COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

JOHN DUNN, Complainant v. AMERICAN DENTAL CENTER, INC., Respondent	: : : : : : :	DOCKET NO. E-24567

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COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

JOHN DUNN,	:	DOCKET NO. E-24567
Complainant	:	
v.	:	
AMERICAN DENTAL CENTER,	:	
Respondent	:	

~~PROPOSED~~ STIPULATIONS OF FACT

The following facts are admitted by all parties to the above-captioned case and no further proof thereof shall be required:

1. The Complainant herein is John Dunn, an adult, black male who resides at 619 S. 19th Street, Philadelphia, PA.

2. The Respondent herein is American Dental Center, Inc., 1260 East Woodland Avenue (formerly 100 E. Woodland Avenue), Springfield, PA 19064.

3. During the period from 6/15/81 to 12/31/83, ~~all times relevant to the case at hand~~, Respondent employed four or more employees in the Commonwealth of Pennsylvania.

4. The Complainant on December 28, 1982 filed a complaint with the Pennsylvania Human Relations Commission ("Commission") at docket number E-24567. ~~A copy of the complaint is attached as Appendix "A" and will be included as a docket entry in this case.~~

5. The Complainant on January 17, 1983 filed an amended notarized complaint with the Commission at docket number E-24567. ~~A copy of the amended complaint is attached as Appendix "E" and will be incl ded as a docket entry in this case~~.

6. On or about February 2, 1983 Commission staff served a copy of the complaint on Respondent in a manner which satisfies the requisites of 1 Pa. Code §33.32.

7. In correspondence, dated June 21, 1984 the Commission notified Respondent that probable cause existed to credit the allegations contained in the above referenced complaint.

8. Subsequent to the determination of probable cause, the Commission and Respondent attempted to resolve the matter in dispute between the Complainant and Respondent through conference, conciliation and persuasion, but were unable to do so.

9. In correspondence dated December 23, 1985, the Commission notified the Respondent that a Public Hearing had been approved in the matter.

10. On June 15, 1981 Respondent hired Complainant as a full-time lab assistant.

11. On September 1, 1982 Complainant filed a charge of racial discrimination against the Respondent with the Commission, at docket number E-23613.

12. On September 13, 1982 the Commission served the Respondent with Complainant's initial complaint, docket number E-23613.

13. Complainant received a notice of termination along with an accompanying letter signed by "Debbie" which were both dated September 16, 1982.

14. The notice of termination dated September 16, 1982 from Respondent stated that Complainant's termination would be effective on October 16, 1982.

15. ~~When Ms. Hinebaugh wrote Complainant's notice of termination and accompanying letter, she was aware that Complainant had filed a discrimination charge (docket number E-23613) with the Commission against Respondent~~.

[illegible]
Date:

[illegible]
Elizabeth A. Sensue
(Counsel for the Commission on behalf of the Complainant)

12/13/87
Date:

David B Buerger
David Buerger
(Counsel for the Respondent)

FINDINGS OF FACT*

1. After graduation in 1980 from dental school, Dr. Harry Hinebaugh, ("Dr. Hinebaugh"), opened The American Dental Center, Inc; ("Respondent"), on June 15, 1981. (N.T. 158; S.F. 2).

2. The Respondent's initial business was 100% a denture practice designed to make economy dentures on a volume basis. (N.T. 158-160).

3. For the first six to eight weeks of Respondent's operation, Dr. Hinebaugh facilitated the training of Respondent employees through a training team headed by a Dr. Densey. (N.T. 19, 23, 160, 197).

4. Dr. Hinebaugh's high volume denture business expectations far exceeded the actual area demand. (N.T. 39, 40, 90, 154, 160, 165, 172, 186-188, 190.)

5. The Respondent's initial operation consisted of a waiting room, a clinic and a laboratory. (N.T. 160).

6. The waiting room could accommodate up to 50 people, and the clinic had eight dentist chairs: Six for taking impressions, and two designed for an optional potential expansion to general dentistry. (N.T. 160).

