

**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**TIMOTHY R. VOGT, COMPLAINANT**

**v.**

**ACTION INDUSTRIES, INC., RESPONDENT**

**DOCKET NO. E-23851**

**FINDINGS OF FACT**

**CONCLUSIONS OF LAW**

**OPINION**

**FINAL ORDER**

**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**TIMOTHY R. VOGT, COMPLAINANT**

**v.**

**ACTION INDUSTRIES, INC., RESPONDENT**

**DOCKET NO. E-23851**

**STIPULATIONS OF FACT**

1. The Complainant in this action, Timothy R. Vogt, is a male individual who at the time the Complaint was filed resided at 452 Fourth Avenue, New Kensington, Pennsylvania.
2. The Complainant's current address is: Box 182, Yatesboro, Pennsylvania.
3. The Respondent in this action, Action Industries, Inc., is a Pennsylvania corporation licensed to do business within the Commonwealth of Pennsylvania with a facility located at Allegheny Industrial Park, Cheswick, Pennsylvania.
4. Action Industries is an importer, manufacturer and distributor of a wide variety of household product goods, plastics, and light bulbs. Action maintains its headquarters, a manufacturing plant and a warehouse facility at the Cheswick site.
5. The Respondent is an employer of more than four persons in the Commonwealth of Pennsylvania.
6. On May 18, 1982, Complainant completed an application for employment and turned it in to Respondent. This application was made in an effort to obtain a position in Respondent's warehouse.
7. On or about July 12, 1982, Complainant was interviewed for possible employment with the Respondent by Joseph Cornett, Respondent's assistant warehouse manager.
8. On or about July 12, 1982, Joseph Cornett made a conditional offer of employment to Complainant which would have become unconditional if Complainant had been recommended for employment by the physician who examined him during a pre-placement health evaluation.
9. The position offered to Complainant was that of temporary warehouse worker. (The position of temporary warehouse worker is described more fully in Exhibit A attached.)
10. During the employment interview, Complainant was informed by Joseph Cornett that the pool of temporary warehouse workers would be the group from which future permanent warehouse workers would be selected if Action needed to hire any additional warehouse workers.
11. At the close of the employment interview an appointment was made for Complainant to undergo a pre-placement health evaluation at the Harmarville Rehabilitation Center, Inc., on July 29, 1982.

12. On July 29, 1982, Complainant reported to the Harmarville Rehabilitation Center, filled out a Health Evaluation History, underwent x-rays performed by Howard M. Simon, Jr., M.D., Radiologist and a physical examination by Dan Welch, M.D.
13. Upon review of Complainant's medical evaluation, Dr. Welch formed a medical opinion that Complainant had rotary lateral scoliosis of the spine and that Complainant should do no heavy lifting. Dr. Welch recommended to the Respondent that the Respondent not hire Complainant for the position of temporary warehouse worker.
14. On or about August 9, 1982, Complainant contacted the office of Joseph Cornett, to inquire about the status of his application for employment with the Respondent. Complainant was informed that he would not be hired because of the results of his pre-employment health evaluation.
15. Respondent's decision not to hire Complainant was based on Dr. Dan Welch's medical opinion regarding Complainant's medical condition.
16. On October 7, 1982, Complainant filed a verified complaint with the Pittsburgh Regional Office of the Pennsylvania Human Relations Commission alleging that Respondent's decision not to hire him unlawfully discriminated against him on the basis of a non-job related handicap or disability.
17. The complaint was duly served upon the Respondent by certified mail along with a letter from Joseph Retort dated October 18, 1982.
18. The PHRC found Probable Cause to credit the allegations of the complaint in this case in April, 1983, and Respondent was notified of this by a letter dated April 14, 1983 from Joseph Retort, Human Relations Representative.
19. The PHRC approved this for public hearing on June 29, 1983 and Respondent was notified of this by a letter dated July 11, 1983 from Homer C. Floyd, Executive Director.
20. Respondent and Complainant have attempted to conciliate this matter but their efforts at conciliation have failed.
21. Respondent experienced the following claim history regarding workers' compensation claims by warehouse workers:

**Workers' Compensation Claims by Warehouse Workers**

	Claims Costs as a Percent of Company <u>Total</u>	Lifting Injury Claims Costs as a Percent of Company <u>Total</u>	Warehouse Workers as a Percent of <u>Company Population</u>
FY 1978	67	42	15
FY 1979	92	73	12
FY 1980	81	44	10
FY 1981	55	46	9
FY 1982	0.6	0.5	13

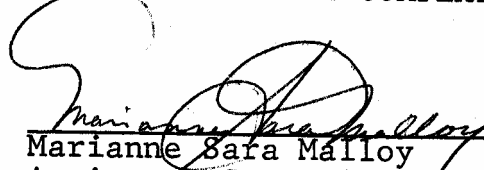
22. Respondent incurred the following workday loss by injured warehouse workers:

	<u>Lost Workdays</u>	<u>No. Workers</u>
FY 1978	859	105
FY 1979	456	88
FY 1980	832	82
FY 1981	141	78
FY 1982	28	78

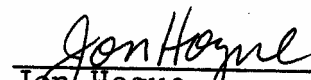
23. Attached hereto as Exhibit B is a document which lists the names of all individuals who applied for a position in Action's warehouse at or about the same time as Complainant. Exhibit B also indicates which of these individuals were employed by Action. For those individuals who were employed by Action, Exhibit B further indicates the number of days worked and annual wages earned by each of those employees during the years 1982 through 1985.
24. All employees listed on Exhibit B were at all times employed by Action Industries in the position of temporary warehouse worker with the exception of Esther Drum who was employed as a temporary warehouse worker until April 1, 1985 at which time she was offered and accepted a full-time position in the warehouse.

The undersigned parties agree to stipulate that the facts set forth above are true and correct and that proof of these facts will not be required at any Public Hearing on this matter.

ON BEHALF OF THE COMPLAINANT

  
 Marianne Sara Malloy  
 Assistant General Counsel  
 Pa. Human Relations Commission  
 11th Floor, State Office Building  
 300 Liberty Avenue  
 Pittsburgh, PA 15222-1210

ON BEHALF OF THE RESPONDENT

  
 Jon Hogue  
 Titus Marcus & Shapira  
 624 Oliver Building  
 Pittsburgh, PA 15222

## **FINDINGS OF FACT**

The foregoing Stipulations of fact are hereby adopted and incorporated into these Findings as if fully set forth. Any factual findings recited in the Opinion below but not set forth here shall be deemed to be additional findings of fact.

1. Complainant Timothy Vogt was not hired by Respondent Action Industries, Inc. because Action perceived that his back condition would substantially interfere with his ability to perform heavy labor.
2. Complainant performed heavy labor prior to applying for the position at Action; he has at no time experienced pain or any other difficulty with his back.
3. Mr. Vogt's scoliosis measures fifteen degrees using the Cobb technique.
4. Temporary warehouse workers at Action perform heavy labor.
5. Dr. Welch did not measure the degree of Complainant's scoliosis at the time of performing the pre-employment health evaluation.
6. Dr. Welch cited medical authorities in support of his medical opinion which tended to contradict that opinion.
7. Pain and other difficulties incidental to scoliosis tend to increase as the degree of curvature increases.
8. Scoliosis of fifteen degrees does not render an individual more prone than is anyone else to injury while performing heavy labor.

## **CONCLUSIONS OF LAW**

1. The Pennsylvania Human Relations Commission has jurisdiction over the parties and subject matter of this case.
2. The parties and the Commission have fully complied with the procedural prerequisites to a public hearing in this case.
3. Complainant is an individual within the meaning of the Pennsylvania Human Relations Act ("Act").
4. Respondent is an employer within the meaning of the Act.
5. Complainant has met his initial burden of establishing a prima facie case by proving that:
  - a. He belongs to a protected class;
  - b. He applied for a position for which he was qualified;
  - c. His application was rejected; and
  - d. The employer continued to seek applicants of equal qualifications.
6. Complainant is a handicapped or disabled person within the meaning of the Act and applicable regulations.
7. Respondent has met its burden of introducing evidence tending to establish a legitimate, non-discriminatory reason for its conduct, namely the job-relatedness of Mr. Vogt's handicap or disability.
8. Complainant has met his ultimate burden of persuasion that his condition is a non-job related handicap or disability.
9. Prevailing Complainants are entitled to relief including lost wages and hiring, with interest of six percent on lost wages.

