

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

DONALD F. CALDWELL,  
COMPLAINANT  
  
v.  
  
CITY OF PITTSBURGH, DEPARTMENT OF  
ENVIRONMENTAL SERVICES,  
RESPONDENT

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DOCKET NO. E-17297

STIPULATIONS OF FACT

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF HEARING PANEL

FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

DONALD F. CALDWELL, :  
Complainant :  
v. : Docket No. E-17297  
CITY OF PITTSBURGH, DEPARTMENT :  
OF ENVIRONMENTAL SERVICES, :  
Respondent :

STIPULATIONS OF FACT

The Parties hereby indicate their agreement on and stipulation to the truth and relevance of the following statements of fact in the above-captioned case by the signature of their attorneys below:

1. On or about July 21, 1979, Donald Caldwell applied for a position with the City of Pittsburgh, Department of Environmental Services as an Extra Helper, A.N.
2. In the Fall of 1979, the City of Pittsburgh, by and through its Assistant Director, Secretary and Chief Examiner, Michele Cunko, notified Mr. Caldwell that he did not meet the physical qualifications for employment in the position of Extra Helper, A.N. because of the medical condition, <sup>WJ</sup> <sup>JWS</sup> ~~of his back.~~
3. At the time of the denial of Complainant's application, the Civil Service Commission was interpreting its Civil Service Rule III, Section 12B(10) to exclude those individuals with transitional vertebrae, <sup>and abnormal cervical curvature</sup> ~~from employment in a strenuous nonsedentary position.~~

4. On or about March 24, 1980, Donald Caldwell was examined by his personal physician, John C. Rossi, who found that Complainant had a recurrent back condition, straightening of <sup>with the removal of the usual</sup> the spinal curvature. <sup>WT</sup> Dr. Rossi indicated that "I feel he could perform these duties with no major difficulties."

5. After denying the position of Extra Helper, A.N. to Donald Caldwell, the City of Pittsburgh continued to seek to fill the position of Extra Helper, <sup>A.N. WT</sup> in the Department of Environmental Services.

6. On or about December 28, 1979, Mr. Caldwell duly filed a verified complaint with the Pennsylvania Human Relations Commission (hereinafter called "PHRC") alleging that he has been "discriminated against because of non-job related handicap or disability, four (4) vertebrae in the lumbar region" in violation of the Pennsylvania Human Relations Act. (Hereinafter called "PHRA").

7. In May of 1979, Respondent was notified that PHRC staff found cause to credit the allegations of the Complainant.

8. After attempts to conciliate the complaint were unsuccessful, the Commission, at its October 27, 1980 meeting approved this case for public hearing.

9. On September 13, 1979, <sup>WT</sup> W.S. Mellon, Jr., M.D., examined Mr. Caldwell. Dr. Mellon's x-ray report indicated that there was a "straightening of the cervical curvature." On September 19, 1979, Dr. Mazzei stated that Mr. Caldwell had "sacrification of the fifth lumbar vertebrae."

10. As of January 1, 1979, the applicable rate of pay for the Respondent's Extra Helper, A.N. position was \$5. <sup>762 WT</sup>75 per hour.

11. As of January 1, 1980, the applicable rate of pay for the Respondent's Extra Helper, A.N. position was \$6.272 per hour. <sup>ZLZ. WY JWS</sup>

12. As of January 1, 1980, the applicable rate of pay for the Respondent's Extra Helper, A.N. position was \$6.762 per hour.

13. As of January 1, 1982, the applicable rate of pay for the Extra Helper, A.N. position was \$9.787 per hour.

~~14. As of January 1, 1983, the applicable rate of pay for the Respondent's Extra Helper, A.N. position was \$10.312 per hour.~~ <sup>JWS</sup>

Judith W Spain  
Judith Spain  
Assistant City Solicitor  
City of Pittsburgh

3-3-87 William R. Fewell, Jr.  
William R. Fewell, Jr.  
Assistant Chief Counsel  
Pa. Human Relations Commission

