

COMMONWEALTH OF PENNSYLVANIA
EXECUTIVE OFFICES
PENNSYLVANIA HUMAN RELATIONS COMMISSION

BETTY J. ISLER, :
Complainant :
v. : DOCKET NO. E-19523
PENNSYLVANIA DEPARTMENT OF :
ENVIRONMENTAL RESOURCES, :
Respondent :

STIPULATION OF FACT

1. Complainant is Betty J. Isler, a black female adult residing at 2135 Jefferson street, Harrisburg, PA.

2. The Respondent is Commonwealth of Pennsylvania, Department of Environmental Resources with its principal offices at 9th Floor, Fulton Bank Building, Harrisburg, Pennsylvania.

3. On or about April 18, 1980, Complainant filed a complaint of alleged discrimination with PHRC at docket number E-17193.

4. On or about January 6, 1981, Complainant filed a verified complaint with the Pennsylvania Human Relations Commission ("Commission") at Docket No. E-19523. A copy of the complaint is attached hereto as Appendix "A" and is incorporated by reference herein as if fully set forth.

5. On or about January 20, 1981, the Commission staff duly served all parties to this action with a copy of the complaint. A copy of the Certificate of Service is attached hereto as Appendix "B" and is incorporated herein as if fully set forth.

6. The Commission staff made a finding that probable cause existed to credit the allegations of the complaint. Respondent was duly notified of the Commission's finding by letter dated April 26, 1982.

7. Respondent, by letter of May 10, 1982, provided a rebuttal to the finding of probable cause.

8. All statutory and regulatory requirements for convening of a public hearing have been met.

9. On or about January 13, 1972, Complainant was hired by Respondent.

10. On or about November 7, 1980, Respondent posted a notice for a vacancy in the position of Personnel Analyst I in Respondent's Placement Section.

11. At the time the vacancy notice was posted, Complainant held the position of Personnel Assistant I in the Placement Section.

12. The minimum experience and training for the Personnel Analyst I position are one year of experience in the performance of technical personnel duties; and a bachelor's degree or any equivalent combination of experience and training.

13. On or about November 14, 1980, Complainant applied for the position of Personnel Analyst I in the Placement Section.

14. Aside from Complainant, six other individuals applied for the position of Personnel Analyst I in the Placement Section.

15. James Spontak was the only applicant who was male.

16. Complainant was the only applicant who was black; the other six applicants were white.

17. Mr. Spontak was the only applicant who was given a personal interview for the position.

18. The Respondent hired Mr. Spontak for the position effective on or about December 11, 1980.

19. Complainant was the only applicant for the position who was employed in Respondent's Placement Section.

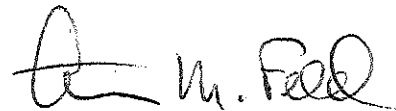
20. A request for Preliminary Evaluation was submitted to the Civil Service Commission for all applicants for the position. Complainant, Spontak and two other applicants were evaluated by the Civil Service Commission as eligible for the position; three of the applicants were evaluated as ineligible.

21. As of November 11, 1980 Complainant was classified as a Personnel Assistant I, Pay Range 30 Step F. If Complainant had been selected for the Personnel Analyst I position she would have been classified as Pay Range 35 Step C.

The Stipulations of Fact, together with all appendices and the Witness Lists and Exhibits of each party will be incorporated into a Pre-Hearing Order which will become a part of the official record of this case and will be incorporated into the transcript prepared during the course of any subsequent public hearing in this matter.



G. Thompson Bell
Counsel for Complainant



Arthur M. Feld
Counsel for Respondent

COMMONWEALTH OF PENNSYLVANIA
EXECUTIVE OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

BETTY J. ISLER,

Complainant

v.

