

COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

KIM LINGLE SANDERS,  
Complainant

v.

ANIMAL HOSPITAL OF HARRISBURG,  
DR. WILLIAM C. ADAMS, individually  
and in his capacity as owner,  
Respondent

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DOCKET NO. E-47121

ADMISSIONS

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

KIM LINGLE SANDERS, :  
Complainant :  
v. : Docket No. E-47121  
ANIMAL HOSPITAL OF HARRISBURG, :  
DR. WILLIAM C. ADAMS, individually :  
and in his capacity as Owner, :  
Respondent :

REQUEST FOR ADMISSIONS #1

And now comes Kim Lingle Sanders, by and through Pennsylvania Human Relations Commission Assistant Chief Counsel Charlene E. Couch pursuant to 16 Pa. Code § 42.55 requests that the Respondent, Dr. William C. Adams, admit the following facts:

1. Complainant Kim Lingle Sanders is a female.
2. Respondent is Animal Hospital of Harrisburg and Dr. William C. Adams, individually and in his capacity as Owner.
3. Respondent, Animal Hospital of Harrisburg, is located in Dauphin County.
4. Respondent, Dr. William C. Adams, is an employer within the meaning of Section 4(b) of the Pennsylvania Human Relations Act, Act of October 27, 1955, as amended, 43 P.S. § 954(b).
5. On December 15, 1988, the Complainant began working as a Receptionist for Respondent, Dr. William C. Adams.
6. A pregnancy test for Kim Lingle Sanders was performed on January 17, 1989 and the results were positive.

7. On January 26, 1989, the Complainant informed Respondent Dr. William C. Adams of her pregnancy.

8. On February 2, 1989, Respondent Dr. William C. Adams discharged the Complainant.

9. Upon discharging the Complainant, Respondent Dr. William C. Adams informed the Complainant that:

a. He was not pleased with her pregnancy.

b. It would be better for both if he let her go now instead of later in her pregnancy.

c. The stress of the job would be too much for her as the pregnancy went on.

10. While employed by the Respondent, Dr. William C. Adams, the Complainant earned \$5.00 per hour.

11. On March 30, 1989, the Complainant filed a written verified complaint with the Pennsylvania Human Relations Commission which was docketed at E-47121 and alleged that the discharge was unlawfully based on Complainant's sex, female, and non-job related handicap/disability, pregnancy.

12. On or about April 18, 1989, Harrisburg Regional Office Commission staff served a copy of the complaint in a manner which satisfies the requisites of 1 Pa. Code § 33.32.

13. On July 21, 1992, Complainant filed a written verified complaint amending the complaint previously docketed at E-47121.

14. On or about July 21, 1992, Harrisburg Regional Office Commission staff served a copy of the amended complaint in a manner which satisfies the requisites of 1 Pa. Code § 33.32.

15. Respondent, Dr. William C. Adams, received the amended complaint, but did not submit an answer or reply.



16. To date, conciliation efforts have failed.

17. The Commission approved this matter for public hearing and so notified the parties.

18. By letter dated December 1, 1992, Respondent Dr. William C. Adams, received notice from Permanent Hearing Examiner Phillip A. Ayers, that a pre-hearing conference in the matter was scheduled for Tuesday, January 5, 1993, at 10 a.m.

19. Neither Respondent, Dr. William C. Adams nor his representative appeared at the pre-hearing conference which was held on Tuesday, January 5, 1993.

20. Under cover of a letter dated January 7, 1993, Respondent Dr. William C. Adams, received a Pre-hearing Order notifying him that the public hearing will be held on April 20, 1993.

21. Had the Complainant remained employed by the Respondent, Dr. William C. Adams, she would have earned \$9750.00 for the year 1989.

22. Had the Complainant remained employed by the Respondent, Dr. William C. Adams until May 4, 1990, she would have earned \$3375.00.

23. The Complainant worked for Jamesway Corp. from March 27, 1989 until May 4, 1990.

24. For the year 1989 the Complainant earned \$1073.20 while working for the Respondent, Dr. William C. Adams.

25. For the year 1989 the Complainant earned \$5758.97 while working for Jamesway Corp.

26. For the year 1990 the Complainant earned \$3204.79 while working at Jamesway Corp.



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FINDINGS OF FACT\*

1. Prior to learning she was pregnant, the Complainant inquired about the Respondent's Health Insurance plan. (N.T. 34).
2. The Respondent's plan was set up in such a way that if an employee wanted to be on the plan the employee was responsible to pay for the first 6 months. Thereafter, the expense of the plan would be fully paid by the Respondent. (N.T. 34-35).
3. The Complainant testified that for the first 6 months, the plan would have cost her \$21.00 per month. (N.T. 61).
4. A part of the Complainant's duties was to enter payments from patients. (N.T. 34).
5. On a given day 2 or more employees had occasion to enter payments. (N.T. 16-17, 19, 25, 26, 37).
6. Commonly, numerous employees made billing errors. (N.T. 16, 22, 29).
7. The Respondent was aware other employees who were not pregnant had made billing errors but did not discipline these employees. (N.T. 22, 26).
8. Prior to terminating the Complainant, the Respondent asked Lisa Pankake Latchford, an employee of the Respondent at the time, her opinion of the Complainant and if the Complainant had planned on having children. (N.T. 15).

