

COMMONWALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Nneka Pleasant, Complainant	:	PHRC Case No. 200605783
	:	
v.	:	
	:	
Wordsworth Academy Respondent	:	EEOC No. 17F200761590
	:	

STIPULATIONS OF FACT ON PROCEDURAL PREREQUISITES

1. Nneka Pleasant (“Complainant” or “Ms. Pleasant”) filed her Complaint with the Commonwealth of Pennsylvania Human Relations Commission (“PHRC” or “the Commission”) on or about March 27, 2007, against Wordsworth Academy (“Wordsworth” or “Respondent”), PHRC Case No. 200605783.
2. In her Complaint, Complainant alleged that Wordsworth had discriminated against her because of her sex, based on sexual harassment (Count 1 of the Complaint) and constructive discharge (Count 2 of the Complaint).
3. Wordsworth filed its verified Answer to Complaint on or about June 6, 2007, in which Wordsworth denied that it had discriminated against Ms. Pleasant because of her sex and asserted that the Complaint failed to state a claim for which relief can be granted. (Joint Exhibit 2.)
4. The Commission investigated the allegations of Ms. Pleasant’s Complaint.
5. At the completion of its investigation, the Commission “determined that probable cause exists to credit the allegations of the Complaint.” By letter dated July 13, 2007 the Commission notified the parties of its probable cause determination (“Determination”).
6. In its letter of July 13, 2007 the Commission scheduled a conciliation meeting for July 31, 2007.

7. Complainant and Respondent participated in the conciliation meeting, but the attempt at conciliation was unsuccessful. Upon the failure of conciliation, the procedural prerequisites to the holding of a Public Hearing were fulfilled.

8. By letter dated October 26, 2007, the parties were notified that a pre-hearing conference had been scheduled for Wednesday, November 28, 2007 at 10:00 a.m.

9. A pre-hearing conference was held before Carl H. Summerson, then the Hearing Panel Advisor, on November 28, 2007. On November 29, 2007 Mr. Summerson issued a Pre-Hearing Order which, among other things, scheduled a Public Hearing "to commence at 9:00 a.m. on Thursday, February 7, 2008 and continue through Friday, February 8, 2008 if necessary."

10. The parties' respective counsel were notified by email from Mr. Summerson on December 10, 2007 that the case had been reassigned from a hearing panel of three Commissioners to Mr. Summerson "as a Hearing Examiner."

Thomas D. DeLoach *7 Feb 2008*
Michael A. Davi *2/7/08*

FINDINGS OF FACT*

1. The Complainant is Nneka Pleasant (hereinafter "Pleasant"), an adult female who had been an employee of the Respondent, Wordsworth Academy (hereinafter "Wordsworth") for the five years immediately preceding January 26, 2007. (N. T. 12, 13, 24, 192).
2. The Wordsworth educational facility located at 3905 Ford Road, Philadelphia, Pa. is in a four story building that is the residence for approximately 200 students as well as a school. (N. T. 73, 75).
3. When Pleasant began working for Wordsworth, the program she was in was located at Elkins Park. (N. T. 42, 71).
4. From Elkins Park, Pleasant's program moved to Fort Washington, where it remained until the program was moved to Ford Road approximately one year before Pleasant left Wordsworth's employment. (N. T. 71, 80).
5. Approximately 10 classrooms were located in the basement of the Ford Road building. (N. T. 75).
6. Because Wordsworth's Ford Road facility was the residence for its students, there were three shifts: 7:00a.m. to 3:00p.m; 3:00 p.m. to 11:00p.m; and 11:00 p.m. to 7:00a.m. (N. T. 76, 198).

* The foregoing "Stipulations of Fact" are 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 Facts. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

N.T. Notes of Testimony
C.E. Complainant's Exhibit
R.E. Respondent's Exhibit
S.F. Stipulations of Fact

