

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**JOHN E. SHOEMAKER, JR., Complainant
v.
CITY OF LOCK HAVEN POLICE DEPARTMENT, Respondent**

DOCKET NO. E-28351

STIPULATIONS OF FACT

FINDINGS OF FACT

CONCLUSIONS OF LAW

RECOMMENDATION OF HEARING COMMISSIONER

FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

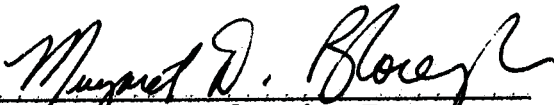
JOHN E. SHOEMAKER, JR., Complainant
v.
CITY OF LOCK HAVEN POLICE DEPARTMENT, Respondent

DOCKET NO. E-28351

STIPULATION

It is hereby stipulated that:

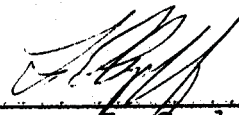
1. The Complainant, John E. Shoemaker, Jr., (hereinafter Complainant) is an individual residing at 16 Beech Lane, Lock Haven, Pennsylvania.
2. The Respondent, City of Lock Haven, Police Department (hereinafter Respondent) is a political subdivision of the Commonwealth of Pennsylvania and employs four or more persons within the Commonwealth.
3. On or about January 1984, Respondent notified Complainant that his employment by the City of Lock Haven, would be terminated effective February 8, 1984.
4. On or about March 21, 1984, Complainant made, signed, and filed a verified complaint with the Pennsylvania Human Relations Commission (hereinafter PHRC) alleging that Respondent had discharged him because of his non-job-related handicap/disability, Variant (Prinzmetal's Angina: Coronary Artery) in violation of Section 5(a) of the Pennsylvania Human Relations Act, (hereinafter PHRA), 43 P.S. §955(a).
5. The Respondent was served with a copy of the Complaint on April 3, 1984.
6. On or about September 4, 1984, probable cause was found by PHRC staff to credit the allegations in the Complaint.
7. The PHRC endeavored to conciliate the matter without success.
8. By letter dated May 3, 1985, the PHRC notified the parties that at its meeting on April 29, 1985, the case had been approved for public hearing and had been placed on the public hearing docket.



Margaret D. Blough, Esq.
Assistant Chief Counsel

Attorney for the PHRC in
Support of the Complaint

Date 1/25/91



Larry E. Coploff, Esq.

Attorney for Respondent,
City of Lock Haven
Police Department

Date 1/21/91

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**JOHN E. SHOEMAKER, JR., Complainant
v.
CITY OF LOCK HAVEN POLICE DEPARTMENT, Respondent**

DOCKET NO. E-28351

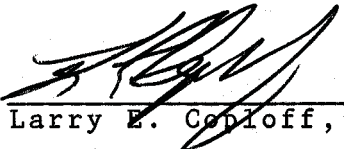
STIPULATION

It is hereby stipulated that:

1. Respondent, City of Lock Haven Police Department, ("Respondent") is a municipal corporation of the State of Pennsylvania and is governed by the Optional Third Class City Charter Law, 53 P.S. §41501 et seq.
2. Frank L. Taggart is an adult individual and City Manager of Respondent, having held such position since July, 1970, and as City Manager is Chief Executive Officer and Administrative Official of the City of Lock Haven and is responsible for the proper administration of all affairs of the City of Lock Haven.
3. Complainant, John E. Shoemaker, Jr., ("Complainant") commenced employment as a police officer with Respondent on or about February 7, 1968, and had reached the rank of detective in the criminal division prior to November 16, 1982.
4. The rank of detective is within the bargaining unit covered by the collective bargaining agreement between the City of Lock Haven and the union(s) representing its police department.
5. The rank of police chief is management and not covered by the collective bargaining agreement.
6. James Belcher was Chief of Police of Respondent from July 19, 1982, to May 15, 1986.
7. The current Chief of Police is Joseph Sanders. In 1982-84, he was a lieutenant in Respondent.
8. Complainant suffered an attack of angina on November 16, 1982, at work and was temporarily hospitalized.
9. Under the orders of his treating physician, Complainant did not return to work immediately upon his release from the hospital.
10. The Complainant's treating physician at the time and at all times since is Dr. James J. Dolan.
11. By referee's decision dated September 26, 1983, the Complainant was awarded Workers' Compensation benefits.
12. In June and July, 1983, Complainant and Respondent arrived at a list of job duties for Complainant's position.

