

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

MICHAEL A. GIORGI, COMPLIANT

v.

**SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY,
RESPONDENT**

DOCKET NO. E-33410

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STIPULATIONS OF FACT

At the Pre-Hearing Conference on September 4, 1986, the parties to the above-captioned case admitted the following facts and no further proof thereof shall be required:

1. The Complainant herein is Michael Giorgi, an adult male.
2. The Respondent herein is the Southeastern Pennsylvania Transportation Authority, 130 South 9th Street, Philadelphia, PA 19107.
3. The Respondent, at all times relevant to the instant case, has employed four or more individuals within the Commonwealth.
4. On June 5, 1985, the Complainant filed a notarized complaint with the Pennsylvania Human Relations Commission ("Commission") at docket number E-33410.
5. On or about June 11, 1985, the Commission staff served a copy of the complaint on Respondent in a manner which satisfies the requisites of 1 Pa. Code §33.32.
6. By correspondence dated February 11, 1986, the Respondent was notified of the probable cause finding.
7. The Commission and Respondent attempted to eliminate the allegedly unlawful practice through conference, conciliation and persuasion, but were unable to do so.
8. In correspondence dated July 22, 1986, the Commission notified the Respondent that a public hearing had been approved in this matter.

FINDINGS OF FACT

The facts contained in the foregoing "Stipulations of Fact" are hereby incorporated herein as if fully set forth.

To the extent that the Opinion which follows recites facts in addition to those here listed, such facts shall be considered to be additional Findings of Fact. The following abbreviations will be utilized throughout:

N.T. Notes of Testimony

C.E. Complainant's Exhibit
R.E. Respondent's Exhibit

1. During the period January 6, 1985 through January 11, 1985, SEPTA advertised in the newspaper for openings for Third Class Mechanics. (N.T. 13, C.E. 1)
2. In January 1985, responding to SEPTA's ad, the Complainant submitted his resume to SEPTA's recruiting office. (N.T. 14, C.E. 2).
3. SEPTA called the Complainant and scheduled an interview with the Complainant in February 1985. (N.T. 14).
4. The Complainant's first interview was with Ms. Sue Flower during which the job description for a Third Class Mechanic was reviewed and the Complainant completed a job application. (N.T. 14, 15, C.E. 3).
5. On or about February 26, 1985, the Complainant took and passed SEPTA's written tests for the Third Class Mechanic position. (N.T. 16, C.E. 4).
6. The Complainant was subsequently interviewed by Mr. Rick Davis, during which interview, the job was again explained to the Complainant and the Complainant was instructed he had to pass a physical examination. (N.T. 12).
7. The Complainant is a Type 1 diabetic, aka "juvenile diabetic", which means that the Complainant's body produces an insufficient or negligible amount of insulin. (N.T. 216, 220).
8. Type I diabetics must take insulin. (N.T. 216).
9. Since medical diagnosis at age 9, the Complainant has been an insulin dependent diabetic. (N.T. 22, 72, 73).
10. The Complainant controls his diabetes by taking an insulin injection each morning and following a specific diet: (five meals per day with in-between snacks). (N.T. 22, 23, 73).
11. During the Complainant's physical, SEPTA's doctor, Dr. Gares, informed the Complainant that SEPTA's guidelines prohibited SEPTA from hiring insulin dependent diabetics.
12. The parties stipulated that SEPTA failed to hire the Complainant because SEPTA's medical guidelines prohibited SEPTA from hiring an insulin dependent diabetic for any position which requires the operation of heavy vehicles. (N.T. 82, C.E. 7).
13. Prior to applying for a position with SEPTA, the Complainant had no medical restrictions regarding working numerous other mechanics positions. (N.T. 22-29).
14. Except for a viral condition affecting the Complainant's insulin level causing his hospitalization for a short period in 1980-1981, the Complainant had not experienced dramatic insulin-related symptom problems since high school. (N.T. 76, 77, 78, 145).
15. SEPTA's open Third Class Mechanic position was for mechanic work at SEPTA's Victory Avenue Depot, (hereinafter the "Depot"). (N.T. 175, C.E. 5).
16. The Depot is on approximately 3½ acres of land, and contains three buildings: The wash and steam room, the brake shop, and the maintenance shop. (N.T. 175, 183).
17. The Depot's maintenance shop contains 12 bays, of which 5 bays have pits and 3 have hoist lifts. (N.T. 175).
18. The 5 bay pits run the length of a bay, approximately 80', and are approximately 4' wide, and 5' deep. (N.T. 176).
19. Pits are unprotected unless a bus is over it being repaired. (N.T. 176).

