

COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

HELENE KRUPPA,  
Complainant

v.

HSS VENDING DISTRIBUTORS,  
Respondent

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Docket No. E-35704

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT \*

1. The Complainant is an individual who resides at 816 Ferree Street, Coraopolis, Pennsylvania 15108. (NT 5.)

2. The Respondent, HSS Vending Distributor, is a Pennsylvania company located at 994 Brodhead Road, Suites 202-203, Coraopolis, Pennsylvania 15108. (CE C.)

3. The Respondent employed more than four employees at all times pertinent to this complaint. (NT 7.)

4. The Respondent is in the business of supplying coin-operated vending machines to businesses such as restaurants and gas stations. (NT 7.)

5. The Complainant, Helene Kruppa, was hired by the Respondent as a secretary on October 7, 1985. (NT 21.)

6. The Complainant's job duties included general secretarial duties such as typing, filing, answering the phone, and taking messages. (NT 6.)

7. The Complainant's duties also included telephone soliciting and booking leads for the Respondent. (NT 6.)

8. In soliciting business for Respondent, the Complainant was responsible for contacting potential customers, determining customer

\* 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 Fact. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

NT Notes of Testimony  
CE Complainant's Exhibit  
RE Respondent's Exhibit

interest, arranging appointments, and notifying the salespeople of the appointments. (NT 9-10.)

9. During her employment with Respondent, the Complainant's salary was \$258 every two weeks. (NT 19.)

10. Upon being hired by Respondent, the Complainant was told that if she received a good evaluation she would be entitled to a raise after three months. (NT 22.)

11. The Complainant was never reprimanded by her supervisor or told that her performance was unsatisfactory. (NT 11, 67.)

12. The Complainant was never given any written warnings about her performance on the job. (NT 11.)

13. The Complainant was never suspended or disciplined in any manner while in the employ of the Respondent. (NT 11.)

14. In December of 1985, the Complainant was congratulated by Respondent owner Richard Hersperger for doing a good job. (NT 23, 24.)

15. The Complainant maintained a good working relationship with fellow employees and never was involved in any argument or confrontation with fellow employees. (NT 11, 67-68.)

16. The Complainant was never late for work, but rather complied with the owner's request to arrive early. (NT 6, 12.)

17. The Complainant, while in the employ of the Respondent, only missed one day of work. (NT 12-13.)

18. The Complainant was given permission by Respondent owner to leave work early several times because of insufficient heating in the office. (NT 12-13.)

19. On January 3, 1986, the Complainant requested a raise in pay from Respondent owner. (NT 26-27.)

20. Respondent owner replied that the Complainant was doing "a fine job," and that he would "get back to her" on her request for a raise. (NT 26-27.)

21. While at work during the first week of January 1986, the Complainant received a call from Planned Parenthood and was informed that she was pregnant. (NT 14.)

22. Immediately after receiving this call, the Complainant informed Jim Godel, a co-worker, of her pregnancy. (NT 15.)

23. On January 6, 1986, the Complainant left a note on Respondent owner's door notifying him of her pregnancy. (NT 57.)

24. The Complainant also informed Respondent owner that she would need to arrive at work late on January 7, 1986, due to a doctor's appointment. (NT 57.)

25. It was an apparently acceptable practice for employees to leave written messages for the Respondent owner. (NT 58-59.)

26. On January 7, 1986, the Complainant's pregnancy was confirmed by her doctor. (NT 57.)

27. On January 8, 1986, the Complainant's husband called the Respondent's office, notifying them that she would not be in that day. (NT 44, 57.)

28. Prior to January 10, 1986, the Complainant communicated directly to the Respondent owner that she was pregnant. (NT 15, 16, 60.)

29. The Respondent owner did not verbally respond, but merely shook his head. (NT 15, 16, 60.)

30. Mr. Hersperger asserted at the public hearing in this matter that he was unaware of the Complainant's pregnancy until she filed a complaint with the Pennsylvania Human Relations Commission. (NT 107.)

31. However, in the Respondent's Answer, Respondent owner stated, "When she finally informed the office of her pregnancy it was somehow expected." (CE B, D.)

32. On January 10, 1986, Hersperger terminated the Complainant. (NT 4, 39.)

33. In Respondent's Answer, it was stated that the Complainant was terminated due to "poor working habits and a very bad attitude." (CE B.)