13. Said list was referred to Dr. Dolan who indicated which duties Complainant should not do on medical grounds and which he could do with or without restrictions. (Said list is attached to Dr. Dolan's deposition, taken February 25, 1991, as Complainant's Exhibit A and B).
14. Dr. Dolan issued an additional report to Respondent on October 21, 1983. (Complainant's Exhibit C, 2/25/91 .Dolan deposition).
15. Dr. Dolan was the only physician whose opinion was sought or utilized by either Complainant or Respondent regarding Complainant's ability to return to work.
16. The Complainant's physical condition was the only reason Respondent gave for his termination and the separation was an honorable one.
17. Since May 4, 1985, Complainant has been employed by Clinton County earning the following amounts:

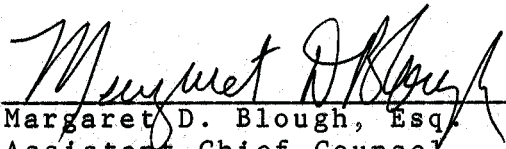
1985	\$ 7,758.68
1986	12,439.09
1987	19,518.71
1988	20,500.95
1989	23,352.96
	(salary of \$22,172.96 plus payment of \$1,180.00 for teaching course)
1990	23,975.52
	(salary of \$22,985.22 plus \$990.00 for teaching course)



 Larry E. Copleff, Esq.

Attorney for Respondent

Date: 5/23/91



 Margaret D. Blough, Esq.
 Assistant Chief Counsel

Attorney for the Commission
 in Support of the Complaint

Date: 5/24/91

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION


JOHN E. SHOEMAKER, JR., Complainant
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CITY OF LOCK HAVEN POLICE DEPARTMENT, Respondent

DOCKET NO. E-28351

STIPULATIONS

The parties stipulate to the following revision of stipulation 7.c., 7, 8, and .9 in the stipulation primarily on fringe benefits, page 6:

Due to the length of service Complainant would have had with Respondent had he continued in its employment, Complainant would have been entitled to 21 vacation days respectively in 1988, 1989 and 1990, and the total for 1988 would be adjusted to \$2,782.90.



Margaret D. Blough, Esq.
Assistant Chief Counsel

Attorney for the Commission
in Support of the Complaint

Date 6/6/91



Larry E. Copleff, Esq.

Attorney for the Respondent

Date 6/6/91

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**JOHN E. SHOEMAKER, JR., Complainant
v.
CITY OF LOCK HAVEN POLICE DEPARTMENT, Respondent**

DOCKET NO. E-28351

STIPULATIONS OF FACT

It is hereby stipulated that:

1. The fringe benefits for a police officer employed by the Respondent, City of Lock Haven Police Department ("Respondent"), for the time frame covered by this case are set forth in the collective bargaining agreements between the Respondent and the collective bargaining representatives of its police officers. Agreements No. 521 (January 1, 1984, through December 31, 1984); No. 530 (1985-1987); No. 653 (1988-89 including the Award of the AAA together with hourly computations of Award salaries); and No. 679 (1990 along with a March 28, 1990 memo to implement the attached agreement). Said agreements are the subject of a separate business records stipulation signed by counsel for the Commission in Support of the Complaint on April 1, 1991 and counsel for the Respondent on April 3, 1991.)
2. There is no collective bargaining agreement currently in effect and the matter is under binding arbitration.
3. Pension rights and benefits of police officers employed by Respondent, City of Lock Haven Police Department, are set forth in the following documents included in the Second Business Records Stipulation in City of Lock Haven Ordinances Codification of Ordinances dealing with pensions and benefits (pre-1977) No. 52 (Session of 1977); No. 69 (Session of 1978), Ordinance 77 (Session of 1979); Ordinance 105 (Session of 1980); Ordinance 106 (Session of 1980); No. 200 (Session of 1984); No. 233 (Session of 1985); No. 236 (Session of 1986); No. 283 (Session of 1987); and No. 327 (Session of 1989).
4. Since 1986 (Ordinance No. 236), an officer with Respondent could retire at age 50 and with 20 years of service on a pension of 50% of the highest salary paid to him or her annually during the five years immediately preceding retirement from active service as a police officer, plus a service increment as set forth in Ordinance No. 233 (Session of 1985).
5. Had the Complainant, John E. Shoemaker, Jr., (the Complainant) continued employment with the Respondent after February 8, 1984, he would have reached 20 years of service with Respondent and 50 years of age on or about May 6, 1988.