20. SEPTA buses are approximately 40' long, 106" wide, 10' 7" high, and weigh approximately 16 tons. (N.T. 176, 191).
21. Mechanical problems with lights and air conditioning units on the top of buses requires Third Class Mechanics to climb 10' ladders to make necessary repairs to this equipment. (N.T. 180).
22. Third Class Mechanics work mostly alone. (N.T. 181).
23. In addition to general bus servicing and specific mechanical work done on SEPTA buses at the Depot, Third Class Mechanics are assigned duties which include driving buses and a large tow truck which tows inoperable buses. (N.T. 18, 65, 181-193).
24. There are three classes of mechanics working at the Depot. Third, Second and First. (N.T. 197).
25. In 1985, approximately 62 to 65 mechanics worked at the Depot: approximately 15 to 20 first class mechanics; 15 to 20 second class mechanics; and 10 third class mechanics. (N.T. 197).
26. There were also three shifts working around the clock: first shift 7:00 a.m. - 3:30 p.m.; second shift 3:00 p.m. to 11:30 p.m.; and third shift 11:00 p.m. to 7:30 a.m. (N.T. 202-203, C.E. 5).
27. Normally, when a mechanic is assigned to work on a bus, the assigned mechanic drives the bus from its waiting repair location in the depot yard to the maintenance shop and upon completion of the required work, the mechanic drives the bus back to a line in the depot's yard. (N.T. 181).
28. Additionally, mechanics often test drive buses on which mechanical work is being done. (N.T. 183).
29. The test drive is done either on a test track located approximately four miles from the depot or on public streets. (N.T. 183, 184) .
30. Over a month's period, as many as 50 to 75 in-service buses breakdown on the streets and mechanics must either take a replacement bus to the breakdown location and drive the malfunctioning bus back to the depot or when a breakdown or accident renders a bus inoperable, one or two mechanics take a tow truck to pick up the out-of-service bus. (N.T. 188).
31. All three classes of mechanics are assigned service calls and all three test drive buses. (N.T. 198, 201).
32. It is common practice at the depot for one mechanic to test drive another mechanic's repairs. (N.T. 203).
33. When a bus has been involved in an accident and requires towing, two mechanics are often dispatched to the scene. (N.T. 205).
34. There is only one tow truck available at the depot to work service calls. (N.T. 207).
35. Depot foreman have flexibility regarding who is assigned to specific duties. (N.T. 209).
36. Depot foremen do have mechanics other than the mechanic assigned to do repairs on a bus deliver buses from the repair waiting line to the repair bays. (N.T. 210).
37. Almost all of a third class mechanics' job is performed in the three buildings at the depot. (N.T. 204).
38. If the Complainant were to drive either a bus or SEPTA tow truck on the public streets, his status as an insulin dependent diabetic presents a demonstrable threat to the health and safety of others because of the increased risk of experiencing a hypoglycemic episode which could result in a serious accident. (N.T. 243).

39. Although working near open pits or on ladders exposes the safety of an insulin dependent diabetic to some risk, the threat of harm is minimized by proper control techniques of insulin levels, and by the exercise of a higher degree of care by the diabetic. (N.T. 227, 228, 252, 258).
40. Prior to 1982, although there were 10 to 12 mechanics per shift, only 3 or 4 mechanics were assigned to make service calls on stranded buses or to either drive or tow disabled buses back to the depot for repairs. (N.T. 199).
41. This assignment arrangement did not pose an undue hardship on SEPTA. (N.T. 199-202).
42. SEPTA refused to hire the Complainant on May 6, 1985. (C.E. 18) .
43. On May 6, 1985, newly hired third class mechanics were paid \$9.1953 per hour. (C.E. 18).
44. Third class mechanics were awarded the following rate increases:

August 4, 1985	\$10.2171 per hour
October 17, 1985	\$10.5236 per hour
January 26, 1986	\$15.5488 per hour

 (C.E. 18).
45. Following SEPTA's refusal to hire him, the Complainant made reasonable attempts to find employment. (N.T. 32, 33).
46. Between June 1985, and June 1986, the Complainant earned approximately \$200.00. (N.T. 39).
47. Between June 1986, and the date of public hearing on this matter, the Complainant earned net income of approximately \$5,570.00 from his employment with C&S Auto/Charlie's Imported Car Service. (N.T. 33-46).

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the parties and the subject matter of this case.
2. The parties and the PHRC have fully complied with the procedural pre-requisites to a public hearing in this matter.
3. Respondent is an "employer" within the meaning of the PHRA.
4. Complainant is an "individual" within the meaning of the PHRA.
5. Complainant has established a prima facie case by proving that:
 - a. He is handicapped within the meaning of the PHRA and applicable regulations;
 - b. He applied for an available position for which he was otherwise qualified; and
 - c. His application was rejected because of his handicap.
6. The Respondent failed to reasonably accommodate the Complainant's handicap/disability by modifying the third class mechanic's position to include driving responsibilities.
7. It would not have been an undue hardship. for the Respondent to modify the Complainant's duties had the Respondent hired the Complainant.
8. Handicapped job applicants must have the same degree of self-determination as able-bodied job applicants.
9. Section 9 of the PHRA gives the PHRC broad discretion to order relief including hiring with backpay after a finding of discrimination.

OPINION

This case arises on a complaint filed by Michael A. Giorgi, ("Complainant") against the Southeastern Pennsylvania Transportation Authority ("Respondent" or "SEPTA") with the Pennsylvania Human Relations Commission ("PHRC") on or about June 5, 1985, at Docket No. E-33410. The Complainant alleged that SEPTA discriminated against him on the basis of his non-job related handicap/disability, insulin dependent diabetic, by refusing to hire him for the position of third class mechanic, in violation of Section 5(a) of the Pennsylvania Human Relations Act, 43 P.S. §§951 et seq, ("PHRA") .

Following an investigation, PHRC staff found probable cause to credit the allegations of discrimination. The parties and the PHRC then attempted to resolve the situation through conference, conciliation and persuasion. When these efforts were not successful, the case was approved for public hearing. The hearing was held in Philadelphia on April 9, and 10, 1987, before Hearing Examiner Carl H. Summerson.

In January 1985, the Complainant applied for an available position with SEPTA as a third class mechanic. The actual opening was at the Victory Avenue Depot, where SEPTA services its bus fleet. The Complainant successfully completed all but one aspect of SEPTA's pre-employment screening process. It is not disputed that the Complainant was rejected only because of his failure to meet the physical requirements for the position. The general question for resolution here is whether this rejection violated the PHRA.

Section 5(a) of the Act provides in relevant part:

It shall be an unlawful discriminatory practice...for any employer because of the...non-job related handicap or disability of any individual to refuse to hire or employ, or to bar or to discharge from employment such individual, or to otherwise discriminate against such individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment, if the individual is the best able and most competent to perform the services required.

43 P.S. 955(a).

Section 4(p) provides the Act's only clarification of the reach of the cited portion of Section 5(a):

The term "non-job related handicap or disability" means any handicap or disability which does not substantially interfere with the ability to perform the essential functions of the employment which a handicapped person applies for, is engaged in or has been engaged in.