FINDINGS OF FACT \*

1. Complainant herein is Donald F. Caldwell, an individual within the meaning of the Pennsylvania Human Relations Act, who resides at 1341 Herrod Street, Pittsburgh, Pennsylvania. (N.T. 9)
2. Respondent herein is the City of Pittsburgh, Department of Environmental Services, an employer within the meaning of the Pennsylvania Human Relations Act. (Complaint)
3. All procedural prerequisites to a Public Hearing have been complied with in this case. (S.F. 6, 7, 8)
4. The Complainant was eliminated from consideration for the position of Extra Helper A.N. in September, 1979, because the Respondent regarded the medical condition of the Complainant's back as a disqualifying handicap/disability. (N.T. 45, 55, 78, 79, 94)
5. After the Complainant's rejection, the Respondent hired seven applicants for Extra Helper A.N. positions. (N.T. 64; R.E. 4)
6. The condition of Transitional Vertebrae is normally not related to back symptoms or abnormalities regarding working. (R.D. 19)
7. The Complainant's medical records which indicated the Complainant had a straightening of the cervical curvature came from the Complainant's doctor. (N.T. 47)

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\*The facts contained in the "Stipulations of Fact" are hereby 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 Fact. The following abbreviations will be utilized throughout:

|      |                       |
|------|-----------------------|
| S.F. | Stipulations of Fact  |
| N.T. | Notes of Testimony    |
| C.E. | Complainant's Exhibit |
| R.E. | Respondent's Exhibit  |
| R.D. | Rossi Deposition      |
| S.D. | Sekhar Deposition     |

8. The Complainant's condition of straightening of the cervical curvature was temporary and was caused by muscle spasms. (R.D. 8, 17)
9. The Respondent's medical examiner did not detect a straightening of the Complainant's cervical curvature. (R.E. 2, 3)
10. The Respondent did not establish that the condition of the Complainant's back was a job related handicap/disability. (N.T.)
11. The Complainant would have had no difficulty performing the duties of an Extra Helper A.N. (R.D. 9; S.D. 7)
12. Had the Complainant been hired in September, 1979, as an Extra Helper A.N., he would have been laid off on March 1, 1982, because the Respondent went to curb side pickup. (N.T. 101, 103, 113, 125, 133)
13. In order for a Respondent employee to maintain an Extra Helper A.N. position, that employee would require seniority at least as early as 1970. (N.T. 128)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the parties and subject matter of this case.
2. The parties and the Pennsylvania Human Relations Commission have fully complied with the procedural prerequisites to a public hearing in this case.
3. Complainant is an individual within the meaning of the Pennsylvania Human Relations Act ("PHRA").
4. Respondent is an employer within the meaning of the PHRA.
5. Complainant has met his initial burden of establishing a prima facie case by proving that:
  - a. He is a handicapped or disabled individual;
  - b. He applied for a position for which he was qualified;
  - c. His application was rejected; and
  - d. The Respondent continued to seek applicants of equal qualifications.
7. Respondent failed to meet its burden of introducing evidence tending to establish a legitimate, non-discriminatory reason for its conduct, namely the job relatedness of the Complainant's handicap or disability.
8. Complainant has met his ultimate burden of persuasion that his condition is a non job related handicap or disability.
9. Prevailing Complainants are entitled to relief including lost wages with interest of 6% per annum.

O P I N I O N

This case arises on a complaint filed by Donald F. Caldwell, (hereinafter "Complainant") against the City of Pittsburgh, Department of Environmental Services, (hereinafter "Respondent") on or about December 28, 1979, at Docket E-17297. The Complainant alleged that the Respondent discriminated against him by refusing to hire him as an Extra Helper A.N. after he did not pass a pre-employment physical examination; he claimed that this action violated 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. ("PHRA").

PHRC staff conducted an investigation and found probable cause to credit the allegations of discrimination. The PHRC and the parties then attempted to eliminate the allegedly unlawful practice through conference, conciliation and persuasion. These efforts were unsuccessful, and the case was approved for public hearing. The hearing was held on March 3, 1987, in Pittsburgh, PA, before Hearing Panel Chairperson John P. Wisniewski, and Hearing Panel member Carl E. Denson. The parties waived the right to a hearing before three Commissioners.