34. Between January 10, 1986 and February 7, 1986, no one assumed the responsibilities and duties of Complainant's position. (NT 89-90, 95.)

35. Subsequent to the Complainant's termination, the Complainant sought equivalent employment through numerous temporary agencies. (NT 132.)

CONCLUSIONS OF LAW

1. The Complainant is an individual within the meaning of the Pennsylvania Human Relations Act (hereinafter the "Act").
2. The Respondent is an employer within the meaning of the Act.
3. The Pennsylvania Human Relations Commission (hereinafter the "PHRC") has jurisdiction over the subject matter of the complaint and over the parties.
4. All procedural prerequisites to a Public Hearing have been met.
5. The Complainant has established a prima facie case by showing:
  - a) she is a member of a protected class, female;
  - b) she was satisfactorily performing the job duties;
  - c) she was discharged from her position; and
  - d) following her discharge the Respondent sought others with similar qualifications to perform the duties.
6. The Respondent met its burden of producing evidence of legitimate, nondiscriminatory reasons for its discharge of Complainant.
7. The Complainant has met her ultimate burden of persuasion by showing by a preponderance of the evidence that the proffered reasons of Respondent are unworthy of credence and/or pretextual.
8. The PHRC, by virtue of Section 9 of the Act, has broad discretion in fashioning a remedy, once a finding of discrimination is made.
9. The PHRC is permitted to award interest in back-pay awards at the rate of six percent per annum.

## OPINION

This case arises out of a complaint filed by Helene Kruppa (hereinafter "Complainant") against HSS Vending Distributors (hereinafter "Respondent") with the Pennsylvania Human Relations Commission ("PHRC") on or about May 28, 1986, at Docket No. E-35704. In her complaint, the Complainant alleged that the Respondent violated Sections 5(a), 5(b)(1) and 5(b)(3) of the Pennsylvania Human Relations Act by terminating her from her employment as a secretary-receptionist because of her sex, female, and pregnancy.

After the matter was investigated, PHRC staff found probable cause to credit the Complainant's allegations. The parties attempted to resolve this complaint through conference, conciliation and persuasion. However, the efforts were unsuccessful, and the case was approved for Public Hearing.

A Public Hearing was held in this matter on May 21, 1991, in Pittsburgh, Pennsylvania, before Phillip A. Ayers, Permanent Hearing Examiner. Lisa Mungin, Assistant Chief Counsel, represented the state's interest in the complaint. John Linkosky, Esquire, appeared on behalf of the Respondent. Both parties filed post-hearing briefs in the instant case.

Since this is a case involving disparate treatment, we must look to the commonly used pattern of proof analysis articulated by the United States Supreme Court in the case of McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973), and further clarified in Allegheny Housing Rehabilitation Corp. v. PHRC, 516 Pa. 124, 532 A.2d 315 (1987). Using this pattern of proof, a complainant must establish a prima facie case of discrimination. If a complainant establishes a prima facie case, the burden of production

shifts to the respondent to simply produce evidence of a legitimate, nondiscriminatory reason for its action. If the respondent meets the 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. A complainant may succeed in this ultimate burden of persuasion either by direct evidence that a discriminatory reason more than likely motivated the respondent, or indirectly by showing that a respondent's proffered explanation is unworthy of credence, or pretextual. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981).

In an allegation of a sex-based termination, the elements of a prima facie case are as follows:

- a) the complainant was a member of a protected class, female;
- b) the complainant was performing the job duties;
- c) the complainant was discharged from the position; and
- d) the Respondent sought others with similar qualifications who were not pregnant to perform the job duties.

Clearly, the Complainant in this case meets the first element of the prima facie case. She is a female, and therefore a member of a protected class under the Act. Also, the Complainant was performing the job duties of her position with Respondent.

In reference to the third element of the prima facie showing, it is also undisputed that the Complainant was, in fact, dismissed from her position. The fourth element is whether after her termination the Respondent sought others with similar qualifications to perform the job duties. In the instant case, the Respondent, after a month's delay, did



seek others with similar qualifications and, in fact, hired another individual to perform the job duties. Accordingly, the Complainant has met the fourth element of the prima facie showing.

As aforementioned, once the Complainant establishes her prima facie case, the burden of production shifts to the Respondent to simply produce evidence of a legitimate, nondiscriminatory reason for its action. In the instant case, the Respondent has articulated that it discharged the Complainant for the following reasons: poor work habits, bad attitude, poor attendance and problems with fellow employees. The Respondent, by articulating these reasons, has met its burden of producing evidence of legitimate, nondiscriminatory reasons for its actions.