\* Pursuant to 16 Pa. Code §42.94(b), the foregoing facts listed in "Request for Admissions #1" are deemed admitted and 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 of Fact for reference purposes:

N.T. Notes of Testimony  
C.E. Complainant's Exhibit



9. Staphanie Roe Hoover, another former employee of the Respondent, testified that after the Complainant was fired, the Respondent discussed the Complainant stating: "since she was pregnant there was no sense retraining her on the areas where she was poor like we used to train everyone else." (N.T. 20).
10. Other employees who were not pregnant had been retrained. (N.T. 20-21).
11. Valerie Shultz, another former employee, testified that when she was initially interviewed before beginning work with the Respondent in September 1990, the Respondent asked her her "plans for having children..."
12. On February 2, 1989, the Complainant was terminated. (N.T. 33).
13. At the time of her termination the Complainant had worked 37½ hours per week at the rate of \$5.00 per hour. (N.T. 40).
14. On March 27, 1989, the Complainant began employment with Jamesway Corporation where she was paid \$4.80 per hour. (N.T. 41).
15. For four weeks, beginning September 7, 1989, the Complainant was off work for the delivery of her baby and the recovery period afterwards. (N.T. 59-60).
16. The records reflect that between December 30, 1989, and January 13, 1990, the Complainant's wages were \$4.90 per hour. (C.E. 12)
17. After January 13, 1990, the Complainant's wages equalled or exceeded the wages she was paid by the Respondent. (C.E. 12).
18. Beginning the last week of April 1989, the Complainant paid \$37.00 per week to participate in her husband's health insurance plan. (N.T. 42).
19. In May 1990, the Complainant stopped health care coverage through her husband because the Complainant joined the U.S. Air Force. (N.T. 43).

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the parties and subject matter of this case.
2. The parties have fully complied with the procedural prerequisites to a public hearing in this case.
3. The Complainant is an individual within the meaning of the Pennsylvania Human Relations Act ("PHRA").
4. The Respondent is an employer within the meaning of the PHRA.
5. The Complainant has proven sex-based discrimination by direct evidence.
6. A prevailing Complainant is entitled to lost wages, plus six percent interest.



## O P I N I O N

This case arises on a complaint originally filed on or about March 25, 1989, when the Complainant's name was Kim Lingle, against Noah's Animal Hospital of Harrisburg, with the Pennsylvania Human Relations Commission ("PHRC"). On or about July 16, 1992, the Complainant amended her complaint to reflect her name as Kim Lingle Sanders, (hereinafter either "Complainant" or "Lingle Sanders"), and to change the name of the Respondent to Animal Hospital of Harrisburg and to add Dr. William C. Adams, individually and in his capacity as owner, as an additional Respondent, (hereinafter referred to collectively as "Respondent"). In her complaint, the Complainant alleged that the Respondent discharged her because of her sex, female, and handicap/disability, pregnancy, in violation of Section 5(a) of the Pennsylvania Human Relations Act, Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §§951 et. seq. ("PHRA").

PHRC staff conducted an investigation and found probable cause to credit the Complainant's allegations. The PHRC and the parties attempted to eliminate the alleged unlawful practices through conference, conciliation, and persuasion. However, such efforts were unsuccessful, and this case was approved for public hearing. The hearing was held on April 20, 1993 in Harrisburg, Pennsylvania before Phillip Ayers, Permanent Hearing Examiner.

Charlene E. Couch, Esquire, appeared on behalf of the PHRC's interest in the complaint. The Respondent failed to appear at the public hearing and consistent with 16 Pa. Code §42.105(a) and (b), the hearing proceeded in the Respondent's absence.

Section 5(a) of the PHRA provides in pertinent part: "It shall be an unlawful discriminatory practice...[f]or an employer because of the...sex...of any individual to...discharge from employment such

individual, or to otherwise discriminate against such individual with respect to...conditions or privileges of employment...

It is well established law in Pennsylvania that discrimination based on pregnancy constitutes sex discrimination proscribed by Section 5(a) of the PHRA. Dallastown Area School District v. PHRC, 74 Pa. Cmwlth Ct. 400, 460 A.2d 878, at 880 (1983), citing Cerra v. East Stroudsburg Area School District, 450 Pa. 207, 299 A.2d 277 (1973). Also, we note that when a Complainant presents direct evidence of discrimination, the oft used three part evidence analysis first set out in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973), is inapplicable. See, Cline v. Roadway Express, 29 FEP 1365 (4th Cir. 1982); Blalock v. Metals Trades, Inc., 39 FEP 140 (6th Cir. 1985). Direct evidence and the 3 part evidentiary formulation are simply different evidentiary paths used to resolve the issue of a Respondent's intent. Jd at 143.

