

COMMONWEALTH OF PENNSYLVANIA
EXECUTIVE OFFICES
PENNSYLVANIA HUMAN RELATIONS COMMISSION

AMELIA FRASSENEI,
Complainant

v.

DOCKET NO. E-14576

LUKENS GENERAL INDUSTRIES,
NATIONAL ROLL DIVISION,
Respondent

FINDINGS OF FACT

1. Complainant, Amelia Frassenei is an adult female individual residing at R.D. #2, Box 360-A, Saltsburg, Pennsylvania 15681. (By Admission).

2. Respondent, National Roll Division, is a division of Lukens General Industries, Inc., and employs more than four persons at its facility in Avonmore, Pennsylvania 15618. (By Admission).

3. By complaint dated September 12, 1978, Complainant alleged that Respondent refused to hire her because of her sex, female, and non-job related handicap, impaired vision. (By Admission).

4. The complaint was served upon Respondent on or about September 21, 1978. (By Admission).

5. By letter dated May 20, 1981, Respondent was advised that Commission staff had found probable cause to credit the allegations of the complaint. (By Admission).

6. Attempts to resolve the case by conciliation were unsuccessful. (N.T. 74-76).

7. By letter dated November 6, 1981, the Commission advised Respondent that the case had been approved for public hearing on October 27, 1981. (By Admission)

8. Complainant applied for employment in an entry-level position at Respondent's Avonmore facility through the Vandergrift office of the Pennsylvania State Employment Service by application dated September 6, 1977. (By Admission).

9. Subsequently, pre-employment aptitude and manual dexterity tests were administered to the Complainant and eight (8) other applicants at the Vandergrift office of the Pennsylvania State Employment Service. (By Admission).

10. On August 18, 1978, Complainant was interviewed by Mr. William Mason, Respondent's Manager of Industrial Relations, and Mr. Thomas Pohanka, Respondent's Assistant Manager of Industrial Relations, at the Vandergrift office of the Pennsylvania State Employment Service. (By Admission).

11. The Pennsylvania State Employment Service regularly accepted applications for employment at Respondent's Avonmore facility; when openings occurred, applicants were tested and referred to Respondent for interviews on a chronological basis. (N.T. 127-128).

12. By letter dated August 24, 1978, Complainant was informed by Respondent that she would not be hired for the laborer's position. (C.E. 2).

13. The laborer's position for which Complainant was rejected was filled by another woman, Cynthia Richards, after it was offered to and rejected by two other women. (N.T. 136-137).

14. Complainant has, since birth, been legally blind in her left eye, and has 20/20 uncorrected vision in her right eye. (Fabinyi Deposition p. 13, 27).

15. Complainant answered in the negative the question on her application for employment with Respondent "Have you any physical defects?" (C.E. 1).

16. Complainant disclosed during her interview with Respondent that she had a visual impairment. (N.T. 14, 131-132).

17. Respondent refused to hire Complainant because of her visual impairment. (C.E. 5; N.T. 133, 165).

18. Respondent's Avonmore facility manufactures rolls of steel and iron weighing as much as fifty tons by processes including pouring molten metal and heat treating and grinding rolls once they have cooled. (N.T. 138-140).

19. The foundry process generates excessive heat, dust, and smoke, and occasional sparks and flying metal chips. (N.T. 140-142).

20. Portions of the foundry floor are uneven and sandy; tools are sometimes left on the floor. (N.T. 142-143).

21. There are several thirty to forty foot deep pits in the foundry where molten metal is poured; they are normally guarded by chains, but the chains are sometimes down when there are workers in the area. (N.T. 143).

22. Overhead cranes with hanging chains move heavy loads through the foundry. Sirens which warn of their approach may be difficult to hear because of other noise in the work area. (N.T. 141, 148).

23. Laborers work in all areas of the plant. (N.T. 144).

24. Laborers generally load and unload materials, clean work areas, and facilitate the work of more skilled workers. (C.E. 4).

25. Laborers are occasionally required to move up to more skilled positions. (N.T. 146).

26. Laborers must work in the pits and at heights of up to fifty feet. (C.E. 4).

27. Specific duties of laborers include parking and braking coal cars, giving directions to crane operators who set hooks to pick up slag buckets, working with tools on ladders, using sledge hammers to strike objects held by other workers, using jackhammers to break up concrete, and using pickaxes to break up frozen coal on the surface of coal cars. (N.T. 146-147, 151-156).