DOCKET NO. E-19523

PENNSYLVANIA DEPARTMENT OF
ENVIRONMENTAL RESOURCES,

Respondent

FINDINGS OF FACT*

1. Complainant was promoted by Respondent to the position of Personnel Assistant I in 1975. (N.T. 10, 12, 14; C.E. 1)

2. James Spontak was employed by Respondent as Residential Coordinator at Camp Quehanna prior to accepting the Personnel Analyst position. (N.T. 57)

3. Mr. Spontak was a college graduate. (N.T. 104)

4. Camp Quehanna, operated by Respondent, was a Young Adult Conservation Corps camp. (N.T. 56)

*The foregoing Stipulation of Fact is incorporated herein as if fully set forth.

The following abbreviations are used throughout this Opinion:

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

5. The Young Adult Conservation Corps was a federally funded program through which unemployed young adults were hired by DER as Conservation Aides to perform conservation work on public lands. (N.T. 55, 56, 57)

6. As Residential Coordinator, Mr. Spontak was responsible for the non-work hour activities of the Corps members. (N.T. 58)

7. Mr. Spontak's Residential Coordinator duties included making room assignments and counseling Corps members about personal problems and post-Corps employment opportunities. He also supervised the camp's four security officers. (N.T. 59)

8. Corps members were subject to federal guidelines; the security officers were state employees subject to Civil Service regulations. (N.T. 58)

9. Joseph Fiedor was Camp Quehanna's Director when Mr. Spontak was employed at the camp. (N.T. 55, 57)

10. There were no furloughs at Camp Quehanna when Mr. Spontak worked there. (N.T. 60)

11. Mr. Spontak did not deal professionally with the Civil Service Commission while he worked at Camp Quehanna. (N.T. 60, 61)

12. Mr. Spontak had no involvement with an intern program while at Camp Quehanna. (N.T. 61)

13. Mr. Spontak's involvement with DER personnel policies while at camp Quehanna was limited to policies

relating to supervision of the security officers. (N.T. 61, 62, 63)

14. Mr. Spontak's experience with employee selection at Camp Quehanna was limited to selecting Corps members and sitting in on interviews of security officers. (N.T. 61, 64, 65, 67)

15. Respondent characterized Mr. Spontak's prior experience as "professional" and Ms. Isler's prior experience as "responsible clerical". (N.T. 85, 78, 133)

16. Dean Jury and Janet Hall both participated in the decision to hire Mr. Spontak for the Personnel Analyst position. (N.T. 82, 83)

17. Ms. Hall testified that she was impressed by Mr. Spontak's enthusiasm. (N.T. 132)

18. Both Ms. Hall and Mr. Jury testified that they considered Mr. Spontak to be better qualified than Ms. Isler, based on his analytical ability, his prior work experience, and his education. (N.T. 85, 86, 132, 133, 134)

19. Mr. Jury testified that Mr. Spontak's college degree enabled him to meet the minimum requirements for the Personnel Analyst position. (N.T. 104)

20. Mr. Spontak's college work did not include courses in personnel work. (N.T. 104, 105)

21. Respondent's normal practice was to interview job applicants, including incumbent employees, unless the number of applicants was very large. (N.T. 112, 165, 166)

22. Ms. Hall testified that Mr. Spontak demonstrated his analytical ability during his interview for the Personnel Analyst position. (N.T. 138)

23. The job description for the Personnel Analyst position filled by Mr. Spontak lists four Key Result areas: employment selection, furlough coordination, employment counseling, and intern programs. (C.E. 4)

24. Ms. Isler's duties prior to November of 1980 included work with Civil Service eligibility lists and DER's furlough system, and counseling of job applicants about employment opportunities within DER. (N.T. 15-22; C.E. 1)

25. Four of the six Personnel Analysts hired by Respondent between November 1, 1978 and November 20, 1980, had previously worked as Personnel Assistants. (N.T. 107, 108)

CONCLUSIONS OF LAW

1. Complainant is an individual within the meaning of the Pennsylvania Human Relations Act, 43 P.S. §§ 951 et seq. ("Act").

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

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

4. The parties and the Commission have fully complied with the procedural prerequisites to a public hearing in this case.