## OPINION

This case arises on a complaint filed by Timothy R. Vogt ("Complainant") against Action Industries, Inc. ("Respondent" or "Action") with the Pennsylvania Human Relations Commission ("Commission") on or about October 7, 1982 at Docket No. E-23851. Mr. Vogt alleged that Respondent discriminated against him by refusing to hire him for a warehouse position after he did not pass a pre-employment physical examination; he claimed that this action violated Sections 5(a), 5(b)(1), and 5(b)(5) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §§951 *et seq.* ("Act"). On or about July 21, 1983, Respondent filed an answer to the complaint which denied any violation of the Act.

Commission staff conducted an investigation into the situation and found probable cause to credit the allegations of discrimination. The Commission and the parties then attempted to eliminate the allegedly unlawful practices through conference, conciliation and persuasion. These efforts were unsuccessful, and the case was approved for public hearing. The hearing was held on June 27, 1985 in Pittsburgh, Pennsylvania, before Hearing Examiner Edith E. Cox.

The essential facts giving rise to this dispute are not contested. Action is an importer, manufacturer and distributor of household product goods, plastics, and light bulbs; it maintains its headquarters, a manufacturing plant, and a warehouse facility at the Allegheny Industrial Park in Cheswick, Pennsylvania. On May 18, 1982, Mr. Vogt completed an application for a position in the warehouse. On or about July 12, 1982, Mr. Vogt was interviewed by Action's assistant warehouse manager, Joseph Cornett. Mr. Cornett offered Mr. Vogt a position as temporary warehouse worker; the parties agree that temporary warehouse workers perform heavy labor, regularly lifting loads of up to 65 pounds and occasionally lifting even heavier loads. The offer of employment was conditional; Complainant was required to undergo a pre-employment health evaluation and obtain a recommendation of employment from the examining physician.

The health evaluation was performed on July 29, 1982 at the Harmarville Rehabilitation Center. Complainant's medical history was taken; X-rays and a physical examination were done. The evaluation revealed that Complainant had rotary lateral scoliosis of the spine. The examining physician, a physiatrist, Dan Welch, M.D., therefore formed a medical opinion that Complainant should not do heavy lifting and advised Respondent that he could not recommend Mr. Vogt for employment as a temporary warehouse worker. Mr. Vogt was informed of this decision on August 9, 1982. His complaint to the Commission followed.

Complainant bears the initial burden of proof, that of establishing a prima facie case of unlawful employment discrimination. McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973); General Electric Corp. v. Pennsylvania Human Relations Commission, 365 A.2d 649 (1976). The United States Supreme Court in McDonnell-Douglas set out the elements of a prima facie case of refusal to hire brought under the federal anti-discrimination law, elements which have been repeatedly required by Pennsylvania courts and this Commission in cases brought under the Act. Pennsylvania Department of Transportation v. Pennsylvania Human Relations Commission, 480 A.2d 342 (1983); Pennsylvania State Police v. Pennsylvania Human Relations Commission, 457 A.2d 584 (1983): Complainant must establish that:

1. He belongs to a class protected by the Act; and

2. He applied for a position for which he was qualified; and
3. His application was rejected; and
4. The employer continued to seek applicants of equal qualifications.

Complainant has met this burden. The parties have stipulated to all but the first element, and have in essence stipulated to that as well. It is agreed that Complainant was rejected solely because of the results of his physical examination. While the Act does not define "handicap or disability", pertinent Commission regulations provide at 16 Pa. Code §§44.1 et seq.:

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; 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
    - ...
    - (B) "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
    - ...
    - (D) "is regarded as having 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...
- 16 Pa. Code §44.4.

Respondent rejected Mr. Vogt because it perceived that his back condition would substantially interfere with his ability to perform manual labor. He is therefore a handicapped or disabled person within the meaning of the above cited regulations, and is protected by the Act from discrimination on that basis.

Complainant by establishing a prima facie case has created a presumption that the conduct complained of was discriminatory. Respondent may (and, in order to prevail, must) rebut the presumption thus created by introducing admissible evidence of a legitimate, non-discriminatory reason for its action. Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1980); Pennsylvania Department of Transportation v. Pennsylvania Human Relations Commission, 480 A.2d 342 (1984). Job relatedness of a handicap is, of course, such a reason; the Act's protection extends only to non-job related handicaps.