* The foregoing "Stipulations of Fact" are hereby incorporated herein as if fully set forth. To the extend 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 these Findings of Fact for reference purposes:

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

7. The Respondent's laboratory which manufactured dentures had four rooms: a model room, a room for setting and waxing, a hot room, and a finishing bench. (N.T. 226)

8. John Dunn, ("Complainant"), was hired on June 15, 1981 and was initially trained as an investor in the hot room operation. (N.T. 20, 21, 24; S.F. 10).

9. When the Respondent's operations opened, the Complainant was one of three lab employees assigned to work in the Respondent's hot room. (N.T. 22).

10. The Respondent began its operations with 15 lab employees. (N.T. 23; R.E. 4).

11. By September 1981, the Complainant was the only remaining employee in the hot room. (N.T. 38).

12. When the Complainant began working for the Respondent, he worked approximately 40 hours per week. (N.T. 39).

13. Within three months, the Complainant's hours had dropped to approximately 25 hours or less per week. (N.T. 39).

14. After approximately 1 year, the Complainant's work schedule was on an as needed basis. (N.T. 40).

15. The Complainant worked for the Respondent on weekdays during daylight hours. (N.T. 43).

16. In October 1981, the Complainant took an evening and weekend part time job with Burlington Coat Factory ("Burlington") where he simultaneously worked until laid off by Burlington in January 1982. (C.E. 6; N.T. 41, 43).

17. The Complainant made repeated errors as a Respondent laboratory employee which resulted in warnings of probable termination if his work failed to improve. (N.T. 85, 86, 146-147, 149, 165, 168, 170, 230, 240-241, 258, 273).

18. Both the Complainant's immediate supervisor and Dr. Hinebaugh made repeated recommendations to Ms. Debra Hinebaugh, Dr. Hinebaugh's wife and Respondent's Office Manager, to discharge the Complainant for poor work performance. (N.T. 147, 169, 170, 240).

19. Ms. Hinebaugh in effect told the Complainant's immediate supervisor that despite the Complainant's recognized poor work performance the Complainant would not be terminated and she intended to keep the Complainant as an employee forever. (C.E. 7, 16).

20. On September 1, 1982, the Complainant filed a complaint with the PHRC at Docket No. E-23613, alleging race-based discriminatory conditions of employment. (C.E. 1; S.F. 11).

21. On September 13, 1982, the PHRC served the Respondent with the complaint at Docket No. E-23613. (S.F. 12).

22. By letter dated September 16, 1982, Ms. Hinebaugh notified the Complainant that he was terminated effective October 16, 1982. (C.E. 2).

23. At the time Ms. Hinebaugh prepared the Complainant's termination notice, she was aware the Complainant had filed a PHRC complaint. (N.T. 243).

24. Just prior to the termination notice the Complainant missed a day of work saying he was sick but subsequently indicated to Ms. Hinebaugh that he was not sick but was actually visiting a friend. (N.T. 243).

25. Although some work was available, the Complainant did not work for the Respondent between September 16, 1982, and October 16, 1982. (N.T. 244-245.)

26. After the Complainant's termination, the Complainant did not look for another job until January 1983. (N.T. 67, 95, 97).

27. In October 1982, the Complainant was recalled from the prior layoff by Burlington. (N.T. 47; C.E. 6).

28. The Complainant was initially recalled by Burlington to part time status which could have been worked simultaneously with his position with the Respondent had the Complainant not been terminated. (N.T. 47).

29. In January 1983, the Complainant successfully bid on a full time positon with Burlington, which position could not have been held simultaneously with his position with the Respondent. (N.T. 48; C.E. 6).

30. In January 1983, the Complainant began to actively seek other employment. (N.T. 51, 97).

31. Between January 7, 1983 and February 22, 1985, the Complainant remained a full time employee at Burlington. (N.T. 67; C.E. 6).

32. Respondent's denture production began a steady decline beginning as early as the second month of its operations. (N.T. 186-188; A.S. Appendix A).