28. While use of safety goggles is mandatory, one hundred and seventy-five eye injuries have been reported since 1975. (N.T. 162).

29. Large overhead fans circulate air around the foundry, causing dust and debris to blow around. (N.T. 162).

30. Employment as a laborer at Respondent's Avonmore facility involves a serious risk of eye injury. (N.T. 162).

31. If Complainant were temporarily blinded by an injury to her right eye, there would be a significant risk of injury to a co-worker. (N.T. 157, 155).

32. Complainant lacks true depth perception and has diminished peripheral vision. (Fabyinyi Deposition p. 28, 30).

33. Complainant has developed a "substitute sense" to compensate for her lack of depth perception. (Fabinyi Deposition p. 30-31).

34. Complainant's performance of skilled tasks in the foundry could be hampered by her lack of depth perception. (Fabinyi Deposition p. 29).

CONCLUSIONS OF LAW

1. Complainant is an adult individual within the meaning of the Act.

2. Respondent is an employer within the meaning of the Act.

3. The Pennsylvania Human Relations Commission has jurisdiction over the parties and subject matter of this case.

4. All procedural and jurisdictional prerequisites to a public hearing under the Act have been met.

5. To prevail in this case, Complainant must initially prove that:

- a. She is a member of a protected class or classes;
- b. That she applied for a position for which she was qualified;
- c. That her application was rejected; and
- d. That the employer continued to search for equally qualified applicants.

6. Complainant has met her burden of proving prima facie cases of sex discrimination and discrimination on the basis of handicap.

7. Respondent has overcome Complainant's prima facie case of sex discrimination by showing that the laborer's position sought by Complainant was offered to three other women, one of whom accepted it. Complainant has not proved

that Respondent's reasons for its conduct were pretextual.

8. Complainant was a handicapped person at the time of her application for employment with Respondent.

9. Respondent has met its burden of proving that Complainant's handicap was job related.

10. When as here a Respondent overcomes a Complainant's prima facie showings of discrimination, and the Complainant does not show that the Respondent's reasons for its conduct were pretexts for discrimination, the complaint must be dismissed with prejudice.

O P I N I O N

This case arises on a complaint filed by Amelia Frassenei ("Complainant") against Lukens General Industries, Inc., National Roll Division ("Respondent") with the Pennsylvania Human Relations Commission ("Commission") on September 12, 1978, at Docket No. E-14576. After investigation, Commission staff found probable cause to credit the allegations of discrimination. Efforts at conciliation were unsuccessful, and the case was approved for public hearing. The hearing was held on November 16, 1982 before Commissioners Elizabeth M. Scott, Chairperson of the hearing panel, Rita Clark, and John P. Wisniewski.

Complainant alleged that Respondent refused to hire her for the position of Laborer because of her sex, female, and non-job related handicap, impaired vision. It was alleged that the refusal to hire her violated Sections 5(a) and 5(b)(1) and (5) of the Pennsylvania Human Relations Act, 43 P.S. §§ 951 et seq. ("Act").

Complainant bears the initial burden of proving a prima facie case of discrimination under the Act. She may do this by showing that she is a member of a protected class or classes, that she applied for a position for which she was qualified, that her application was refused, and that the employer continued to seek applicants with equal qualifications.

General Electric Corp. v. Pennsylvania Human Relations Commission, 469 Pa. 292, 365 A.2d 649 (1976). The burden then shifts to the employer to prove that its conduct did not violate the Act. Philadelphia Electric Co. v. Pennsylvania Human Relations Commission, Pa. Cmwlt. 448 A.2d 701 (1982). This burden may be satisfied by proof that the handicap in question was job related, National Railroad Passenger Corp. (AMTRAK) v. Pennsylvania Human Relations Commission, Pa. Cmwlt. 452 A.2d 301 (1982), or that the challenged policy was necessary to the efficient and safe operation of the business. General Electric Corp., supra. Complainant's claims of sex and handicap discrimination must both be resolved within this framework. We shall consider them separately.