5. Complainant bears the initial burden of establishing a prima facie case of discrimination.

6. Complainant has met her initial burden by establishing that:

- a. She is a member of a protected class or classes;
- b. She applied for a position for which she was qualified;
- c. Her application was rejected; and
- d. The employer continued to seek applicants of equal qualifications or hired someone not of Complainant's protected class or classes.

7. Respondent may prevail after Complainant has made out a prima facie case by proving that she was not the best able and most competent applicant to perform the services required.

8. Respondent has failed to establish that Complainant was not the best able and most competent to perform the services required.

9. Respondent failed to promote Complainant to the position of Personnel Analyst because of her race and sex.

10. After a finding of discrimination, the Commission may award relief which includes wages lost as a result of the unlawful conduct, along with interest at the rate authorized by law, and upgrading of employees.

O P I N I O N

This case arises on a complaint filed by Betty J. Isler ("Complainant") against the Pennsylvania Department of Environmental Resources ("Respondent" or "DER") with the Pennsylvania Human Relations Commission ("Commission") on or about January 6, 1981. The complaint alleged that Respondent discriminated against Complainant on the basis of her race, Black, and sex, female, by not promoting her to the position of Personnel Analyst I, in violation of Section 5(a) of the Pennsylvania Human Relations Act, 43 P.S. §§ 951 et seq. ("Act"). The complaint further alleged that Ms. Isler, who has been employed by Respondent since 1972, had filed an earlier complaint of discrimination with the Commission against DER, and that the failure to promote her might have been because of the earlier complaint. A violation of Section 5(d) of the Act was also alleged.

Commission staff investigated the matter and 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 March 30, 1983 and May 2, 1983 in Harrisburg, Pennsylvania before Commissioner Doris M. Leader, the parties having waived their statutory rights to a hearing before a panel of three Commissioners.

Complainant bears the initial burden of establishing a prima facie case of discrimination. Philadelphia Electric Co. v. Pennsylvania Human Relations Commission and Joyce English, Pa. Cmwlth. 448 A. 2d 701 (1982). She may do so in this case by proving:

- (1) that she is a member of a protected class (or classes);
- (2) that she applied for a position for which she was qualified;
- (3) that her application was rejected; and
- (4) that the employer continued to seek applicants of equal qualifications or hired someone not of Complainant's protected class.

McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1972); General Electric Corp. v. Pennsylvania Human Relations Commission, 365 A.2d 649 (1976). Should Complainant establish a prima facie case, the burden shifts to Respondent to prove that its conduct did not violate the Act. Pennsylvania State Police v. Pennsylvania Human Relations Commission and Phyllis Sweeting, Pa. Cmwlth., 457 A.2d 584 (1982).

We find that Complainant has met her initial burden. She is a Black female, protected against discrimination on the basis of race and sex. The parties stipulated that she applied for the position of Personnel Analyst I in DER's Placement Section on or about November 14, 1980, and that the position was subsequently given to Mr. James Spontak, a White male.

We find that Complainant was qualified for the Personnel Analyst I position. The parties stipulated that

"(t)he minimum experience and training for the Personnel Analyst I position are one year of experience in the performance of technical personnel duties; and a bachelors' degree or any equivalent combination of experience and training." (S.F. 12) It was further stipulated that Complainant was certified by the Civil Service Commission as qualified for the position. We note as well that Complainant at the time of her unsuccessful application had worked for Respondent for approximately five years as a Personnel Assistant, performing technical personnel duties.

Having found that Complainant has met her initial burden, we must consider Respondent's explanation of its failure to promote her. Respondent urges, in essence, that Mr. Spontak was the better qualified applicant. Various factors are advanced in support of this conclusion.

Section 5(a) of the Act provides in part that it shall be an unlawful discriminatory practice to refuse to hire or otherwise discriminate against any individual on the basis of race or sex, "...if the individual is the best able and most competent to perform the services required."