6. Light duty, involving office work only, was assigned to the following individuals for the time periods set forth:

<u>Individual</u>	<u>Period of Time</u>
Sergeant J. C. Frazier	September 7, 1982-April 25, 1983
Detective Keith Eichenlaub	March, 1983 (approximately 6 weeks)
Patrolman 1st Class (PFC) Cindy Bies	January 7, 1985 (approximately 6 weeks)
Patrol Officer David Schultz	December 21, 1989-December 29, 1989
PFC Thomas Winters	March 5, 1991-March 15, 1991

7. The following stipulations are as to value only and do not go the issue of whether damages exist and/or what items represent elements of damages and/or offsets and without calculation of interest. The parties expressly reserve any legal theories as to the mode and manner of calculating interest:

a. Police Disability Pension received by Complainant:

1984	\$ 4616.35
1985	5151.17
1986	5151.12
1987	5439.68
1988	5439.60
1989	5439.60
1990	5439.60

b. Actual compensation and compensation had Complainant worked entire year as a detective with Respondent:

(1) ACTUAL COMPENSATION

1982 Salary (A)	\$15,776.00
1982 Longevity Pay	620.00
1982 Other Pay	<u>509.31</u>
1982 W-2 Statement	\$16,905.31
1983 W-2 Statement	\$ 4,001.76

(2) COMPENSATION HAD SHOEMAKER WORKED FULL YEAR

1983 Salary (A)	\$16,676.00
1983 Longevity Pay	<u>665.00</u>
	\$17,341.00
1984 Salary (B)	\$17,176.00
1984 Longevity Pay	<u>710.00</u>
	\$17,886.00
1985 Salary (C)	\$17,863.00
1985 Longevity Pay	<u>755.00</u>

	\$18,618.00
1986 Salary (C)	\$18,756.00
1986 Longevity Pay	<u>800.00</u>
	\$19,556.00
1987 Salary (C)	\$19,694.00
1987 Longevity Pay	<u>800.00</u>
	\$20,494.00
1988 Salary (D)	\$20,480.00
1988 Longevity Pay	<u>800.00</u>
	\$21,280.00

- (A) Labor Agreement No. 472.
- (B) Labor Agreement No. 521.
- (C) Labor Agreement No. 530.
- (D) City/AFSCME Memorandum.

c. Vacations and holidays with Respondent:

	Vacation	Holiday	Daily Rate	Total
1982	11	1	\$ 65.02	\$ 780.24
1983	19	13	\$ 66.70	\$2,134.40
1984	19	13	\$ 68.79	\$2,201.28
1985	19	13	\$ 71.61	\$2,291.52
1986	19	13	\$ 75.22	\$2,407.04
1987	19	13	\$ 78.82	\$2,522.24
1988	19	13	\$ 81.85	\$2,619.22
1989	19	13		
1990	19	13		

d. Sick days:

1. 1982: 23½ .
2. 1983-1990: 12 days per year not to exceed 200.


e. Clothing Allowance:

1. Clothing up to \$250.00 per year.
 2. Dry cleaning up to \$13.00 a month.
8. Any patrol officers who had been on Respondent's payroll prior to December 31, 1987, who were below the rank of Patrolman First Class as of February 1, 1989, advanced to Patrolman First Class without serving as Patrolman (Permanent/Step I)(Agreement No. 653).
 9. Further, a police officer hired when Complainant was, with at least ten years service, is entitled to a monthly payment totaling \$3.00 x years of service from the City Employees Retirement Fund (C.E.R.F.) payable in accordance with the provisions of the various pension ordinances.

10. The following Workers' Compensation payments were received by Complainant for the years noted:

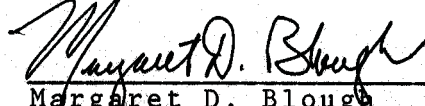
1983	\$ 4,228.97
1984	11,277.24
1985	6,777.24
1986	3,209.76

11. Respondent has no formal policy on police officers returning to work with medical restrictions.



Larry E. Corioff, Esq.
Attorney for Respondent

Dated 5/23/91



Margaret D. Blough
Attorney for the Commission
in Support of the Complaint

Dated 5/24/91

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**JOHN E. SHOEMAKER, JR., Complainant
v.
CITY OF LOCK HAVEN POLICE DEPARTMENT, Respondent**

DOCKET NO. E-28351

STIPULATION

It is hereby stipulated that:

1. Although John E. Shoemaker, Jr. ("Complainant") is not a member of the Court-Related Employees Bargaining Unit, fringe benefits as an employee of Clinton County, for the time frame covered by this case, are set forth in the collective bargaining agreements between Clinton County and the collective bargaining representatives of its court-related employees as set forth in Paragraph 3 of the Complainant's Exhibit List, the authenticity and admissibility of which are hereby agreed upon.
2. Pension rights and benefits of Clinton County employees are set forth in the Summary Plan Description of the Clinton County Employees' Retirement System (see Complainant's Exhibit List, Paragraph 4), the authenticity and admissibility of which is hereby agreed upon.
3. The following stipulations are as to value only and do not go the issue of whether damages exist and/or what items represent elements of damages and/or offsets and without calculation of interest. The parties expressly reserve any legal theories as to the mode and manner of calculating interest.
 - a. Vacations and holidays with Clinton County:

	Vacation	Holiday	Daily rate	Total
1985	3 ½	10 ½	\$51.72	\$ 724.08
1986	9 ½	14 ½	47.84	1,148.16
1987	12	12 ½	75.07	1,839.22
1988	12	13 ½	78.85	2,010.68.
1989	12	13 ½	85.28	2,174.64
1990	12	13 ½	88.40	2,254.20

b. sick days:

1985	1 ¾
1986	4 ¾
1987-89	6 per year
1990	9

May be accumulated to maximum of 48.

4. During 1988, 1989, and 1990, by action of the Clinton County Commissioners, the Clinton County Courthouse was closed for a portion of each year on Wednesday afternoons without reduction in pay of county employees. The number of Wednesday afternoon closings were as follows for each year:

1988	13
1989	13
1990	30

5. with the elimination of the classification of Detective from the collective bargaining agreements between the City of Lock Haven and its police officers, the Complainant would, if employed by Respondent, have been entitled to a minimum salary of \$21,375 for 1989 and \$22,230 for 1990 as a Patrolman First Class.




Larry E. Coploff, Esq.

Attorney for Respondent

Dated

6/12/91



Margaret D. Blough

Attorney for the Commission
in Support of the Complaint

Dated

6/12/91

FINDINGS OF FACT *

1. The Complainant. John E. Shoemaker. Jr. (hereinafter "Complainant"). is an individual residing at 16 Beech Lane. Lock Haven. Pennsylvania. (S.F. A.1.)
2. The Respondent. City of Lock Haven. Police Department (hereinafter "Respondent"). is a political subdivision of the Commonwealth of Pennsylvania and employs four or more persons within the Commonwealth. (S.F. A.2.)
3. In or about January 1984. Respondent notified Complainant that his employment by the City of Lock Haven would be terminated effective February 8. 1984. (S.F. A.3.)
4. On or about March 21. 1984. Complainant made, signed and filed a verified complaint with the Pennsylvania Human Relations Commission (hereinafter "PHRC") alleging that Respondent had discharged him because of his non-job-related handicap/disability. Variant Prinzmetal's Angina: Coronary Artery, in violation of Section 5(a) of the Pennsylvania Human Relations Act (hereinafter "PHRA"). (S.F. A.4.)

*To the extent that the Opinion which follows recites facts in addition to those here listed, such fact shall be considered to be additional Findings of Fact. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

N.T. Notes of Testimony
S.F. Stipulations of Fact A, B, C, D, E
C.E. Complainant's Exhibit
R.E. Respondent's Exhibit

5. The Respondent was served with a copy of the Complaint on April 3, 1984. (S.F. A,S.)
6. On or about September 4, 1984, probable cause was found by PHRC staff to credit the allegations in the complaint. (S.F. A,6.)
7. The PHRC endeavored to conciliate the matter without success. (S.F. A,7.)
8. By letter dated May 3, 1985, the PHRC notified the parties that at its meeting on April 29, 1985, the case had been approved for public hearing and had been placed on the public hearing docket. (S.F. A,8.)
9. The Complainant commenced employment as a police officer with Respondent on or about February 7, 1968, and had reached the rank of detective in the criminal division prior to November 16, 1982. (S.F. B,3.)
10. The rank of detective is within the bargaining unit covered by the collective bargaining agreement between the City of Lock Haven and the union(s) representing its police department. (S.F. B,4.)
11. The rank of police chief is management and not covered by the collective bargaining agreement. (S.F. B,5.)
12. James Belcher was Chief of Police for Respondent from July 19, 1982 to May 15, 1986. (S.F. B.6.)
13. On November 16, 1982, the Complainant suffered an angina attack at work after a heated discussion with Chief Belcher. (S.F. B,8.)
14. The Complainant's doctor at that time and at all times relevant to this complaint is Dr. James J. Dolan. (S.F. B,10.)