33. In the seven month period between June 1981 through December 1981, a total of 1,772 dentures were made; in the entire year 1982, 1,554 dentures were made; in 1983, 1,152 dentures were made; in 1984, 914; and in 1985 approximately 950 to 1,000 were made. (A.S. Appendix A and B).

34. The Complainant was not a fast worker and during the last six months of his employment the Complainant was known to try to stretch short tasks into all day projects. (N.T. 148, 191).

35. For approximately 14 months after the Complainant was terminated, the Complainant's duties were shared between newly hired lab employees, Dr. Hinebaugh and Ms. Hinebaugh. (N.T. 228).

36. Beginning approximately 1984, after all other lab employees left the Respondent's employ, Dr. Heinbaugh and Ms. Heinbaugh did all the Respondent's required lab work. (N.T. 190, 228).

37. The nature of the Respondent's business was also changing as Dr. Heinbaugh at some point began to do general dentistry in addition to denture work. (N.T. 199).

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission ("P.H.R.C.") has jurisdiction over the parties and the subject matter of this case.

2. The parties and the Commission have fully complied with the procedural prerequisites to a Public Hearing in this case.

3. Respondent is an "employer" within the meaning of the P.H.R.A.

4. Complainant is an "individual" within the meaning of the P.H.R.A.

5. Complainant here has met his burden of establishing a *prima facie* case by proving that:

   (a) he filed a P.H.R.C. complaint;

   (b) the Respondent was aware of the complaint;

   (c) the Complainant was discharged; and

   (d) the discharge followed the filing of the complaint within such a period of time and in such a manner that a retaliatory motive can be inferred.

6. The Respondent has articulated legitimate reasons for terminating the Complainant.

7. The Respondent had mixed motives for discharging the Complainant; some legitimate some discriminatory.

8. When a retaliatory motive plays any part in a decision to terminate, such decision is unlawful discrimination under Section 5d of the P.H.R.A.

9. When an individual has participated in the P.H.R.C. complaint process, the truth or falsity of that individual's claims are not a consideration regarding the issue of retaliation.

10. A Respondent is prohibited from determining the correctness of a P.H.R.C. complaint in contemplation of adverse action against the individual making the allegations.

11. The P.H.R.C. has discretion in fashioning a remedy.

12. A Complainant who has been shown to have failed to take reasonable steps to find alternate employment can be denied backpay for the period of such unreasonable conduct.

13. Interim earnings are deductible from lost wages occasioned by discrimination.

OPINION

This case arises on a complaint filed by John Dunn, ("Complainant"), against American Dental Center, Inc., ("Respondent"), with the Pennsylvania Human Relations Commission. In his complaint filed on or about December 28, 1982, and amended on or about January 17, 1983, the Complainant alleged that the Respondent had unlawfully terminated his employment because of his race, Black and in retaliation for filing an earlier complaint at Docket No. E-23613 which had alleged race-based discrimination. The Complainant's complaint alleges violations of Sections 5(a) and 5(d) of the Pennsylania Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §§951 et seq. ("P.H.R.A.").

PHRC staff investigated the allegations and in correspondence, dated June 21, 1984, informed the Respondent that probable cause existed to credit the Complainant's allegations. Thereafter, the PHRC attempted to eliminate the alleged unlawful practice through conference, conciliation and persuasion but such efforts proved unsuccessful. Subsequently, in correspondence, dated December 23, 1985, the PHRC notified the Respondent that it had approved a Public Hearing.

The Public Hearing was held on December 14 and 15, 1987 in Springfield, PA, before Hearing Examiner Carl H. Summerson. The case on behalf of the Complaint was presented by PHRC staff attorney Elizabeth Sensue. David B. Buerger, Esquire, appeared on behalf of the Respondent.

During the initial stages of the Public Hearing, the Complainant withdrew the race-based allegation of his complaint and proceeded with the retaliation portion of his complaint only. At the

conclusion of the Public Hearing, the record remained open to allow the parties to review Respondent's business records and attempt to stipulate to Respondent's denture production. The parties subsequently entered a stipulation concerning Respondent's denture production. Post-hearing briefs were submitted by the parties in March 1988.

