

that the owners were planning to close the restaurant, Mr. Leask purchased it in his own name.

2. He has had no training or experience in operating any business, including a restaurant, and he did not give up his job at BIW after making the purchase—his purpose in buying Southgate was simply to keep the restaurant open. The purchase was a turnkey transaction, and Mr. Leask changed very little after the purchase. Mr. Leask runs the restaurant very informally. His involvement in day-to-day restaurant operations has been limited to coming in around the 2 p.m. closing time, to tally the restaurant's receipts for the day.

3. Responsibility for the daily operation of the restaurant rests mainly with the restaurant manager, Doreen Beaulieu, who also is Mr. Leask's domestic partner. The other restaurant staff includes cooks, dishwashers and servers. As manager, Ms. Beaulieu supervises the operation of the restaurant and covers the tasks of other employees if someone is out sick or during especially busy times.

4. Mr. Leask stays generally up to date on restaurant operations through informal conversations with employees when he comes to tally receipts in the afternoon, and also through Doreen Beaulieu, who routinely briefs him on events and developments at the restaurant. Also, he and Ms. Beaulieu are friends with one of the employees, Wendy Rego, and the three go out for supper regularly and talk about goings-on at the restaurant.

5. As owner, Mr. Leask makes the major decisions such as hiring or firing of employees, but Southgate has no written personnel policies or employee handbooks or

manuals. Likewise, there is no training of managers or employees in employment practices and procedures.

6. During the summer of 2013, one of the line cook positions at the Southgate Restaurant came open. The opening came to the attention of Plaintiff John Pappas and he submitted an application. Mr. Pappas has worked as a cook and chef at a variety of restaurants and dining facilities, and was well qualified in terms of experience for the line cook position at Southgate.

7. At one of his prior positions, Mr. Pappas had worked with Wendy Rego, one of the employees at Southgate Restaurant, and they remained friends. Ms. Rego was working as a line cook at Southgate in 2013, though she has since moved to being a server. After receiving Mr. Pappas's application, Mr. Leask asked her about Mr. Pappas, and Ms. Rego told him that Mr. Pappas was an excellent cook.

8. After an interview with Mr. Leask and Ms. Beaulieu, Mr. Pappas was hired for the line cook position. Mr. Leask was so impressed with Mr. Pappas's credentials that he offered him the line cook position and offered to pay Mr. Pappas a dollar more per hour than what Mr. Pappas had asked for—and more than Mr. Leask was paying the other cooks. As a result of the interview, Mr. Leask and Ms. Beaulieu had very high expectations of Mr. Pappas and were eager for him to start work in the Southgate kitchen. On cross-examination during the trial of his case, Mr. Pappas acknowledged “embellish[ing]” his experience during the interview.

9. Mr. Pappas's first day on the job was September 23, 2013. The menu at Southgate has numerous items, all calling for dishes to be cooked and served in specific ways. It takes time for any cook to learn any menu, including the recipes and the

presentations for various dishes, but the expectations of Mr. Pappas were especially high because of how he had presented himself and his experience during the hiring interview. However, during his first month on the job, his food preparation was slow and he made repeated mistakes, particularly in connection with which sides and garnishes went with which main dishes. He had particular difficulty filling orders involving more than two plates. Another line cook, Matthew Lackie, told Mr. Leask and Ms. Beaulieu that Mr. Pappas should be doing a better job, based on his claimed experience. In response, Mr. Leask told Mr. Lackie that he would speak with Mr. Pappas, but he did not follow through, at least immediately.

10. Wendy Rego, the line cook at Southgate who had worked with Mr. Pappas before and had recommended him to Mr. Leask, was surprised and disappointed to observe how slow Mr. Pappas was in preparing food. She regularly was scheduled to work with Mr. Pappas two or three days a week, and she regularly had to correct the plates he had prepared because wrong items had been included or correct items omitted. She later went so far as to apologize to Ms. Beaulieu and Mr. Leask for recommending Mr. Pappas to them. Crystal Webster, another server at Southgate, found that Mr. Pappas left something off plates or put the wrong food on them about half the time.

11. Ms. Beaulieu soon became aware of the problem and complained to Mr. Leask about Mr. Pappas's slow handling of customer orders and the mistakes he made in preparing and presenting dishes on the menu.

