

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

DANIEL BUTLER, Complainant	:	PHRC CASE No. 200600473 EEOC No. 17FA662793
EDWARD GARDNER, Complainant	:	PHRC CASE No. 20060755 EEOC No. 17FA662792
SAMUEL GOLLAPALLI, Complainant	:	PHRC CASE No. 200600941 EEOC No. 17FA662791
GERARD KERSHAW, Complainant	:	PHRC CASE No. 200600769 EEOC No. 17FA662789
DAVID LEWIS, Complainant	:	PHRC CASE No. 200505979 EEOC No. 17FA661513
MARK ST. MARIE Complainant	:	PHRC CASE No. 200600939 EEOC No. 17FA662790
and,	:	
DAVID THUMMEL, Complainant	:	PHRC CASE No. 200600474 EEOC No. 17FA662997
v.	:	
CITY OF PHILADELPHIA, Respondent	:	

STIPULATIONS

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF HEARING PANEL

FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

David Lewis v. City of Philadelphia
PHRC Case No. 200505979, EEOC No. 17FA661513

Gerard Kershaw v. City of Philadelphia
PHRC Case No. 200600769, EEOC No. 17 FA662789

Mark St. Marie v. City of Philadelphia
PHRC Case No. 200600939, EEOC No. 17FA662790

David Thummel v. City of Philadelphia
PHRC Case No. 200600474, EEOC No. 17FA662997

Edward Gardner v. City of Philadelphia
PHRC Case No. 200600755, EEOC No. 17FA662792

Daniel Butler v. City of Philadelphia
PHRC Case No. 200600473, EEOC No. 17FA662793

Samuel Gollapalli v. City of Philadelphia
PHRC Case No. 200600941, EEOC No. 17FA662791

STIPULATIONS

The following facts are admitted by all parties to these cases and no further proof thereof is required.

1. Daniel Butler, Edward Gardner, Samuel Gollapalli, Gerard Kershaw, David Lewis, Mark St. Marie, and David Thummel ("Complainants"), applied for the position of firefighter in Respondent City of Philadelphia's Fire Department ("Respondent"). They took and passed the City's Civil Service Test, Examination No. 06Q36B01, in November 2005 ("2005 Examination") and received their respective test scores. They were placed on the certified eligibility list ("2006 List"). Exhibit "1."

2. In Respondent's Application for Firefighter that Complainants completed, it states that:

To be hired for the position:
[You] must have reached Eighteenth (18th) birthday, but not have reached fortieth (40th) birthday by date of appointment.

Exhibit "2."

3. Complainants paid Respondent's \$35 application fee and Respondent accepted same, permitting Claimants to take Civil Service Examination ("CSE") Number 06Q36B01.

4. In order to be hired as a Firefighter, Complainants, like all applicants, were required to take and pass the written examination.

5. Once applicants complete the written examination, the examinations are scored and the applicants who pass the examination are placed on an eligible list of hires.

6. Based on their respective placement on the eligible list of hires, applicants are required to undergo a background screening and physical examination.

7. Applicants who successfully complete the background screening and physical examination may be selected to enter the Fire Academy based on their respective placement on the eligible list of hires.

8. Respondent certified the Eligible List for Civil Service Examination 06Q36B01 in January 2006 ("2006 List").

9. Applicants who had successfully passed the 2005 Examination were placed on the 2006 List and began to be appointed to the Fire Department after successfully completing the remainder of the screening process.

10. Complainants received the following examination scores and certified eligible ranks:

	<u>Name</u>	<u>Score</u>	<u>Rank¹</u>
a.	Gerard Kershaw	107	10
b.	Samuel Gollapalli	104	28
c.	Mark St. Marie	100	74
d.	David Thummel	97	193
e.	Edward Gardner	96	263 (V)
f.	Daniel Butler	94	448
g.	David Lewis	93	496.7 (V)

11. On or about February 2, 2006, Respondent sent each Complainant a letter stating:

Congratulations, you passed the examination for the position of Firefighter, (06Q36B01). ...If vacancies occur, our staff will contact you by mail to make an appointment for a job interview when we reach your rank. Good luck with your career.