In General Electric, supra, Pennsylvania's Supreme Court rejected an employer's argument that a complainant's prima facie case should include proof that he or she was the "best able and most competent" employee. The Court placed the converse burden on the employer:

We believe that notions of fairness and common sense dictate that the burden of establishing such a limitation should fall upon the party in whose favor the limitation is designed to

operate... Moreover, our decision is supported by certain pragmatic considerations. The employer has far easier access to the facts which must be established in order to prove the relative qualifications of those employees who were retained and those employees who were laid off in any given work curtailment situation.

365 A.2d at 657

This rationale is of course equally applicable in a situation involving a promotion. And see Blackburn v. Pennsylvania Human Relations Commission and Crescent Hills Coal Co., Pa. Cmwlth. 435 A.2d 671 (1981), requiring an employer to prove that the Complainant was not the best able and most competent applicant in a case alleging discriminatory refusal to hire. We must therefore determine whether DER has established that Mr. Spontak was the best able and most competent applicant for the Personnel Analyst position.

Mr. Spontak, a college graduate, was employed by DER as a Park Superintendent at Camp Quehanna, a Young Adult Conservation Corps camp, prior to accepting the Personnel Analyst position. Specifically, he served as the camp's Residential Coordinator, under the supervision of the Camp Director. The YACC was a federally funded program; Corps members were young unemployed adults hired by DER as Conservation Aides to perform conservation work on public lands. Mr. Spontak was responsible for their non-work hour activities; he handled room assignments and assisted Corps members with problems ranging from post-Corps employment opportunities to drug and alcohol abuse. He also supervised the Camp's four security officers. Unlike the Corps members, who were subject to federal guidelines, the

security officers were state Civil Service employees.

Mr. Joseph Fiedor, who was Quehanna's Camp Director while Mr. Spontak worked there as Camp Superintendent, testified credibly about Mr. Spontak's duties in that position. No dealings with the Civil Service Commission were involved. Mr. Spontak's required knowledge of DER personnel policies was limited to those policies which had a bearing on the supervision of the four security officers. He had no involvement with any sort of intern program; nor were there any furloughs while he was at the camp. His involvement in employee selection was limited to selecting Corps members (to whom federal guidelines applied) and sitting in on security officer interviews.

Respondent points to several factors in its argument that Mr. Spontak was better qualified. It emphasizes that he was a college graduate who had functioned in a professional capacity before becoming Personnel Analyst; Complainant's experience is described as "responsible clerical".

Respondent's witnesses Janet Hall and Dean Jury, each of whom played a part in the decision to hire Mr. Spontak, testified that he was more enthusiastic and had greater analytic ability than Ms. Isler. These factors, as well as his superior education and prior experience, were said to have led to his selection. For these reasons which follow, we find that these factors fail to establish that Mr. Spontak was the most able candidate for the position.

While indicating that Mr. Spontak's college education was a significant factor in his selection, Mr. Jury on cross

examination testified that his college degree simply enabled Mr. Spontak to meet the minimum requirements for the position. The actual college work done by Mr. Spontak did not include personnel work. Respondent has thus failed to establish that Mr. Spontak's college degree rendered him better qualified than Ms. Isler for the position. In a similar vein, the distinction between "professional" and "clerical" work does not seem to us to be particularly meaningful, given Mr. Jury's definition of "professional" work as "...work performed as a result of usually a four-year post-high school education... that... normally involves an analytical process..." (N.T. 79)

Nor is Respondent's reliance on Mr. Spontak's enthusiasm and analytic ability persuasive. Given the inability of Mr. Jury and Ms. Hall to specify any particular action of Mr. Spontak which demonstrated his analytic ability, and the use of a single incident to show Complainant's lack thereof, we find that Respondent's reliance on these factors constitutes application of subjective criteria. As the Supreme Court stated in General Electric, supra, "(e)mployment decisions predicated on subjective appraisals have been treated with particular suspicion and have generally been condemned." (Citations omitted.) 365 A.2d 657, n. 14. In this case, reliance on these subjective factors is insufficient to discharge Respondent's burden of proof.

It is also significant in this context that Respondent interviewed only Mr. Spontak for the Personnel Analyst position, although the Department's normal practice is to interview all eligible applicants, including incumbent employees.