Here, the Complainant has proffered several accounts which amount to direct evidence of the Respondent's discriminatory motive. First, a co-worker of the Complainant when she worked for the Respondent testified that after firing the Complainant, the Respondent stated, "since she was pregnant there was no reason to retrain her..." Others who were not pregnant had been retrained. Another co-worker at the time testified that she was asked by the Respondent if the Complainant had planned on having children.

Finally, by failing to respond to a Request for Admissions, the Respondent admits that upon discharging the Complainant, the Complainant was informed by Dr. Adams that:

- (a) He was not pleased with her pregnancy.
- (b) It would be better for both if he let her go now instead of later in her pregnancy.



(c) The stress of the job would be too much for her as the pregnancy went on.

This evidence sufficiently supports the conclusion that the Complainant's discharge was sex-based discrimination. Having established liability, we turn to the issue of damages.

On February 2, 1989, when discharged, the Complainant was earning \$5.00 per hour and working 37½ hours per week. In mitigation, the Complainant commenced employment with Jamesway Corporation on March 27, 1989, and was paid \$4.80 per hour. Between December 30, 1989, and January 13, 1990, the Complainant's wages were \$4.90 per hour. After January 13, 1990, the Complainant's wages equalled or exceeded \$5.00 per hour. Also for a four week period beginning September 7, 1989 the Complainant was temporarily unable to work as she had delivered her baby and was recovering.

From this picture the following back pay calculations can be made:

1. February 2, 1989 - March 27, 1989  
8 wks. x (37½ hrs. x \$5.00 per hr.)  
8 wks. x \$187.50.....\$1,500.00
2. March 27, 1989 - December 30, 1989  
minus 4 wks. in Sept. 1989 x (37½ hrs. x \$.20)  
36 wks. x \$7.50..... 270.00
3. December 30, 1989 - January 13, 1990  
2 wks. x (37½ hrs. x \$.10)  
2 wks. x \$3.75..... 7.50  
Total Back Pay Award.....\$1,777.50

The Complainant also seeks to recover alternative health care insurance. Between the last week of April 1989 and May 1990, the Complainant indicates that she expended \$37.00 per week to



participate in her husband's health insurance plan. The Complainant does not seek recovery for health care costs after May 1990. Between the last week of April 1989 and May 4, 1990, approximately when the Complainant joined the armed services, amounts to 54 weeks. Accordingly, the following calculations can be made:

54 wks. x \$37.00.....	\$1,998.00
minus the cost of participation in the	
Respondent's plan - 3 mos. at \$21.00 per mo.....	<u>63.00</u>
Total Health Insurance Care Award.....	\$1,935.00

Finally, the Complainant presented evidence that she incurred travel expenses in coming to the public hearing. In this regard, the complainant should be awarded \$26.00 for travel expenses.

Accordingly, the total lump sum award should be \$3,738.50 plus interest. An appropriate order follows.

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RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that the Complainant has proven discrimination in violation of Section 5(a) of the Pennsylvania Human Relations Act. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Admissions, Findings of Fact, Conclusions of Law and Opinion be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted, the Permanent Hearing Examiner recommends issuance of the attached Final Order.

  
Phillip A. Ayers  
Permanent Hearing Examiner

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FINAL ORDER

AND NOW, this 8th day of June , 1993, after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Admissions, Findings of Fact, Conclusions of Law and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Admission, Findings of Fact, Conclusions of Law and Opinion as its own findings in this matter and incorporates the Admissions, Findings of Fact, Conclusions of Law and Opinion into the permanent record of this proceeding, to be served on the parties to the complaint, and hereby

O R D E R S

1. That the Respondent shall cease and desist from sex-based discrimination with regard to termination decisions.
2. That the Respondent shall pay to the Complainant within thirty days of the effective date of this Order the lump sum of \$3,738.50, which amount represents back pay lost for the period between February 2, 1989 and

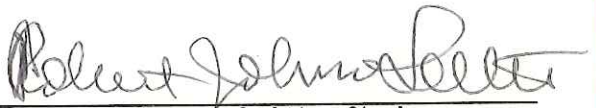


January 13, 1990, costs incurred for alternative health insurance, and expenses incurred by the Complainant in attending the public hearing.

3. That the Respondent shall pay additional interest of six percent per annum calculated from February 2, 1989 until payment is made.

4. That within thirty days of the effective date of this Order, the Respondent shall report to the Commission on the manner of its compliance with the terms of this Order by letter addressed to Charlene Couch, Esquire, in the Commission's Harrisburg Regional Office.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY:   
Robert Johnson Smith, Chairperson

ATTEST:

  
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Gregory J. CeTia, Secretary