

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

RONALD R. REHMANN,
Complainant

v.

COURT OF COMMON PLEAS,
COURT ADMINISTRATION
PERSONNEL OFFICE,
Respondent

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Docket No. E-34786

JOINT STIPULATIONS OF FACT

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF HEARING PANEL

FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

RONALD R. REHMANN, :
Complainant :
 :
v. : DOCKET NO. E-34786
 :
COURT OF COMMON PLEAS, COURT OF :
ADMINISTRATION PERSONNEL, :
Respondents :

JOINT 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 Ronald R. Rehmann, an adult male (hereinafter "Complainant").
2. The Respondent herein is the Court of Common Pleas, Court Administration Personnel (hereinafter "Respondent").
3. Respondent, at all times relevant to the case at hand, employed four or more employees in the Commonwealth of Pennsylvania.
4. On October 18, 1985, the Complainant filed a notarized complaint with the Pennsylvania Human Relations Commission (hereinafter "Commission") at Commission docket number E-34786. A copy of the complaint is attached hereto as Appendix "A" and will be included as a docket entry in this case at time of hearing.
5. In correspondence, dated August 1, 1986, the Commission notified Respondent that its investigation had resulted in a finding that Probable Cause existed to credit the allegations contained in the above-referenced complaint.

6. Subsequent to the determination of Probable Cause, the Respondent declined the Commission's invitation to attempt to resolve the matter in dispute between Complainant and Respondent through conference, conciliation and persuasion.

7. In correspondence, dated November 26, 1986, the Commission notified the Respondent that a Public Hearing had been approved in this matter.

8. On September 15, 1984, Complainant applied for the position of pretrial warrant investigator.

9. The Complainant, at the time he applied for the position, wore a prosthesis because of a congenital absence of the left foot.

10. On February 15, 1985, Matthew F. Lewandowski, Respondent's personnel officer, notified Complainant that he was not being considered further for the position due to the fact that other candidates exceeded him in experience and qualifications.

11. On April 11, 1985, Complainant reapplied for the position.

12. On April 30, 1985, Respondent considered Complainant one of twenty resumes/applications qualified for review and interview for the position.

13. On May 15, 1985, Complainant was interviewed for the position by four panelists: Robert L. Johnson, Director, Pretrial Services; Michael Rodriquez, Field Supervisor; Larry Evans, Supervisor, Domestic Relations; and Edward Burnley, Superintendent, Warrant Investigator.

14. On May 16, 1985, the Complainant was given a psychological evaluation. No pre-employment physical or medical examination was administered to Complainant or any of the candidates by Respondent.

15. By letters dated October 7, 1985, Complainant and other unsuccessful applicants were notified by Matthew F. Lewandowski that they had not been selected for the position of Pre-Trial Warrant Investigator.

16. The Respondent, in correspondence dated July 31, 1985, notified the successful applicants that they had been selected for the positions because they met the necessary qualifications.

17. The minimum salary listed for the position was \$16,908.00.

Date: January 10, 1989

Pamela Darville
Pamela Darville
(Counsel for the Commission on
behalf of the Complainant)

Date: January 18, 1989

Mary Ellen Krober
Mary Ellen Krober
Deputy City Solicitor
(Counsel for the Respondents)

FINDINGS OF FACT

1. The Complainant in this matter wears a prosthesis on his left leg which replaces the lower two-thirds of his left leg. (N.T. 60)
2. In September of 1984, the Respondent announced a job listing for the position of pretrial warrant investigator. (N.T. 60)
3. The job announcement listed the following requirements for the position:
 1. Education equivalent to completion of the twelfth grade;
 2. Two (2) years of experience or training in investigation work or in work requiring public contact and the acquisition of facts relative to the process of locating people.
 3. Or, a bachelors' degree with major course work in a related field of study;
 4. Meet physical requirements;
 5. City residency within six (6) months of satisfactory completion of probation period. (C.E. 5)

*The foregoing "Stipulations" 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 Facts. The following abbreviations will be utilized throughout these Findings for reference purposes:

N.T. Notes of Testimony (The date of the Public Hearing is also noted)

C.E. Complainant's Exhibit

S.F. Joint Stipulations of Fact

NOTE:

Joint Stipulations of Fact

13. **Should be Nathaniel Johnson, Managing Investigator instead of Robert L. Johnson.**

4. The job description for the pretrial warrant investigator position listed the following required knowledge, skills and abilities:

- a. Some knowledge of the principles, methods and techniques of investigation involving the verification of information.
- b. Some knowledge of the investigative techniques and social community factors required eliciting information from various sources in order to find and possibly apprehend persons involved with the criminal justice system.
- c. Ability to develop skill in the use and care of firearms as required by work assignment.
- d. Ability to establish and maintain effective working relationships with disturbed and/or maladjusted individuals, law enforcement and other public agency personnel, associates, and the general public. (C.E. 10)

5. The job position also required the ability to meet approved minimal, physical, medical and psychological standards and possession of a valid driver's license as issued by the Commonwealth of Pennsylvania. (C.E. 10)

6. The only standards relied upon by the Respondent were those contained in the job announcement for pretrial warrant investigator. (C.E. 1)

7. On February 15, 1985, the Respondent notified the Complainant that he was not being considered for the position because other candidates exceeded him in experience and qualifications. (C.E. 7; N.T. - 1/17/91)

8. On April 11, 1985, the Complainant reapplied for the position of pretrial warrant investigator. (C.E. 8; S.F. 11)

9. On April 30, 1985, the Respondent considered the Complainant as one of twenty applications qualified for interview for the position of pretrial warrant investigator. (S.F. 12)

10. On May 15, 1985, the Complainant was interviewed by four of the Respondent's employees. (N.T. 16, 61 - 9/27/89)

11. Those employees were as follows:

- a. Nathaniel Johnson, Managing Investigator in Respondent's Warrant Department.
- b. Michael Rodriquez, Field Investigator in Investigation and Warrant Services
- c. Larry Evans, Assistant Superintendent
- d. Edward Burnley, a Superintendent in Respondent's Pretrial Services Division.

N.T. 16, 61 - 9/27/89

12. There was no pre-employment physical or medical examination administered to Complainant or any of the other applicants. (S.F. 14)

13. After the Complainant's interview, three of the four-panel members recommended rejecting the Complainant for the position. Those individuals were: Nathaniel Johnson, Michael Rodriquez and Edward Burnley. (C.E. 12E)

14. On October 7, 1985 the Complainant was formally notified that he had been selected for the position of pretrial warrant investigator. (C.E. 9)

15. The Complainant was rejected because of his job-related disability and his lack of qualifications when compared to the other applicants in terms of education, experience and psychological attitude. (C.E. 1))

16. Nathaniel Johnson, a panel member, rejected the Complainant because as he noted on his evaluation form, "really question safety factor in that he is amputee to perform adequately in stress situations." (C.E. 12E)

17. Nathaniel Johnson also asked questions regarding the Complainant's prothesis and also inquired as to whether it would dislodge in a pursuit. (N.T. 135-137 - 9/28/89)
18. Nathaniel Johnson also wrote on his evaluation form that the "Complainant has drive to excel, applicant does have physical handicap of false leg" and "From his conversation he can become overzealous." (C.E. 12E)
19. Nathaniel Johnson concluded that the Complainant would have a safety problem based on his physical conditions (N.T. 135-137 - 9/28/89)
20. Michael Rodriquez, another panel member, gave the following reason for rejecting the Complainant for the position: "May attempt to overwork himself to prove himself and as a result may injure himself more." (C.E. 12E)
21. Edward Burnley, the third panel member, rejected the Complainant because of "very violent tendencies." (C.E. 12E)
22. Edward Burnley also stated that he rejected the Complainant because the Complainant wore a prothesis which he [Burnley] felt might be a hazard to Complainant, his partner and the agency. (N.T. 42 - 9/28/89)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the Complainant and the Respondent and the subject matter of the complaint pursuant to Section 9 of the Pennsylvania Human Relations Act. ("Act")
2. The parties and the Commission have complied with the procedural requirements to a public hearing in this matter.
3. Respondent is an "employer" as defined by the Act.
4. Complainant is an "individual" as defined by the Act.
5. The complaint satisfies the filing requirements set forth in Section 9 of the Act.
6. The Complainant is handicapped or disabled under the definition in the Act and Commission regulations.
7. The Complainant has the burden of establishing a prima facie case of discrimination.
8. In order to establish a prima facie case, the Complainant must show the following:
 1. that he is handicapped;
 2. that he applied for a position for which he was otherwise qualified;
 3. that he was rejected due to his handicap; and
 4. that the employer continued to seek qualified candidates.
9. The Complainant has met its burden of establishing a prima facie case.

