

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

ALBERTHA G. EZELL, :
Complainant :
 :
 :
vs. : DOCKET NO. E-8402-D
 :
PHILADELPHIA HOUSING AUTHORITY, :
Respondent :

HISTORY OF THE CASE, FINDINGS OF FACT,
CONCLUSIONS OF LAW, OPINION,
COMMISSION'S DECISION AND FINAL ORDER

HISTORY OF THE CASE

On January 30, 1975, Albertha G. Ezell filed a complaint with the Pennsylvania Human Relations Commission at docket number E-8402-D alleging that the Philadelphia Housing Authority forced her to resign her position as an Account Clerk because she was pregnant and that she subsequently had to file applications for positions of Account Clerk and Clerk-Typist and apply for those positions as a new employe because of this forced resignation by the Respondent, and that these acts occurred because of her sex, female. Complainant alleged that these actions constituted a continuing violation of Section 5(a) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §951 et seq.

An investigation into the allegations contained in the complaint was made by representatives of the Commission and a determination was made that probable cause existed to credit the allegations of the complaint. Thereupon, the Commission endeavored to eliminate the unlawful practices complained of by conference, conciliation and persuasion.

These endeavors were unsuccessful and, pursuant to §9 of the Pennsylvania Human Relations Act, on April 30, 1976, a hearing on the merits of the case was convened in Philadelphia before Commissioners Benjamin S. Loewenstein, Esquire, Hearing Panel Chairperson, Alvin E. Echols, Jr., Esquire, and Dr. Robert Johnson Smith.

The Hearing Panel, upon consideration of all the testimony presented before it and the stipulations and briefs submitted by both parties, recommended that the Commission find in favor of the Complainant.

FINDINGS OF FACT

1. The following Stipulations of Facts were entered into the record (T. 4):

(1) Complainant, Albertha G. Ezell, is a natural person residing at 5737 Windsor Avenue, Philadelphia, Pennsylvania.

(2) Respondent maintains offices at 2012-18 Chestnut Street, Philadelphia, Pennsylvania.

(3) On January 30, 1975, Albertha G. Ezell filed a complaint with the Pennsylvania Human Relations Commission alleging that "the respondent forced her to resign her position as an Account Clerk because she was pregnant. The Complainant subsequently had to file applications for positions of Account Clerk and Clerk-Typist and apply for these positions as a new employe because of this forced resignation by the Respondent. The Complainant alleges that these acts occurred because of her sex, female." (Exhibit A not attached to Final Order)

(4) The Pennsylvania Human Relations Commission has jurisdiction over both parties and the subject matter of this complaint and all objections thereto are hereby waived.

(5) In August of 1967, Complainant was hired by the Philadelphia Housing Authority as a Clerk-Typist.

(6) Effective September 7, 1971, Complainant was reclassified to Account Clerk in the Accounting Department of the Philadelphia Housing Authority.

(7) In May of 1973, Complainant became pregnant.

(8) In a memo dated September 7, 1973, John F.

Glowacki, Comptroller, wrote to William A. Gaughan,

Personnel Director as follows:

In Compliance with your memorandum of August 1, 1973, attached is doctor's certificate indicating information required for pregnant employee, Albertha Ezell.

We would like you to retain the employee during the period in December when the budget for the fiscal year beginning 4-1-74 is being prepared and assembled so she can instruct another girl in this phase of the work.

Certification from the doctor will be sent to you monthly. (Exhibit B not attached to Final Order).

(9) On September 11, 1973, William A. Gaughan, Personnel

Director, replied:

In reference to (Albertha Ezell), please be advised that we are unable to grant any exception to the rule requiring pregnant employees to separate.

Accordingly, please inform Miss Ezell that she is not permitted to work beyond November 15, 1973, based on the certificate issued by her doctor, stating February 16, 1974, as her delivery date. (Exhibit C not attached to Final Order)

(10) On November 5, 1973, Complainant wrote William Gaughan,

Personnel Director:

Due to the latest personnel policy on pregnancy, please accept my resignation from employment as of November 15, 1973. (Exhibit D not attached to Final Order).

(11) The rule which required the separation of pregnant employees at the sixth month of pregnancy, and which is referred to in paragraphs 9 and 10, was not applied to any other physical condition.

(12) Complainant's last working day at the Philadelphia Housing Authority was November 16, 1973.