At least one Pennsylvania case deciding a claim that a handicap was job related suggests that the burden placed on an employer making that assertion is one of persuasion as well as the burden of

production apparently contemplated by Burdine: in National Railroad Passenger Corporation (AMTRAK) v. Pennsylvania Human Relations Commission, 452 A.2d 301 (1982), Commonwealth Court held that the burden of establishing job relatedness is on the employer. Any apparent discrepancy in the decided cases may however be resolved by analysis of the Complainant's overall burden, which is the ultimate burden of persuading the finder of fact that an unlawful discriminatory practice has occurred. In the context of a case alleging discrimination on the basis of handicap, where a claim of job relatedness is made, this means that a Respondent may rebut a prima facie case by introducing evidence of job relatedness. Consistent with both Burdine and Amtrak, Complainant may still attempt to meet the ultimate burden of persuasion by introducing evidence relevant to the issue of job relatedness which contradicts the employer's evidence. Burdine discusses this opportunity of Complainants to meet their ultimate burden in terms of demonstrating that a Respondent's proffered reasons for a challenged action are pretextual. Where as here the reason for the rejection is not in dispute and the relevant inquiry is whether a handicap is job related, Complainant can meet the ultimate burden by demonstrating that his handicap is in fact not job related.

Action here argues that, because its decision to reject Mr. Vogt was based on a responsible medical opinion, additional medical evidence going to job relatedness should not be considered, as it was not available to Action at the time of making its decision. This argument would have the effect of binding this Commission and reviewing courts to the opinion of an employer's physician about the job relatedness of a disability, and would prevent Complainants from ever challenging that opinion. This is not the result contemplated by the Act or the cases interpreting it.

Initially, it is noteworthy that both federal and state cases have explicitly held that flexibility in applying the McDonnell-Douglas elements to differing factual situations must be maintained. McDonnell-Douglas v. Green, 411 U.S. at \_\_\_, n. 8; Reed v. Miller Printing Equipment Division of Western Gear Corp., 462 A.2d 292 (1983). The need for flexibility does not end with establishment of a prima facie case.

It is also significant that numerous cases decided under the Act have considered the issue of job relatedness by weighing evidence introduced by both the employer and the Complainant. See e.g. Pennsylvania Department of Transportation v. Pennsylvania Human Relations Commission, 457 A.2d 584 (1983); National Railroad Passenger Corp. v. Pennsylvania Human Relations Commission, 452 A.2d 301 (1982). As in any other case, questions regarding the weight to be accorded to the evidence presented are for the finder of fact to resolve. Harmony Volunteer Fire Co. v. Pennsylvania Human Relations Commission, 459 A.2d 439 (1983).

Respondent here has rebutted Complainant's prima facie case by introducing the deposition (in lieu of live testimony) of Dan Welch, M.D. Dr. Welch, as previously noted, was the physician who examined Mr. Vogt and recommended to Action that he not be hired. Dr. Welch testified in his deposition to his medical opinion that persons with scoliosis are more prone than persons without the condition to serious injury while doing heavy labor. After testifying to the procedures he followed in examining Mr. Vogt, and to his familiarity with the duties of Action's temporary warehouse workers, Dr. Welch stated that there would be a significant risk of serious, potentially permanently disabling, injury to Mr. Vogt if he attempted to perform those duties.



Such risk of injury may render a handicap job related under applicable Commission regulations. 16 Pa. Code §44.4 provides in relevant part: "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." In the absence of any contradictory evidence, Dr. Welch's testimony would rebut Complainant's prima facie case and compel a decision in favor of Action. Contradictory evidence was, however, introduced. Resolution of this case therefore requires a careful evaluation of all evidence relevant to job-relatedness.

Complainant's evidence of non job-relatedness was of two sorts. He himself testified that he performed heavy labor in several capacities prior to applying for the Action job, and that he has at no time experienced any difficulty with his back. He also introduced, in lieu of testimony, the depositions of two physicians. The first, Robert Yanchus, M.D., is an orthopedic surgeon who examined Mr. Vogt and reviewed all of his medical records from Harmarville, including the X-ray of his back and Dr. Welch's report. The second, Michael Alexander, M.D., is a physiatrist who did not examine Mr. Vogt but reviewed both his Harmarville records and the report of Dr. Yanchus' examination. Both physicians also reviewed a description of the duties of temporary warehouse worker's at Action. Both physicians concluded that Mr. Vogt was fully able to perform those duties, without any increased risk to injury.