The Complainant bears the initial burden of establishing a prima facie case of discrimination under the PHRA. General Electric Corp. v. PHRC, 469 Pa. 202, 265 A.2d 649 (1976). If he meets this burden, the Respondent may prevail by showing a legitimate, non-discriminatory reason for its conduct; in this case the Respondent could do this by proof that the Complainant had a job-related disability at the time of his application. National Railroad Passenger Corp. v. PHRC, 70 Pa. Commonwealth Ct. 62, 452 A.2d 301 (1982).

The Complainant's initial burden under the PHRA is well settled; he can make out his prima facie case by proof that:



1. He is a handicapped or disabled individual within the meaning of the PHRA and the applicable regulations thereunder;
2. He applied for a position for which he was qualified;
3. His application was rejected; and
4. The Respondent continued to seek applications of equal qualification

National Railroad Passenger Corporation Id., and Pennsylvania State Police v. PHRC, 72 Pa. Commonwealth Ct. 520, 457 A.2d 584 (1983).

The Respondent does not contest that the Complainant has met this burden. The Complainant's application was rejected by the Respondent because a lumbar x-ray, taken as part of a required pre-employment physical, revealed that the Complainant had the condition of a Transitional Vertebrae. This diagnosis was combined with a later x-ray report which indicated the Complainant had a straightening of the cervical curvature, and together, these conditions caused the Complainant's rejection for employment.

When an employer rejects an applicant for medical reasons, that action is per se an impairment of a major life activity, i.e. employment. PA State Police v. PHRC, 72 Pa. Commonwealth Ct. 520, 457 A.2d 584 at 589 n. 12 (1983). Accordingly, the Complainant was a handicapped or disabled person simply because the Respondent regarded the Complainant as having an impairment. See 16 Pa. Code §§44.4 (i)(C), and 44.4 (ii) (D).

The remaining elements of the prima facie showing were also easily established. The position for which the Complainant applied was classified as a laborer position and there is no dispute that the Complainant was, in all other ways, well qualified. Clearly, the Complainant was rejected and the Respondent continued to seek equally qualified applicants to fill vacant Extra Helper A.N. positions.

Complainant, by establishing a prima facie case, has created a presumption that the conduct complained of was discriminatory. Respondent

may (and, in order to prevail, must) rebut the presumption thus created by introducing admissible evidence of a legitimate, non-discriminatory reason for its action. Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1980); Pennsylvania Department of Transportation v. PHRC, 480 A.2d 342 (1984). Job relatedness of a handicap is, of course, such a reason; the PHRA's protection extends only to non job related handicaps.

At least one Pennsylvania case deciding a claim that a handicap was job related suggests that the burden placed on an employer making that assertion is one of persuasion as well as the burden of production apparently contemplated by Burdine. In National Railroad Passenger Corp. (AMTRAK) v. PHRC, 452 A.2d 301 (1982), Commonwealth Court held that the burden of establishing job relatedness is on the employer. Any apparent discrepancy in the decided cases regarding the precise nature of the Respondent's burden may however be resolved by analysis of the Complainant's overall burden, which is the ultimate burden of persuading the finder of fact that an unlawful discriminatory practice has occurred.

In the context of a case alleging handicap-based discrimination where the defense of job relatedness is submitted, a Respondent may rebut the prima facie presumption by introducing evidence establishing job relatedness. Consistent with both Burdine and Amtrak, Complainant may still attempt to meet the ultimate burden of persuasion by introducing evidence relevant to the issue of job relatedness which contradicts the employer's evidence. Burdine discusses a Complainant's opportunity to meet the ultimate burden in terms of demonstrating that a Respondent's proffered reasons for a challenged action are pretextual. Where, as here, the reason for the rejection is not in dispute and the relevant inquiry is whether a handicap is job related, the Complainant can meet his ultimate burden by demonstrating that his handicap is in fact not job related.

The Respondent argues that the Civil Service Commission of the City of Pittsburgh is bound by its enabling statute to insure that, "appointments. . . shall be made only according to qualifications and fitness. . ." 53 P.S. §23431. The General Civil Service Act, Section 23436, also provides the City of Pittsburgh with the mandate to, "prescribe, amend, and enforce rules and regulations for carrying into effect the provisions of [the General Civil Services Act]. . ." The Respondent contends that its action in denying employment to the Complainant was consistent with its obligation to appoint according to fitness.