(13) Albertha G. Ezell was not disabled on November 16, 1973, and was not disabled until February 14, 1974, when she delivered. She was disabled from February 14, 1974 to March 18, 1974. (Exhibit E not attached to Final Order)

(14) Complainant has not worked at the Philadelphia Housing Authority since November 16, 1973.

(15) At the time she resigned from her position as Account Clerk, Complainant's gross annual salary was \$8,139.

(16) After her forced resignation from the Philadelphia Housing Authority, Albertha Ezell received \$3440 in unemployment compensation benefits. As a reimbursable employer, the Philadelphia Housing Authority has reimbursed the Commonwealth for \$2760 of the \$3440 in unemployment compensation benefits.

(17) On November 6, 1975, Albertha G. Ezell was granted a leave of absence without pay from her employment at the Pennsylvania Department of Public Welfare. This leave became effective October 24, 1975, and expired April 22, 1976. Both parties agree that no damages accrue after October 24, 1975. (Exhibit F not attached to Final Order.)

(18) Complainant's gross earnings during 1975 were \$3785.55. (Exhibit G not attached to Final Order.)

2. Complainant made the following attempts to secure re-employment with Respondent:

- a. Filed an application for re-employment in April of 1974 to which she received no response (T.5).

- b. Telephoned the Philadelphia Housing Authority at the end of April and was told to call back in two weeks (T.7).
- c. In May, talked with Mr. Booker, a union officer, about trying to get her job back. Mr. Booker said that he would see what he could do for her and for Complainant to apply for unemployment compensation. Complainant never heard from Mr. Booker after she applied for unemployment compensation (T. 10).
- d. Called Respondent twice in June and twice in July. Complainant continued to make the telephone calls because she was told to call back in two weeks every time she called (T. 11-12).
- e. Filed another written application with Respondent in September, 1974 (T. 12).
- f. Followed up second application with telephone calls until November, 1974. In November, Complainant was told that Respondent had her application and would get in touch with her when Respondent had a job opening (T. 12).

3. Other attempts to find employment made by Complainant during the period that she sought reinstatement by Respondent:

- a. Complainant had interviews at the unemployment office (T. 12). The unemployment office sent her to two interviews, one with Gulf Oil and the other with Dynamite Exterminating Company. Neither company offered her a job (T. 14, 16, 18).
- b. Complainant looked through newspaper advertisements for jobs and followed up on some of them with telephone calls. Complainant did not apply for any of these jobs because of the low salary (T. 16-18, 23).
- c. Complainant did not have money to go to an employment agency (T. 18).

4. Complainant had reason to believe that she would be rehired because she had previously been forced to resign because of pregnancy in 1970, and had been rehired in April, 1971 (T. 15). In addition, within six months of her reinstatement in 1971, she was promoted from a Clerk-Typist I to an Account Clerk II because of her work record (T. 14).

5. After Respondent told Complainant in November that it had no job for her, Complainant took the tests for city, state and federal employment that were given in December, 1974 and January, 1975 (T. 15-16, 25). Complainant was hired by the state in March, 1975 (T. 16).

6. Complainant made reasonable efforts to obtain em-

ployment elsewhere and thereby mitigate the damages accruing from her forced resignation. Complainant's concentration on regaining employment with Respondent was reasonable in light of the fact that Respondent had previously forced her to resign and then rehired her under the same circumstances in 1971.

7. Complainant applied for and started receiving unemployment compensation in May, 1974 (T. 14).

8. Respondent offered to rehire Complainant in April, 1975 after Complainant was already working for the state. However, if Complainant accepted the offer to rehire, she would not have received any back pay (T. 19-20, 26, 37).

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the Complainant, the Respondent and the subject matter of the complaint under the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §951 et seq. Jurisdiction was acknowledged in Stipulation 4.

2. Respondent's policy which required separation of pregnant employes at the sixth month of pregnancy, a rule which was not applied to any other physical condition, is a violation of Section 5(a) of the Pennsylvania Human Relations Act which prohibits employment discrimination, including termination of an employe, because of the employe's sex.

Pregnancy is a temporary disability and must be treated as any other temporary disability.

3. Complainant's testimony that whenever she called the Philadelphia Housing Authority from April, 1974 until November, 1974, she was told to call back, is admissible under the "state of mind" exception to the hearsay rule.