All three physicians agreed that Mr. Vogt has scoliosis, which all three defined essentially as curvature of the spine. The degree of scoliosis was variously characterized as "moderate" (Dr. Simon, the Harmarville radiologist), and "minimal to moderate" (Dr. Yanchus). Both Dr. Yanchus and Dr. Alexander measured the degree of curvature, using the generally accepted Cobb technique, and agreed that it was 15°. Dr. Alexander's uncontradicted testimony was that no curvature of less than 10° is diagnosed as scoliosis; he explicitly disagreed with the term "moderate" but did not substitute any other term. Other than this difference in the terms used to characterize Mr. Vogt's scoliosis, the three physicians differed explicitly only in their conclusions about his employability.

The medical evidence does nonetheless differ significantly. Complainant argues that his own evidence is more persuasive, a contention which is borne out both by analysis of Dr. Welch's testimony and by comparison of it with the opinions of Drs. Yanchus and Alexander.

Most striking is the fact that Dr. Welch did not at the time of his examination of Mr. Vogt measure the degree of curvature. Cross-examined on that omission, he responded that "...the degree of curve in my medical opinion, whether it was 15 degrees or 25 degrees, was significant enough that it was in my opinion would impair his ability to do the job." (Welch deposition, p.21) Yet the text and articles cited by Dr. Welch in support of his opinion and admitted to the record as exhibits consistently discuss the problems caused by scoliosis as a direct function of the degree of curvature present. One of them in fact characterizes as "mild" any scoliosis of less than 50°, and did not even include in the study sample any subject with curvature of less than 19°. ("Physical Work Capacity in Adolescent Patients with Mild Idiopathic Scoliosis", DiRocco, Breed, Carlin and Reddan) Another explores the question of pain incidental to scoliosis. It too finds that pain increases with the degree of curvature, and notes as well that the incidence of

back pain in patients with scoliosis is similar to the incidence of back pain in the general population. ("The Incidence of Low-Back Pain in Adult Scoliosis", Kostvik and Bentivoglio) The text mentioned by both Drs. Welch and Alexander includes the summary statement that "... the natural history of curves of less than 40 degrees is one of a rather benign condition. Most do not progress or progress only minimally. Most do not become significantly symptomatic or bothersome." ("Scoliosis and other Spinal Deformities", Moe, Bradford, Winter and Honstein) None of the authorities cited directly addresses the issue central to resolution of this case, namely the extent to which mild scoliosis such as Mr. Vogt's renders an individual more prone than anyone else to injury while doing heavy labor.

The record is in fact devoid of persuasive evidence that a scoliosis of 15 degrees poses such an increased risk of injury. Dr. Welch did allude briefly to "... three gentlemen all of who had less curves than Mr. Vogt, who suffered injuries while doing moderate to heavy type work..." (Welch deposition, p. 13), all of whom he treated subsequent to examining Mr. Vogt, none of whom performed temporary warehouse work for Action Industries. He however provided no comparative data from any source which would support the conclusion that a mildly scoliotic spine is more prone to injury than any other.

Similarly, the parties stipulated to Respondent's experience of Workers' Compensation claims by its warehouse workers between 1978 and 1982. While these claims accounted for a disproportionate percentage of the company's total for all years except 1982, there is no data which even suggests that warehouse workers with scoliosis accounted for any of the injuries, or that the dramatic reduction in injuries in 1982 was the result of screening out applicants with scoliosis. At best, the figures establish that, in four of the five years for which data was provided, warehouse workers incurred more than their share of injuries at Action. While this suggests that warehouse work at Action is (or was, between 1978 and 1981) hazardous, it does not show that any greater hazard would exist for Mr. Vogt. As Commonwealth Court held in Pennsylvania State Police v. Pennsylvania Human Relations Commission, 483 A.2d at 1043:

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.