Since the Complainant effectively withdrew the race-based portion of his allegations, the focus of the Public Hearing was appropriately placed on the remaining allegation that the Respondent had terminated the Complainant in retaliation for the Complainant previously filing discrimination charges against the Respondent with the PHRC. Allegations of retaliation are brought under Section 5(d) of the PHRA which states: "It shall be an unlawful discriminatory practice...for any person, employer, employment agency or labor organization to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this Act, or because such individual has made a charge, testified or assisted, in any manner, in any investigation, proceeding or hearing under this Act".

In this case, the order and allocation of proof shall follow the oft repeated general pattern first defined in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), and recently clarified by the Pa. Supreme Court in Allegheny Housing Rehabilitation Corp.v. P.H.R.C., _____ Pa. 2d _____ (1987), No. 32 W.D. Appeal Docket 1986. The PA Supreme Court's guidance indicates that the Complainant must first establish a prima facie case of discrimination. If the Complainant establishes a prima facie case, the burden of production then shifts to the Respondent to "simply...produce evidence of a 'legitimate,

non-discriminatory reason' for... [its action]." Id at 6. If the Respondent meets this production burden, in order to prevail, a Complainant must demonstrate that the entire body of evidence produced demonstrates by a preponderance of the evidence that the Complainant was the victim of intentional discrimination. Id at 7. A Complainant may succeed in this ultimate burden of persuasion either by direct pursuasion that a discriminatory reason more likely motivated a Respondent or indirectly by showing that a Respondent's proffered explanation is unworthy of credence. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981). The Complainant may establish a prima facie case of unlawful retaliation by proof:

1. That he filed a PHRC complaint against the Respondent;
2. That the Respondent knew the Complainant had filed a complaint;
3. That he was discharged; and
4. That the discharge followed the filing of a complaint within such period of time and in such a manner that a retaliatory motive can be inferred.

See Brown v. Biglin, 454 F.Supp. 394, 22 FEP Cases 228 (E.D. Pa. 1978); Consumers Motor Mart, ______ Pa. Cmwlth. ______, 529 A.2d 571 (1987); Kowalski v. Adams, Docket No. E-26679 (Pa. Human Relations Commission March 5, 1987).

In effect, the parties have stipulated to the first three elements of the Complainant's required showing. Clearly, on September 1, 1982, the Complainant filed a race-based PHRC complaint against the Respondent. On September 13, 1982, the Respondent was notified that such a complaint had been filed.

Additionally, Ms. Hinebaugh testified that she knew the Complainant had filed a complaint. Also, the parties agree that by letter dated September 16, 1982, the Respondent notified the Complainant that he was terminated effective October 16, 1982.

Without citing authority for its position, the Respondent's brief asserts that because the Complainant failed to return to work between September 16, 1982 and October 16, 1982, he should be deemed to have voluntarily quit. It is not surprising that the Respondent did not cite any authority for this position as such a position is without merit. The fact that the Complainant did not return to work for the month period between the notice of his termination and the effective date merely goes to issues relating to damages. It does not mean that the Complainant should be found to have quit when in reality he was clearly discharged.

The final element of the Complainant's prima facie case was also sufficiently established. Several aspects of the evidence presented create an inference that a retalitatory motive played some part in the Complainant's termination. First, the timing of the Respondent's action could, standing alone, be enough to infer a retaliatory motive. See Rutherford v. American Bank of Commerce, 565 F.2d 1162, 16 FEP 26 (10th Cir. 1977); Minor v. Califano, 452 F. Supp. 36, 17 FEP 756 (D.D.C. 1978): Hochstadt v. Worcester Foundation, 425 F. Supp. 318, 11 FEP 1426 (D.Mass), aff'd 13 FEP 804 (1st Cir. 1976). In this case only three days elapsed between the Respondent learning of the Complainant's complaint and the discharge action. An inference of retaliatory motive is strengthened in direct proportion to how close in time the adverse action follows the Respondent's notice of a Complainant's participation in the PHRC complaint process.