The Complainant may now succeed in her ultimate burden of persuasion by showing by a preponderance of the evidence that Respondent's proffered explanations are pretextual, or unworthy of credence. In looking at the facts of this case, one must look at the issue of credibility. In dealing with credibility, one must take into account each witness's motive, state of mind, strength of memory, demeanor and manner while he or she is testifying.

Firstly, testimony at the public hearing by Respondent (and its witnesses) was that the Complainant was terminated for, among other reasons, poor work habits. There is nothing in the record which indicates that the Complainant ever received a reprimand, a written warning or any type of disciplinary action during her period of employment because of unsatisfactory performance. As a matter of fact, there is unrebutted testimony in the record that the Complainant was told that she was doing a good job. The only adverse action ever taken against the Complainant during her

employment was her termination. There is a great deal of conflict in the record regarding whether the Complainant, after three months, was to be given an evaluation or review, or whether the Complainant was operating under a three-month probation period. The evidence at the Public Hearing indicates that in the Respondent's Answer, and at the Fact Finding Conference, there was no mention of a probation period. However, the Public Hearing testimony by Respondent's witnesses (Mr. Hersperger, Mr. McDonald and Ms. Bologna) was that there was a clear probation period at the end of which an employee would be invited to stay or be terminated. The record further shows that the Respondent first used this term at the Public Hearing, and that the practice at Respondent company was not to have a probation period, but rather, the question of employee termination was always a matter at the complete discretion of Mr. Hersperger.

Secondly, there is conflicting testimony in the record regarding whether the Respondent was aware of the Complainant's pregnancy when she was terminated. Mr. Hersperger, Respondent owner, testified that he was unaware that the Complainant was pregnant until she filed her complaint with the PHRC. However, the Answer filed by the Respondent appears to contradict Hersperger's testimony. In the Answer the Respondent states, "When she finally informed the office of her pregnancy it was somehow expected." Also, in that same document, the Answer provides, "Upon being discharged Mrs. Kruppa asked Mr. Hersperger if she was being fired or laid off. Because if she was being fired she couldn't collect unemployment and she would have to get an abortion."

This point clearly reveals that the owner, Mr. Hersperger, knew of the Complainant's pregnancy. When he responds that the Complainant "would

have to get an abortion," the logical conclusion is that the Complainant was pregnant and the Respondent knew it at that time.

All of these statements clearly indicate that prior to her termination the Complainant did inform the Respondent of her pregnancy. However, the Respondent owner still testified that he was unaware of the pregnancy. The attempt by Respondent to confuse this issue does not succeed because of the other documentation in the record which shows prior knowledge. These statements also indicate that Hersperger was less than credible when testifying regarding whether he was aware of Complainant's pregnancy.

Even though the Respondent indicates several performance-related reasons for its action, the Respondent's primary focus was on the issue of probation and the knowledge (or lack of knowledge) of the Complainant's pregnancy. In that respect, it is necessary to review the performance-related reasons offered by Respondent for its action. As aforementioned, the Respondent never reprimanded or disciplined the Complainant about her work. The Respondent states that it did not keep any written records concerning policies, employee performance or employee evaluations. There is testimony in the record regarding the Complainant's alleged poor secretarial skills. Specifically, Respondent witness Madeline Bologna testified that when she replaced the Complainant, the office was in disarray. However, an entire month had elapsed between the Complainant's termination and the Respondent's hiring of another individual. In essence, the Complainant cannot be blamed for the inactivity of the Respondent's office. Furthermore, the Complainant testified that when she started with Respondent, the office was disorganized. One of Complainant's first

assignments was to refile all of the Respondent's records. The Respondent witness's testimony is somewhat questionable since it only suggests that when the Respondent was without secretarial services, the office would fall into disarray until someone was hired. This issue must be resolved against the Respondent.

There is also testimony by Respondent that the Complainant was habitually late for work. There is nothing in the record to support this position, but rather there is testimony that the Complainant in fact would arrive at work fifteen minutes early. Furthermore, the Complainant rode back and forth to work with a fellow employee, Jim Godel. There is nothing in the record that indicates Mr. Godel was ever reprimanded for being late. Once again, this issue of credibility will be resolved in favor of the Complainant.