12. Another issue that emerged had to do with Mr. Pappas's attitude toward other employees, and especially toward Ms. Beaulieu. Mr. Pappas's behavior toward her was intimidating and disrespectful, and she often complained to Mr. Leask about it.

Matthew Lackie, the third Southgate line cook at the time, confirmed Ms. Beaulieu's view of Mr. Pappas's attitude—at times when Ms. Beaulieu would ask Mr. Pappas to do something, Mr. Lackie saw Mr. Pappas laugh at her or ignore the request. Mr. Lackie also heard Mr. Pappas make snide comments about Ms. Beaulieu and the servers. When Crystal Webster asked Mr. Pappas to correct one of the mistakes he regularly made in preparing plates, he sometimes responded inappropriately.

13. By late October, Mr. Leask had decided that Mr. Pappas was not working out, particularly in light of the high expectations Mr. Pappas had created at the interview and the extra pay he was receiving. About that time, it came to Mr. Leask's attention that Mr. Pappas was planning to purchase a new computer. Mr. Leask felt it would be unfair to terminate Mr. Pappas just after Mr. Pappas had made a major purchase, so he decided to act immediately.

14. Mr. Leask telephoned Mr. Pappas at home on October 22, 2013 in order to terminate him. It was Mr. Pappas's day off, and he and his wife were at home. The call lasted 14 minutes, according to telephone records. Mr. Pappas placed Mr. Leask's call on speaker so that he and his wife could listen. Mr. Leask told Mr. Pappas that Mr. Pappas was not living up to Mr. Leask's expectations and indicated that the reason for his call was to terminate Mr. Pappas's employment at Southgate. Mr. Pappas pleaded for another chance. He told Mr. Leask he needed the job and promised to "do better" and "try harder." Mr. Leask relented and agreed to give Mr. Pappas the further chance that he had asked for, on condition that Mr. Pappas would "pick up the pace" of his work and also take on more responsibility in the kitchen.

15. Thus, what Mr. Leask had intended to be a termination turned into more of a “pep talk,” in which Mr. Leask encouraged Mr. Pappas to improve his performance and meet expectations, and also told Mr. Pappas that his attitude needed to change. Mr. Pappas promised to improve both his job performance and his attitude, and to take on more responsibility.

16. After the October 22, 2013 telephone conversation, Mr. Pappas told his friend and fellow line cook, Wendy Rego, about the conversation. He told her that Mr. Leask had suggested that he not go forward with the computer purchase because his job was in jeopardy. It seemed to her that Mr. Pappas understood that his job was on the line.

17. For a time, Mr. Pappas’s performance as a line cook improved—he picked up speed in filling orders and he took on additional responsibility, such as making bread. However, after a period of improvement, his speed slackened. The interpersonal issues between Mr. Pappas and Ms. Beaulieu, meanwhile, grew worse. He continued to display an attitude that she found intimidating and disrespectful, to the point that she avoided interacting with him. In part because Ms. Beaulieu found Mr. Pappas intimidating, she did not confront him about his attitude, but she complained to Mr. Leask about Mr. Pappas and, as Mr. Leask expressed it in his testimony, said she “wanted him gone.”

18. For a time, Mr. Leask struggled with what to do—he himself had never experienced any difficulty with Mr. Pappas, and liked him. When asked at trial why he waited as long as he did before terminating Mr. Pappas, Mr. Leask said, ““I don’t know

[why] I waited. I was hoping maybe he would straighten himself out and the complaints would stop and I wouldn't have to let him go possibly. I don't know.”

19. By early December, the complaints about Mr. Pappas had reached the point at which Mr. Leask decided to terminate him. Mr. Leask acknowledged at trial that his decision to terminate Mr. Pappas was not based on anything specific, in terms of a single incident or event, but rather the cumulative complaints.