In September of 1977, Complainant completed an application for employment at Respondent's Avonmore foundry and filed it with the Pennsylvania State Employment Service ("PSES"), which regularly accepted applications on behalf of Respondent. When openings occurred, including one for a laborer position, PSES followed its regular practice of testing applicants and scheduling them for interviews with the company. Complainant passed the tests and was scheduled for an interview with Respondent for the laborer position on August 18, 1978. This interview took place as scheduled. By letter dated August 24, 1978, Complainant was informed that she would not be hired for the laborer's position.

These facts establish a prima facie case of sex

discrimination. Respondent has however proved by uncontradicted testimony that the position for which Ms. Frassenei applied was subsequently filled by another woman, Cynthia Richards, after it was offered to and rejected by two other women. Complainant has not established that Respondent's reasons for rejecting her application were a pretext for discrimination on the basis of sex. Her claim of discrimination on the basis of sex must therefore be dismissed.

Ms. Frassenei's handicap claim raises more complex factual issues. Complainant's expert witness Dr. Fabinyi, whose deposition was made part of the record in this case, indicated that she is legally blind in her left eye; while extremely limited vision exists in that eye, this vision allows only minimal recognition of peripheral movement and light; Complainant's own testimony shows clearly that her left eye is essentially useless to her. The condition which causes her impairment has existed since birth, and she has adapted well to it. The uncorrected vision in her right eye is 20/20.

Complainant was a handicapped person within the meaning of the Act at the time of this application. In AMTRAK, supra., Commonwealth Court found that monocular vision does constitute a handicap. The AMTRAK Court noted that the Commission's regulatory definition of handicap was not then applicable; like this case, AMTRAK arose prior to the effective date of those regulations. The Court then referred to its approval in Philadelphia Electric Co., supra., of one aspect of the

regulatory definition, that defining a handicapped person as one who "has a physical or mental impairment which substantially limits one or more major life activities." It agreed with our finding that loss of vision in one eye substantially limits the major function of eyesight.

Complainant has thus satisfied her burden of proof as articulated in AMTRAK of showing that she had a handicap when she applied for a position for which she was otherwise qualified, and that her application was rejected. Respondent however argues that her application was rejected, not because of her handicap, but because of what it describes as her lack of truthfulness in completing the application.

It is not contested that Complainant answered in the negative the PSES application question "Have you any physical defects?" She testified that she did so because she does not consider herself to be defective. There was conflicting testimony as to exactly when during the interview she disclosed the existence of her condition; both parties agree that it was disclosed by her before the interview ended.

Whatever the Company's concerns about Complainant's truthfulness, we find that they were not the determining factor in their refusal to hire her. In a letter to a Commission investigator dated November 3, 1978, and admitted at hearing as Complainant's Exhibit 5, a Respondent official noted Ms. Frassenei's denial that she had a physical defect, and continued:

It is imperative in an industrial operation, such as our foundry, that employees not be in a position to injure themselves, but also, and probably more important, that they not endanger the physical well-being or the lives of other employees. It is not prudent to accept the responsibility for employing persons with such a physical limitation in a foundry of our type with its inherent hazards.

Based on this letter, and on the testimony of Respondent's witness Pohankon about his concern with the safety issues raised by Complainant's condition, we find that Respondent refused to hire Ms. Frassenei because of her handicap. We must therefore consider the issue of job relatedness. AMTRAK places the burden of proving the job relatedness of a handicap on the employer. We find that Respondent has met this burden.

Mr. Pohankon testified that National Roll's Avonmore facility manufactures large rolls of iron and steel, weighing between five hundred pounds and fifty tons. Molten metal is poured into molds; after cooling and heat treating in a furnace, the rolls are shaped by further processes, including grinding. The total operation generates excessive heat and dust, and occasional sparks and flying metal chips. Large overhead fans circulate air, along with dust and smoke.

Working conditions in the foundry are physically hazardous. Mr. Pohankon described portions of the foundry floor which are uneven. Tools are sometimes left on the floor. There are several pits, thirty to forty feet deep, where rolls are poured. When people are working in the area of the pits, the chains which normally guard them are sometimes down. Overhead cranes with hanging chains carry heavy

loads through the foundry. While sirens warn of the cranes' approach, noise from other parts of the process can make it difficult to detect the warning sirens.

