

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

LISA ANN VOZEL,
Complainant

v.

QPONDIRECT, INC.,
Respondent

PHRC CASE NO. 200801213
EEOC CHARGE NO. 17F200863140

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT

1. On or about September 2, 2008, Complainant Lisa Ann Vozel (hereinafter "Vozel") filed a PHRC complaint against QPONDIRECT, INC. alleging age and sex based discrimination when QPONDIRECT, INC. elevated a younger male over Vozel, failed to engage Vozel in an interactive process to determine whether Vozel's speech disorder could be accommodated and on March 5, 2008 terminated Vozel in retaliation for her expression of opposition to discrimination. (N.T. 5)

2. By letter dated January 20, 2009, PHRC's Pittsburgh Regional Office filed a Petition for Rule to Show Cause. (N.T. 5)

3. On January 27, 2009, PHRC Motions Commissioner Rev. Dr. James Earl Garmon, Sr. issued a Rule to Show Cause which notified QPONDIRECT that it had until February 27, 2009 to file a properly verified answer to Vozel's complaint. (N.T. 6)

4. The Rule to Show Cause was served on Respondent counsel on January 27, 2009.

5. On March 3, 2009, PHRC Motions Commissioner Garmon recommended to the full Commission that QPONDIRECT be found liable for Vozel's allegations. (O.D.)

6. On March 23, 2009, the PHRC issued a Final Order finding QPONDIRECT liable for engaging in age and sex-based discrimination when QPONDIRECT elevated a younger male over Vozel; failed to engage Vozel in an interactive process designed to assess whether a reasonable accommodation was practicable regarding Vozel's

* 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
O.D. Official Docket

speech disorder; refused Vozel an accommodation; and on March 5, 2008, terminated Vozel in retaliation for Vozel's opposition to discrimination. (O.D.)

7. The liability finding of the Commission was served on Respondent counsel on March 24, 2009.

8. A public hearing was held on September 2, 2009 in Pittsburgh, on the issue of what, if any, damages are appropriate. (N.T. 7)

9. The notice of public hearing was mailed by certified mail to Joseph Marnell on August 21, 2009.

10. Vozel began working for QPONDIRECT in September 2007 as a Business Analyst. (N.T. 14)

11. Vozel was employed by QPONDIRECT until she was terminated on March 5, 2008. (N.T. 15)

12. Vozel earned \$3,333.00 every two weeks while she was employed as a Business Analyst at QPONDIRECT.

13. Vozel did not receive any raises during her employment with QPONDIRECT. (N.T. 15)

14. In 2008, Vozel earned \$12,921.07 in income from QPONDIRECT. (N.T. 16, C-5)

15. Vozel has been searching for employment since she was terminated on March 5, 2008. (N.T. 21)

16. Vozel's last interview for employment was in August 2009 (N.T. 21)

17. Vozel has made approximately 500 applications for positions since her termination. (N.T.21)

18. Vozel, in the pursuit of her complaint, incurred \$60.00 in travel expenses.

(N.T. 22)

19. Vozel also incurred parking expenses in the amount of \$29.00.

CONCLUSIONS OF LAW

1. A combination of Section 9(b)(3) of the Pennsylvania Human Relations Act ("PHRA") 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 QPONDIRECT, Inc.'s failure to file a properly verified answer resulted in the entry of a judgment for Vozel on the issue of liability.

6. The PHRC has broad discretion in fashioning a remedy.

7. The PHRC may also order a Respondent to cease and desist from discriminatory practices and to take affirmative action as, in the judgment of the PHRC, will effectuate the purposes of the PHRA.

OPINION

This case arose on a complaint filed on or about September 2, 2008 by Lisa Ann Vozel (hereinafter "Vozel") against QPONDIRECT, Inc. Vozel's complaint alleged age and sex based discrimination when QPONDIRECT, Inc. elevated a younger male over Vozel, failed to engage Vozel in an interactive process to determine whether Vozel's speech disorder would be accommodated and, on March 5, 2008, terminated Vozel in retaliation for her expression of opposition to discrimination. Vozel's complaint clearly states claims under Section 5(a) and (d) of the Pennsylvania Human Relations Act ("PHRA").

By correspondence dated January 20, 2009, the Pennsylvania Human Relations Commission's ("PHRC") Pittsburgh regional office petitioned Motions Commissioner Garmon for a Rule to Show Cause, indicating that QPONDIRECT, Inc. had not answered Vozel's complaint. The petition declared that, on December 17, 2008, QPONDIRECT, Inc. had been served with Vozel's complaint. On January 27, 2009, a Rule to Show Cause was issued, directing QPONDIRECT, Inc. to respond on or before February 27, 2009. On March 3, 2009, Motions Commissioner Garmon recommended to the full Commission that QPONDIRECT, Inc. be found liable for Vozel's allegations. Subsequently, on March 23, 2009, the Commission issued a Final Order finding QPONDIRECT, Inc. liable for engaging in age and sex based discrimination for failing to engage Vozel in an interactive process; for failing to accommodate Vozel's disability; and on March 5, 2008, for terminating Vozel in retaliation for her opposition to discrimination. After the liability finding in this matter, conciliation efforts were

unsuccessful. Subsequently this matter was approved for public hearing on the issue of appropriate damages.

