

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

HEATHER L. NASH,	:	
Complainant	:	
	:	
v.	:	
	:	
PANDEMONIUM INC. d/b/a	:	PHRC CASE NO. 201900271
PANDEMONIUM BAR & GRILL,	:	EEOC CHARGE NO. 530-2019-01489
Respondent	:	

FINDINGS OF FACT¹

1. The Complainant is Heather Nash (Nash).
2. The Respondent is Pandemonium Inc. d/b/a Pandemonium Bar & Grill (Pandemonium or Respondent).
3. Respondent is located at 5085 Spring Road, Shermans Dale, PA 17090.
4. Timothy Ricker is the owner of Pandemonium. Tr. 6.
5. In January 2019, Nash dual filed a verified Complaint with the Pennsylvania Human Relations Commission (PHRC) and the Equal Employment Opportunity Commission (EEOC) at PHRC case number 201900271. Tr. 8.
6. On or about March 23, 2021, PHRC filed a Rule to Show Cause indicating that the Respondent had not filed an Answer to the Complaint. *Id.*
7. The Motions Examiner gave the Respondent until April 19, 2021, to respond to the Rule to Show Cause. *Id.*

¹ Abbreviations
Tr-Transcript

8. On or about August 23, 2021, the Commission found liability against Respondent based on Respondent's failure to file an Answer to the Complaint or a Response to the Rule to Show Cause. Tr. 9.
9. The Commission found the Respondent liable for failing to engage with Nash in the interactive process after Nash disclosed she had a disability and for terminating her on August 29, 2018 because of her disability.² *Id.*
10. A Public Hearing was held virtually on February 28, 2022. Tr. 1.
11. Tim Ricker, owner of Pandemonium, appeared at the hearing. Tr. 6.
12. The only issue for the public hearing was damages. Tr. 9.
13. Nash began working at Pandemonium on March 1, 2018. Tr. 14.
14. Nash admitted to missing some work because of her mental health and because she was a victim of domestic violence. Tr. 25.
15. Nash missed 14 days of work in 26 weeks. Tr. 47.
16. Nash was terminated from Pandemonium on August 24, 2018. Tr. 14.
17. For the first six weeks after leaving Pandemonium, Nash was recovering from surgery. Tr. 14-5.
18. It took Nash time to find a job after recovering from surgery because she had been through a traumatic domestic violence situation. Tr. 15.
19. The mental health issues Nash experienced since working at Pandemonium got worse as time went on. Tr. 32.
20. Because of her worsening mental health, Nash was unable to work as often as when she started at Pandemonium. Tr. 33.

² While the Hearing Examiner stated Nash was terminated August 29, 2018, on page 9 of the record, the evidence shows Ms. Nash was terminated on August 24, 2018.

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, Pandemonium's failure to answer or respond to a Rule to Show Cause resulted in the entry of a judgment for Nash on the issue of liability.
6. A party who prevails on a discrimination claim is entitled to back pay unless there are reasons which, if applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination.
7. An employer who has discriminated need not reimburse the plaintiff for salary loss attributable to the plaintiff and unrelated to the employment discrimination.

OPINION

These consolidated cases arose out of a Complaint dual filed by Heather Nash, (Nash), against her former employer, Pandemonium Inc. d/b/a Pandemonium Bar and Grill (Pandemonium or Respondent). In her Complaint, Nash alleged that Respondent discriminated against her based on her disability by failing to engage in the interactive process after Nash disclosed she had a disability and by terminating her because of her disability.

By correspondence dated March 23, 2021, the Pennsylvania Human Relations Commission (PHRC) Harrisburg regional office petitioned for a Rule to Show Cause, indicating that Pandemonium had not answered Nash's Complaint. The petition declared that Pandemonium had been served with Nash's Complaint on December 21, 2020. The petition further indicated that by correspondence dated January 27, 2021, efforts had been made to obtain an answer from Pandemonium.

On August 23, 2021, because Pandemonium failed to answer Nash's Complaint, the PHRC found probable cause and entered judgment for Nash on the issue of liability. After the finding of liability in this case, conciliation efforts were unsuccessful. Subsequently, this matter was approved for a public hearing on the issue of appropriate damages.