10. Since the Respondent has asserted that the rejection was because the handicap/disability in the instant case is job-related, then the Respondent has the burden of showing that the handicap is job-related.

11. Respondent has established that the Complainant's handicap is job-related because of the demonstrable risk of harm which he would pose to the health and safety of others and to himself.

OPINION

This case arises from a complaint filed by Ronald R. Rehmann, ("Complainant") against Court of Common Pleas, Court Administration Personnel Office ("Respondent") with the Pennsylvania Human Relations Commission, docketed at E-34786. On October 15, 1985, the Complainant filed a complaint with PHRC alleging that Respondent denied him employment as a pretrial warrant investigator due to his handicap/disability, he wears a prosthesis which replaces the lower two-thirds of his left leg.

PHRC staff conducted an investigation of the allegation and found probable cause to credit the allegation of discrimination based on Complainant's handicap/disability. Thereafter, the Commission endeavored to conciliate this matter, and efforts were unsuccessful. On November 26, 1986, the Commission notified the Respondent that a public hearing had been approved in this matter. The public hearing in this matter was held over a number of days. The public hearing dates were September 26, 27 and 28, 1989, January 16, and 17, 1991, and February 4, 1991. Originally the three Commissioners who served on the hearing panel were: Dr. Robert Johnson Smith, Thomas L. McGill, Esquire, and Alvin E. Echols, Esquire, with Commissioner Echols serving as Chairperson of the panel. Beginning with the date of January 16, 1991, Commissioner Aubra S. Gaston, Esquire, replaced for Commissioner McGill. The hearing panel advisor was Phillip A. Ayers, Esquire. Maria L. Petrillo, Esquire, appeared on behalf of the Respondent, and Pamela Darville, Assistant Chief Counsel represented the state's interest in the complaint. Assistant Chief Counsel Darville filed a post hearing brief in this matter.

The issue before the Commission is whether Respondent unlawfully denied the Complainant employment as a pretrial warrant investigator because of his handicap/disability. More precisely did the Respondent violate Section 5(a) of the Pennsylvania Human Relations Act which provides in relevant part, "that is is an unlawful discriminatory practice for an employer to refuse to hire or employ, or otherwise discriminate against an individual due to the individual's non job-related handicap or disability."

Furthermore, the term "non job-related handicap or disability" is defined as follows:

"any handicap or disability which does not substantially interfere with the ability to perform the essential functions of the employment which a handicapped person applies for, is engaged in or has been engaged in. Uninsurability or increased cost of insurance under a group or employee insurance plan does not render a handicap or disability job-related."

43 P.S. §954(p)

These definitions have been upheld as a valid exercise of the Pennsylvania Human Relations Commission's legislative rule-making authority. Pa. State Police v. PHRC, 457 A.2d 584 (1983); and Pa. State Police v. PHRC, 483 A.2d 1039 (1984), reversed on other grounds, 517 A.2d 1253 (1983) (appeal limited to propriety of remedy).

Generally, in a handicap disability discrimination case, the allocation of proof is fairly straightforward. The Complainant is required to establish a prima facie case by showing:

1. that he is handicapped;
2. that he applied for a position for which he was otherwise qualified;

3. that he was rejected due to his handicap; and
4. that the Respondent continued to seek qualified applicants.

