensale-Guerin alleged that Respondent Synergent discriminated against her on the basis of age when it terminated her employment.

II. Respondent's Answer:

Respondent denied the allegation of discrimination and asserted that Complainant's employment was terminated because she allowed frustration with her employment to cause her behavior at work to become disrespectful and unprofessional.

III. Jurisdictional Data:

- 1) Date of alleged discrimination: June/July 2013 through April 10, 2014.
- 2) Date complaint filed with the Maine Human Rights Commission ("Commission"): June 18, 2014.
- 3) Respondent has 142 employees and is subject to the Maine Human Rights Act ("MHRA"), the Age Discrimination in Employment Act ("ADEA"), and state and federal employment regulations.
- 4) Complainant is represented by Rebecca Webber, Esq. Respondent is represented by Robert Bower, Esq.
- 5) Investigative methods used: Thorough review of the written materials provided by the parties, request for additional information, Issues and Resolution Conference ("IRC"), and a witness interview. 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) The parties in this case are as follows:

- a) Complainant (d/o/b: ██████████) worked for Respondent from January 8, 2008 through April 10, 2014, most recently as an Assistant Vice President of Finance and Administration. She was 56 years old when she was discharged.
- b) Respondent provides technology services, payment services, and direct marketing services to credit unions.
- 2) Complainant provided the following in support of her position:
- a) Complainant believed she performed her job satisfactorily. From January 2008 through April 2014, Complainant received positive performance reviews and had no disciplinary action. She received some awards while employed by Respondent. Respondent requested that Complainant take a certification course in human resources and she did.
- b) Complainant supervised a team of employees, and was supervised by the Vice President of Finance and Administration ("VP"). Complainant had discretion with her team management, including how she conveyed information to her team.
- c) In June or July 2013, Complainant discussed succession planning with VP. VP told Complainant that when VP spoke with the President/Chief Executive Officer ("President"), President asked if VP was grooming Complainant for VP's position. VP said, "Why would I do that, she is older than me". Complainant replied, "Are you telling me I'm too old to advance in this organization"? VP instantly changed the subject and did not respond.¹
- d) During Complainant's July 2013 annual physical, she told her physician about the stress she had begun to feel at work because she felt she was a target that the company wanted to get rid of based on her age and inability to advance in the company. VP started moving up deadlines and adding more work, making the work conditions more difficult. In order to meet VP's demands, Complainant worked on Saturdays and made herself available 24 hours a day, seven days per week.
- e) In late August 2013, Complainant had lunch with VP to discuss Complainant's annual review and additional certification or courses that the company wanted her to complete in order to advance in the organization. VP did not answer her questions about advancement; Complainant inquired about what she should be doing, like education, and VP did not respond. Instead, VP changed the subject. VP and Complainant discussed the possible separation of financing and human resources into two departments. VP gave noncommittal answers and indicated that President did not want a dedicated human resources department. President would not let VP go from the human resources department, thus Complainant would only be able to move laterally. Complainant felt that if she was younger that VP would have groomed Complainant for VP's position. Complainant, however, was not gunning for VP's job.
- f) That same month Complainant received her annual bonus.

¹ *Investigator Note:* Respondent did not provide specific disagreement with many of the facts presented by Complainant. Respondent indicated in its answer that "[Complainant's] lengthy 'chronology' contains several misstatements, overstatements and omissions. Most of them are not directly relevant to the reasons for the Employee's termination from employment and, therefore, will not be addressed specifically in this response."