Second, there was evidence that during the Complainant's employment, despite the existence of reasons which might be justifiable grounds for dismissal, Ms. Heinbaugh in effect stated that she intended to retain the Complainant as an employee forever. Motive is fundamentally very different from justification. On at least one previous occasion, in the face of justifiable cause to dismiss the Complainant, the Respondent declined to do so. This adds support to the determination that a sufficient inference has been shown that the Respondent's action was retaliatorily motivated.

The Complainant having established his prima facie case, the burden shifts to the Respondent to articulate some legitimate reason for terminating the Complainant. Clearly, the Respondent has not met this burden. In the Respondent's September 16, 1982, notice of termination several reasons were articulated. They include: "low regard for truth with no conscience; lack of enthusiasm to expand on other laboratory techniques; inconsideration of not being punctual; and overall apathy." During the Public Hearing, two additional reasons were presented; poor work performance; and taking a day off indicating sickness but later revealing that the Complainant was not sick, just visiting a friend. Finally, both Dr. and Ms. Heinbaugh specifically denied any retaliatory motive.

Respondent's burden of production has therefore been met. However, the Complainant now has the opportunity to show that the Respondent's stated reasons are either pretextual or not worth of credence.

It is in this final analytical stage that first, we must be acutely aware that justification is very different from motive. Second, when, as in this case, it appears that a Respondent acted in

part with a retaliatory intent and partially with non-discriminatory justifiable reasons, a standard of causation must be established. Numerous Federal Courts have looked at this causation standard question and suggest four possible standards may apply:

Whether the protected conduct

1. played any part in or tainted the challenged action no matter how remote or insubstantial;
2. played a substantial factor in the challenged action;
3. was the principal, though not the sole reason for Respondent's action; or
4. whether or not the Respondent's adverse action would have taken place had there been no protected activity by the Complainant.

See Owens v. Rush, 24 FEP 1534 (D.Kan. 1978), aff'd in pertinent part, 24 FEP 1563 (10th Cir. 1980), citing, Sutton v. Nat's Distillers Prods. Co., 16 FEP 1031 (S.D. Ohio 1978).

Under the circumstances of this case, it is possible that application of any one of the listed standards could still result in the same conclusion. However, given the liberal mandate found in §12(a) of the PHRA, we will apply the first standard listed above. This standard permits liability upon a finding that a retaliatory motive was present, without reference to the Respondent's other motives which may have existed simultaneously. See ie, Grant v. Bethlehem Steel Corp., 22 FEP 1596 (2nd Cir. 1980); Slotkin v. Human Dev. Corp., 21 FEP 933 (E.D. Mo. 1978); Kormbluh v. Stearns & Foster Co., 14 FEP 847 (S.D. Ohio 1976); and U.S. v. Hayes Int'l Corp., 6 FEP 1328 (N.D. Ala. 1973), aff'd mem., 10 FEP 1481 (5th Cir. 1975).

Looking back at the Respondent's written notice of termination, we find telling language which undeniably finds the Respondent's action at least partially retaliatorily motivated. Ms. Hinebaugh wrote, "1. I feel you have submitted false statements to Human Relations with the intent to deceive to insure your position in our office. 2. That this false insurance is a factor in your termination...".

The Respondent's brief goes to great lengths attempting to show that the allegations made in the Complainant's first complaint were not only false but known by the Complainant to be false. Obviously, the Respondent feels justified in terminating someone who they believe has falsely accused them. Ms. Hinebaugh's letter actually emphatically states this when she told the Complainant it was a "factor" in his discharge. However the truth or falsity of the Complainant's initial charges neither should be nor is a consideration here See EEOC v. Va Car. Veneer Corp., 27 FEP 340 (W.D. Va. 1980). A Respondent may not take it on itself to determine the correctness of a PHRC complaint. See Pittway v. American Cast Iron Pipe Co., 1 FEP 752 (5th Cir. 1969). Assertion of rights under the PHRA will be protected even if a Complainant's allegations may have been false and even malicious. To preserve rights of employees to be free from discrimination and to insure that the exercise of those rights not be chilled by fear of retaliation, an employer must be precluded from weighing the correctness or consequences of a complaint. The PHRC complaint process is the life blood of the PHRA and uninhibited access to the PHRC's enforcement mechanism must be insured.