Once the Complainant establishes a prima facie case, normally the burden shifts to the Respondent to produce evidence that the rejection did not violate the Pennsylvania Human Relations Act. Pa. State Police v. PHRC, 72 Pa. Cmwlth. 520, 457 A.2d 584 (1983) In this matter where the Respondent has asserted the defense of job-relatedness, then Respondent must show that the handicap is job-related. The Complainant is still given the opportunity to rebut any reasons given by Respondent. However, the ultimate burden of persuasion still remains with the Complainant throughout the process. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981); Allegheny Housing Rehabilitation Corp. v. PHRC, 516 Pa. 124, 532 A.2d 315 (1987).

In the instant case, it is fairly clear that the Complainant has established a prima facie case. The Complainant is clearly considered to be handicapped under Commission regulations, and the Respondent in fact regarded him as having an impairment that substantially limits a major life activity. Pa. State Police v. PHRC, 72 Pa. Cmwlth. 520, 457 A.2d 584 (1983)

Secondly, a review of the Complainant's job experience in the areas of law enforcement and security work clearly show that the Complainant was qualified for the position of pretrial warrant investigator. The position required specific investigative skills, the ability to use a firearm, and the ability to work with disturbed individuals, law enforcement and public agency personnel, and the general public. (Commission Brief, p. 21) In reviewing the Complainant's work record, his previous employment as a private patrolman required his knowledge of investigative skills. The Complainant also was licensed to carry a firearm and had experience in law enforcement.

The third and fourth elements of the prima facie elements in the instant case have been clearly established. The Respondent did not select the Complainant for the position of pretrial warrant investigator. Ultimately, four other individuals were selected to fill the positions.

Therefore, in the instant case, the Complainant has established a prima facie case. As aforementioned, generally in discrimination cases, when a prima facie case is established, the Respondent then has the burden of articulating a legitimate non-discriminatory reason. However, the Respondent has asserted that the Complainant was rejected, among other reasons, because his handicap/disability is job-related.

Commonwealth Court in the case of National Railroad Passenger Corp. v. PHRC, 452 A.2d 301 (1982), held that a Respondent who defends a charge of handicap discrimination by asserting that the handicap is job-related, bears the burden of proof as to that assertion.

A handicap/disability is considered job-related if it substantially interferes with an individual's ability to perform the essential functions of the particular position in question. Moreover the Respondent must show that the Complainant would pose a "threat of demonstrable and serious harm to the Complainant or a demonstrable threat of harm to the health and safety of others."

It is clear from the testimony of the three panel members who rejected the Complainant that there was a question as to whether the Complainant could substantially perform the essential functions of the position of pretrial warrant investigator. The panel members expressed their concern given the nature of the job and the degree of physical hazards

associated with the position of pretrial warrant investigator. There was also concern that the Complainant would overwork himself in order to prove that he could do the job, thereby creating a threat of harm to the health and safety of those who would be working with him.

An example of the nature of the job of pretrial warrant investigator was clearly given by Michael Rodriquez, one of the panel members. Upon being asked by Respondent counsel to describe what he did in order to perform the functions of a pretrial warrant investigator, Mr. Rodriquez responded.

"Upon locating the Defendant and with the warrant for his arrest, we went to his house physically. One partner covered the back, one -- the other partner went to the front. If entry was not allowed into the house and the Defendant is verified that he is -- it is verified that the Defendant is in the house and he refuses to allow entry, forcible entry would be initiated. In most cases that we went out to the field to a residence to execute a Bench Warrant, if forcible entry had to be initiated, it's the responsibility of the front individual who is attempting to gain entry, to use forcible entry. In this aspect he uses his foot forcing the door open or kicking it open. The person in the rear's responsibility is to watch out for the Defendant coming out of the rear. In a lot of cases that's the avenue of escape the Defendant will use or at least attempt to use. At that point either he is advised to go back into the house or the investigator in the back -- again there's police back-up there also, will

