

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

STACIE GARMON, Complainant
v.
VIP RESTAURANT, Respondent
DOCKET No. E-92918D

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

ORDER

STACIE GARMON, Complainant
v.
VIP RESTAURANT, Respondent
DOCKET No. E-92918D

Findings of Fact*

1. The Complainant herein is Stacie Garmon, (hereinafter “Garmon”), an adult female who resides at 511 Corinthian Avenue, Apt A, Essington, Pennsylvania 19076.
2. The Respondent herein is the VIP Restaurant.
3. Garmon filed a Complaint docketed at E-92918-D with the PHRC on or about August 20, 1999, alleging that she was sexually harassed from March 22, 1999 through March 31, 1999 and terminated on March 31, 1999 in retaliation for opposing the sexual harassment (C.E. 21).
4. PHRC Philadelphia Regional Office staff served the Complaint at E-92918-D on VIP Restaurant on October 18, 1999. (C.E. 21).
5. VIP Restaurant failed to file a properly verified Answer to Garmon’s complaint.
6. On August 7, 2001, PHRC Philadelphia Regional Office staff filed and served on VIP Restaurant a “Petition for Rule to Show Cause Pursuant to 16 Pa. Code §42.33(c)”. (C.E. 21).

* 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 Facts. The following abbreviation will be utilized throughout these Findings of Fact for reference purposes:

N.T. - Notes of Testimony
C.E. - Complainant Exhibit

7. On August 13, 2001, PHRC Motions Commissioner Carl E. Denson, issued and caused to be mailed to VIP Restaurant’s, Chief Executive Officer, John Hesham, a Rule to Show Cause Order which extended another opportunity to VIP Restaurant to file a properly verified Answer on or before September 10, 2001. (C.E. 21).
8. Having received no Answer, the PHRC on September 24, 2001, issued an Order, which provided “that probable cause is found and judgment is hereby entered for the Complainant on the issue of liability. . .” (C.E. 14).
9. The PHRC’s Order of September 24, 2001, was mailed to the VIP Restaurant’s Chief Executive Officer that same day.
10. From September 24, 2001, through May 17, 2002, Commission staff made numerous conciliation attempts to settle the case.
11. On January 30, 2002, the PHRC Philadelphia Regional Office filed a Petition to Provide Service of Process to Respondent by Publication. (C.E.-17).
12. By Interlocutory Order dated February 5, 2002, the Petition to Provide Service by Publication was granted. (C.E. 18).

13. Service of Process was published in the Delaware County Daily Times and the Delaware County Legal Journal consistent with the February 5, 2002 Interlocutory Order. (C.E. 19, 20).
14. Having been duly notified, the VIP Restaurant, failed to appear at the Public Hearing held on May 17, 2002. (N.T. 9).
15. Garmon took two days off without pay from her employment to pursue her Pennsylvania Human Relations Commission (“PHRC”) Complaint. (N.T. 22, 23; C.E. 4).
16. Garmon lost pay on these two days at the rate of \$25.00 per day in wages plus \$32.00 per day in tips. (N.T. 17-18).
17. In pursuing her PHRC complaint, Garmon twice was driven to Philadelphia by her sister to whom she twice gave \$5.00 for gas. (N.T. 22, 23).
18. When Garmon worked for VIP Restaurant she worked part-time, 2 days per week for six hours per day. (N.T. 17).
19. Garmon was a waitress with the VIP Restaurant and earned wages of approximated \$17 per day plus tips of approximately \$30 per day. (N.T. 17, 26).
20. When she was terminated on March 31, 1999, Garmon began to look for alternative work right away and in Mid-July 1999, Garmon found full-time employment at which she earned approximately the same amounts that she had earned at the VIP Restaurant. (N.T. 20, 21, 24).

Conclusions of Law

1. A combination of Section 9(b)(3) of the Pennsylvania Human Relations Act and 16 Pa. Code §42.31(c) requires a Respondent to file a written, verified answer to a complaint within thirty days of service of the complaint.
2. 16 Pa. Code §42.31(d) declares that the failure of a Respondent to timely answer a complaint places a Respondent in default.
3. Under 16 Pa. Code §42.33, when a Respondent has not answered a complaint, a Rule to Show Cause may be issued.
4. Under Pa. Code §42.33(d)(4), when a Respondent does not respond to a Rule to Show Cause, the Pennsylvania Human Relations Commission (“PHRC”) may make a finding of probable cause and enter a judgment for a Complainant on the issue of liability, to be followed by a public hearing on the issue of damages.
5. In this matter, the Respondent’s failure to file a properly verified answer or to respond to a Rule to show Cause resulted in the entry of a judgment for the Complainant on the issue of liability.
6. The PHRC has broad discretion in fashioning a remedy.

OPINION

This case arose on a complaint filed by Stacie Garmon against the VIP Restaurant. Garmon’s complaint at PHRC Docket No.E-92918-D alleged that from March 22, 1999 Through March 31, 1999, Garmon was sexually harassed and that on March 31, 1999, Garmon was terminated in retaliation for her opposition to the sexual harassment. Garmon’s complaint states a claim under Sections 5(a) and Section 5(d) of the Pennsylvania Human Relations Act (PHRA”).