As noted, Complainant, in addition to disputing Respondent's evidence, introduced affirmative evidence of his ability to perform the job in question. The testimony of Dr. Alexander, in particular, was highly persuasive. He testified that his own experience included both treating patients with scoliosis and publishing papers dealing specifically with scoliosis. His analysis of the condition in general and Mr. Vogt's situation in particular was extremely thorough; it repeatedly emphasized the extent to which any meaningful discussion of scoliosis must begin with measurement of the degree of curvature present. And it was unequivocal in concluding that the degree present in Mr. Vogt would not interfere with his overall health or his ability to perform heavy labor.

Complainant has thus met his ultimate burden of establishing that his condition is not job-related, and that Action's refusal to hire him violated Section 5 of the Act. Appropriate relief must

therefore be considered. Following a finding of discrimination, the Commission is empowered by Section 9 of the Act to award relief which includes hiring and lost wages. Complainant here requests both.

The parties stipulated that a number of individuals were hired by Action in 1982 as temporary warehouse workers and remained so employed; through the time of the hearing, with the exception of one Esther Drum who accepted a full-time position in the warehouse on April 1, 1985. The stipulation also included the numbers of days worked and the amounts earned by each worker in each of the relevant years. These amounts varied considerably, for reasons which were not made part of the record.

The purpose of backpay relief is to restore aggrieved individuals to the positions in which they would have been absent the discriminatory conduct. Backpay calculations need not be mathematically precise; they need only provide a reasonable means to determine the probable amount of wages lost. Pennsylvania Human Relations Commission v. Transit Casualty Insurance Co., 340 A.2d 624 (1975). On this record, a reasonable means of arriving at this amount is to calculate the average earnings for each of the relevant years.

The earnings of David Shade are not used in the calculation of backpay; Mr. Shade was employed by Action for a total of two days, both in 1982, making his earnings atypically low in the extreme. The lump sum awarded Order is based on average earnings for each relevant year, as follows:

1982	\$3,522
1983	\$6,147
1984	\$7,642
1985	\$3,914

Interest of six percent per annum also appropriate. Goetz v. Norristown Area School District, 328 A.2d 579 (1975). Finally, the Act's stated purpose of fostering the employment of all individuals in accordance with their fullest capabilities will best be served in this case by ordering that Mr. Vogt be offered the next available position as temporary warehouse worker at Action. Relief is therefore ordered as described with specificity in the final order which follows.

**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**TIMOTHY R. VOGT, COMPLAINANT**

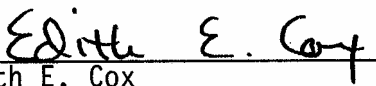
**v.**

**ACTION INDUSTRIES, INC., RESPONDENT**

**DOCKET NO. E-23851**

**RECOMMENDATION OF HEARING EXAMINER**

Upon consideration of the entire record in this case, the Hearing Examiner concludes that Respondent violated Section 5(a) of the Pennsylvania Human Relations Act, and therefore recommends that the foregoing findings of fact, conclusions of law, and opinion be adopted and ratified by the full Pennsylvania Human Relations Commission, pursuant to Section 9 of the Act.

  
\_\_\_\_\_  
Edith E. Cox  
Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

TIMOTHY R. VOGT, COMPLAINANT

v.

ACTION INDUSTRIES, INC., RESPONDENT

DOCKET NO. E-23851

**FINAL ORDER**

AND NOW, this 27<sup>th</sup> day of November, 1985, the Pennsylvania Human Relations Commission hereby adopts the foregoing 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. Respondent shall cease and desist from discriminating on the basis of non-job related handicap or disability;
2. Respondent shall offer Complainant the next available position as temporary warehouse worker;
3. Respondent shall pay to Complainant the lump sum of \$21,225.00, plus interest of 6% per annum, (calculated from the time of refusal to hire), within thirty (30) days of the effective date of this Order;
4. Within thirty (30) days of the effective date of this Order, Respondent shall report to the Commission on the manner of its compliance with the terms of this Order by letter addressed to Marianne Malloy, Esquire, in the Commission's Pittsburgh Regional Office.

Pennsylvania Human Relations Commission

By: \_\_\_\_\_

JOSEPH X. YAFFE  
Chairperson

Attest:

\_\_\_\_\_  
ELIZABETH M. SCOTT  
Secretary