43 P.S. 954(p).

Applicable regulations promulgated by the Commission provide: Handicapped or disabled person --Includes the following:

(i) A person who:

(A) has a physical or mental impairment which substantially limits one or more major life activities;

- (B) has a record of such an impairment; or
(C) is regarded as having such an impairment.
- (ii) As used in subparagraph (i) of this paragraph, the phrase:
- (A) "physical or mental impairment" means a physiological disorder or condition, cosmetic, disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal; special sense organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine or mental or psychological disorder, such as mental illness, and specific learning disabilities.
- (B) "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- (C) "has a record of such an impairment" means has a history of or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.
- (D) "is regarded as having such an impairment" means has a physical or mental impairment that does not substantially limit major life activities but that is treated by an employer or owner, operator, or provider of a public accommodation as constituting such a limitation; has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or has none of the impairments defined in subparagraph (i)(A) of this paragraph but is treated by an employer or owner, operator or provider of a public accommodation as having such an impairment.
- 16 Pa. Code §44.4.

Non-job-related handicap or disability -- Includes the following:

- (i) Any handicap or disability which does not substantially interfere with the ability to perform the essential functions of the employment which a handicapped person applies for, is engaged in, or has been engaged in. Uninsurability or increased cost of insurance under a group or employee insurance plan does not render a handicap or disability job-related.
- (ii) A handicap or disability is not job-related merely because the job may pose a threat of harm to the employee or applicant with the handicap or disability unless the threat is one of demonstrable and serious harm.
- (iii) A handicap or disability may be job-related if placing the handicapped or disabled employee or applicant in the job would pose a demonstrable threat of harm to the health and safety of others.
- 16 Pa. Code §44.4.

These definitions have been upheld as a valid exercise of the Commission's legislative rule-making authority. Pennsylvania State Police v. PHRC, 457 A.2d 584 (1983); and see Pennsylvania State Police v. PHRC, 483 A.2d 1039 (1984), reversed on other grounds 517 A.2d 1253 (1986) (appeal limited to propriety of remedy).

The burden of proof applicable to this case was set forth by Pennsylvania's Commonwealth Court in National Railroad Passenger Corp. (Amtrak) v. PHRC, 452 A.2d 301 (1982). Complainant must first make out a prima facie case, which he has done here by proving:

1. That he was handicapped within the meaning of the PHRA and applicable regulations at the time of the action he challenges;
2. That he applied for a position for which he was otherwise qualified; and
3. That his application was rejected solely because of his handicap.

While a Complainant in a case of refusal to hire must generally also prove that the employer continued to seek other qualified applicants, such proof is unnecessary here where there is no dispute as to the reason for the Complainant's rejection. See McDonnell-Douglas Corp. v. Green, 411 U. S. 792 (1973); Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981).

As to the other elements there is no particular dispute on this record. SEPTA does not dispute that the Complainant is an insulin dependent diabetic, that he applied for the third class mechanic's position, that the position was available, that he was informed that he would be accepted for employment contingent upon passing a physical examination, and that he was rejected when he failed that examination.

Unquestionably, the Complainant is handicapped within the meaning of the PHRA and applicable regulations. The fact that he was rejected by an employer for medical reasons renders him handicapped because of the impairment of the major life activity of working. Pennsylvania State Police v. PHRC, Supra. It is also concluded on this record that diabetes is a disorder of the endocrine system which substantially interferes with such major life activities as eating and working. Because Complainant has made out a prima facie case, we must consider Respondent's explanation for its refusal to hire him.

The Pennsylvania Commonwealth Court in National Railroad Passenger Corp. v. PHRC, Supra, held that a Respondent who defends a charge of handicap discrimination by asserting that the handicap in question is job related, bears the burden of establishing that assertion. Respondent here argues that the Complainant's handicap is job related. Resolution of this question requires careful analysis of both the duties of a third class mechanic and the Complainant's ability to perform those duties. In addition, the heart of this matter requires a further inquiry into whether SEPTA could have made a reasonable accommodation of the Complainant's handicap under the circumstances presented here.

In 1985, approximately 62 to 65 mechanics worked at SEPTA's Victory Avenue Depot. The mechanics were classified as first, second, and third class mechanics. First class being the most skilled positions.

The Depot operated on three eight and one-half hour shifts: first shift, 7:00 a.m. to 3:30 p.m.; second shift 3:00 p.m. to 11:30 p.m. and third shift 11:00 p.m. to 7:30 a.m. Several mechanics from each class worked on each shift. While the record is not clear regarding what the exact differences were in the duties performed by each class of mechanics, the record does reflect that certain duties were assigned to all classes of mechanics.