- g) In October 2013, two additional staff members were added to Complainant's team.
- h) On October 16, 2013, Complainant received an email from the Executive Vice President ("Executive VP") requesting the ages of staff members under his divisions for planning purposes. Executive VP wanted the ages of his staff members over the age of forty broken down into three age groups (40-49, 50-59, and 60 and up) and by name and date of birth for long term planning.²
- i) From November through December 2013 after Complainant returned from a week's vacation, VP started taking Complainant's management and workload responsibilities away from her. VP instructed Complainant's staff to go to VP with questions. Complainant's staff felt there was a shift in the departmental management while Complainant was away and that they did not know who their supervisor was anymore. VP took over many of Complainant's essential job functions and management responsibilities.
- i. Complainant provided a statement from an employee ("Witness 1") who indicated that on more than one occasion after Complainant met with her staff regarding the due date for monthly reports, VP would change the date to an earlier time. VP had her reasons, but Witness 1 believed most of the time that it was for VP to assert her power over Complainant.
 - ii. While Complainant was out of the office on vacation, Witness 1 felt a change.
 - iii. Witness 1 recalled that Complainant preferred for people on her team to go to her with questions before they took their questions to VP. Witness 1 reported to Complainant first, since Complainant managed her work.
 - iv. Another member of Complainant's team ("Witness 2") observed VP undermining Complainant when VP began emailing members of Complainant's team directly regarding their individual work without going through Complainant first. In the past they followed a top down chain of command and reported to Complainant. After Complainant was on vacation, VP changed the invoice payment process so that VP had final approval before an invoice was paid, a departure from past practice. Complainant was no longer able to approve invoices for Witness 2.
- j) On December 11, 2013, VP sent an email to Complainant's staff to set up coaching sessions with each of them. This was Complainant's responsibility. Complainant was not copied on the email. Some of Complainant's staff asked her what was going on. Witness 1 was confused by VP wanting to do the coaching sessions since the goal was for the coaching sessions with VP since VP was not her manager, Complainant was her manager. Witness 2 had a similar response and reaction to Witness 1 to the change in coaching sessions.
- k) When Complainant confronted VP about undermining her work and overriding her decisions, VP told Complainant that VP had the authority to do what she felt was necessary to get the work done.
- l) During a January 2014 planning meeting, Witness 1 recalled that they discussed an older coworker's retirement. Speculation occurred about who might retire next. This kind of planning had happened before with similar discussions. During that meeting, however, Witness 1 said that she was tired of

² *Investigator Note:* Respondent was asked to explain the reasoning behind Executive VP's email, among other questions like "were all employees asked about their five year plan? Specifically, were employees under 55 years old asked about their five year plan?" and for more information about Respondent's practice of succession planning. Respondent did not provide a direct answer; instead Respondent said that "the other questions in your letter ask for information unrelated to [President's] state of mind or his motivation".

hearing VP bring up when people may retire and that it seemed like age discrimination. The subject was not brought up again during the planning meetings.

- m) On January 31, 2014, President sent a companywide memorandum explaining the promotion of a number of employees to vice president positions. Complainant and one other assistant vice president were the only ones at that level who were not promoted. All of the promoted individuals were 51 years old or younger, except Executive VP, and they all received a salary bonus.
- n) On January 31, 2014, Complainant emailed VP and asked why she was not considered for promotion and indicated that she felt that the decision was discriminatory based on Complainant's age or gender.³ Complainant requested an explanation. VP replied that the move was part of succession planning. Complainant asked why she was not part of the succession planning and VP replied that it was just the first phase and gave no indication about when or if Complainant would advance.
- o) In February 2014 during a meeting with VP and President to discuss being passed over for promotion, President told Complainant that the promotions were merely title changes. As part of the meeting, Complainant asked President what she could do to advance herself within the company. President did not answer Complainant's questions. He indicated that the decisions being made were done in the best interest of the company. Complainant outlined her accomplishments for the company and asked what else she needed to do. President did not respond. They discussed the possibility of separating the department, but President was not convinced that the company needed this division and he needed convincing. President said that an independent consultant would be retained to look at the grade level of the recent changes in positions, including Complainant's grade level of assistant vice president. They did not discuss age specifically in the meeting.
- p) About five days later, President approached Complainant to follow up on their conversation and asked if Complainant had any further questions. Complainant asked him what else she needed to do. President indicated that he was more focused on the finance component and the need to have strong people in finance. President indicated he was positioning the company for the future and that there was an aging workforce, using the terms older or aging. Complainant told President that she had no plans to retire. Complainant did not know what purpose the conversation held.
- q) During February, a sixty-one year old coworker ("Coworker") applied for a Conversion Manager position, along with another forty year old employee with no programming experience who got the job. Complainant felt that Coworker was the more experienced and qualified for the position. On March 14, 2014, Executive VP listed Coworker as an employee that the company planned to replace with no retirement date. President, in response to Executive VP's email, told Executive VP to begin looking for replacements for employees they thought would retire in the next few years.
- r) In March 2014, Complainant asked VP about the progress on the independent consultant related to the reevaluation of their positions. VP told Complainant that the firm recommended no change to Complainant's position, but did not share the results. Complainant asked how the determination was made and VP informed her that VP provided information to the consultant that VP thought was appropriate. The only other assistant vice president position that was not promoted in January was recommended for a change in grade level change upward; the affected employee was forty-two years old. Complainant learned that the consultant did not indicate that one other assistant vice president