7. The majority of Wordsworth employees worked the 7:00 a.m. to 3:00 p.m. shift. (N. T. 77).
8. Shawn Walsh (hereinafter "Walsh") was Wordsworth's Principal and Director of Education for the Stars Program. (N. T. 15, 81, 161).
9. Chris Connor (hereinafter "Connor") was Wordsworth's Residential Director and Mike Britcher (hereinafter "Britcher") was Wordsworth's Vice President of Residential Services. (N. T. 15, 181, 184).
10. Each classroom had both a teacher and an assistant teacher. (N. T. 75).
11. Pleasant was both a Mental Health Worker and a Teacher's Assistant at Wordsworth's Ford Road facility. (N. T. 12, 13).
12. On school days, Pleasant came to the residential area and assisted female children getting ready for school, helped take them to breakfast in the school's cafeteria located on the first floor, then helped return them to the residential area and ultimately to the school in the basement. (N. T. 12, 73, 74).
13. Once school began, Pleasant worked as a teacher's assistant in a class composed of approximately 12 students, 15 to 18 years old. (N. T. 12, 14, 96).
14. During her five year employment with Wordsworth, until January 12, 2007, Pleasant maintained a friendly, mutually supportive relationship with William Taylor (hereinafter "Taylor"). (N. T. 122, 123).
15. Taylor was a behavioral specialist for Wordsworth's residential program. (N. T. 22, 197).
16. Taylor's office was located in the basement outside of the classrooms. (N. T. 22).

17. Taylor's job was to deal with problem children from any one of the ten classrooms. (N. T. 22).
18. Prior to January 12, 2007, Taylor helped Pleasant with car repairs, supported her with problems she was experiencing both at work and home, and on occasion lent her money. (N. T. 124).
19. Prior to January 12, 2007, in the five years Pleasant and Taylor worked in close proximity, Taylor never did anything to Pleasant that she considered harassment. (N. T. 43, 44).
20. Prior to January 12, 2007, Pleasant had no problems at Wordsworth. (N. T. 13).
21. While "horseplay" between employees is not permitted at Wordsworth, it frequently happened. (N. T. 125, 133; RE 4).
22. Pleasant and Taylor had, on occasion, engaged in mutual horseplay. (N. T. 126-127).
23. At approximately 1:30 p.m. on January 12, 2007, as Pleasant was returning to the building, she happened upon Taylor who was also returning to the building. (N. T. 15, 94, 125).
24. As Pleasant and Taylor entered the building, they encountered Kevin Slaughter (hereinafter "Slaughter") as he was escorting a few younger children from the first floor cafeteria to the school area in the basement. (N. T. 15, 84, 149).
25. Slaughter testified that Taylor and Pleasant were in front of the elevator engaged in what he termed "definitely horse playing". (N. T. 150, 151).
26. Slaughter indicated that as he passed by, he witnessed Pleasant laughing as she playfully pushed Taylor away saying "stop f...ing playing". (N. T. 150- 151, 155).

27. Pleasant testified that she had intended to take the stairs down to the school area; however, Taylor pushed her onto the elevator. (N. T. 16, 86).
28. Pleasant further testified that when the doors of the elevator closed, Taylor began to rub her neck, kiss and lick her face, and pull her right breast out and fondle her. (N. T. 16, 17, 46).
29. Taylor and Pleasant agree that the elevator first went up to the second floor, which was vacant, the doors opened and then preceded directly to the basement. (N. T. 17, 69, 86, 136-137).
30. Pleasant indicated that she asked Taylor to stop but he did not until the elevator reached the basement. (N. T. 17, 18).
31. Pleasant added that when the elevator door opened in the basement she adjusted her clothing and Taylor smacked her on the butt as she exited the elevator. (N. T. 18).
32. Although Pleasant testified that Slaughter witnessed her adjusting her clothes and leaving the elevator, Slaughter offered that he did not see Pleasant for approximately 10 minutes. (N. T. 18, 150, 155).
33. Taylor's version was that he began to "play" with Pleasant outside the elevator and bumped her onto the elevator when the doors opened, and that he playfully pushed Pleasant around messing up her hair. (N. T. 125).
34. Taylor indicated that Pleasant was laughing and joking for the minute they were on the elevator saying "stop playing" and "don't mess up my hair". (N. T. 125, 127, 136, 138).
35. Taylor specifically denied either kissing or licking Pleasant's face or putting his hands in her shirt or pants. (N. T. 127).