20. Mr. Leask and Ms. Beaulieu agreed that Mr. Leask would terminate Mr. Pappas at the end of his shift on Thursday, December 12, 2013. Mr. Pappas had Friday, the next day, off, meaning that another cook was already scheduled to work and Mr. Leask and Ms. Beaulieu could use that day to develop an interim schedule to cover the vacancy until it was filled. Mr. Leask and Ms. Beaulieu did not share their plan with any other Southgate employees other than Wendy Rego. She and Mr. Leask and Ms. Beaulieu were in the habit of going out for pizza every week or so at The Cabin restaurant in Bath, and at one of these occasions, a week or so before December 12, she learned from them that Mr. Leask was planning to terminate Mr. Pappas. It may have been then that she made her apology for recommending Mr. Pappas. It does not appear that Ms. Rego knew when the termination was planned to occur.

21. Despite the plan to terminate Mr. Pappas on December 12, 2013, the work schedule Ms. Beaulieu posted on Wednesday, December 11, listed Mr. Pappas as scheduled to work on Saturday, December 14 and later days. To exclude him from the posted schedule would be to signal his termination before Mr. Pappas himself was informed of it.

22. Around mid-morning on the day Mr. Leask was planning to terminate him—Thursday, December 12, 2013—Mr. Pappas suffered a seizure while he and Wendy Rego were working in the kitchen, and he was making bread. Ms. Rego became aware something was wrong and was able to catch him and break his fall somewhat, as he collapsed and fell to the floor, burning his arm on a grill as he fell. On the floor, he was unconscious and convulsing, and he lost control of his bladder. This was at least the third seizure he had experienced, having had seizures in 2007 and 2011.

23. As was his right, Mr. Pappas had not disclosed those prior seizures to Mr. Leask and Ms. Beaulieu in the course of the hiring process. Moreover, there is no evidence that Mr. Leask or Ms. Beaulieu or any other employee of Southgate knew of any seizure disorder or other disability on the part of Mr. Pappas prior to Mr. Pappas's seizure on December 12, 2013.

24. An ambulance was called and Mr. Pappas was taken to a nearby hospital. His wife, Anne Pappas, was also notified and came quickly to the restaurant, in time to see Mr. Pappas being taken into the ambulance. While she was there, she mentioned to Wendy Rego and others that this was not the first seizure Mr. Pappas had experienced. Ms. Rego asked Ms. Pappas for her telephone number in case Mr. Pappas had a further seizure. Understandably, the employees and customers at Southgate were shocked and upset by the incident.

25. About that time, Doreen Beaulieu telephoned Mr. Leask to advise him of the seizure, and they agreed that the termination planned for that afternoon at closing time would be put on hold. For one thing, Mr. Pappas had been taken to the hospital and they had no idea of his condition or how long he would be hospitalized. In any case,

they assumed he would not be back that day. They also realized that to terminate him the day of his seizure might look like unlawful discrimination.

26. However, that same afternoon, less than three hours after he had been taken away from the restaurant by ambulance, Mr. Pappas returned with his wife to the restaurant to retrieve his coat. Ms. Beaulieu and the other Southgate employees were very surprised to see him return so soon and apparently with no ill effects from the seizure. Mr. Pappas assured everyone that he was fine and would be returning to work as usual on his next scheduled workday—Saturday, December 14, 2013.

27. When Ms. Beaulieu relayed this surprising news to Mr. Leask, Mr. Leask decided that because Mr. Pappas appeared—and claimed—to be fine and suffering no ill effects from the seizure, the termination of his employment could and should proceed. At the trial, Mr. Leask expressed skepticism that Mr. Pappas could recover from a seizure so quickly, but he decided to take Mr. Pappas at his word that he had recovered and was fine.

28. He telephoned Mr. Pappas at home Friday morning, December 13, 2013, and told him he was terminated. That afternoon, not long before closing time, Mr. Pappas returned with his wife to the Southgate Restaurant to collect his last paycheck. While at the restaurant, Mr. or Ms. Pappas, or both, asked Mr. Leask why he had terminated Mr. Pappas. Mr. Leask refused to give a reason, saying, according to Mr. Pappas's trial testimony, "Not now." When Ms. Pappas persisted, Mr. Leask became angry and started toward her, until another employee of Southgate stepped between them. Mr. Leask then told Mr. and Ms. Pappas to "get out" or he would throw them out, and as they left, he yelled after them not to come back.

29. Mr. Leask's refusal to answer Ms. Pappas's request that he specify the reason for terminating Mr. Pappas was not unreasonable. The restaurant was open; customers and employees were within earshot. The fact that he responded to her request by saying, "Not now," implies a willingness to provide a reason in some other context, and Ms. Pappas should have let it go, at least for the moment. However, when she continued to insist on a reason, Mr. Leask's intemperate and threatening response was clearly uncalled for.