4. The Pennsylvania Human Relations Commission has the authority under Section 9 of the Pennsylvania Human Relations Act to order Respondent - Philadelphia Housing Authority, to compensate Complainant for the back pay that she lost because of Respondent's discriminatory policy. Complainant is entitled to back pay for lost earnings from November 17, 1973 through February 13, 1974 and April 23, 1974 through March 27, 1975 and for the difference in her earnings from March 28, 1975 through October 23, 1975.

5. Complainant had a duty to mitigate the damages by making reasonable efforts to obtain employment elsewhere.

6. It is within the Commission's discretion to decide whether to deduct all or part of the unemployment compensation benefits that Complainant received from the back pay award.

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OPINION

Complainant alleged that Respondent forced her to resign her position as an Account Clerk because she was pregnant and that she subsequently had to file applications for positions of Account Clerk and Clerk-Typist and apply for these positions as a new employe because of the forced resignation and that this was because of her sex, female. It has been long established in Pennsylvania that the termination of a woman's employment solely because of pregnancy "is sex discrimination pure and simple" and therefore is violative of Section 5(a) of the Pennsylvania Human Relations Act. Cerra v. East Stroudsburg School District, 450 Pa. 207, 299 A.2d 277 (1973). The only real issue presented by this case is the amount of back pay to which Complainant is entitled. To determine this amount it is necessary to examine Complainant's duty to mitigate damages and the effect of the payment of unemployment compensation benefits by a reimbursable employer.

If a person is improperly dismissed from employment that person has a duty to mitigate damages. Respondent, in his brief, cites Savitz v. Gallacio, for the principle that:

"Where an employee has been discharged before the expiration of his term of employment without sufficient excuse, he is nevertheless bound to use reasonable efforts to obtain employment elsewhere." 179 Pa. Super. 589 (1955).

The question then, is what constitutes "reasonable efforts"? In Savitz the employe testified that he made no effort to secure other work after his discharge because, at that time of year, employment as a superintendent was impossible to obtain. The employer attempted to show that jobs were available. The jury found for the employe and the Superior Court affirmed.

The present case constitutes an analogous situation. Complainant directed most of her energies to re-employment with the Philadelphia Housing Authority. Her reasons were (1) that she had previously been forced to resign because of pregnancy in 1970 and had been rehired in April, 1971, and (2) she was told to call back every time she called about a job until November, 1974. Her testimony that representatives of the Respondent directed her to call back is admissible under the "state of mind" exception to the hearsay rule. The Respondent's directions to call back reinforced her logical belief based on past experience that she would be rehired. Just as it was reasonable for the superintendent to make no effort to secure other work because at that time employment as a superintendent was impossible to obtain, or so he believed, so it was reasonable for Complainant to make less strenuous efforts to secure employment elsewhere than she otherwise might have made because her past experience in an identical situation with Respondent had been that she would be re-employed.

Complainant made the necessary reasonable efforts to mitigate damages.

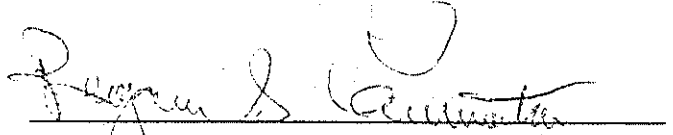
The second factor that it is necessary to consider is whether the amount of unemployment compensation benefits that Complainant received should be deducted from the back pay awards.

Present case law on this issue has gone both ways. Unemployment compensation benefits have been deducted from Title VII back pay awards in two cases pursuant to the language in Title VII which provides that "interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable." (43 U.S.C. 2000(e)-5(g)). Bowe v. Colgate Palmolive Company, 416 F.2d 711 (7th Cir. 1969); Diaz v. Pan American World Airways, Inc., 346 F. Supp. 1301, Amended 348 F. Supp. 1083 (S.D. Fla. 1972). Other courts have found unemployment compensation benefits to be collateral earnings and have refused to deduct them from Title VII back pay awards. Tidewell v. American Oil Co., 332 F. Supp. 424 (D. Utah 1971); Mabin v. Lear Siegler, Inc., 4 F.E.P. Cas. 679 (W.D. Mich. 1971, aff'd mem 457 F. 2d 806 (6th Cir. 1972)). The Pennsylvania Human Relations Act does not contain the "interim earnings" provisions of Title VII and the Commission policy follows Tidewell and Mabin. As a general rule, the Commission will not deduct unemployment compensation benefits from a back pay award. However, where the Respondent is a reimbursable employer, as is the present case, the Commission will deduct the amount that has been reimbursed. To refuse to allow the employer to offset the reimbursed amount would be punitive in nature and, therefore, not within the spirit of the Pennsylvania Human Relations Act.