follow him through the house. Beings physical or forcible entry has been initiated into the house, the investigator from the initial entry point would meet up with the other investigator who entered through the rear of the premises and either apprehend the subject physically and in most cases in a hostile manner, if he was still resisting arrest. Usually at that point once they see that there is enough officers there or investigators, there's no resistance. If the Defendant does get out of the house at one point or the other, you are required to make all efforts to attempt to apprehend him. This involves either chasing him down, finding him where he's hiding under a vehicle, in an abandoned house and you must maintain -- you're in a heated chase now and you must maintain that speed at which the Defendant is going at. That's basically it. The physical arrest in the residence. Out in the field, it's somewhat more complicated. It's an open area. Once you team with a partner in the field and the arrest in the field, you have to determine who's going to be the runner and who's going to be the driver. In my case I was usually the runner. That entails extensive, and I'm not trying to boast about this , but at that time you had to stay in shape."

This detailed description provides a very clear picture of what a pretrial warrant investigator is expected to do in the daily performance of his duties. The panel members also indicated that in the performance of these duties, they felt that the Complainant would be overzealous in order to prove himself. This attitude would not only present a potential hazard to the Complainant but also to others who would be working with him.

Given the nature of the job, the panel members felt that the Complainant would not be able to perform the essential functions of the job, and would present a risk of harm to the health and safety of others.

Also, Respondent argues that the Philadelphia Police Department recruitment standards, testified to by Respondent witness, Dr. George Hayes, serves as a "frame of reference" in this matter. Those standards state:

"...there can be no loss or impairment of use of foot, leg, fingers, hand, arm or spine or other structural defects or limitations likely to interfere with performance of duties."

While these standards were not specifically used by the panel members, they do serve as an illustration of the type of standards used to judge whether an individual is capable of performing a certain type of job.

Therefore, it is clear that the Complainant's handicap is job-related within the meaning of the aforementioned regulations because of the increased risk of harm to the health and safety of others. As always in cases involving issues of job-relatedness of handicaps, we emphasize that this decision be limited to the factual setting in which it arose. With that reminder we conclude that the Respondent has sustained its burden of job-relatedness, the Complainant has not met its ultimate burden of persuasion and, therefore, the Complainant's case must be dismissed. An appropriate Order follows:

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

RONALD R. REHMANN,
Complainant

v.

COURT OF COMMON PLEAS,
COURT ADMINISTRATION
PERSONNEL OFFICE,
Respondent

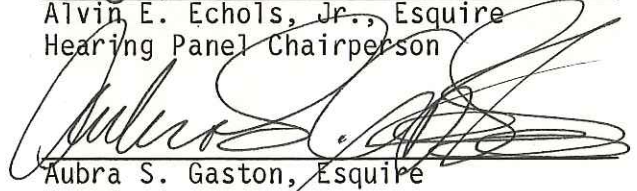
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RECOMMENDATION OF THE HEARING PANEL

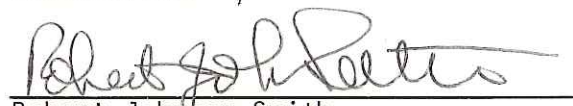
Upon consideration of the entire record in the above-captioned case, it is the Hearing Panel's recommendation that the Complainant has failed to prove discrimination in violation of the Pennsylvania Human Relations Act. It is, therefore, the Hearing Panel's recommendation that the attached Stipulations of Fact, Findings of Fact, Conclusions of Law, Opinion and Order be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted, the Hearing Panel recommends issuance of the attached Final Order.



Alvin E. Echols, Jr., Esquire
Hearing Panel Chairperson



Aubra S. Gaston, Esquire
Commissioner



Robert Johnson Smith
Commissioner

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Docket No. E-34786

FINAL ORDER

AND NOW, this 3rd day of April, 1992, after a review of the entire record in this case, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves and adopts the foregoing Stipulations of Fact, Findings of Fact, Conclusions of Law, Opinion and Final Order recommended by the Hearing Panel and hereby

O R D E R S

that the instant complaint be dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: Robert Johnson Smith
Robert Johnson Smith, Chairperson

ATTEST:

Gregory J. Celina
Gregory J. Celina, Secretary