³ Respondent's submissions included a copy of this email.

position could change upward, but the consultant's grade was overridden and the 40-year old employee in the position was given a raise.

- s) On March 31, 2014, Complainant emailed President about these changes and asked for an explanation. President said he had not seen the grades from the consultant and that he would look into it upon his return from vacation. President did not reply after his return.
- t) That same month, Complainant learned that another assistant vice president blind carbon copied VP on an email to Complainant. Complainant reported the incident to Executive VP, that employee's supervisor, and he told Complainant that she should discuss the matter with the particular employee. When confronted by Complainant, the employee denied consciously blind carbon copying VP. Complainant felt that the blind carbon copy was done to monitor her work to allow Respondent to compile information about her to discharge for something other than her age. Complainant did not accuse the employee of lying nor was she disrespectful in the way they interacted.
- u) In March 2014, Executive VP requested an update on the ages of the employees in his division for planning purposes.
- v) In March 2014, Complainant received an email discussing recruitment of 21 and 22-year olds. The email asked how to get in to the minds of these age ranges and asked if the company needed to do something different related to hiring to show how dynamic the company was.
- w) On April 1, 2014, Complainant met with Executive VP and two other assistant vice presidents to discuss the company's long term plan. They discussed the need to plan for the possibility of personnel retiring and other personnel needs as the business grew. Executive VP had a list of employees labeled with their anticipated retirement dates, if known. Complainant told him that he could not assume people would retire. Executive VP said he could ask them; Complainant told him that they could not. Executive VP said he could ask about their five year plans. Complainant agreed, so long as everyone was asked about their five year plans.⁴
- x) In April 2014, VP continued to undermine Complainant's ability to do her job when VP preemptively responded to emails addressed specifically to Complainant.
- y) On April 10, 2014, Complainant was working on a deadline for the next day. VP told Complainant to communicate to Complainant's staff that VP would be working on the monthly financial statement so that Complainant could complete another project. Complainant informed her senior accounting person and asked her to tell Complainant's staff about the plan. Complainant had disseminated information in this manner many times before without incident. In this instance, however, one of Complainant's other staff members did not hear the instruction from the senior accounting person. That employee questioned who she reported to and Complainant emailed her to clarify. VP then sent Complainant an email wanting to talk about communication. Complainant went to VP's office where VP instructed Complainant that VP wanted Complainant to communicate with her staff, not have Complainant delegate the duty to another person on Complainant's team. Complainant told VP she thought the communication was proper and VP disagreed. VP would not

⁴ *Investigator Note:* At the IRC, Respondent indicated that it did not know if all of its employees were asked about their five year plans. Respondent did not answer the query when asked in a subsequent request for information.

let the disagreement go, and Complainant told VP that she needed to leave. Complainant went back to her office and VP followed her yelling at her along the way. VP told Complainant that as Complainant's supervisor that VP could tell Complainant how to do her job and Complainant had to follow the instruction. The disagreement escalated when Complainant told VP that VP had been trying to undermine Complainant for about a year and that she not know what VP's problem was or why things changed so drastically. Complainant said she needed to go home for the day. VP agreed. VP told Complainant to put her out-of-office notice on, change her voicemail, and inform her staff. Complainant did so, telling her staff she would see them in the morning.