Based on the above reasoning the amount of the Complainant's award is \$7,696.75 plus interest at the rate of six (6) percent per year.

RECOMMENDATIONS OF HEARING PANEL

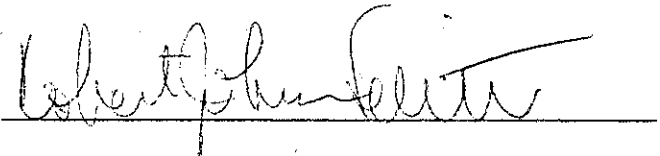
AND NOW, this 22nd day of August, 1976,
upon consideration of all the evidence presented at the public hearing on the above matter, the stipulations, the arguments of counsel, the briefs and the proposed History of the Case, Findings of Fact, Conclusions of Law and Opinion, the Hearing Panel recommends to the entire Commission that an Order be entered against Respondent Philadelphia Housing Authority holding it in violation of Section 5(a) of the Pennsylvania Human Relations Act and providing for backpay for Complainant and the revamping of Respondent's policy on pregnancy to bring that policy in accordance with the Pennsylvania Human Relations Act.



BENJAMIN S. LOEWENSTEIN, Esquire
Presiding Commissioner



ALVIN E. ECHOLS, JR., Esquire
Hearing Commissioner



DR. ROBERT JOHNSON SMITH
Hearing Commissioner

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COMMISSION'S DECISION

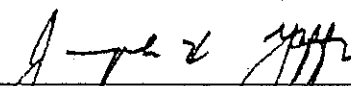
AND NOW, this 22nd day of August , 1976,
upon the Recommendations of the Hearing Panel and upon all
the evidence presented at the public hearing of this case, the
briefs of both parties and in consideration of the History of
the Case, the Findings of Fact, Conclusions of Law and Opinion,
the Pennsylvania Human Relations Commission finds and deter-
mines that Respondent Philadelphia Housing Authority engaged in
an unlawful discriminatory practice in violation of Section 5
(a) of the Pennsylvania Human Relations Act, Act of October 27,
1955, P.L. 744, as amended, in that Respondent Philadelphia
Housing Authority discriminated against Complainant on the
basis of sex by its rule which required the separation of preg-
nant employes after six months of pregnancy, a rule which does
not apply to any other physical condition.

PENNSYLVANIA HUMAN RELATIONS
COMMISSION

ATTEST:


Elizabeth M. Scott
Secretary

By:


Joseph X. Yaffe
Chairperson

COMMONWEALTH OF PENNSYLVANIA

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FINAL ORDER

AND NOW, this 27th day of August , 1976, upon consideration of the foregoing History of the Case, Findings of Fact, Conclusions of Law, Opinion, and the Commission's Decision and pursuant to Section 9 of the Pennsylvania Human Relations Act, as amended, the Pennsylvania Human Relations Commission hereby

ORDERS:

1. Respondent Philadelphia Housing Authority shall cease and desist from discriminating on the basis of sex by requiring the separation of pregnant employes at the sixth month of pregnancy, a rule which does not apply to any other physical condition.

Respondent's policy on pregnancy shall be adjusted so that pregnancy is treated as any other temporary disability.

2. Respondent Philadelphia Housing Authority shall pay Complainant Albertha G. Ezell \$7,696.75 as back pay, plus simple interest at the rate of six (6) percent per year to commence running as follows:

6% on \$1,971.14 from February 13, 1974
(This amount is for the period of time
that she was forced to quit work even
though she wasn't disabled).

6% on \$4,815.56 from March 27, 1975
(This amount is for the period of time
starting when she was no longer disabled
because of childbirth until she found a
job less the amount of reimbursed unemploy-
ment compensation paid by Respondent.

6% on 910.05 from October 24, 1975
(Difference in earnings from what she
would have earned in Respondent's employ
and what she actually earned from day she
started job to her last day before voluntarily
going on leave).

3. Respondent Philadelphia Housing Authority shall,
within thirty (30) days of this Order, submit to the Pennsyl-
vania Human Relations Commission notice and proof that the
actions required by this Order have been performed.