30. Mr. Pappas applied for unemployment compensation benefits after his termination. When Mr. Leask was asked to respond to Mr. Pappas's claim, he again reacted intemperately. He prepared (with the assistance of Ms. Beaulieu) a list of derogatory terms to describe Mr. Pappas and provided it to the Bureau of Unemployment Compensation. The list includes some words arguably consistent with Mr. Leask's testimony as to why he terminated Mr. Pappas: "lazy," "slow," "abusive," "smart mouth", "low performer," "incompetent." It includes other words—"thief," "pot smoker," and "alcoholic"—that are not substantiated in the evidence in any way. Still other words on the list—"misrepresenting", "liar"—may stem from Mr. Leask's view that Mr. Pappas oversold his qualifications for the line cook job. Below the list, Mr. Leask wrote "And these are his good points!"

31. At trial, Mr. Leask acknowledged creating the list and said that it summarized his reasons for terminating Mr. Pappas. He also acknowledged being angry about Mr. Pappas having filed for unemployment.

32. Why Mr. Leask labeled Mr. Pappas as a thief, alcoholic and pot smoker is unclear, given that there is no evidence in the trial record to support those labels, but

the most likely explanation is that Mr. Leask was so angry about the prospect of unemployment benefits going to someone he considered undeserving of them that he included all the epithets he could think of on the list.

33. After his termination, Mr. Pappas was unemployed for several months, despite diligent efforts to find new work. Mr. Pappas found work at the Maquoit Market although the hours and pay were less. Mr. Pappas did not become aware of another job comparable to the one he had at Southgate that he did not apply for. Mr. Pappas was laid off when the Maquoit Market closed down. Mr. Pappas found work again at the Lighthouse Deli where he works to the present. Mr. Pappas was recruited to work at the Lighthouse Deli by a former coworker from Maquoit Market.

34. Mr. Pappas was not the first line cook at Southgate Restaurant to have experienced seizures at work. Terry Cummings Blodgett worked as a line cook at Southgate during 2007 and 2008 and again during 2012. She had a total of eight seizures between July and November 2008 while working at Southgate, or one seizure every two to three weeks. Each time, she would fall down unconscious on the floor and an ambulance would be called to take her to a medical facility for treatment. Mr. Leask never took any job action against her as a result of her seizures. After the eighth seizure in five months, Mr. Leask said to her he was “worried sick” about her being hurt as a result of her repeated seizures and made reference to her being “a liability.” She took offense at his comment and quit, but she returned in 2012 for a time in anticipation of buying the restaurant from Mr. Leask, although that plan failed due to issues with financing. At trial, Mr. Leask indicated that his concerns about injury and liability were that a line cook who had a seizure in the kitchen might be injured by falling into or onto

a pot of boiling water, a deep fryer or a hot grill, any of which could cause very serious injury.

35. Mr. Pappas’s claims arise under the Maine Human Rights Act (“the Act” or “MHRA”), 5 M.R.S. § 4551 *et seq.* A plaintiff bringing a claim of employment discrimination under the MHRA has the burden of persuasion, to show that 1) he or she is a member of a protected class, 2) that the defendant employer imposed adverse employment action against the plaintiff, and 3) that there was a causal connection between plaintiff’s protected status and the adverse employment action. *See Cormier v. Genesis Healthcare LLC*, 2015 ME 161, ¶8, 129 A.3d 944; *Fuhrmann v. Staples the Office Superstore East, Inc.*, 2012 ME 135, ¶15, 58 A.3d 1083; *Walsh v. Town of Millinocket*, 2011 ME 99, ¶24, 28 A.3d 610.

36. Of the three enumerated elements, the second is undisputed—Mr. Pappas’s termination obviously qualifies as an adverse employment action. The first and third elements merit more detailed discussion.

