

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

YOLANDA SANTOS, Complainant
v.
VANGUARD MANUFACTURING, INC., Respondent

DOCKET NO. E86658DH

ADMISSIONS

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT *

1. Yolanda Santos (hereinafter "Santos") filed a PHRC complaint against Vanguard Manufacturing, Inc. (hereinafter "Vanguard"), which alleged both race- and disability-based discrimination.
2. Vanguard failed to answer Santos' complaint.
3. On August 24, 1998, the PHRC imposed liability against Vanguard for its failure to answer the complaint.
4. At the time of the public hearing, Santos was still employed by Vanguard. (NT 12.)
5. Santos would have earned an additional \$7,907.64 in 1997, had Vanguard not discriminated against Santos. (NT 13; CE 2.)
6. Santos would have earned \$13,832 in 1998, absent Vanguard's actions. (CE 5.)

7. While employed at Vanguard, Santos' rate of pay was \$6.65 per hour. (NT 16.)

8. Had Santos worked at Vanguard between January 1, 1999 and April 2, 1999, she would have earned \$3,458. (NT 16; CE 7.)

* The foregoing "Admissions" are 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 fact. The following abbreviations will be utilized throughout these findings of fact for reference purposes:

CE Complainant's Exhibit
NT Notes of Testimony

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has broad discretion in fashioning a remedy.
2. Santos has established that she suffered an economic loss.
3. Vanguard had an opportunity to oppose Santos' claim for an award of backpay, but Vanguard did not attend the public hearing.
4. The burden was on Vanguard to establish any factors warranting mitigation of bac pay.
5. Vanguard made no attempt to prove an affirmative defense to any part of an award of damages.

OPINION

This case arises on a complaint filed by Yolanda Santos (hereinafter "Santos") against Vanguard Manufacturing, Inc. (hereinafter "Vanguard"), which alleged a race- and disability-based refusal to honor Santos' medical restrictions. Santos' complaint alleged that from February 20, 1997 to December 3, 1997, Vanguard refused to honor Santos' doctor's restrictions. Santos' race and disability allegations are claims under Section 5(a) of the Pennsylvania Human Relations Act ("PHRA").

Vanguard's failure to either file an answer to the complaint or respond to a Rule to Show Cause resulted in the entry of an August 24, 1998 judgment of liability. Following the judgment of liability conciliation was attempted but did not result in a settlement. Accordingly, the issue of appropriate damages was approved for public hearing.

The public hearing on the limited issue of appropriate damages was held on April 9, 1999, in Allentown, Pennsylvania, before Carl H. Summerson, Permanent Hearing Examiner. The Pennsylvania Human Relations Commission ("PHRC") interest in the allegations was presented by PHRC staff attorney Francine Ostrovsky. Although properly notified of the public hearing, Vanguard did not appear.

Section 9(f)(1) of the PHRA generally outlines the remedies the PHRC is authorized to order. This section provides in pertinent part:

If . . . the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the Commission shall state its findings of fact, and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to. . . hiring. . . with or without back pay. . . as, in the judgment of the Commission, will effectuate the purposes of this act, and including a requirement for a report of the manner of compliance.

The function of the remedy in employment discrimination cases is not to punish the respondent, but simply to make a complainant whole by returning the complainant to the position in which she would have been, absent the discriminatory practice. *See Albemarle Paper Co. v. Moody*, 422 U.S. 405, 10 FEP 1181 (1975); *PHRC v. Alto-Reste Park Cemetery Assoc.*, 306 A.2d 881 (Pa. S.Ct. 1973).

The first aspect we must consider regarding making Santos whole is the issue of the extent of financial losses suffered. When complainants prove an economic loss, back pay should be awarded absent special circumstances. *See Walker v. Ford Motor Co. Inc.*, 684 F.2d 1355, 29 FEP 1259 (11th Cir. 1982). A proper basis for calculating lost earnings need not be mathematically precise but must simply be a “reasonable means to determine the amount [the complainant] would probably have earned. . .” *PHRC v. Transit Casualty Insurance Co.*, 340 A.2d 624 (Pa. Commonwealth Ct. 1975), *aff’d*. 387 A.2d 58 (1978). Any uncertainty in an estimation of damages must be borne by the wrongdoer, rather than the victim, since the wrongdoer caused the damages. *See Green v. USX Corp*, Slip Op. at 41-42 (3rd Cir., May 29, 1988).

In this case, Santos submits that she should be completely reimbursed for lost wages based upon established wage rates through April 2, 1999. Santos also seeks frontpay. On the issue of lost wages, Santos submitted a summary of lost wages at CE 7. The information found on this exhibit accurately reflects the evidence in this case regarding lost wages. Accordingly, an award of \$25,998.19 for lost wages and interest is appropriate.

Vanguard’s failure to appear at the public hearing effectively waived its opportunity to oppose any aspect of the back-pay calculation through the introduction of affirmative defenses. Respondents have the burden to establish any factors which might warrant mitigation of a backpay award. *See Macks v. Prattco*, 28 FEP 44 (5th Cir. 1981). Further, respondents have the burden to prove that a backpay award should be reduced by an amount a reasonably diligent person could have earned. *See Masco v. United Airlines*, 13 FEP 1560 (W.D. Pa. 1976); and *Robinson v. SEPTA*, 64 FEP 250 (3rd Cir. 1993). Here, the Respondent made no effort to establish that any reduction is appropriate.

Since the Complainant testified that she remains an employee of Vanguard, consideration of reinstatement is not appropriate. Instead, Vanguard should be ordered to cease and desist from treating Santos differently because of her race, hispanic, or her disability. Santos must be assigned to duties for which she is qualified and which accommodate her disability.

On the issue of frontpay, since Santos remains off the job, she should be compensated for a period beyond the date of this order. Here an award of \$266 per week is appropriate as the estimated present value of earnings. This amount shall be paid until either Santos' disability has been offered a proper accommodation by (1) her reassignment to a comparable position, or (2) accommodation in her present assignment, or Santos becomes employed elsewhere, whichever occurs first.

Accordingly, relief is ordered as described with specificity in the Final Order which follows.

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RECOMMENDATION OF PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that Santos has proven she suffered an economic loss by reason of Vanguard's 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.

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FINAL ORDER

AND NOW, this 25th day of May, 1999, 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 Admissions, Findings of Fact, Conclusions of Law, and Opinion as its own findings in this matter, and incorporates same into the permanent record of this proceeding, to be served on the parties to the complaint, and hereby

ORDERS

1. That Vanguard shall cease and desist from both race-based and disability-based discrimination with regard to assignment to accommodate medical restrictions.
2. That Vanguard shall pay to Santos within thirty days of the effective date of this order the lump sum of \$25,998.19, which amount represents backpay lost, plus interest, for the period between February 20, 1997 and April 2, 1999.
3. That Vanguard shall pay additional interest of six percent per annum on the backpay award until payment is made.
4. That Vanguard shall pay Santos frontpay in the amount of \$266 per week beginning from the date of this order until either:
 - a. Vanguard offers Santos a proper accommodation through either an accommodation of her present assignment or reassignment to a comparable position; or
 - b. Santos becomes employed elsewhere.

5. That within thirty days of the effective date of this order, Vanguard shall report to the Commission on the manner of its compliance with the terms of this order by letter addressed to Assistant Chief Counsel in the Commission's Harrisburg Regional Office.

PENNSYLVANIA HUMAN RELATIONS COMMISSION