Garmon's verified complaint was filed on or about August 20, 1999. By correspondence dated August 7, 2001, the Pennsylvania Human Relations Commission ("PHRC") Philadelphia regional office petitioned Motions Commissioner Denson for a Rule to Show Cause, indicating that the VIP Restaurant had not properly answered Garmon's complaint. The petition declared that the VIP Restaurant had been served with the complaint on October 18, 1999. The petition further indicated that, by correspondence dated December 19, 1999, February 1, 2000, and June 4, 2001, the VIP Restaurant was notified that its failure to properly answer Garmon's complaint could result in a judgment being entered for Garmon.

On August 13, 2001, a Rule to Show Cause was issued, directing the VIP Restaurant to respond on or before September 10, 2001. After no response was filed, on September 13, 2001, Motions Commissioner Denson recommended a finding of liability to the full PHRC. On September 24, 2001, the full PHRC determined that on or about March 22 to March 31, 1999, Garmon was sexually harassed, and on March 31, 1999 terminated in retaliation for her opposition to the sexual harassment.

The public hearing on the issue of appropriate damages was held May 17, 2002 in Media, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The state's interest in the complaint was overseen by Pamela Darville, PHRC Assistant Chief Counsel. The VIP Restaurant did not attend.

After the finding of liability in this case conciliation efforts were unsuccessfully attempted. Subsequently, this matter was approved for a public hearing on the issue of appropriate damages.

Since liability had been found after the VIP Restaurant failed to file a properly verified answer, the only question at the public hearing was what damages Garmon could establish. Under Section 9(f)(1) of the PHRA, the PHRC is empowered to order the Respondent "to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, reimbursement of certifiable travel expenses in matters involving the complaint, compensation for loss of work in matters involving the complaint . . . reinstatement . . . with or without back pay. . . and any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice. . . as, in the judgment of the Commission, will effectuate the purposes of this act. . ."

The first item for consideration is compensation for loss of work associated with the complaint Garmon filed. Here, the uncontroverted evidence reflects that Garmon lost two days of work. Garmon testified that her wages for a days work are approximately \$25.00 per day and that she also earns approximately \$30.00 per day in tips. Accordingly, an award of \$110.00 is appropriate to compensate the Complainant for lost work due to her involvement in her PHRC complaint.

We next turn to consideration of certifiable travel expenses. The uncontroverted evidence shows that Garmon made two trips to Philadelphia in pursuit of her complaint. Garmon seeks reimbursement of gas money in the amount of \$5.00 per trip she gave her sister for driving her to

Philadelphia. Accordingly, an award of \$10.00 is appropriate to reimburse Garmon for her travel expenses.

On the question of reinstatement and back pay, during the procedural history of this case, it was learned that the VIP Restaurant is no longer in operation. Accordingly, the only question here is how much back pay Garmon lost.

When Garmon first sought employment with the VIP Restaurant, Garmon only wanted part-time employment of two days per week. At the time, Garmon was also employed three days per week at the Rolling Green Golf Course.

While working for the VIP Restaurant, Garmon earned approximately \$17.00 per day in wages and another \$30.00 per day in tips. Once terminated on March 31, 1999, Garmon did not find comparable employment until mid-July, 1999: a period of approximately 14 weeks.

Had Garmon remained at the VIP Restaurant she would have earned approximately \$34.00 per week as wages and another \$60.00 per week in tips. Accordingly an award of \$1,316 is appropriate to reimburse Garmon for lost wages.

Finally, the PHRC is authorized to award interest on the back pay award. Goetz v. Norristown Area School District, 16 Pa. Cmwlth. Ct. 389, 328 A.2d 579 (1975). Until January 1, 2000, interest shall be computed using that rate of six percent. For the period of calendar year 2000, the interest rate shall be eight percent and from 2001 until the back pay award is paid, the interest rate shall be nine percent. (Computation of interest penalties, Act 1982-266 amended).

Accordingly, relief is ordered as directed with specificity in the final order, which follows.

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RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that Stacie Garmon suffered damages. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted, the Permanent Hearing Examiner recommends issuance of the attached Final Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: Carl H. Summerson, Permanent Hearing Examiner

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FINAL ORDER

AND NOW, this 26th day of August 2002, after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Commission Act, hereby approves the foregoing Findings of Fact, Conclusions of Law and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Findings of Fact, Conclusions of Law, and Opinion as its own findings in this matter and incorporates the Findings of Fact, Conclusions of Law and Opinion into the permanent record of this proceeding, to be served on the parties to the complaint, and hereby

ORDERS

1. That the VIP Restaurant shall pay to Garmon within 30 days of the effective date of this Order the lump sum of \$1,316, which amount represents back pay lost for a fourteen-week period after Garmon's termination on March 31, 1999.
2. That the VIP Restaurant shall pay additional interest of six percent per annum on the back pay award, calculated from March 1, 1999 until December 31, 1999, and interest at the rate of eight percent for calendar year 2000, and interest at the rate of nine percent thereafter.
3. That the VIP Restaurant shall pay to Garmon within 30 days of the effective date of this order the lump sum of \$120.00, which amount collectively represents two days of lost wages associated with Garmon's complaint and certifiable travel expenses.
4. That, within 30 days of the effective date of the Order, the VIP Restaurant report to the Commission on the manner of its compliance with the terms of this Order by letter addressed to Pamela Darville, Esquire, in the Commission's Philadelphia Regional Office.

PENNSYLVANAI HUMAN RELATIONS COMMISSION

BY: Carl E. Denson, Chairperson

ATTEST: Russell S. Howell, Assistant Secretary