36. Upon leaving the elevator, Pleasant first went to her classroom where she began to cry, so she proceeded to the ladies bathroom to compose herself. (N. T. 19).
37. Slaughter indicated that he did see Pleasant “stomping” through the hallway looking angry so he asked her, “what’s wrong, are you alright?” (N. T. 151-152, 155; CE 6).
38. Pleasant responded to Slaughter by saying “Bill plays too much”. (N. T. 152, 155).
39. Pleasant spoke with David Flesher, the teacher she was assisting, who advised Pleasant that she should go to Human Resources with her allegation. (N. T. 94-95, 175).
40. At Flesher’s suggestion, after school ended for the day, at approximately 3:00p.m. Pleasant spoke with Anna Wessells (hereinafter “Wessells”), Wordsworth’s Human Relations Coordinator, conveying her version of what had occurred while on the elevator that afternoon with Taylor. (N. T. 20, 63, 95, 179, 180).
41. At that moment, Wessells began an investigation, asking Pleasant to prepare a written statement over the weekend. (N. T. 180).
42. Taylor had been scheduled to work the overnight shift in the residence; however, he did not because Wessells immediately contacted both Walsh and Conner, and Taylor was notified on January 12, 2007 that he was suspended pending an investigation. (N. T. 20, 181).
43. Walsh testified that he informed Pleasant that Taylor would be suspended pending an investigation and that if her allegations were founded, Taylor would not be returning. (N. T. 162-163).

44. When Pleasant left the building on January 12th, Sadie Lane, a teacher's assistant, Tracey Wilkins, a teacher's assistant, Nelson Larson, a behavioral specialist, Kenya Baldwin, a teacher, Sharice Frank-Hayes, a teacher's assistant, Kareen Ajulea, a teacher's assistant, and Taylor were in the parking lot. (N. T. 25-26, 185).
45. Pleasant was restrained by several staff members as she attempted to get at Taylor. (N. T. 130).
46. As Taylor was leaving, Pleasant threw a water bottle striking Taylor's car. (N. T. 130).
47. As Monday, January 15th was a holiday, Pleasant had been asked by Wessells to report to Human Relations on Tuesday morning, January 16th instead of reporting to work. (N. T. 181).
48. Wordsworth's investigation team consisted of Wessells, Walsh, Britcher, Connor, and legal counsel. (N. T. 179).
49. Wordsworth had intended that its investigative team meet with both Pleasant and Taylor on the morning of January 16, 2007; however, the team met with Pleasant and Taylor separately when Pleasant indicated she would not be comfortable with Taylor in the room. (N. T. 98).
50. Pleasant, Taylor and Slaughter each provided written statements to the investigative team. (N. T. 154, 181, 182, 183; CE 5, 6; RE 2).
51. After speaking with Pleasant, Taylor, Slaughter and Flesher, the investigative team initially concurred that something had happened on the elevator and decided to keep Taylor on suspension. (N. T. 184, 207).

52. On January 17, 2007, the investigative team reviewed the incident in the parking lot on January 12th by speaking with all staff members who were present. (N. T. 185).
53. It was determined that Pleasant and Taylor had verbally argued, Pleasant threw a water bottle at Taylor's car, and Pleasant was escorted to her car by Baldwin and Frank-Hayes. (N. T. 186).
54. On January 25, 2007, Pleasant was called to a meeting with Wessells, Walsh and Britcher where Britcher informed Pleasant that the investigation was complete and that the decision had been made to return Taylor to work because the team could not figure out exactly what had occurred and there was no way to prove Pleasant's allegations. (N. T. 22, 172, 189, 196).
55. Because the team believed that Pleasant's version possibly could have happened, Pleasant was informed that Taylor would be mandated to attend a one-on-one sexual harassment training with Wordsworth's legal counsel. (N. T. 186-187, 209, 215).
56. Pleasant was also told that any glance or comment from any staff member generally or Taylor specifically should be reported immediately and further action would be taken, up to and including termination. (N. T. 189-190).
57. Pleasant became angry, tearfully expressing that she did not understand the outcome. (N. T. 22, 189).
58. Pleasant was given time to compose herself. (N. T. 22, 64).
59. When Pleasant was at work on January 26, 2007, she saw Taylor and became anxious and upset. (N. T. 23).
60. Subsequently, it was reported to Walsh that Pleasant was in the hallway yelling over a telephone that she was going to sue Wordsworth. (N. T. 163, 175-176).