Exhibit "3" (Exemplar).

12. Complainants have dates of birth and ages as follows:

	<u>Name</u>	<u>DOB</u>	<u>Age on Exam 11/19/05</u>	<u>Age as of 2/2/06</u>	<u>Age Now</u>
a.	Gerard Kershaw	5/8/65	40	40	42
b.	Samuel Gollapalli	8/3/65	40	40	42
c.	Mark St. Marie	9/17/61	44	44	46
d.	David Thummel	11/5/64	41	41	43
e.	Edward Gardner	11/24/61	44	45	46

¹ Veteran's preference ("V") is awarded to Candidates with military service pursuant to the Pennsylvania Military Affairs Act.

f.	Daniel Butler	5/28/65	40	40	42
g.	David Lewis	7/30/64	41	41	43

13. On or after February 16, 2006, Respondent sent each Complainant a letter stating that they were "examined in error for the position of Firefighter" and did not meet the eligibility requirements for the position of Firefighter. Exhibit "4" (Exemplar).

14. On or about April 27, 2006, Respondent sent Complainant David Lewis and additional letter stating

"You recently passed the examination for the position of Firefighter, (06Q36B01). We have received and processed your claim for Veteran's Preference. Your new score is 93.00, V and your new rank on the eligible list is 496.700...If vacancies occur, our staff will contact you by mail to make an appointment for a job interview when we reach your rank. Good luck with your career."

Exhibit "5."

15. Complainants had all reached their 40th birthdays before the date they were placed on the eligible list of hires.

16. Had Complainants names not been removed from the eligibility list because of their ages they would have been scheduled for medical exams and the remainder of the steps necessary to complete the screening process to become Philadelphia Firefighters.

17. Had the Complainants been determined as qualified (on a pass/fail basis) following the medical examinations and the background investigations, their ranks on the eligibility list would have been determined based solely on the written test results and applicable veterans preference.

18. Had Complainants passed the remaining steps in the hiring process, they would have been eligible for hire in the position of Firefighter and would have been scheduled

to begin training at the Fire Academy no later than January 2007 based on their placement on the 2006 List.

19. Respondent did not permit Complainants to complete the applicant screening process to be hired as Firefighters because they were all age 40 or over.

20. Complainants each timely filed separate complaints with the Pennsylvania Human Relations Commission alleging that Respondent has discriminatorily refused to hire them based on their age.

21. Complainants' Complaints were consolidated by the Pennsylvania Human Relations Commission because of the commonality of their allegations and of the Respondent.

22. Respondent filed Answers to each Complaint. In its Answer, Respondent admits that "Firefighters who are over 40 years of age are rejected automatically." Exhibit "6" (Exemplar).

23. In its Answer, Respondent also admits that it has hired individuals over the age of 40 in the past. Id.

24. On December 5, 2006 and February 6, 2007, the Pennsylvania Human Relations Commission issued letters stating that it found probable cause to support a finding of discrimination on account of Claimants' age in violation of the Pennsylvania Human Relations Act. Exhibit "7" (Exemplar).

25. The application form from August 1982 read as follows: applicants "must have reached nineteenth (19) birthday but not have reached thirty-first (31) birthday at date of appointment. Candidates must be within these age limits on the date of appointment. The date of appointment is the date on which a person actually enters the Fire Academy for training." Exhibit "8."

26. The application form from August 1984 read as follows: applicants "must have reached nineteenth (19) birthday as of the date of appointment. The date of appointment is the date on which a person actually enters the Fire Academy for training. Also, candidates must not have reached the thirty-sixth (36) birthday as of the date of the written test. The written test is scheduled for November 17, 1984." Exhibit "9."