37. Defendant Leask does not concede that Plaintiff Pappas suffers from a disability for purposes of the MHRA. The MHRA prohibits discrimination against persons with actual or perceived disabilities, and Mr. Pappas’s claim to be within a protected class is based on his seizure disorder. The MHRA defines “disability” to include conditions that “substantially limit a major life activity” under 5 M.R.S. §4553-A(1)(A)(1) and conditions that “significantly impairs mental or physical health” under 5 M.R.S. §4553-A(1)-(A)(2) which is further defined under 5 M.R.S. §4553-A(2)(B) as “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.”

38. In this case, the legitimate question as to whether Mr. Pappas’s seizure disorder meets the definition of “disability” arises mainly from the fact that the disorder is typically asymptomatic and has not manifested itself in any seizure for a year or more at a time. However, the fact that a condition appears only episodically and can, in fact, be controlled with medication, diet, exercise or other measures does not disqualify it from constituting a “disability” for purposes of the MHRA. Moreover, when Mr. Pappas does experience seizures, with the associated loss of consciousness and control over body functions, there is no doubt whatever that the seizure itself operates to limit substantially all major life activities and to impair physical and mental health.

39. The disability provisions of the MHRA are “construed and applied along the same contours as the ADA.” *Kelley v. Correctional Medical Services, Inc.*, 707 F.3d 108, Fn. 12 (1st Cir. 2013) citing to *Dudley v. Hannaford Bros. Co.*, 333 F.3d 299, 312 (1st Cir. 2003). The ADA contains the same language as 5 M.R.S. §4553-A (1)(A)(1) in defining “disability” as a condition that “substantially limits a major life activity.” In fact, while the MHRA has prohibited disability discrimination in employment since 1974 (physical disability) and 1975 (mental disability), the MHRA was amended in 2007 to track this language of the ADA.

40. While there are no cases that interpret the identical “substantially limited” language contained in the MHRA as amended in 2007, the plain language of the statute reflects that the intention of the Maine Legislature was to define “disability” in the same “broad manner” as the federal ADA. Notably, the MHRA definition also includes a list

of *per se* conditions which are always disabilities regardless of severity, including cancer, Crohn’s disease, diabetes, epilepsy, HIV or AIDS, and multiple sclerosis. 5 M.R.S. § 4553-A(1)(B). The Maine Legislature clearly sought to protect persons with these conditions even though the conditions may be characterized by long periods without an episode and/or periods when the conditions are in remission. This supports that the “substantial limitation” prong of the MHRA should also be interpreted to include episodic conditions such as Mr. Pappas’s seizure disorder.

41. For these reasons, the court finds and concludes that Mr. Pappas has proved the first of the three elements of his MHRA claim—that he has, and had as of 2013, a disability for purposes of MHRA. The adverse action element is undisputed. Accordingly, the analysis shifts to whether he has proved the third element—namely that there is a causal connection between his disability and the adverse action taken against him. His burden with regard to the element of causation is to prove that his disability “was a substantial, even though perhaps not the only, factor motivating the adverse employment action.” *Walsh v. Town of Millinocket*, 2011 ME 99, ¶25, 28 A.3d 610; *accord, Brady v. Cumberland Cty.*, 2015 ME 143, ¶16, 126 A.3d 1145.

42. At the beginning of the trial, counsel observed that this case likely would be decided based on whether Mr. Leask’s account of why he terminated Mr. Pappas was credited or not. This framing of the issue does have a practical basis, even though it does not reflect the legal standard—Mr. Leask does not have to prove that Mr. Pappas’s disability was *not* a substantial factor in his decision to terminate Mr. Pappas. On the other hand, given that Mr. Pappas’s evidence presents what, in the summary judgment

context, would be deemed a *prima facie* case of unlawful employment discrimination, the credibility of Mr. Leask's response is relevant if not determinative.

43. The most powerful component of Mr. Pappas's *prima facie* case is the coincidence in time of his seizure on December 12, 2013 and his termination less than 24 hours later. So in practical terms, the case does distill to whether this really was a coincidence, as Mr. Leask more or less contends, or not, as Mr. Pappas contends.

44. In determining whether a MHRA plaintiff has proved causation, the court looks to both direct and circumstantial evidence. Mr. Pappas's proof does not include much, if any, direct evidence, but this is not in the least unusual—unlawful discrimination in employment is often proved mainly or solely through circumstantial evidence.