The Respondent has also indicated that Complainant was terminated because of her attitude and her work relationship with other employees. The Respondent has asserted, through its witnesses, that the Complainant was hard to get along with in reference to her relationships with other employees. The Complainant was never disciplined or reprimanded by Respondent for this reason, and the overall record indicates that the Complainant was a good employee who did not present any problems. On the contrary, the record reflects that the Complainant was an employee who got along with everyone and performed her job in a satisfactory manner.

A review of the entire record indicates that the Complainant was never disciplined or reprimanded, got along with fellow employees, arrived at the workplace in a timely manner, had good work habits and, finally, was terminated within two to three days of informing the Respondent of her

pregnancy. The record reflects that the articulated reasons of the Respondent are pretextual and unworthy of credence.

Upon review of all of the evidence before the Commission, the Complainant has met her ultimate burden by showing by a preponderance of the evidence that the proffered explanations of the Respondent are pretextual and unworthy of credence. Having found that the Respondent, in terminating the Complainant, violated the Pennsylvania Human Relations Act, we now move to the issue of damages.

Once there is a finding of unlawful discrimination, a remedy shall be fashioned to grant Complainant "make whole relief" and deter future discrimination. PHRC v. Alto Reste Park Cemetery Assn., 453 Pa. 124, 306 A.2d 881 (1973). Also, the Pennsylvania Human Relations Commission has broad discretion when it fashions an award to a Complainant. Murphy v. PHRC, 506 Pa. 549, 486 A.2d 388 (1985). The Complainant in the instant case is seeking damages in the nature of back pay for the time period of January 10, 1986 (date of termination) to July 1, 1989, when the Complainant left the work force to spend more time with her child. Clearly, once a Complainant proves an economic loss resulting from discrimination, back pay should be awarded, absent special circumstances. Merriweather v. Hercules, Inc., 631 F.2d 1122, 1125 (5th Circuit, 1981). The Complainant did mitigate her damages by seeking and obtaining employment during the back-pay period. The case law is abundantly clear that an award of damages in a back pay situation will be reduced by any earnings acquired during the interim period regardless of the type of work involved. Taylor v. Phillips Industries, Inc., 593 F.2d 783, 786 (7th Circuit, 1979). Complainant's Brief does accurately reflect the back pay damages in this matter as follows:

The Complainant received a gross pay of \$258 every two weeks while employed by Respondent. In 1986, the Complainant had fifty weeks available in which to work. That figure is reduced by six weeks for maternity leave to forty-four weeks. During that forty-four-week period, the Complainant would have received 22 paychecks. The computation is as follows:

1986 . . . . .	22 x \$258.00 . . . . .	\$ 5,676.00
1987 . . . . .	26 x \$258.00 . . . . .	6,708.00
1988 . . . . .	26 x \$258.00 . . . . .	6,708.00
1989 (January to June 30, 1989)	13 x \$258.00 . . . . .	<u>3,354.00</u>
		\$22,446.00

The Complainant had undisputed income during this time period of:

1986 . . . . .	\$ 742.00
1987 . . . . .	2,898.00
1988 . . . . .	4,117.44
1989 . . . . .	<u>699.60</u>
	\$8,457.04

The total amount of back pay in this matter is \$13,988.96. Having found that Complainant has met her ultimate burden of proving discrimination by a preponderance of the evidence, and having found the appropriate figure of damages, an appropriate Order follows.



COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
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HELENE KRUPPA,  
Complainant

v.

HSS VENDING DISTRIBUTORS,  
Respondent

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Docket No. E-35704

FINAL ORDER

AND NOW, this 23rd day of December, 1992, following review of the entire record in this case, including the transcript of testimony, exhibits, brief and pleadings, the Pennsylvania Human Relations Commission hereby adopts the foregoing Findings of Fact, Conclusions of Law and Opinion in accordance with the Recommendation of the Permanent Hearing Examiner, pursuant to Section 9 of the Pennsylvania Human Relations Act, and therefore

O R D E R S

1. That the Respondent cease and desist any action that discriminates on the basis of sex or any other protected class under the Pennsylvania Human Relations Act.

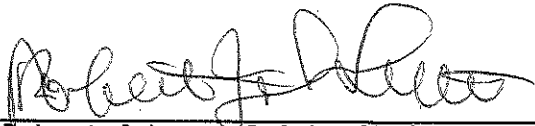
2. Respondent shall pay Complainant, within thirty days of the date of this Order, back pay in the amount of \$13,988.96.