27. On September 30, 1996, the Pennsylvania Commonwealth Court issued its decision in City of Philadelphia v. Pennsylvania Human Relations Commission, 684 A.2d 204 (Pa. Commw. Ct. 1996), striking down the Philadelphia Police Department's maximum hiring age restriction.

28. Firefighters employed by Respondent do not have a mandatory retirement age.

29. Respondent does not currently have any records showing that any applicant was disqualified from the position of Firefighter based on his or her age before the November 2005 Examination.

30. Before this Certified List, Respondent hired candidates who had passed the Civil Service Examination for Firefighter who had reached their Fortieth (40th) birthday before their respective date of hire for this position. Specifically, among others, Respondent had hired:

<u>Name</u>	<u>DOB</u>	<u>Class(Date)</u>	<u>Age in Class</u>
Denis McCaig	6/17/1948	(Nov.1988)	40
John Smith	8/1/1949	(Nov.1989)	40
Eugene Worth	2/1/1949	(Nov.1989)	40
William Brown	1/15/1954	(Dec. 1994)	40
Michael Lashley	2/1/1953	(Dec. 1994)	41
Antonio Lieggi	8/21/1952	(Dec. 1994)	42
Daniel Morgan	3/11/1952	(Dec. 1994)	42
Stephen Boub	8/2/1951	(Dec. 1994)	43

Joseph Duff	11/10/1948	(Dec.1994)	46
Larry Williams	10/24/1955	(Mar. 1996)	40
Ralph Keys	5/8/1953	(Mar.1996)	42
Richard Benditt	8/29/1950	(Mar.1996)	45
Thomas Coyle	1/14/1951	(Mar. 1996)	45
Ronald Gabor	6/26/1949	(May 1996)	46
Michael Creswell	4/11/1956	(Dec. 1996)	40
Farris Young	4/9/1956	(Dec. 1996)	40
Michael Hagan	10/28/1954	(Dec. 1996)	42
Michael Janits	7/27/1952	(Dec.1996)	44
Rodney Shepphard	12/28/1951	(Dec.1996)	44
Eric Stukes	9/12/1952	(Dec. 1996)	44
Ronald Hipple	8/2/1940	(Dec.1996)	56
Prince Gilliard	12/22/1954	(Apr.1997)	45
Neil Mullen	1/7/1951	(Apr. 1997)	46
Edward Thomas	12/9/1955	(June 1998)	42
Waverly Settles	5/25/1953	(Sept. 1998)	45
John Rivera	6/26/1958	(Mar.1999)	40
David Goble	11/17/1956	(Mar.1999)	42
Donald Woods	9/12/1955	(Mar.1999)	43
Wynnefield Smith	1/15/1953	(Mar.1999)	46
Robert Simmons	10/23/1946	(Mar.1999)	52
Dennis Meehan	12/29/1951	(Aug.1999)	47
James Gillespie	5/31/1958	(Feb.2000)	41
Kenneth Legions	3/10/1957	(Feb. 2000)	42
Gary Weisler	3/1/1956	(Feb. 2000)	43
Ralph Smith	9/5/1940	(Feb. 2000)	59
Edward Birtwistle	9/8/1949	(Nov. 2000)	51
Clay Finley	10/28/1957	(Mar.2001)	43
Manuel Gonzalez	12/11/1955	(Mar.2001)	45
William Armstrong	5/4/1948	(Mar.2001)	52
Stacey Harley	8/30/1960	(Jun. 2002)	41
William Smith	9/19/1960	(Jun. 2002)	41
Ira Dixon	6/3/1960	(Jun. 2002)	42
Gregory Fair	4/28/1958	(Jun.2002)	44
Gerald Bumpars	5/12/1956	(Jun.2002)	46
Eugene Mears	12/28/1954	(Jun.2002)	47
Eric Scott	3/22/1963	(Jun.2003)	40
Judith Brown	10/7/1960	(Jun.2003)	42
Luther Graves	8/23/1959	(Jun.2003)	43
Richard Pfeiffer	12/10/1957	(Jun.2003)	45
Michael Farrell	1/24/1950	(Jun.2003)	53
Paige Taylor	8/1/1963	(Dec.2003)	40
Donna Swallow	12/21/1961	(Dec.2003)	41
George Savoy	4/22/1959	(Dec.2003)	44
Daniel Grosser	2/22/1957	(Dec.2003)	46