Clearly, all mechanics test drove buses as part of the repair process. Test driving entailed driving a bus either on the streets or on a test track located approximately four miles from the depot.

Another job which all classes of mechanics did was to make service calls throughout the entire area serviced by SEPTA buses. Approximately 50 to 75 times per month, SEPTA buses had problems on the road sufficient enough to require mechanical assistance. Often, a mechanic had to drive an empty bus from the depot to the location of the problem bus and exchange buses. Sometimes the problem bus was capable of being driven back to the depot by the mechanic, and at other times, the problem bus was inoperable and required towing.

SEPTA mechanics also drove SEPTA's tow truck, when the tow truck became necessary. The situation was often severe enough that two mechanics were dispatched to the scene.

Buses in need of repair were also parked in a line near the depot and mechanics would drive these buses into the maintenance areas so that necessary repairs could be made. Following the repairs, the buses would then be driven from the maintenance area.

A SEPTA bus is approximately 40' long, 106" wide, 10' 7" high, and weighs approximately 16 tons. SEPTA's tow truck also weighs approximately 16 tons. Loss of control of heavy equipment of this nature on the public streets would clearly pose a substantial hazard.

In an effort to establish job-relatedness, SEPTA presented the expert testimony of Theodore Duncan, M.D. head of the Diabetes and Metabolism Section at Pennsylvania Hospital in Philadelphia. Dr. Duncan is also an assistant professor at the University of Pennsylvania Medical School. His practice has been limited to the treatment of diabetes since 1963.

Dr. Duncan testified persuasively to the following facts: diabetes is a "sugar problem" in which the body is unable to keep blood sugar within normal limits. The disease causes many complications, which may be acute or chronic; it is the acute complications which are relevant to this case.

Acute complications may be produced by blood sugar levels which are too low or too high. The symptoms of high sugar, while they may end with a diabetic coma, develop gradually over a period of several days.

The symptoms produced by low blood sugar on the other hand can come on quickly, within a matter of minutes or hours. The brain, deprived of necessary sugar, does not function normally. Symptoms include anxiety, tremors, cold sweats, hostility, and unconsciousness. Frequently, the diabetic is unaware that there is a problem, and may forget the episode. Persons suffering from low blood sugar, or hypoglycemia, may be stuporous or incoherent, causing them to be viewed as inebriated and put in jail.

Depending on various factors, diabetes may be treated by diet alone, by oral medicine, or by insulin, in combination with a regulated diet. Individuals taking insulin are more likely than other diabetics to experience the symptoms of hypoglycemia.

Because of the increased likelihood of developing hypoglycemic symptoms, diabetics using insulin are at greater risk of being involved in accidents while driving than are other diabetics or drivers not suffering from diabetes. Manual dexterity and mental acuity are impaired, and as

many as 50% of patients with impairment serious enough to cause driving hazards are completely unaware that there is any problem. In various incidents described by Dr. Duncan, diabetics suffering from hypoglycemic episodes had with them the sugar (as in a candy bar) which would have quickly ended the episode but were unable to think clearly enough to take the sugar.

For these reasons SEPTA argues that the policy in effect in 1985 which restricted insulin-dependent diabetics from driving its vehicles was not discriminatory. At least insofar as that policy was applied to prevent the Complainant from performing those driving duties required of third class mechanics at the Victory Avenue Depot in 1985, we agree. Specifically, we find that the Complainant's diabetes and insulin dependence posed an increased and demonstrable risk to the health and safety of others because of the increased likelihood that he would experience a hypoglycemic episode with attendant loss of ability to safely drive a bus or tow truck. We find it particularly relevant that such episodes are likely to occur without the awareness of the person suffering from low blood sugar.