Upon discovery of the Complainant's conditions of transitional vertebrae and straightening of the cervical curvature, a determination was made that such conditions precluded the Complainant from efficiently fulfilling the duties of Extra Helper A.N. In support of this position, the Respondent cites portions of Rule III of the Rules of the Civil Service Commission, City of Pittsburgh. Rule III, Section 12 A states:

Physical Standards - The physical standards in Section 12B and C of this rule are applicable in their entirety to the Police and Fire services. For other positions requiring a physical examination, only those physical standards which are job related shall be applicable to such positions in accordance with Section 11B of this rule.

Rule III, Section 11A and B provide:

A. All physical examinations shall be conducted by or under the direction of the regularly appointed Civil Service Chief Surgeon, except in the case of applicants for the positions of Police Officer or Fire Fighter, who shall be examined by a Board of Physicians appointed for such purpose in accordance with the Police and Fire Civil Service Acts.

B. Except in cases involving candidates for or employees in the Police and Fire services, the scope of physical examination, as outlined in Section 12 of this rule, may be curtailed by action of the Commission; but such determination as it may require shall be in accord with the clinical standards provided for in the aforesaid section.

The Respondent also offered testimony through the Respondent's Assistant Director, Secretary and Chief Examiner for the City of Pittsburgh, Department of Personnel, Ms. Cunko, which alluded to an in-house study regarding selection methods and qualification determinations for Extra Helper A.N. positions. The study reviewed the hiring process used for refuse collectors by approximately 43 other cities. Also, the study consisted of an on sight review of the process of refuse collection in Pittsburgh. The focus of the study was designed to assist in determining what the Respondent should do with respect to selecting people for vacant Extra Helper A.N. positions.

Although the Respondent conducted a study, no report was offered and no specific evidence was offered regarding the Respondent's conclusions. Instead, the Respondent appears to fully rely on its interpretation of Rule III, Section 12 A of the Rules of the Civil Service Commission for its decision that the Complainant's condition was job related.

It is important to note that the evidence clearly shows that it was the Respondent's administrative decision that the Complainant's condition precluded him from being hired. The Respondent cites the case of Action Industries v. PHRC, \_\_\_ Commonwealth Ct. \_\_\_, 518 A.2d 610 (1986), for the proposition that when a Respondent reasonably relies upon the opinion of a medical expert in refusing to hire an applicant, that Respondent has a good faith defense which negates a perceived intent to discriminate. Close scrutiny of Respondent's Exhibits 2 and 3 shows that the Respondent's medical examiner simply conveyed information that the Complainant had a condition. The exhibits do not suggest that the Respondent was given a medical opinion that the Complainant's condition would prevent him from performing the job. Interestingly, at the conclusion of the public hearing, the parties mutually requested that this case remain open until three doctors could be deposed.

The depositions were then to be submitted in lieu of testimony. However, the Respondent's doctor was not deposed. Only the Complainant's doctors' depositions were submitted. Therefore, this case is clearly distinguishable from the facts in Action Industries. Here, there is no clear evidence that the Respondent received anything more than a medical report indicating the Complainant had the condition of transitional vertebrae and a straightening of the cervical curvature.

The record is not clear at all regarding precisely how the Respondent made the assessment that these conditions were job related. Instead, the Respondent's unsupported testimony and evidence simply offers that such conditions are job related.

The Complainant correctly points out that the Civil Service Rules do not in any way specifically address the conditions of either transitional vertebrae or straightening of the cervical curvature. Rule III, Section 12 B (10) states:

The physical standards are as follows: SPINE: Evidence of serious back injury, disc, or back pathology, abnormal curvature, Pott's disease, ankylosis, osteomyelitis, or other gross abnormalities will be disqualifying.

First of all, without further clarification, the physical standards outlined in Section 12 B (10) cannot be said to even apply to the position of Extra Helper A.N. Section 12 A says that Section 12 B standards apply in their entirety only to police and firefighters positions and that Section 12 B standards apply to other positions only when they are job related. Like the PHRA, the Respondent's own guidelines require a showing of job relatedness.

Second, even if we were to assume that Section 12 B (10) standards apply to the Extra Helper A.N. position, the section does not specifically include transitional vertebrae or straightening of the cervical curvature.