Accordingly, the Respondent's discharge action was unquestionably motivated, at least in part, by the fact that the Complainant had initated a complaint against the Respondent. Having assessed liability against the Respondent for its unlawful action we next turn our attention to remedial issues.

In the Complainant's brief he specifically states "The only relief requested is backpay, including vacation pay...from...October 15, 1982, through December 31, 1985." Therefore, besides issuing a cease and desist order, backpay issues will be the only other remedial issues addressed.

The Complainant apparently recognizes that between September 16, 1982 and October 16, 1982 there was work available from the Respondent but he chose not to avail himself of it. Accordingly, he seeks damages beginning October 15, 1982. Several general principles guide the scope of the discretionary power to either award or deny backpay. First, there is a general presumption in favor or awarding backpay and that victims of discrimination should be made whole for losses suffered. See Albemarle Paper Co. v. Moody 422 U.S. 405 (1975). When a Complainant establishes an economic loss resulting from discrimination, backpay should be awarded, absent special circumstances. See Walker v. Ford Motor Co., 684 F.2d 1355, 29 FEP 1259 (11th Cir. 1982); Merriweather v. Hercules, Inc., 631 F. 2d 1122, 26 FEP 733 (5th Cir. 1981). Once a Complainant establishes such a loss, the burden shifts to the Respondent to show that deductions or offsets are appropriate because of interim earnings or lack of diligence in pursuing other employment in mitigation. See Jackson v. Wakulla Springs & Lodge, 33 FEP 1301 (N.D. Fla. 1983).

Conveniently, the period after the Complainant's termination can be broken down into specific periods of time during which applicable circumstances change. The first distinct period is the time between October 1982 and January 1983. The Complainant claims that during this period, had he not been the victim of discrimination, he would have continued to work for the Respondent approximately 25 hours per week at a rate of $4.85 per hour. In October, 1982, the Complainant was also recalled from a prior layoff at Burlington Coat Factory where he previously held a part time job in the evenings and on weekends. He had previously held the part time Burlington job simultaneously with his job with the Respondent.

As a general rule, a Complainant's "moonlighting" earnings can be offset against a backpay award if the Complainant would have been unable to hold the "moonlighting" job simultaneously with the job he lost because of discrimination. See Whatley v. Skaggs Cos., 27 FEP 459 (D.C. Col. 1981), citing Bing v. Roadway Express, Inc., 485 F.2d 441, 6 FEP 677 (5th Cir. 1973). Here, the part time Burlington job to which the Complainant was recalled in October, 1982, could have been held simultaneously with his positon with the Respondent. Therefore the amount earned at Burlington between October 1982 and January 1983 are not deductible.

However, the evidence poses a greater dilemma for the Complainant. He specifically testified that for three to four months after his termination he made no attempts to find other work. His stated excuse was that he feared a bad reference from the Respondent.

The question presented is whether for three to four months the Complainant exercised reasonable care and diligence in seeking another job. The Complainant argues his fear made his failure to

pursue other employment reasonable. I disagree. While a Complainant is not required to make every possible effort to find employment, he is required to make reasonable efforts to mitigate damages. Here, the course of conduct followed by the Complainant was so deficient as to constitute an initial unreasonable failure to seek employment. Therefore, the Complainant's failure to mitigate damages between October, 1982 and January, 1983 makes a backpay award inappropriate for this period.

The next distinct period is the entire year 1983. The Complainant testified that beginning in Janury 1983, he did begin to seek other employment. However, a change in his status at Burlington also occurred in January 1983. The Complainant changed from part time to full time. A full time position came open and the Complainant successfully bid on the position.