61. Walsh proceeded to where Pleasant was and asked Pleasant to come to his office. (N. T. 165).
62. In Walsh's office, he informed Pleasant that she was in violation of Wordsworth's cell phone policy and that she should return to her classroom. (N. T. 165, 176).
63. With that Pleasant walked out of Walsh's office. (N. T. 165).
64. Walsh then went to Wessells' office to indicate he had spoken to Pleasant and that she was upset and would be coming to see Wessells. (N. T. 190).
65. Pleasant arrived at Wessells' office and Wessells asked Walsh to leave so she could speak to Pleasant in private. (N. T. 190).
66. Wessells discussed why Pleasant was upset and encouraged Pleasant to stay working by reflecting on the importance of not just walking off. (N. T. 191).
67. Wessells then reviewed other job postings with Pleasant but Pleasant expressed that she was stressed and anxious and could not stay. (N. T. 192).
68. Pleasant decided to quit and wrote a resignation letter. (N. T. 192; C.E. 1).
69. Pleasant did not go to the police with her allegations. (N. T. 68).
70. Taylor was issued a counseling memorandum advising him that his 8 day suspension would be unpaid and that any further incidents would subject him to discipline up to and including termination. (N. T. 187; R.E. 4).
71. Taylor subsequently completed the mandated one-on-one sexual harassment training. (N. T. 188, 196).

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the parties and the subject matter of the complaint under the Pennsylvania Human Relations Act (hereinafter "PHRA").
2. The parties and the Commission have fully complied with the procedural prerequisites to a Public Hearing.
3. Pleasant is an "individual" within the meaning of Section 4(a) of the PHRA.
4. Wordsworth is an "employer" within the meaning of Section 4(b) and 5(a) of the PHRA.
5. Section 5(a) of the PHRA prohibits employers from discriminating against individuals in their employment because of their sex.
6. In order to establish a *prima facie* case of a hostile work environment created by the actions of a co-worker a Complainant must show:
 - (a) that she suffered sexual harassment because of her sex;
 - (b) that the sexual harassment was severe or pervasive;
 - (c) that subjectively the sexual harassment detrimentally affected her;
 - (d) that objectively the sexual harassment would detrimentally affect a reasonable woman; and
 - (e) that the employer knew of the sexual harassment and failed to take prompt, effective remedial action.
7. Pleasant failed to establish that a reasonable woman would have been detrimentally affected under a totality of the circumstances present in this case.

8. Pleasant failed to establish that Wordsworth failed to take prompt, effective remedial action.
9. To establish that there has been a constructive discharge, a Complainant must establish that her working conditions were so intolerable that a reasonable woman would feel compelled to resign.
10. Before resigning, an employee must give an employer's remedial measures a fair opportunity to stop the harassment.
11. Pleasant failed to show that either a reasonable woman in the same circumstances would have resigned or that she gave Wordsworth's remedial measures an opportunity to work.

OPINION

This case arises on a complaint filed by Nneka Pleasant (hereinafter "Pleasant") against Wordsworth Academy (hereinafter "Wordsworth") on or about March 27, 2007 at PHRC Case Number 200605783. In her two count complaint, Pleasant generally alleged an incident of sexual harassment on January 12, 2007, which subjected her to a hostile work environment and caused her constructive termination. Pleasant's claims allege that Wordsworth violated Section 5(a) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §§951 et. Seq. (hereinafter "PHRA").

Pennsylvania Human Relations Commission (hereinafter "PHRC") staff conducted an investigation and found probable cause to credit Pleasant's allegations of discrimination. The PHRC and the parties attempted to eliminate the alleged unlawful practices through conference, conciliation and persuasion. However, those efforts were unsuccessful, and this case was approved for Public Hearing. The Public Hearing was held on February 2, 2008, in Philadelphia, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The Post-Hearing brief on behalf of the state's interest in the complaint was received on May 12, 2008, Wordsworth's post-hearing brief was received on May 13, 2008.

Initially, with regard to Pleasant's hostile work environment claim, Section 5(a) of the PHRA states in pertinent part that "It shall be an unlawful discriminatory practice . . . [f]or any employer because of the . . . sex . . . of any individual . . . to . . . discriminate against such individual . . . with respect to . . . conditions or privileges of employment . . ." Here, Pleasant's hostile work environment claim can only rest on an allegation that upon learning of her claim, Wordsworth failed to take adequate remedial action. Pleasant does not allege that Wordsworth failed to prevent Taylor's alleged conduct on January 12, 2007, she simply alleges that after she complained about the purported victimization by