The Respondent offered no medical evidence to substantiate that either condition constitutes a serious back injury, back pathology, or other gross abnormality. Abnormal curvature is listed as a physical standard but, once again, the Respondent offered no evidence that the straightening of the Complainant's cervical curvature was outside "normal" limits. In fact, the Respondent's own doctor failed to note this condition. This condition was only noted when the Complainant's doctor's report, (See Exhibit #6), was given to the Respondent.

It is significant that numerous cases decided under the PHRA have considered the issue of job relatedness by weighing evidence introduced by both the Respondent and the Complainant. See e.g. Pennsylvania Department of Transportation v. PHRC, 457 A.2d 584 (1983); National Railroad Passenger Corp. v. PHRC, 452 A.2d 301 (1982). As in any other case, questions regarding the weight to be accorded to the evidence presented are for the finder of fact to resolve. Harmony Volunteer Fire Co. v. PHRC, 459 A.2d 439 (1983). Here, contradictory evidence was introduced. Resolution of this case therefore requires a careful evaluation of all evidence relevant to job relatedness.

The Complainant's evidence of non job relatedness was of two sorts. He himself testified that he performed heavy labor in several capacities prior to applying for the Extra Helper A.N. job, and that he has at no time experienced any difficulty with his lower back. He also introduced, in lieu of testimony, the depositions of two physicians. The first, Laligam N. Sekhar, M.D., is a neurosurgeon who examined the Complainant and reviewed x-rays of his back. The second, John C. Rossi, is a general surgeon who also reviewed x-rays of the Complainant's back and knew the general medical history of the Complainant during the years 1978-1979 and 1980. Both physi-

cians also reviewed a description of the duties of an Extra Helper A.N. Both physicians unequivocally concluded that the Complainant was fully able to perform those duties.

Neither Dr. Sekhar nor Dr. Rossi found the condition of transitional vertebrae when reviewing x-rays of the Complainant's lower back. Only the Respondent's doctor, Dr. Mazzei, noted this condition. The only evidence of record which suggests exactly what it means to have a transitional vertebrae came in Dr. Rossi's deposition. Interestingly enough, Dr. Rossi suggested that transitional vertebrae is a congenital condition not usually associated with any back symptoms or abnormalities, as far as work.

Dr. Rossi's deposition also cleared up the meaning of straightening of the cervical curvature. Basically, such a condition is generally caused by muscle spasms and is a temporary condition lasting only about 10 days and which can easily be eliminated by treatment of the muscle spasms.

The Complainant's contention that he did not have a job related back condition is borne out both by the Complainant's personal medical history, as outlined by Dr. Rossi, and by the fact that the Complainant had a work history of strenuous jobs without incident of lower back injury. This evidence is quite persuasive when stacked up against the record made by the Respondent. Frankly, the record is devoid of persuasive evidence that a fair determination was ever made that the Complainant's back condition constituted a job related circumstance. Instead, the Respondent appears to have made an administrative conclusion that any sign of any back condition prohibited an applicant from being hired as an Extra Helper A.N. without due regard for whether the condition noted was in fact job related.

Accordingly, the Complainant has met his ultimate burden of establishing that his condition is not job related, and that the Respondent's

refusal to hire him violated Section 5 of the Act. Appropriate relief must therefore be considered. Following a finding of discrimination, the PHRC is empowered by Section 9 of the Act to award relief which includes hiring and lost wages. Complainant here requests both.

The issue of backpay will be resolved first. Basically, the purpose of backpay relief is to restore aggrieved individuals to the positions in which they would have been absent the discriminatory conduct. Backpay calculations need not be mathematically precise; they need only provide a reasonable means to determine the probable amount of wages lost. PHRC v. Transit Casualty Insurance Co., 340 A.2d 624 (1975). On this record, a reasonable means of arriving at this amount is to calculate the average earnings of several other Extra Helpers who were hired at the time the Complainant would have been hired. Interest of six percent per annum is also appropriate. Goetz v. Norristown Area School District, 328 A.2d 579 (1975).

First, the record shows that shortly after the Complainant applied for a job, seven other applicants were hired on September 24, 1979. This date shall serve as the commencement date for the backpay calculation. Also, of the seven hired on September 24, 1979, all individuals who were still working in the Respondent's environmental services department were laid off on March 1, 1982. Had the Complainant been hired in 1979, he too would have been laid off.