- i. Witness 2 observed the interaction, heard VP and Complainant in VP's office, and saw VP follow Complainant into her office. Complainant told her staff she was leaving and would see them the next day. Complainant was professional.
 - ii. Witness 1 saw Complainant leave for the day, indicating she would be in the next morning. The way that Complainant left was similar to the way that Complainant informed her staff she would be leaving for the day.
- z) Complainant arrived home at about 2:00 P.M. At 5:15 P.M. VP called her. Complainant could not understand VP and thought she was on speakerphone. VP told her that based on the events of the day that Complainant's employment was terminated. Complainant told VP she had a big problem.
- aa) That same day, Complainant emailed an outside facilitator ("Facilitator") who worked with Respondent in the past and told him that she was discharged because she disagreed with VP.
- i. When Complainant did not arrive on time for work the next day, Witness 1 wondered if she was let go. Witness 1 did not have this same thought process prior to November 2013.
- bb) Complainant was shocked. Respondent did not follow its own progressive discipline policy. Complainant knew of one 42-year old staff member who received multiple verbal warnings and at least one written warning without being discharged.
- cc) Shortly after Complainant's discharge, VP and an assistant vice president were observed shredding documents. Complainant questioned if the shredding was related to her complaints and departure.
- dd) Complainant was replaced by younger employees. A younger employee took over the human resources portions of Complainant's job. In June 2014, Respondent hired a young man under thirty years old to take over the accounting side of her job ("Accounting Manager"). Complainant felt her age made her non-promotable, not her skills. Her replacements were 16 to 20 years younger.
- ee) Complainant felt that Respondent's process of succession planning was a ruse for age discrimination. As part of Respondent's planning, it created jobs for individuals who were under 55, but not for those over 55.
- 3) Respondent provided the following in response to Complainant's allegations:
- a) In 2013, Complainant's title was changed to Assistant Vice President of Finance and Administration. Complainant reported to VP. During her employment, Complainant received bonuses based on the performance of the organization as a whole. Complainant's performance reviews were positive.

- b) Complainant desired a promotion within the company. Her skill set was in human resources. Complainant was the assistant head of the department with no room for advancement at that time. Complainant was frustrated by the circumstances.
- c) Perhaps due to her frustrations, Complainant began to misperceive actions by VP and others as undercutting Complainant's role. Facilitator recommended to VP that she become more involved in the day-to-day operations of her department and meet periodically with the staff. Complainant perceived VP's shift as undermining Complainant.
- d) On March 26, 2014, an employee mistakenly blind carbon copied VP on an email to Complainant about a lack of response from a previous inquiry.⁵ The employee meant to carbon copy VP. Complainant accused the employee of lying and treated her in a disrespectful manner by accusing her of conspiring against Complainant.
- e) In March 2014, Respondent hired an independent firm to reevaluate the pay scale for its job classifications within the organization. That firm determined that Complainant's pay grade should not be changed. Complainant reacted unprofessionally to the news and stormed out of VP's office during their conversation.
- f) On April 10, 2014, Complainant was asked to disseminate specific information to the staff of the Department about the assignment of tasks for two big projects. Complainant, instead of communicating directly with the staff, delegated the responsibility to one of her subordinates. VP saw an email from a different staff member who was confused about the tasks. VP asked Complainant about the communication method she used for the assignment. When Complainant explained that she delegated the task, VP was concerned and wanted to meet with Complainant. VP felt that the information should have been conveyed by a departmental supervisor to avoid confusion about tasks. Complainant argued with VP on this point since Complainant believed that her delegation was appropriate. VP reminded Complainant that they have been working on communication since the beginning of the year. (This kind of problem was identified in one of their departmental planning meetings.) VP reiterated that she asked Complainant to communicate the information or VP would. Complainant argued with VP. VP remained firm that Complainant should have relayed the information herself. Complainant became upset and stormed out of VP's office. VP called to Complainant and followed her, telling her it was not appropriate for Complainant to leave VP's office during a meeting. Complainant said that she was leaving for the day and then shouted that there was no problem with how she communicated information. VP instructed Complainant to set her out of office indicator. Because of her abrupt departure, Complainant missed a meeting with senior leadership where Complainant was scheduled to present.⁶
- g) As a result of the events, VP emailed President requesting a meeting to discuss the events of the day. VP was concerned that this was the second time in just over a week that Complainant left a meeting

⁵ *Investigator Note:* Respondent characterizes this employee as a subordinate of Complainant. Complainant disputed this characterization as the employee was also an assistant vice president.