45. As just noted, the most persuasive piece of circumstantial evidence within Mr. Pappas's proof is the timing of the termination in relation to the seizure, but other significant circumstantial evidence supporting the Plaintiff's case include the lack of any documentation of the alleged concerns about Mr. Pappas's performance and attitude; Mr. Leask's anger at Mr. Pappas, manifested after the fact, and Mr. Leask's view of Ms. Blodgett as "a liability."

46. However, there is equally substantial circumstantial evidence to the contrary. The October 22 telephone call is a salient example. Although Mr. Pappas characterized the call as a "pep talk" and it did eventually turn into that, the court credits Mr. Leask's testimony that he made the call with the intention of terminating Mr. Pappas. It is implausible that Mr. Leask would have called Mr. Pappas at home on

his day off just to give him a pep talk, given that he could have given Mr. Pappas a pep talk any afternoon at closing time.

47. The testimony of current and former Southgate employees about issues with Mr. Pappas's performance and attitude is also persuasive corroboration of Mr. Leask's explanation for the termination, and of his testimony that, before learning of the seizure, he had already decided to terminate Mr. Pappas after the restaurant closed that very day.

48. Mr. Pappas's premise, at least implicitly, is that Ms. Beaulieu, Ms. Rego, Mr. Lackie and Ms. Webster all fabricated their accounts of Mr. Pappas's subpar performance and objectionable attitude to support Mr. Leask's explanation. Mr. Pappas suggests, based on the fact that most of them appeared for trial without being subpoenaed, that they favor Mr. Leask, and this is no doubt true. But that does not mean that they fabricated their testimony. An alternative explanation could be that they agree with Mr. Leask's assessment of Mr. Pappas as "a problem employee."

49. In any event, witnesses were sequestered in this case, and there is nothing to suggest that the sequestration order was breached. Moreover, although Mr. Leask's witnesses were consistent in describing Mr. Pappas's job performance and attitude, there was enough inconsistency among their accounts to belie any appearance of collusion or fabrication. Some of them said Mr. Pappas's food was bad; some said it was good, for example. Some of them did not experience directly any negative comments from him; others did.

50. What is very clear is that Doreen Beaulieu developed a deep aversion to Mr. Pappas because of what she perceived to be his disrespectful, belittling attitude—an

attitude that was corroborated in other testimony. She testified to feeling uncomfortable around Mr. Pappas, going so far as to try to schedule him to work on her days off. Mr. Pappas inadvertently confirmed that aspect of her testimony by testifying that she never asked him to do anything and “didn't say three words to me.”

51. What also seems clear is that Ms. Beaulieu repeatedly complained to Mr. Leask about Mr. Pappas, before and after the October 22, 2013 telephone call. It can readily be inferred that she was not happy when Mr. Leask agreed to give Mr. Pappas another chance. It also is logical and readily understandable that by early December 2013, Mr. Leask came to the point of deciding he had to terminate Mr. Pappas even though, as he said, he did not want to.

52. Mr. Leask himself came across as a gruff, somewhat hotheaded, plain-spoken man who had little if any knowledge of the MHRA and other employment laws, at least prior to being sued in this case, who freely admitted to various points that did not help his case, who also acknowledged to never having had any issues himself with Mr. Pappas, and who freely admitted being very angry and unhappy about this lawsuit.

53. With the support of testimony from his current and former employees, Mr. Leask steadfastly maintained that, before he knew anything about Mr. Pappas's seizure, he made a plan to terminate Mr. Pappas at the close of business December 12, 2013; that he delayed doing so that day because of the seizure, and, after hearing that Mr. Pappas was fine and suffering no ill effects, went ahead with the plan the next morning notwithstanding the seizure. The court credits his explanation of the reason for the termination and timing of the decision as true.

54. The court finds and concludes that Plaintiff John Pappas has not proved by a preponderance of evidence that his disability was a substantial factor in Defendant Steven Leask's decision to terminate him.

IT IS ORDERED AS FOLLOWS: Judgment on the complaint is entered for Defendant Steven Leask. Defendant is awarded his costs as the prevailing party.

Pursuant to M.R. Civ. P. 79(a), the Clerk is directed to incorporate this Decision and Judgment by reference in the docket.

Dated April 26, 2016

s/ J. Horton
A. M. Horton
Justice, Business and Consumer Court