The lay offs occurred as a result of a fundamental change in the method of trash collection in Pittsburgh. The city changed to curb side service which eliminated many jobs. Accordingly, the cut off date for calculating backpay should be March 1, 1982.

Four of the seven hired in September, 1979, remained working until the lay off: Rokicki; Scott; Sizemore; and West. The most equitable method



of calculating the Complainant's probable earnings between September, 1979, and March, 1982, is to average the income of these four employees. The reason why it is impractical to calculate an hourly rate times hours worked per week is because employees in the position of Extra Helper A.N. did not work regular hours. They worked on an as needed basis.

The figures used are as follows:

| Employee | Earnings from 9/79 - 3/82 |
|----------|---------------------------|
| Rokicki  | \$ 37,295.54              |
| Scott    | \$ 38,591.45              |
| Sizemore | \$ 37,660.35              |
| West     | \$ 34,927.78              |
|          | <hr/>                     |
|          | \$148,475.12              |

Average wages - \$ 37,118.78

From this figure we must deduct the Complainant's interim earnings for the period September 24, 1979, thru March 1, 1982. The evidence reveals that the Complainant earned a total of approximately \$26,259.05 during this period.

In order to calculate interest, a yearly total of lost wages must be calculated. There are approximately 29 months between September, 1979, and March, 1982. If the Complainant would have earned \$37,118.78 over the entire period, on a monthly basis his earnings would have been approximately \$1,279.95. Using this figure, the following interest calculations can be made:

|  |             |
|--|-------------|
| 1979 - 3 months @ \$1,279.95               | \$ 3,839.85 |
| minus 1979 interim earnings                | \$ 2,323.28 |
| Lost Wages                                 | \$ 1,516.57 |
| Interest @ 1.5%                            | \$ 22.74    |
| Total Lost Wages plus interest<br>for 1979 | \$ 1,539.31 |

|  |              |
|--|--------------|
| 1980 - 12 months @ \$1,279.95  | \$ 15,359.40 |
| minus 1980 interim earnings  | \$ 10,454.55 |
| Lost Wages for 1980  | \$ 4,904.85  |
| Plus 1979 interest and wages lost  | \$ 1,539.31  |
| Total Lost Wages for 1980, plus<br>lost wages and interest for 1979              | \$ 6,444.16  |
| Interest @ 6%  | \$ 386.64    |
| Total lost wages plus interest<br>for 1979, 1980                                 | \$ 6,830.80  |
| 1981 - 12 months @ \$1,279.95  | \$ 15,359.40 |
| minus 1981 interim earnings  | \$ 11,481.22 |
| Lost Wages 1981  | \$ 3,878.18  |
| Plus 1979-1980 interest and<br>lost wages  | \$ 6,830.80  |
| Total lost wages for 1981 plus<br>lost wages and interest for<br>1979, 1980      | \$ 10,708.98 |
| Interest @ 6%  | \$ 642.53    |
| Total lost wages plus interest<br>for 1979, 1980, 1981                           | \$ 11,351.51 |
| 1982 - 2 months @ \$1,279.95   | \$ 2,559.90  |
| minus approximate 1982 interim<br>earnings                                       | \$ 2,000.00  |
| Lost Wages 1982  | \$ 559.90    |
| Plus 1979-1980-1981 interest and<br>lost wages                                   | \$ 11,351.51 |
| Total lost wages for 1982, plus<br>lost wages and interest for<br>1979-1980-1981 | \$ 11,911.41 |
| Interest @ 6%  | \$ 714.68    |
| Total lost wages plus interest<br>for 1979-1980-1981-1982                        | \$ 12,626.09 |
| 1983 - Interest @ 6%   | \$ 757.56    |
| <b>Subtotal</b>  | \$ 13,383.65 |
| 1984 - Interest @ 6%   | \$ 803.01    |
| <b>Subtotal</b>  | \$ 14,186.66 |
| 1985 - Interest @ 6%   | \$ 851.19    |
| <b>Subtotal</b>  | \$ 15,037.85 |
| 1986 - Interest @ 6%   | \$ 902.27    |
| <b>Subtotal</b>  | \$ 15,940.12 |
| 1987 - Interest 2 months @ 1%  | \$ 159.40    |
| <b>Total lost wages plus<br/>interest up to the date<br/>of public hearing</b>   | \$ 16,099.52 |

Having determined the amount of the Complainant's backpay award, we next focus on whether the Complainant is entitled to be hired into a

comparable position in the environmental service department. We have already noted that as of March 1, 1982, all other Extra Helpers hired in September, 1979, were laid off on March 1, 1982. Clearly, this same fate would have befallen the Complainant.