⁶ Respondent stated that Complainant left without permission and that Complainant was required to get VP's permission to leave early.

with VP. They met that afternoon at about 3:30 P.M. and decided that Complainant's disrespectful and unprofessional behavior justified her immediate discharge.

- h) Respondent provided several reasons for Complainant's discharge:
- i. In Respondent's answer, Respondent indicated that Complainant was discharged because she allowed frustration with her employment to cause her behavior at work to become disrespectful and unprofessional. Respondent elaborated further that VP reached out to President and asked for help with Complainant after Complainant left early without permission. President told VP that Complainant should be discharged, as that "type of behavior could not be tolerated in a high level manager with responsibility for administering the organization's human resource functions". Respondent identified VP and President as decision makers in the discharge.
 - ii. During the IRC, Respondent indicated that Complainant was discharged because VP was upset about the breakdown in their relationship when Complainant disagreed about the way information was disseminated to her staff members. VP was so upset that she could not work with Complainant anymore. Respondent did not attempt to work it out with Complainant, indicating that they were emotional.
 - iii. In response to a request for information, Respondent said that President was the sole individual who made the decision, "no one else made that decision" to discharge Complainant after she left two meetings early. "He decided to terminate [Complainant's] employment on the spot."
- i) Complainant's discharge was unrelated to her age in any way; her discharge was based on her behavior.
- j) Respondent argued that it was compelling that Complainant's email to Facilitator that day did not allege that Respondent discharged her based on her age, but because of her disagreement with VP.
- k) Complainant had a history of insubordination. Complainant clashed with senior management several times in the two years prior to her discharge primarily related to Complainant's position and her ability to advance.⁷
- l) Progressive discipline was not used because Complainant's behavior was unacceptable given her position as an assistant vice president who was in part responsible for human resource functions.
- m) Four people have separated from the company in the last two years. One resigned (age 61), two were discharged because of "performance" (one age 55 and the other age 26), and Complainant was discharged, without explanation.
- n) Complainant's duties are performed by three individuals: VP, a human resources coordinator, and Accounting Manager.⁸ No one was hired for Complainant's position.

⁷ *Investigator Note:* Respondent provided one document in response to a request for disciplinary action involving Complainant: VP's summary of the events that took place on April 10, 2014.

⁸ *Investigator Note:* Complainant provided documentation showing that the two individuals, in addition to VP, are an Assistant Vice President of Human Resources and an Assistant Vice President of Finance, reflecting that Respondent – after Complainant's discharge – bifurcated Complainant's role. During Complainant's last few months of employment, President told Complainant that this was not a possibility at

- o) Respondent's senior management is made of people who are all over 50 years old.
 - p) Respondent has engaged in succession planning on a company wide basis for a few years and part of that planning is to anticipate when positions within the organization will become available. Respondent tracks employees' ages to advance that effort.
- 4) Investigator – Phone Interview with Witness 2:
- a) Witness 2 worked with Complainant for about six or seven years. Complainant, her supervisor, was fair and balanced in her treatment of employees. Complainant advocated for her team and set high expectations for them.⁹
 - b) Respondent is a top-down system. Witness 2 reported to Complainant and Complainant reported to VP. The company is based on procedure.
 - c) It became confusing when VP, in the last eight to ten months of Complainant's employment, started to take over tasks and duties that Complainant performed. Everyone in the department saw it and they talked about it "*ad nauseam*".
 - i. VP took over the monthly coaching sessions that were supposed to be done by Complainant. Complainant had always done the coaching sessions. Complainant was unaware that VP did this. It was "out of the blue".
 - ii. Witness 2 was in charge of accounts payable and needed approval to pay invoices. In the past, when VP was on vacation, Complainant had the authority approve invoices. In the last few months before Complainant's discharge, VP removed Complainant's authority to approve invoices while VP was on vacation.
 - d) For a long time it appeared that Complainant and VP were quite close. Then something changed, Witness 2 did not know what happened. It was about eight to ten months before Complainant's discharge when things changed. It was like a coldness came over their relationship. The working relationship turned really sour and it was not a good working environment.
 - e) Complainant told Witness 2 that she did not know why VP was doing these things. When Witness 2 asked Complainant why this happened, Complainant said she thought that VP was sabotaging her.
 - f) On April 10, 2014, she heard VP and Complainant in VP's office. There were raised voices and she could hear VP. At one point, Complainant opened the door and said she was going back to her office. VP said, "Get back here, don't you turn your back, don't you dare leave". VP followed Complainant as she walked to her office. The door was closed and Witness 2 heard raised voices and then they quieted down. VP went back to her office. Complainant came over to Witness 2's area and told her that she was going home and would see her in the morning.