The public hearing on the issue of appropriate damages was held September 2, 2009 in Pittsburgh, Pennsylvania before Permanent Hearing Examiner Phillip A. Ayers. The state's interest in the complaint was overseen by Diane Blancett-Maddock, PHRC Assistant Chief Counsel. Although duly notified, QPONDIRECT, Inc. failed to attend the public hearing.

Since liability had been found after QPONDIRECT, Inc. failed to file a properly verified answer, the only question at the public hearing was what damages Vozel could establish.

Section 9(f) of the PHRA provides in pertinent part:

If, upon hearing all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in the Act, the Commission shall state its finding of fact, and shall issue and cause to be served on such respondent an order requiring such 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, hiring, 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, and including a requirement for report of the manner of compliance.

The main purpose of a remedy in employment discrimination is not to punish the Respondent, but rather to make the Complainant whole. The goal is to return the Complainant to the position in which she would have been, absent the discriminatory practice. Albemarle Paper Co. v. Moody, 422 U.S. 405, 10 FEP Cases 1181 (1975) We must first consider making Vozel whole to the extent of the financial loss she suffered. When complainants show an economic loss, back pay should be awarded

absent specific circumstances. Walker v. Ford Motor Company, Inc., 684 F.2d 1355, 29 FEP Cases 1259 (11th Cir. 1982) A proper basis for calculating lost earnings need not be mathematically precise but must simply be a "reasonable means to determine the amount [the complainant] would probably have earned" PHRC v. Transit Casualty Insurance Co., 340 A.2d 624 (Pa. Commonwealth Ct. 1975) Any uncertainty in an estimation of damages must be borne by the wrongdoer, rather than the victim, since the wrongdoer caused the damages. Green v. USX Corp. 46 FEP Cases 720 (3rd Cir. 1968)

In the instant case, Vozel earned \$3,333.00 every two weeks while she was employed by QPONDIRECT, Inc. Vozel's claim for back pay runs from March 5, 2008 through September 2, 2009, the date of the public hearing in this matter. The back pay for the time period is as follows:

2008 potential earnings from QPONDIRECT, Inc.	26 pay pds x \$3,333.00	\$86,658.00
2008 actual earnings from QPONDIRECT, Inc		-12,921.00
	2008 Total Lost Wages	73,737.00
2009 potential earnings	16 pay pds x \$3,333.00	53,328.00
	Total Lost Wages	\$127,065.00

Next, Vozel testified that she made two trips to the Pittsburgh Regional Office in pursuing her complaint. The two trips totaled 120 miles in travel and Vozel incurred \$29.00 in parking expenses while in Pittsburgh for matters involving her complaint.

Those mileage and parking expenses are as follows:

120 miles x \$.50	=	\$60.00
Parking expenses		<u>29.00</u>
		\$89.00

In regard to the issue of mitigation of damages, the Complainant has a duty to mitigate her damages. However, the burden is on the Respondent to show that the

Complainant fails to mitigate. In this case, QPONDIRECT, Ind. did not appear at the public hearing to make a showing on the issue of whether Vozel's efforts at mitigation were reasonable. Without such a showing, Vozel is entitled to a full back pay remedy.

The PHRC is also authorized to award interest on back pay awards. Goetz v. Norristown Area School District, 16 Pa. Cmwlth. Ct. 389, 328 A.2d 579 (1975). Accordingly, interest shall be ordered. Lastly since Vozel does not seek to be reinstated, an order of reinstatement will not be issued.

An appropriate Order follows:

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RECOMMENDATION OF PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, I find that Vozel suffered damages. It is, therefore, my recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted. If so, approved and adopted, I further recommend issuance of the attached Final Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

May 6, 2010
Date

By:


Phillip A. Ayers
Permanent Hearing Examiner

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AND NOW, this 25TH day of MAY, 2010 after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations 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 into the permanent record of this proceeding, to be served on the parties to the complaint and hereby

ORDERS

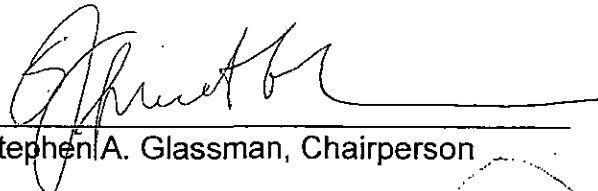
1. That QPONDIRECT, Inc. shall cease and desist from discriminating against individuals on the basis of their age or their sex.

2. That QPONDIRECT, Inc. shall pay Vozel the lump sum of \$127,065.00 which amount represents lost wages from March 5, 2008 to September 2, 2009.

3. That QPONDIRECT, Inc. shall pay additional interest of 6% per annum on the back pay award calculated from March 5, 2008 until payment is made.

4. That QPONDIRECT, Inc. shall pay Vozel travel and parking expenses in the amount of \$89.00.

5. That, within thirty days of the effective date of this Order, QPONDIRECT, Inc. shall report to the PHRC on the manner of its compliance with the terms of this Order by letter addressed to Diane Blancett-Maddock, Assistant Chief Counsel, Pennsylvania Human Relations Commission, Pittsburgh, PA.

By: 
Stephen A. Glassman, Chairperson

Attest:



Dr. Daniel D. Yun, Secretary