Unrebutted evidence established that when the City of Pittsburgh went to curb side garbage pick-up in March, 1982, in order to hold a job as a helper or extra helper, one would need seniority back to at least 1970. Although, some laid off employees were eventually rehired by the Respondent, in other jobs, they each had to apply for a posted vacancy to be hired. No one was recalled from the 1982 lay off. In fact, like some Extra Helpers who were laid off in 1983, the Complainant was hired by the Respondent as a rodent control worker.

Accordingly, under the circumstances of this case, the Complainant is not entitled to an order requiring that he be hired as an Extra Helper. Relief is therefore ordered as described with specificity in the Final Order which follows.

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

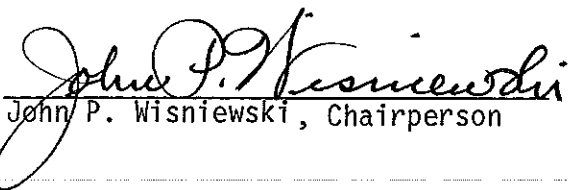
DONALD F. CALDWELL, :  
COMPLAINANT :

v. : DOCKET NO. E-17297

CITY OF PITTSBURGH, DEPARTMENT OF :  
ENVIRONMENTAL SERVICES, :  
RESPONDENT :

RECOMMENDATION OF THE HEARING PANEL

Upon consideration of the entire record in the above-captioned matter, it is the view of the hearing panel that the Respondent refused to hire the Complainant because the Respondent regarded the Complainant's back condition as a handicap or disability in violation of §5 (a) of the Pennsylvania Human Relations Act. Accordingly, it is the panel's recommendation that the attached Stipulations of Fact, Findings of Fact, Conclusions of Law, Opinion, and Order be adopted by the full Pennsylvania Human Relations Commission.

  
John P. Wisniewski, Chairperson

September 28, 1987  
Date

  
Carl E. Denson, Commissioner

September 28, 1987  
Date

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

DONALD F. CALDWELL,  
COMPLAINANT

v.

CITY OF PITTSBURGH, DEPARTMENT OF  
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DOCKET NO. E-17297

FINAL ORDER

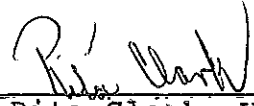
AND NOW, this 30th day of September, 1987, the Pennsylvania Human Relations Commission hereby adopts the foregoing Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion, in accordance with the Recommendation of the Hearing Panel, pursuant to Section 9 of the Pennsylvania Human Relations Act and therefore

O R D E R S

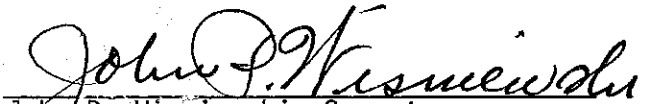
1. That the Respondent cease and desist from either making prejudgments or forming opinions before knowing sufficient information regarding medical conditions which may prove on examination to be unrelated to job performance or to be nonexistent.
2. That the Respondent shall pay to the Complainant the lump sum of \$16,099.52 which represents backpay lost for the period between September 24, 1979, and March 1, 1982, plus interest of 6% per annum calculated up to the month in which the Public Hearing of this matter was held. This amount shall be paid within 30 days of the effective date of this Order.
3. That the Respondent shall pay additional interest of 6% per annum calculated from the effective date of this Order until payment is made.

4. That within 30 days of the effective date of this Order, the Respondent shall report to the PHRC on the manner of its compliance with the terms of this Order by letter, addressed to William R. Fewell, Jr., Esquire, in the PHRC Pittsburgh Regional Office.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY:   
Rita Clark, Vice-Chairperson

ATTEST:

  
John P. Wisniewski, Secretary