Ms. Isler was evaluated for the position solely on the basis of her education and experience. Respondent thus judged the qualifications of Ms. Isler and Mr. Spontak on different bases. Mr. Spontak was said to have exhibited his analytic skills during his interview; the opportunity to do so was not afforded Ms. Isler.

Finally, Respondent urges that Mr. Spontak's prior work experience was superior to Ms. Isler's. The nature of his work at Camp Quehenna has already been described. As noted, this work did not include furlough coordination or use of interns. Very limited employee selection and employment counseling were involved. Yet Complainant's Exhibit 4, the job description for the Personnel Analyst Position, lists four Key Result Areas: employment selections, furlough coordination, employment counseling, and intern programs.

By contrast, Ms. Isler's prior experience included five years with DER as a Personnel Assistant. Her duties included work with Civil Service eligibility lists, the Department's furlough system, and counseling of job applicants about opportunities within the Department, three of the four Key areas for the Personnel Analyst position. Clearly her experience was far more relevant, a conclusion which is reinforced by the fact that four of the six Personnel Analyst I's hired by DER between November 1, 1978 and November 20, 1980, had previously been Personnel Assistants. We therefore find that a close comparison of Ms. Isler's work experience with that of Mr. Spontak fails to support Respondent's assertion that he was the most qualified applicant.

Having found that Complainant made out a prima facie case of discrimination, and that Respondent failed to prove that she was not the best able and most competent to perform the services required, we conclude that Respondent failed to promote Complainant on the basis of her race and sex, in violation of Section 5 of the Act. Following such a finding we are empowered by Section 9 of the Act to award relief including back pay and such other relief as shall effectuate the Act's purposes. SEE: Pennsylvania Human Relations Commission v. Transit Casualty, 387 A.2d 58 (1978). We therefore award relief as described with specificity in the final order which follows.

COMMONWEALTH OF PENNSYLVANIA
EXECUTIVE OFFICE
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BETTY J. ISLER,
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v.

PENNSYLVANIA DEPARTMENT OF
ENVIRONMENTAL RESOURCES,
Respondent

DOCKET NO. E-19523

FINAL ORDER

AND NOW, this 31st day of October, 1983,
the Pennsylvania Human Relations Commission hereby adopts the
foregoing Findings of Fact, Conclusions of Law, and Opinion,
in accordance with the Recommendation of the Hearing Commis-
sioner, pursuant to Section 9 of the Human Relations Act, and
therefore

O R D E R S

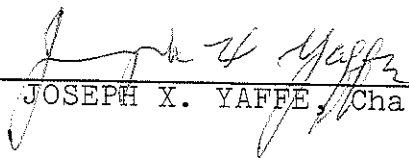
1. That Respondent cease and desist from dis-
criminating on the basis of race or sex;
2. That Respondent offer to Complainant the
next available Personnel Analyst I posi-
tion;
3. That Respondent pay to Complainant a lump
sum monetary payment in the amount of the
difference between her actual earnings
and what she would have earned, had she
been promoted to Personnel Analyst I on
December 11, 1980, between that date and
the date of this Order, plus simple

interest of 6% per annum calculated from the due date of each unpaid portion of salary which would have accrued between December 11, 1980 and the date of this Order;

4. That Respondent pay to Complainant at regular intervals the difference between her actual earnings and what her earnings would have been, had she been promoted to the Personnel Analyst I position in December of 1980, between the date of this Order and such time as she is promoted to that position;
5. That Respondent report to this Commission upon the manner of its compliance with this Order within thirty (30) days of the date of entry of the Order.

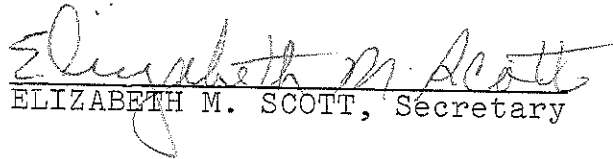
PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY:



JOSEPH X. YAFFE, Chairperson

ATTEST



ELIZABETH M. SCOTT, Secretary