However, our inquiry does not stop here. Unlike the PHRC case of Phillips v. SEPTA, Docket No. E-26602 (Pennsylvania Human Relations Commission, July 9, 1987), our inquiry here shall explore the question of whether SEPTA could have made a reasonable accommodation which would have provided the Complainant with an opportunity to work without posing an undue hardship on SEPTA. In Phillips, the PHRC similarly found that a job applicant for a rail equipment mechanic position who had diabetes and blindness in one eye posed a demonstrable risk to the health and safety of the public. The Complainant in the Phillips case would have been working in a position where an average of thirty to forty percent of the job involved driving.

Phillips is distinguishable from the present case because testimony in this case reveals that the major part of a third class mechanics duties are performed in the maintenance buildings at the bus depot. In fact, there was direct testimony that the requirement of driving buses or the SEPTA tow truck could easily be assigned to any mechanic on duty. Mr. Larry Moore, SEPTA's General Maintenance Manager, testified that one mechanic can test drive another mechanic's work without difficulty. Similarly, it does not matter which mechanic brings a bus from the waiting line to the repair shop for repairs. What is important is that the repairs are accomplished. Lastly, with regard to the tow truck duties and servicing buses broken down in the streets, Moore testified that it was no problem to have 3 or 4 mechanics from a shift assigned to these duties while the other mechanics remained at the Depot making repairs.

If the emergency arose when all mechanics on a shift would be needed to attend breakdowns in the street, certainly, there is no reason why the Complainant could not be assigned as the second mechanic on the tow truck. In other words, there would be no hardship at all placed upon SEPTA to make modifications in the job assignments of its mechanics to accommodate the fact that the Complainant should not drive either buses or the tow truck.

Under the PHRC Regulations:

Handicapped or disabled persons shall not be denied the opportunity to use, enjoy, or benefit from employment and public accommodations subject to the coverage of the act,

where the basis for such denial is the need to make reasonable accommodations, unless the making of reasonable accommodations would impose an undue hardship.
16 Pa. Code §44.5(b).

An employer shall make reasonable accommodations by modifying a job, including but not limited to modification of duties, scheduling, amount or nature of training, assistance provided, and the like, provided that such modification shall not impose an undue hardship.
16 Pa. Code §44.14(a).

Thus, the demonstrable risk to the health and safety of the public by reason of an insulin dependent diabetic driving a bus or tow truck on public streets could have easily been eliminated by simply modifying the Complainant's job duties to exclude driving requirements.

SEPTA also presented testimony about several hazards facing mechanics at the depot itself. SEPTA's main concern was primarily the driving component of the third class mechanic position, however, at the depot, the maintenance pits and ladder work may also increase the risk of harm to the Complainant because of the symptoms associated with hypoglycemia.

First, it is significant that SEPTA's own expert witness, Dr. Duncan testified that in his professional opinion, if the driving duties were eliminated, the Complainant could do the job with only a little higher risk to the Complainant.

16 Pa. Code §44.4(D)(ii)

Provides that "[a] handicap or disability is not job-related merely because the job may pose a threat of harm to the employe or applicant with the handicap or disability unless the threat is one of demonstrable and serious harm." The official comment further provides that:

Section 44.4(5)(ii) [sic]...is specifically intended to afford the same degree of self-determination as is available to able-bodied persons. This is considered consistent with the general goal of aiding persons with handicaps or disabilities to be full, independent participants in Pennsylvania life.

The record shows that the possibility of a hypoglycemic reaction is minimized if the diabetic takes insulin regularly, maintains a regular diet with in-between snacks and is properly educated regarding diabetes. Here the Complainant had received a course of instruction, takes insulin regularly and maintains his diet. Also, the Complainant testified that except for one incident of hypoglycemia possibly caused by a virus, he has not had such problems since high school. The evidence of record suggests that working at the depot would pose no greater risk of harm to the Complainant than such work poses to non-handicapped mechanics. The purpose of 16 Pa. Code §44.4(ii) was to give the same degree of self-determination to the handicapped as to the able-bodied. It is inconsistent with that purpose to treat a threat of harm equally posed to handicapped and able-bodied persons as job-related only in the case of the handicapped. See PA State Police v. PHRC, 483 A.2d 1039 (Pa. Cmwlth. 1984).