Jean Werner	11/21/1955	(Dec.2003)	48
Clarence Young	8/11/1955	(Dec.2003)	48
Gary Boyd	6/9/1949	176 (Feb. 2003)	53
Tyrone Gatewood	3/15/1959	176(Feb. 2003)	43
Kurt Green	4/25/1959	176(Feb. 2003)	43
James Halligan	8/22/1955	176(Feb. 2003)	47
Paul Kotasenski	4/27/1954	176(Feb. 2003)	48
Sharon Backett	8/25/1959	177(June 2003)	43
Wayne Gentner	8/3/1949	177(June 2003)	53
Dennis Harte	2/25/1961	177(June 2003)	42
Gary Rebstock	3/31/1953	177(June 2003)	50
Larry Shaw	6/17/1961	177(June 2003)	42
Joe Ryan	4/10/1962	179(Jan. 2005)	41
John Spencer	6/26/1962	179(Jan.2005)	41
Christopher Willing	3/3/1963	179(Jan.2005)	41
Dennis McClernand	12/14/1960	179(Jan 2005)	44
Angelo Esposito	8/1/1959	179(Jan.2005)	45
Michael Kumor	10/1/1959	179(Jan.2005)	45
John Mahan	7/04/1953	180(July 2005)	52
David Alequin	9/25/1964	180(July 2005)	40
Gino Arroyo	6/2/1965	180(July 2005)	40
Charles Benzenhafer	11/16/1965	180(July 2005)	40
Ernest Foley	2/21/1965	180(July 2005)	40
Kevin Hopkins	2/9/1965	180(July 2005)	40
Joseph Iannacone	1/19/1965	180(July 2005)	40
Edmonde Sestini	9/19/1963	180(July 2005)	41
Carl Neuber	1/17/1961	180(July 2005)	44
Thomas Schuhl	1/8/1961	180(July 2005)	44
Patrick Meehan	11/22/1959	180(July 2005)	45
Barbara Driscoll	2/3/1957	180(July 2005)	48

31. Since February 2, 2006, there have been four (4) Fire Academy Classes,

Class Numbers 181-184. These classes and their appointment dates, with the last non-consent decree appointment ranks for accepted candidates, are listed below:

<u>Class</u>	<u>Size</u>	<u>Appointment Date</u>	<u>Last Rank Hired</u>
181	79	May 8, 2006	126
182	90	July 6, 2006	238
183	91	January 8, 2007	360
184	91	January 12, 2007	532

32. The next Fire Academy class is currently scheduled for February 24, 2008, Class Number 185.

33. No applicants have been appointed to the Fire Department from the 2006 List who have reached their 40th birthday by the date of appointment except Roman Baczara.

34. Roman Baczara took and passed the 2005 CSE 06Q36B01, receiving a score of 99 and a rank of 94 on the 2006 List.

35. Mr. Baczara was hired as a Firefighter on May 8, 2006. His date of birth is May 12, 1965. His payroll number is 207419.

36. At the time he was hired as a Firefighter, Mr. Baczara was 40 years old.

37. Mr. Baczara was working as a Fire Service Paramedic for the City of Philadelphia at the time he took the Firefighter examination in October 2001 ("2001 examination").