3. Respondent shall pay interest calculated at six percent per annum from January 10, 1986 until payment is made.

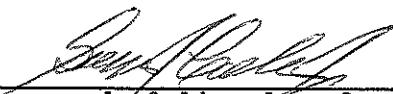


4. Within thirty days of the date of this Order, Respondent shall report on the manner of compliance with the terms of this Order by letter addressed to Lisa J. Mungin, Esquire, at the Commission's Pittsburgh Regional Office, 300 Liberty Avenue, 11th Floor, Pittsburgh, Pennsylvania 15222.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY:   
Robert Johnson Smith, Chairperson

ATTEST:

  
Gregory J. Celia, Jr., Secretary

COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

HELENE KRUPPA,  
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v.

H.S.S. VENDING DISTRIBUTORS,  
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DOCKET NO. E-35704

ENFORCEMENT DETERMINATION HEARING  
FINDINGS OF FACT

RECOMMENDATION

FINAL ORDER

ENFORCEMENT DETERMINATION HEARING  
FINDINGS OF FACT

1. In a Pennsylvania Human Relations Commission ("PHRC") Order dated December 23, 1992, the Respondent H.S.S. Vending Distributors was ordered to pay the lump sum of \$13,988.96, plus six percent interest, within thirty days of the date of the Order.

2. The PHRC Order dated December 23, 1992 also ordered the Respondent to provide written verification of the Respondent's compliance with the PHRC Order within thirty days from December 23, 1992.

3. PHRC Compliance Division staff mailed the Respondent copies of the December 23, 1992 Final Order.

4. The Respondent was notified of an Enforcement Determination Hearing by letter dated May 10, 1994.

5. The Enforcement Determination Hearing was scheduled for May 24, 1994.

6. As of the date of the Enforcement Determination Hearing, the Respondent has failed to make the ordered lump sum payment to the Complainant and has failed to submit written verification regarding compliance with the PHRC Order.

7. The Respondent did not appear at the Enforcement Determination Hearing on May 24, 1994.

8. Therefore, the Respondent has presented no just cause for its failure to comply with the December 23, 1992 PHRC Order.

Dated:

June 21, 1994

By:



Phillip R. Ayers  
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

HELENE KRUPPA, :  
Complainant :  
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v. : DOCKET NO. E-35704  
 :  
H.S.S. VENDING DISTRIBUTORS, :  
Respondent :

RECOMMENDATION OF PERMANENT HEARING EXAMINER

AND NOW, this 21<sup>st</sup> day of June, 1994, upon consideration of the entire record of the Enforcement Determination Hearing held on May 24, 1994, the Permanent Hearing Examiner concludes that the Respondent has failed to comply with the Pennsylvania Human Relations Commission's Final Order dated December 23, 1992, and therefore recommends that the foregoing Enforcement Determination Hearing Findings of Fact and Final Order attached be adopted by the full Pennsylvania Human Relations Commission pursuant to PHRC policy adopted on June 2, 1986.

By: Phillip A. Ayers  
Phillip A. Ayers  
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
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DOCKET NO. E-35704

FINAL ORDER

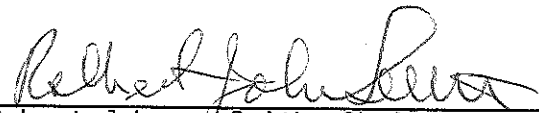
AND NOW, this 28th day of June, 1994, the Pennsylvania Human Relations Commission hereby adopts the foregoing Enforcement Determination Hearing Findings of Fact in accordance with the Recommendation of the Permanent Hearing Examiner, and therefore

O R D E R S

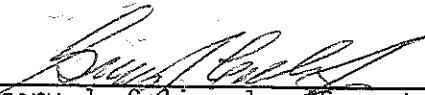
1. That the Respondent shall, within thirty days of the effective date of this Order, comply with the Pennsylvania Human Relations Commission's December 23, 1992 Final Order in the above-captioned case.

2. That the Respondent's failure to comply with such Order within thirty days shall automatically operate to authorize enforcement proceedings to be initiated in Commonwealth Court.

By:

  
Robert Johnson Smith, Chairperson

ATTEST:

  
Gregory J. Celia, Jr., Secretary