Accordingly, the Complainant's handicap is not job-related to the depot mechanic duties which are the majority of a third class mechanic's duties. Regarding the driving duties, SEPTA could have easily accommodated the Complainant by assigning other mechanics all the driving responsibilities. Therefore, the Respondent unlawfully discriminated against the Complainant by rejecting him for a position as a third class mechanic solely because he is an insulin dependent diabetic. Having determined that SEPTA failed to reasonably accommodate the Complainant's handicap, we must consider appropriate relief.

Section 9 of the PHRA provides that hiring, with or without backpay, may be ordered after a finding of discrimination. The function of backpay relief is to put the victim of discrimination in the position he would have attained absent the discrimination. Albermarle Paper Company v. Moody, 422 U.S. 405, 418-423 (1975); PHRC v. Transit Casualty Insurance Company, 478 Pa. 430, 387 A.2d 58 (1978). Further, the Pa. Supreme Court has declared that the PHRC has broad discretion when fashioning an award. Murphy v. PHRC, 506 Pa. 549, 486 A.2d 388 (1985).

First, the Complainant is entitled to be offered the next available third class mechanic position modified consistent with this opinion, with retroactive seniority back to May 6, 1985. Next, the Complainant is entitled to backpay from May 6, 1985 to April 9, 1987.

On this issue, it is a fundamental principle of law that a backpay award should be reduced by interim wages earned by the Complainant. See PHRC v. Transit Casualty Insurance Co. supra.

The Respondent attempted to show that the Complainant earned more money than the Complainant disclosed. However, the Respondent's efforts on this question amounts to merely innuendo and assumptions drawn from the Complainant's testimony during cross examination. It is noted, however, that cash amounts reportedly received by the Complainant during his employment at C&S Auto/Charlie's Imported Car Service were net amounts. The net amount received amounted to \$5.00 per hour. Accordingly, the \$5,570.00 reportedly earned at this employment shall be increased by 20% to approximate the gross salary of the Complainant.

In the Complainant's brief, for some reason, the Complainant suggests that unemployment compensation received after SEPTA's rejection should also be deducted. Unemployment compensation received is reported to total \$720.00.

Finally, prior to calculating the backpay award in this case, sufficient un rebutted evidence was presented to indicate that the Complainant actively sought comparable employment following SEPTA's refusal to hire him.

With these considerations in mind, the evidence indicates that at a minimum, as a third class mechanic at SEPTA, the Complainant would have earned at least the following amounts during the period from May 6, 1985 to April 9, 1987:

Time Period Amount

5/6/85 to 8/3/85 \$ 4,781.53 (\$9.1953 per hour x 40 hrs. x 13 weeks)

8/4/85 to 10/16/85	\$ 4,291.18	(\$10.2171 per hour x 40 hrs. x 10½ weeks)
10/17/85 to 12/31/85	\$ 4,630.38	(\$10.5236 per hour x 40 hrs. x 11 weeks)
1/1/86 to 1/25/86	\$ 1,473.30	(\$10.5236 per hour x 40 hrs. x 3½ weeks)
1/26/86 to 12/31/86	\$30,164.67	(\$15.5488 per hour x 40 hrs. x 48½ weeks)
1/1/87 to 4/9/87	\$ 8,707.33	(\$15.5488 per hour x 40 hrs. x 14 weeks)

During this same period the Complainant either earned or received the following deductible amounts:

5/6/85 to 12/31/85	\$ 720.00 (Unemployment Compensation)
	\$ 200.00 (Estimated amount received for odd jobs)
1/1/86 to 12/31/86	\$ 3,463.00 (Approximate gross earnings at C&S Auto/Charlie's Imported Car Service)
1/1/87 to 4/9/87	\$ 3,500.00 (Approximate gross earnings at Charlie's Imported Car Service)

Using these figures, the Complainant's backpay plus interest award is calculated as follows:

1985	
May 6, 1985 to December 31, 1985	\$13,703.09
Minus 1985 interim earnings and amounts received	<u>\$ 920.00</u>
Lost wages, 1985	\$12,783.09
Interest @ 4%	<u>\$ 511.32</u>
Total lost wages plus interest for 1985	\$13,294.41
1986	
January 1, 1986 to December 31, 1986	\$31,637.97
Minus 1986 interim earnings	<u>\$ 3,463.00</u>
Lost wages, 1986	\$28,174.97
Plus 1985 interest and lost wages	<u>\$13,294.41</u>
Total lost wages 1985, 1986	\$41,469.38
Interest @ 6%	<u>\$ 2,488.16</u>
Total lost wages plus interest for 1985, 1986	\$43,957.54
1987	
January 1, 1987 to April 9, 1987	\$ 8,707.33
Minus 1987 interim earnings	<u>\$ 3,500.00</u>
Lost wages 1987	\$ 5,207.33
Plus 1985, 1986 interest and lost wages	<u>\$43,957.54</u>
Total lost wages 1985, 1986, 1987	\$49,164.87
Interest @ 1.5%	\$ 737.47
Total lost wages plus interest for entire period	\$49,902.34

Accordingly, relief is ordered as described with specificity in the Final Order which follows:

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

MICHAEL A. GIORGI, COMPLAINTANT


v.

**SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY,
RESPONDENT**

DOCKET NO. E-33410

RECOMMENDATION OF THE HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, it is the view of the Hearing Examiner that the Respondent failed to reasonably accommodate the Complainant's handicap/disability. Accordingly, the Complainant has proven discrimination in violation of §5(a) of the Pennsylvania Human Relations Act. Accordingly, it is the Hearing Examiner's recommendation that the attached Stipulations of Fact, Findings of Fact, Conclusions of Law, Opinion, and Final Order be adopted by the full Pennsylvania Human Relations Commission.



Carl H. Summerson
Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

MICHAEL A. GIORGI, COMPLAINANT
v.
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY,
RESPONDENT

DOCKET NO. E-33410

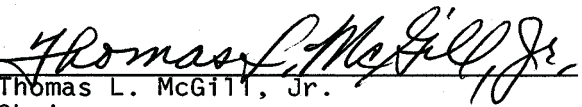
FINAL ORDER

AND NOW, this 1st day of December, 1987, following a review of the entire record in this matter, including the transcript of testimony, exhibits, briefs, and pleadings, the Pennsylvania Human Relations Commission hereby adopts the foregoing Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion, in accordance with the Recommendation of the Hearing Examiner, pursuant to Section 9 of the Pennsylvania Human Relations Act, and therefore,

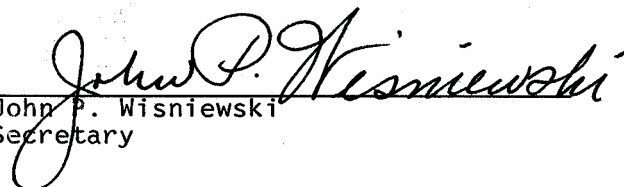
ORDERS

1. That the Respondent cease and desist from its failure to consider reasonable accommodations of the handicap/disabilities of employment applicants.
2. That the Respondent shall pay to the Complainant within 30 days of the effective date of this Order, the lump sum of \$49,902.34, which amount represents backpay lost for the period between May 6, 1985, and April 9, 1987, plus interest of 6% per annum, calculated up to the month during which the Public Hearing of this matter was held.
3. That the Respondent shall pay additional interest of 6% per annum calculated from the effective date of this Order until payment is made.
4. That the Respondent shall offer the Complainant the next available third class mechanic position at its Victory Avenue Depot, and should the Complainant accept such employment, reasonably accommodate the Complainant's handicap by modifying the position in a manner consistent with this opinion.
5. That the Respondent's offer of employment shall include retroactive seniority back to May 6, 1985, together with all benefits to which such retroactive seniority would have entitled the Complainant.
6. That within 30 days of the effective date of this Order, the Respondent shall report to the PHRC on the manner of its compliance with the terms of this Order by letter, addressed to Cynthia M. Williams, Esquire, in the PHRC Philadelphia Regional Office.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: 
Thomas L. McGill, Jr.
Chairperson

ATTEST:


John P. Wisniewski
Secretary