38. Respondent has continued to process younger Firefighter applicants whose certified scores and ranks are below Complainants. Specifically, had Respondent not used age as a basis for disqualification, it would have placed Fire Service Paramedics ("FSP") Kershaw, Gollapalli and St. Marie in Fire Academy Class 181, which commenced on May 8, 2006, if they successfully completed the remainder of the screening process. It would have placed Mr. Thummel in its 182nd Class, which commenced on July 6, 2006, if he successfully completed the remainder of the screening process. It would have placed Mr. Gardner in Class 183, which commenced on January 8, 2007, if he successfully completed the remainder of the screening process. Respondent would have placed Messrs. Butler and Lewis in Class 184, which commenced on January 12, 2007, if they successfully completed the remainder of the screening process.

39. Had Complainants been hired as Firefighters they would have been paid in accordance with the relevant pay schedule then in effect, for pay range \$34,877.00.

40. Pay schedule step increases occur once every year on the anniversary date of employment for the employee for the first four years of service as a Firefighter.

41. Had the Complainants been hired as Firefighters, each would be eligible for all employment related benefits provided in applicable collective bargaining agreements, including, but not limited to: longevity pay, opportunity for overtime pay, stress (shift) differential, health and welfare benefits, pension, life insurance benefits, accrued vacation and sick time allowances, legal services and promotion possibility.

42. Respondent continues to refuse to hire Claimants or process them into Fire Academy classes.

Norman G. Matlock
Assistant Chief Counsel
(Counsel for the Commission)

Date

Shannon D. Farmer, Esquire
(Counsel for Respondent)

Date

Alice W. Ballard, Esquire
(Counsel for David Lewis)

Date



Arthur L. Bugay, Esquire
(Counsel for Daniel Butler, Edward Gardner, Samuel Gollapalli,
Gerard Kershaw, Mark St. Marie, and David Thummel)

Date

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Norman G. Matlock
Assistant Chief Counsel
(Counsel for the Commission)

Date



Shannon D. Farmer, Esquire
(Counsel for Respondent)

12/10/07
Date

Alice W. Ballard, Esquire
(Counsel for David Lewis)

Date

Arthur L. Bugay, Esquire
(Counsel for Daniel Butler, Edward Gardner, Samuel Gollapalli,
Gerard Kershaw, Mark St. Marie, and David Thummel)


Date

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Norman G. Matlock
Assistant Chief Counsel
(Counsel for the Commission)

10 Dec 2007
Date

Shannon D. Farmer, Esquire
(Counsel for Respondent)

Date

Alice W. Ballard, Esquire
(Counsel for David Lewis)

Date

Arthur L. Bugay, Esquire
(Counsel for Daniel Butler, Edward Gardner, Samuel Gollapalli,
Gerard Kershaw, Mark St. Marie, and David Thummel)

Date

FINDINGS OF FACT *

1. The seven applicants, Daniel Butler, Edward Gardner, Samuel Gollapalli, Gerald Kershaw, David Lewis, Mark St. Marie and David Thummel (hereinafter "Complainants") applied for the position of firefighter in Respondent City of Philadelphia's Fire Department. (S. 1)
2. The Complainants took the Respondent's Civil Service Test Examination, received their respective scores and were placed on the certified eligibility lists. (S. 1).
3. Applicants who successfully complete the written examination, background screening and physical examination may be selected to enter the Fire Academy based on their placement on the eligible tests of hires. (S. 7).
4. Complainants Kershaw, St. Marie and Gallapalli are employed as Fire Service Paramedics in Respondent's Fire Department. (CE 10, 14-17).
5. These three Complainants have submitted affidavits with commendations to document their success as paramedic's and in addition, Complainant St. Marie has taught at the Fire Academy. (CE 4, 10).
6. Complainant Lewis is a veteran and submitted an affidavit summarizing his history and ability to perform the work of a firefighter. (CE 19).

* The foregoing "Stipulations" are hereby incorporated herein as if fully set forth. To the extent that the Opinion that 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 these Findings of Fact for reference purposes:

S.F. Stipulations
C.E. Complainant's Exhibit