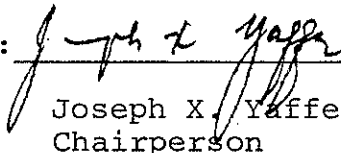
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HISTORY OF THE CASE

On January 30, 1975, Albertha G. Ezell filed a complaint with the Pennsylvania Human Relations Commission at docket number E-8402-D alleging that the Philadelphia Housing Authority forced her to resign her position as an Account Clerk because she was pregnant and that she subsequently had to file applications for positions of Account Clerk and Clerk-Typist and apply for those positions as a new employe because of this forced resignation by the Respondent, and that these acts occurred because of her sex, female. Complainant alleged that these actions constituted a continuing violation of Section 5(a) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §951 et seq.

An investigation into the allegations contained in the complaint was made by representatives of the Commission and a determination was made that probable cause existed to credit the allegations of the complaint. Thereupon, the Commission endeavored to eliminate the unlawful practices complained of by conference, conciliation and persuasion.

These endeavors were unsuccessful and, pursuant to §9 of the Pennsylvania Human Relations Act, on April 30, 1976, a hearing on the merits of the case was convened in Philadelphia before Commissioners Benjamin S. Loewenstein, Esquire, Hearing Panel Chairperson, Alvin E. Echols, Jr., Esquire, and Dr. Robert Johnson Smith.

The Hearing Panel, upon consideration of all the testimony presented before it and the stipulations and briefs submitted by both parties, recommended that the Commission find in favor of the Complainant.

FINDINGS OF FACT

1. The following Stipulations of Facts were entered into the record (T. 4):

(1) Complainant, Albertha G. Ezell, is a natural person residing at 5737 Windsor Avenue, Philadelphia, Pennsylvania.

(2) Respondent maintains offices at 2012-18 Chestnut Street, Philadelphia, Pennsylvania.

(3) On January 30, 1975, Albertha G. Ezell filed a complaint with the Pennsylvania Human Relations Commission alleging that "the respondent forced her to resign her position as an Account Clerk because she was pregnant. The Complainant subsequently had to file applications for positions of Account Clerk and Clerk-Typist and apply for these positions as a new employe because of this forced resignation by the Respondent. The Complainant alleges that these acts occurred because of her sex, female." (Exhibit A not attached to Final Order)

(4) The Pennsylvania Human Relations Commission has jurisdiction over both parties and the subject matter of this complaint and all objections thereto are hereby waived.

(5) In August of 1967, Complainant was hired by the Philadelphia Housing Authority as a Clerk-Typist.

(6) Effective September 7, 1971, Complainant was reclassified to Account Clerk in the Accounting Department of the Philadelphia Housing Authority.

(7) In May of 1973, Complainant became pregnant.

(8) In a memo dated September 7, 1973, John F. Glowacki, Comptroller, wrote to William A. Gaughan, Personnel Director as follows:

In Compliance with your memorandum of August 1, 1973, attached is doctor's certificate indicating information required for pregnant employee, Albertha Ezell.

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(9) On September 11, 1973, William A. Gaughan, Personnel Director, replied:

In reference to (Albertha Ezell), please be advised that we are unable to grant any exception to the rule requiring pregnant employees to separate.

Accordingly, please inform Miss Ezell that she is not permitted to work beyond November 15, 1973, based on the certificate issued by her doctor, stating February 16, 1974, as her delivery date. (Exhibit C not attached to Final Order)

(10) On November 5, 1973, Complainant wrote William Gaughan, Personnel Director:

Due to the latest personnel policy on pregnancy, please accept my resignation from employment as of November 15, 1973. (Exhibit D not attached to Final Order).

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(12) Complainant's last working day at the Philadelphia Housing Authority was November 16, 1973.

(13) Albertha G. Ezell was not disabled on November 16, 1973, and was not disabled until February 14, 1974, when she delivered. She was disabled from February 14, 1974 to March 18, 1974. (Exhibit E not attached to Final Order)

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- a. Filed an application for re-employment in April of 1974 to which she received no response (T.5).

- b. Telephoned the Philadelphia Housing Authority at the end of April and was told to call back in two weeks (T.7).
- c. In May, talked with Mr. Booker, a union officer, about trying to get her job back. Mr. Booker said that he would see what he could do for her and for Complainant to apply for unemployment compensation. Complainant never heard from Mr. Booker after she applied for unemployment compensation (T. 10).
- d. Called Respondent twice in June and twice in July. Complainant continued to make the telephone calls because she was told to call back in two weeks every time she called (T. 11-12).
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ployment elsewhere and thereby mitigate the damages accruing from her forced resignation. Complainant's concentration on regaining employment with Respondent was reasonable in light of the fact that Respondent had previously forced her to resign and then rehired her under the same circumstances in 1971.