the time. Respondent's October 28, 2015 submission corroborates that Respondent split Complainant's role after her discharge, explaining that the financial replacement was hired as an accounting manager and was later reclassified as an assistant vice president.

⁹ Respondent questioned Witness 2's credibility since she a close friend of Complainant; some of the factual information provided was not accurate.

- g) The way that Complainant reported she was leaving that day was similar to her past practice.
- h) There was a shift with VP. It was her personality, not her position. She was always standoffish, like VP was on a different plane than the rest of the group. After Accounting Manager was hired it was like VP was a different person. She was friendlier and more congenial, like she took an interest in their jobs and their performance.
- i) Complainant told Witness 2 in the past that there was no reason for the company to ask for their ages and she said that people should not tell them how old they are. Complainant told Witness 2 that she told VP and others in senior leadership about her concerns with asking people about their ages or plans for retirement.
- j) Witness 2 was not asked when she might retire. She perceived that no people with grey hair were being promoted, except for those that were already in their positions.

V. Analysis:

- 1) The 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. § 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 that it is unlawful "to discharge an employee or discriminate with respect to hire, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment or any other matter directly or indirectly related to employment" because of age. See 5 M.R.S. § 4572(1)(A).
- 3) Here, Complainant alleged that Respondent discriminated against her based on her age when it terminated her employment. Respondent denied the allegations of discrimination and asserted that Complainant's employment was terminated because she allowed frustration with her employment to cause her behavior at work to become disrespectful and unprofessional.
- 4) Because here there is no direct evidence of discrimination¹⁰, 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) Complainant establishes a prima-facie case of unlawful age discrimination by showing that: (1) she performed her job satisfactorily, (2) her employer took an adverse employment decision against her, (3) her employer continued to have her duties performed by a comparably qualified person or had a continuing need for the work to be performed, and (4) those who continued to perform Complainant's

¹⁰ Direct evidence" consists of "explicit statements by an employer that unambiguously demonstrate the employer's unlawful discrimination. . . ." *Doyle v. Dep't of Human Servs.*, 2003 ME 61, ¶ 14, n.6, 824 A.2d 48, 54, n.6. Although it is a close question, VP's statement about grooming Complainant to take VP's position, "why would I do that, she is older than me" and statements by President about the older or aging workforce are contested, and are not considered direct evidence of discriminatory intent in the circumstances of this case.

job duties were a substantially different age than Complainant. *See Santiago-Ramos v. Centennial P.R. Wireless Corp.*, 217 F.3d 46, 54 (1st 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; *O'Connor v. Consolidated Coin Caterers Corp.*, 517 U.S. 308, 312-13 (1996) (federal ADEA).