The public hearing on the issue of appropriate damages was held virtually on February 28, 2022, before Permanent Hearing Examiner Carl H. Summerson.³ Jonathan Chase, Esquire, appeared at the Public Hearing on behalf of Nash. Robert Taylor, Esquire, appeared on behalf of the Commonwealth's interest in the Complaint. Timothy Ricker, owner of Pandemonium, appeared on behalf of the Respondent. Since liability attached because Pandemonium failed to file an

³ Hearing Examiner Summerson is no longer with the Commission. A telephone conference was held on July 27, 2022, to determine if the parties wanted the case reheard or if they wanted the case decided on the papers. The parties agreed to have the case decided on the papers.

answer, the only question at the public hearing was what damages Nash could establish.⁴ The parties filed post-hearing briefs in September 2022.

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

“If, upon 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 this 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 function of the remedy in employment discrimination cases is not to punish a Respondent, but simply to make a Complainant whole by returning the Complainant to the position in which he/she would have been, absent the discriminatory practice. See *Albemarle Paper Co. v. Moody*, 422 U.S. 405, (1975); *PHRC v. Alto-Reste Park Cemetery Association*, 306 A.2d 881 (Pa. S. Ct. 1973).

The first aspect to consider regarding making Nash whole is whether she is entitled to back pay. A party who prevails on a discrimination claim is entitled to back pay unless there are reasons which, if applied generally, would not frustrate the central statutory purposes of eradicating discrimination throughout the economy and making persons whole for injuries suffered through past discrimination. *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 421 (1975). However, courts have found that an employer who has discriminated need not reimburse the plaintiff for salary loss attributable to the plaintiff and unrelated to the employment discrimination. See *Mason v.*

⁴ At the Hearing, Respondent testified that he believed he answered the Complaint in January 2019, and that he got a call from someone from the federal government saying that since he had less than 25 employees, he did not have to worry about this. Tr. 11. Hearing Examiner Summerson found this testimony irrelevant because the PHRC Complaint was not filed until February 2019.

Association for Independent Growth, 817 F. Supp. 550 (E.D. Pa. 1993) and *American Mfg. Co.*, 167 N.L.R.B. 520, 522 (1967).

Here the Hearing Examiner finds that Nash is not entitled to back pay because the loss in wages was unrelated to the employment discrimination. Nash testified that she had mental health issues and was a victim of domestic violence while working at Pandemonium. Tr. 25. She admitted that these two issues caused her to miss some work. *Id.* Respondent testified that Nash missed 14 days in 26 weeks. Tr. 47. Immediately upon being terminated from Pandemonium, Nash got surgery and took six weeks to recover. There is no evidence that the injury was work-related. Nash testified it took her about six months to find employment after she recovered from surgery because of trauma related to the domestic violence. Tr. 15. “I actually had just gone through a very traumatic domestic violence situation, so it did take me some time to find work. *Id.* There is no evidence that the delay was because of the discrimination. Nash further testified that the mental health issues she experienced since working at Pandemonium got worse as time went on. Tr. 32. Because of her worsening mental health, Nash was unable to work as often as when she started at Pandemonium. Tr. 33. Since other factors caused Ms. Nash to miss work and be unable to find employment, the Hearing Examiner finds that she is not entitled to damages.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Darlene Hemerka

By: Darlene Hemerka, Hearing Examiner

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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 Nash has proven she was discriminated against because of her disability in violation of Section 5(a) of the PHRA but did not suffer any damages because of the discrimination. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted. If so, approved and adopted, the Permanent Hearing Examiner further recommends issuance of the attached Final Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Darlene Hemerka

Darlene Hemerka, Hearing Examiner

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FINAL ORDER

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

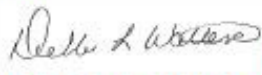
ORDERS

1. Pandemonium to cease and desist from discriminating against any employee with a disability who requests a reasonable accommodation.
2. Pandemonium to cease and desist from terminating any employee because of a disability.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: 
_____ **M. Joel Bolstein**

ATTEST:

By:  O/B/O Commissioner Mayur Patel
_____ **Mayur Patel, Secretary**

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Via email