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CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the Complainant, the Respondent and the subject matter of the complaint under the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §951 et seq. Jurisdiction was acknowledged in Stipulation 4.

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Complainant alleged that Respondent forced her to resign her position as an Account Clerk because she was pregnant and that she subsequently had to file applications for positions of Account Clerk and Clerk-Typist and apply for these positions as a new employe because of the forced resignation and that this was because of her sex, female. It has been long established in Pennsylvania that the termination of a woman's employment solely because of pregnancy "is sex discrimination pure and simple" and therefore is violative of Section 5(a) of the Pennsylvania Human Relations Act. Cerra v. East Stroudsburg School District, 450 Pa. 207, 299 A.2d 277 (1973). The only real issue presented by this case is the amount of back pay to which Complainant is entitled. To determine this amount it is necessary to examine Complainant's duty to mitigate damages and the effect of the payment of unemployment compensation benefits by a reimbursable employer.

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"Where an employee has been discharged before the expiration of his term of employment without sufficient excuse, he is nevertheless bound to use reasonable efforts to obtain employment elsewhere." 179 Pa. Super. 589 (1955).

The question then, is what constitutes "reasonable efforts"? In Savitz the employe testified that he made no effort to secure other work after his discharge because, at that time of year, employment as a superintendent was impossible to obtain. The employer attempted to show that jobs were available. The jury found for the employe and the Superior Court affirmed.

The present case constitutes an analogous situation. Complainant directed most of her energies to re-employment with the Philadelphia Housing Authority. Her reasons were (1) that she had previously been forced to resign because of pregnancy in 1970 and had been rehired in April, 1971, and (2) she was told to call back every time she called about a job until November, 1974. Her testimony that representatives of the Respondent directed her to call back is admissible under the "state of mind" exception to the hearsay rule. The Respondent's directions to call back reinforced her logical belief based on past experience that she would be rehired. Just as it was reasonable for the superintendent to make no effort to secure other work because at that time employment as a superintendent was impossible to obtain, or so he believed, so it was reasonable for Complainant to make less strenuous efforts to secure employment elsewhere than she otherwise might have made because her past experience in an identical situation with Respondent had been that she would be re-employed.

Complainant made the necessary reasonable efforts to mitigate damages.

The second factor that it is necessary to consider is whether the amount of unemployment compensation benefits that Complainant received should be deducted from the back pay awards.

Present case law on this issue has gone both ways. Unemployment compensation benefits have been deducted from Title VII back pay awards in two cases pursuant to the language in Title VII which provides that "interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable." (43 U.S.C. 2000(e)-5(g)). Bowe v. Colgate Palmolive Company, 416 F.2d 711 (7th Cir. 1969); Diaz v. Pan American World Airways, Inc., 346 F. Supp. 1301, Amended 348 F. Supp. 1083 (S.D. Fla. 1972). Other courts have found unemployment compensation benefits to be collateral earnings and have refused to deduct them from Title VII back pay awards. Tidewell v. American Oil Co., 332 F. Supp. 424 (D. Utah 1971); Mabin v. Lear Siegler, Inc., 4 F.E.P. Cas. 679 (W.D. Mich. 1971, aff'd mem 457 F. 2d 806 (6th Cir. 1972). The Pennsylvania Human Relations Act does not contain the "interim earnings" provisions of Title VII and the Commission policy follows Tidewell and Mabin. As a general rule, the Commission will not deduct unemployment compensation benefits from a back pay award. However, where the Respondent is a reimbursable employer, as is the present case, the Commission will deduct the amount that has been reimbursed. To refuse to allow the employer to offset the reimbursed amount would be punitive in nature and, therefore, not within the spirit of the Pennsylvania Human Relations Act.

Based on the above reasoning the amount of the Complainant's award is \$7,696.75 plus interest at the rate of six (6) percent per year.