- 6) 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.
- 7) 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 by the strength of Complainant's evidence of unlawful discriminatory motive or by proof that Respondent's proffered reason should be rejected. *See Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16; *City of Auburn*, 408 A.2d at 1262, 1267-68. Thus, Complainant can meet her overall burden at this stage by showing that (1) the circumstances underlying the employer's articulated reason are untrue, or (2) even if true, those circumstances were not the actual cause of the employment decision. *Cookson v. Brewer School Department*, 2009 ME 57, ¶ 16. In order to prevail, Complainant must show that she 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.
- 8) Complainant has established a prima facie case for age discrimination. Complainant has shown she performed her job satisfactorily, her employment was terminated, Respondent had the need for Complainant's job duties to be performed and younger individuals were hired or assigned to perform some of those duties.
- 9) Respondent provided a legitimate nondiscriminatory reason for discharging Complainant, namely, that Complainant allowed her frustration with her employment to cause her behavior at work to become disrespectful and unprofessional.
- 10) At the final stage of the analysis, Complainant has demonstrated that Respondent's reason was false or irrelevant and that her age was a deciding factor in Respondent's decision to discharge her, with reasoning as follows:
 - a. Respondent argued that Complainant's reason for discharge did not change over the course of the case; however, Respondent initially identified that VP and President made the discharge decision and then later asserted that only President was responsible for the decision. Respondent initially provided that the reason Complainant was discharged was because of her behavior, then at the IRC stated that the reason was because VP was upset, and then Respondent clarified the decision was made because Complainant left two meetings early. Respondent's inconsistent statements about the decision makers and variations on the reasons for Complainant's discharge could indicate that Respondent's explanations are pretextual or irrelevant and ultimately that its actions were discriminatory.
 - i. Respondent's failure to provide specifically-requested information to the Investigator also contributes to the perception that its explanations are pretextual.

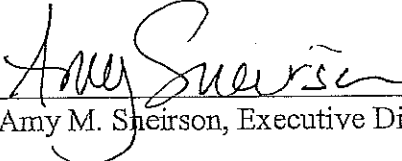
- b. Respondent failed to follow its own termination policy when discharging Complainant. While it is reasonable to expect an Assistant Vice President involved in human resources decisions to exemplify good behavior, it is illogical to believe that - with positive performance reviews and no disciplinary action until the date of her discharge - Complainant had a history of insubordination as indicated by Respondent's submissions. The record reflects that there was tension for some time between Complainant and VP. Some of that tension may have been related to Respondent ignoring Complainant's requests for information about what she needed to do to advance or about the purported fact that she was the only assistant vice president that was not reclassified and/or received a pay grade increase after an external review by an independent firm where VP was the individual who provided the information necessary to analyze Complainant's grade level.
- c. Respondent's argument that Complainant's discharge was based solely on her behavior that day seems illogical based on her past work history, especially in light of Respondent's admission that VP was also emotional when the decision was made. The statement of Witness 2, in particular, supports the fact that VP was emotional, while undermining the supposed lack of professionalism by Complainant.
- d. Respondent indicated that Facilitator told VP to become more involved in the day-to-day operations of her department and that VP followed that advice. Respondent felt this led to some of Complainant's frustration and confusion. The record is unclear whether VP discussed her increased day-to-day management in connection with Facilitator's recommendation. Two witnesses who were employees on Complainant's team were confused about why VP was implementing her own coaching sessions when she was not their manager and why she was taking over some of the day-to-day tasks. These pieces when viewed alone do not appear to be tied to Complainant's age or the discharge decision, but when viewed in the larger picture, that this change happened after Complainant asked if she was too old to advance, it sets the stage for a broader understanding of the dynamic between VP and Complainant prior to the April 10, 2014 meeting.
- e. Executive VP's multiple requests for the specific ages of all of the employees over the age of 40, grouped by decade, suggests that age was very much a factor in the "succession planning" for Respondent.

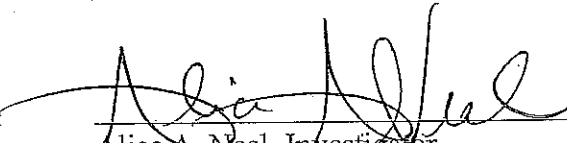
11) Discrimination on the basis of age is found.

VI. Recommendation:

For the reasons stated above, it is recommended that the Commission issue the following findings:

- 1) There are **Reasonable Grounds** to believe that Synergent discriminated against Marianne Sensale-Guerin by terminating her employment on the basis of her age; and
- 2) Conciliation should be attempted in accordance with 5 M.R.S. § 4612(3).


Amy M. Sheirson, Executive Director


Alice A. Neal, Investigator