The Complainant's brief strenuously argues that but for his discharge, he would have continued working both for the Respondent during the day and for Burlington in the evenings and weekends. The Complainant contends that only the hours of the Complainant's full time position at Burlington which exceed the hours he could have continued to work part time should be counted as interim earnings.

Such a position ignores two general rules: First, the continued obligation a Complainant has to mitigate damages, and second, he could not have worked both the full time position at Burlington simultaneously with a postion with the Respondent. Furthermore, by transferring from nights and weekends part time to full time days, the Complainant's nights and weekends were once again open to find other part time employment. Accordingly, the earnings at the Complainant's full time job with Burlington are appropriately deductible as interim earnings.

In 1983, the Complainant's brief indicates he earned approximately $6,548.10 at Burlington. Accepting the premise that the Complainant's hours would have remained approximately 25 hours per week with the Respondent, his approximate 1983 earnings total $6,305.00. This amount is less than he actually earned at Burlington. Accordingly after calculating the deduction of interim earnings, from the Complainant's position with regard to potential earnings from the Respondent, the Complainant has suffered no financial loss in 1983.

Turning to 1984, the Complainant remained working the entire year at Burlington where he earned approximately $6,535.30. The Complainant continues to claim that had he remained with the Respondent he would have worked approximately 25 hours per week and further that he would have received a 50¢ per hour wage increase. Calculating this position, the Complainant claims he lost earnings of approximately $6,955.00. A $419.70 difference.

However, the Respondent argues that as early as November 1982, the total available work in the hot room may have been as low as one-half hour per day. Clearly, the Respondent's business reflects a steady decline almost from the moment the Respondent opened its doors for business. When the Complainant began in June 1981, there were 15 lab employees. In June 1982, the number had diminished to six and further diminished to only 3 by June 1983.

There also was unrebutted testimony that by 1984, Dr. Hinebaugh and his wife were doing all the lab work themselves. Clearly, by 1984, if the Complainant had stayed, his hours would have

been significantly decreased. In my opinion, the evidence actually reveals that there would have been no hot room position for the Complainant by 1984. Accordingly, it is inappropriate to award any monetary damages for 1984 and beyond.

Accordingly, relief is ordered as described in the Final Order which follows.

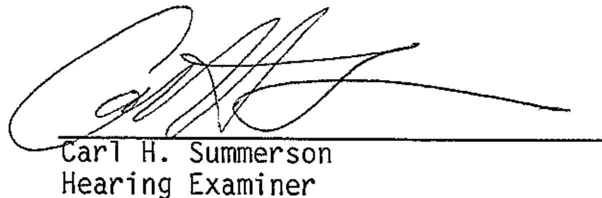
COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

JOHN DUNN, Complainant	:	
v.	:	Docket No. E-24567
AMERICAN DENTAL CENTER, INC., Respondent	:	

RECOMMENDATION OF HEARING EXAMINER

Upon consideration of the entire record in this case, the Hearing Examiner concludes that the Respondent did unlawfully discriminate against the Complainant by discharging him in retaliation for the Complainant having filed a PHRC complaint. The Respondent's adverse action was in violation of Section 5(d) of the Pennsylvania Human Relations Act. Accordingly, it is recommended that the foregoing Stipulations of Fact, Findings of Fact, Conclusions of Law, and Opinion be adopted by the full Pennsylvania Human Relations Commission.



Carl H. Summerson
Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

JOHN DUNN,
Complainant

v. : Docket No. E-24567

AMERICAN DENTAL CENTER, INC.,
Respondent

FINAL ORDER

AND NOW, this 4th day of May, 1988, following review of the entire record in this case, including the transcript of testimony, exhibits, briefs, and pleadings, 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 Examiner, pursuant to Section 9 of the Pennsylvania Human Relations Act, and therefore

O R D E R S

1. That the Resondent cease and desist from taking any adverse action in retaliation against anyone because they have participated in the PHRC complaint process.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: Thomas L. McGill, Jr.
Thomas L. McGill, Jr.
Chairperson

ATTEST:

John P. Wisniewski
John P. Wisniewski
Assistant Secretary