RECOMMENDATIONS OF HEARING PANEL

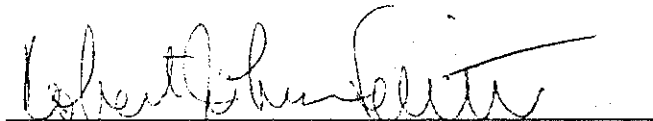
AND NOW, this 22nd day of August, 1976,
upon consideration of all the evidence presented at the public hearing on the above matter, the stipulations, the arguments of counsel, the briefs and the proposed History of the Case, Findings of Fact, Conclusions of Law and Opinion, the Hearing Panel recommends to the entire Commission that an Order be entered against Respondent Philadelphia Housing Authority holding it in violation of Section 5(a) of the Pennsylvania Human Relations Act and providing for back pay for Complainant and the revamping of Respondent's policy on pregnancy to bring that policy in accordance with the Pennsylvania Human Relations Act.



BENJAMIN S. LOEWENSTEIN, Esquire
Presiding Commissioner



ALVIN E. ECHOLS, JR., Esquire
Hearing Commissioner



DR. ROBERT JOHNSON SMITH
Hearing Commissioner

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

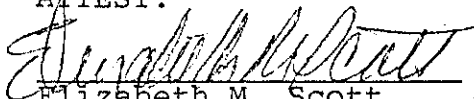
ALBERTHA G. EZELL, :
Complainant :
 :
 :
vs. : DOCKET NO. E-8402-D
 :
PHILADELPHIA HOUSING AUTHORITY, :
Respondent :

COMMISSION'S DECISION

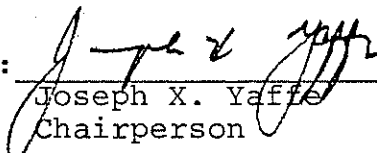
AND NOW, this 22nd day of August, 1976,
upon the Recommendations of the Hearing Panel and upon all
the evidence presented at the public hearing of this case, the
briefs of both parties and in consideration of the History of
the Case, the Findings of Fact, Conclusions of Law and Opinion,
the Pennsylvania Human Relations Commission finds and deter-
mines that Respondent Philadelphia Housing Authority engaged in
an unlawful discriminatory practice in violation of Section 5
(a) of the Pennsylvania Human Relations Act, Act of October 27,
1955, P.L. 744, as amended, in that Respondent Philadelphia
Housing Authority discriminated against Complainant on the
basis of sex by its rule which required the separation of preg-
nant employes after six months of pregnancy, a rule which does
not apply to any other physical condition.

PENNSYLVANIA HUMAN RELATIONS
COMMISSION

ATTEST:


Elizabeth M. Scott
Secretary

By:


Joseph X. Yaffe
Chairperson

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

ALBERTHA G. EZELL, :
Complainant :
 :
vs. : DOCKET NO. E-8402-D
 :
PHILADELPHIA HOUSING AUTHORITY, :
Respondent :

FINAL ORDER

AND NOW, this 27th day of August , 1976, upon consideration of the foregoing History of the Case, Findings of Fact, Conclusions of Law, Opinion, and the Commission's Decision and pursuant to Section 9 of the Pennsylvania Human Relations Act, as amended, the Pennsylvania Human Relations Commission hereby

ORDERS:

1. Respondent Philadelphia Housing Authority shall cease and desist from discriminating on the basis of sex by requiring the separation of pregnant employes at the sixth month of pregnancy, a rule which does not apply to any other physical condition.

Respondent's policy on pregnancy shall be adjusted so that pregnancy is treated as any other temporary disability.

2. Respondent Philadelphia Housing Authority shall pay Complainant Albertha G. Ezell \$7,696.75 as back pay, plus simple interest at the rate of six (6) percent per year to commence running as follows:

6% on \$1,971.14 from February 13, 1974
(This amount is for the period of time
that she was forced to quit work even
though she wasn't disabled).

6% on \$4,815.56 from March 27, 1975
(This amount is for the period of time
starting when she was no longer disabled
because of childbirth until she found a
job less the amount of reimbursed unemploy-
ment compensation paid by Respondent.

6% on 910.05 from October 24, 1975
(Difference in earnings from what she
would have earned in Respondent's employ
and what she actually earned from day she
started job to her last day before voluntarily
going on leave).

3. Respondent Philadelphia Housing Authority shall,
within thirty (30) days of this Order, submit to the Pennsyl-
vania Human Relations Commission notice and proof that the
actions required by this Order have been performed.

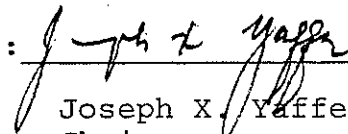
PENNSYLVANIA HUMAN RELATIONS
COMMISSION

ATTEST:



Elizabeth M. Scott,
Secretary

By:



Joseph X. Yaffe
Chairperson