All laborers work in all areas of the plant, performing the functions generally described in Commission Exhibit 4 as loading and unloading materials, cleaning of work areas, and facilitating the work of more skilled workers. Occasionally laborers are temporarily moved into more skilled positions. They must climb without fear to heights of fifty feet, and work in the pits already mentioned. More specific duties include parking and braking coal cars, giving directions to crane operators who are setting hooks to pick up slag buckets, working with tools on ladders, using sledge hammers to strike clamps held by other workers, using jackhammers to break up concrete, and breaking up frozen coal on the surface of coal cars using pickaxes.

Section 4 of the Act describes a job related handicap as one which does not substantially interfere with the ability to perform the essential functions of the position sought. AMTRAK holds that the threat to the health and safety of others which might be presented by employment of a handicapped person must also be carefully considered in determining whether a handicap is job related, independent of the Commission regulation dealing with these factors which was found to be not applicable in that case.

We find that employment as a laborer in Respondent's Avonmore foundry involves a substantial risk of eye injury.

While use of safety goggles is mandatory at the plant, Mr. Pohanka testified that eye injuries still occur, and that one hundred and seventy-five eye injuries have been reported in the plant since 1975. Common sense dictates that the consequence of injury to Complainant's right eye would be extremely serious. In addition to the possibility of total blindness, she would be at risk of additional injury from one of the many plant hazards described above if a minor eye injury rendered her even temporarily blind. As the description of a laborer's duties indicates, there would also be a significant risk of injury to co-workers if Complainant suffered a right eye injury while performing a task along with another worker.

We emphasize that the hazards just mentioned are not merely hypothetical. Eye injuries have occurred in the plant with some frequency. Respondent's concern with safety was not based upon fear of the unknown, but upon known dangers to which its workforce is constantly exposed.

The evidence relating to Complainant's peripheral vision and depth perception is less compelling but does raise additional safety concerns. Both medical witnesses testified that she lacks true depth perception and that her peripheral vision is diminished. They disagreed on the consequences of these limitations. Dr. Pennington testified that a person with monocular vision might become spatially disoriented if working at a height of fifty feet, and that such persons should avoid work at that height. Dr. Fabinyi testified that he did not feel she would endanger herself or other workers

by performing unskilled tasks in the foundry. This opinion was qualified, however. Dr. Fabinyi testified that Ms. Frassenei would probably not qualify for performance of any more sophisticated job functions because of her lack of depth perception.

Considering our prior finding that foundry employment poses a serious risk of eye injury to laborers, we need not and do not decide that Complainant's lack of depth perception alone would disqualify her for the position, particularly in view of the "substitute sense" which Dr. Fabinyi testified she has developed to compensate for that lack. We do find that this limitation could pose a secondary but serious risk of harm to her and her co-workers, particularly if she were temporarily upgraded to perform a more skilled task.

For these reasons we find that Respondent has met its burden of showing that Complainant's handicap is job related, emphasizing that this decision is limited to the factual context in which it arose. We therefore recommend entry of the following final order, dismissing this complaint.

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RECOMMENDATION OF HEARING COMMISSIONERS

Upon consideration of the entire record in this case, the Hearing Commissioners conclude that Respondent has not committed an unlawful discriminatory practice within the meaning of the Act, and recommend that the attached Findings of Fact, Conclusions of Law, Opinion and Order be adopted and entered by the full Pennsylvania Human Relations Commission.

6/27/83

DATE



ELIZABETH M. SCOTT, Chairperson
of Hearing Panel

6/27/83

DATE



JOHN WISNIEWSKI, Hearing
Commissioner

DATE

RITA CLARK, Hearing Commissioner

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FINAL ORDER

AND NOW, this 11th day of July, 1983, upon consideration of the Findings of Fact, Conclusions of Law, Opinion, and Recommendation of Hearing Commissioners, pursuant to Section 9 of the Act, it is hereby

O R D E R E D

that the complaint in the above captioned matter be dismissed with prejudice.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: *Joseph X. Yaffe*
JOSEPH X. YAFFE, Chairperson

ATTEST:

Elizabeth M. Scott
ELIZABETH M. SCOTT, Secretary