15. The Complainant, upon orders of Dr. Dolan, did not immediately return to work after his release from the hospital. (S.F. B,9.)
16. On September 26, 1983, the Complainant was awarded Worker's Compensation benefits. (S.F. B.11.)
17. Dr. Dolan, in reviewing job functions of the Complainant, eliminated 11 out of 25 out-of-office functions that would involve a potential confrontation situation. (C.E., Ex. B.)
18. Dr. Dolan indicated that the Complainant should not answer complaints, fill in as a traffic officer, serve warrants, participate in drug raids, run the speedcheck machine, or pick up prisoners. (C.E., Ex. B.)
19. Upon reviewing Dr. Dolan's assessment of Complainant's ability to perform his job duties, Chief Belcher was concerned as to whether there would be any situation that was not potentially confrontational. (R.E., Ex. 9.)
20. Chief Belcher had a further concern as to whether the Complainant could perform other job functions not noted by Dr. Dolan, such as:
 - a. in-office interrogations;
 - b. breathalyzer operation;
 - c. follow-up investigations;
 - d. interviewing suspects outside of the office;
 - e. attending court sessions;
 - f. acting as juvenile officer; and
 - g. training activities which could include confrontational situations. (C.E., Ex. 9.)
21. Dr. Dolan was the only physician utilized by Respondent and Complainant in determining whether the Complainant was able to return to work. (S.F. B,15.)
22. The Respondent's only reason for its termination of Complainant was his physical condition. (S.F. B,16.)
23. If Complainant returned to Respondent police force, given Respondent's staffing level, it is almost certain that he would be involved in confrontational situations. (N.T.81-82.)
24. If Complainant returned under his physician's restrictions, he would not be capable of performing the essential functions of a police officer. (N.T.82.)
25. The Complainant's return to work merely to process paperwork is not warranted since the paperwork previously done by Complainant is now assigned to clerical staff. (N.T.83.)
26. With current staffing of Respondent police force, all police officers must be available for backup. (N.T. 87-88.)
27. The Complainant cannot follow his physician's restrictions and provide backup to other officers. (N.T.90.)
28. The ability to handle confrontational and stressful situations is an essential function of a sworn police officer. (N.T. 96.)
29. When one is a member of a police force as small as the Respondent police force, an officer must be a generalist in the performance of assigned duties. (N.T. 98.)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission ("PHRC") has jurisdiction over the parties and the subject matter of this case.
2. All procedural prerequisites for a public hearing in this matter have been met.

3. The Complainant is an "individual" as defined by the Pennsylvania Human Relations Act ("PHRA").
4. The Respondent is an "employer" as defined by the PHRA.
5. The Complainant has established a prima facie case by showing:
 - a) he is handicapped within the meaning of the PHRA and therefore a member of a protected class;
 - b) the Complainant was otherwise qualified for the position;
 - c) the Respondent was aware of the handicap; and
 - d) The Respondent terminated the Complainant solely because of his handicap/disability, angina.
6. The Respondent bears the burden of proving that the Complainant's handicap/disability is job-related.
7. The Respondent has shown that the Complainant's handicap/disability is job-related because it substantially interferes with his ability to perform the essential functions of his employment as a sworn police officer.
8. The Complainant's handicap/disability is job-related because Complainant's employment as a sworn police officer poses a threat of demonstrable and serious harm to the Complainant.
9. The Complainant's handicap/disability is job-related because placing the Complainant in the job of a sworn police officer would pose a demonstrable threat of harm to the health and safety of others.
10. The Respondent has shown that it is not reasonable for Respondent to make the modifications that the Complainant would require.
11. The Respondent has met its burden of showing that the Complainant's handicap/disability is job-related, and that no reasonable modifications could be made to eliminate the threat of harm to the health and safety of Complainant and others.

OPINION

This case arises out of a complaint filed by John E. Shoemaker, Jr. ("Complainant"), on or about March 21, 1984, against the City of Lock Haven Police Department ("Respondent"), with the Pennsylvania Human Relations Commission ("PHRC" or "Commission"), docketed at E-28351. The Complainant alleged that the Respondent discriminated against him by discharging him as a police officer on the basis of his non-job-related handicap/disability, Variant (Prinzmetal's Angina: Coronary Artery). The Complainant has alleged that the Respondent's actions in this matter violated Section 5(a) of the Pennsylvania Human Relations Act ("PHRA"), 43 P.S. §951 et seq.

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, but efforts were unsuccessful. On May 3, 1985, the Commission notified the Respondent that a public hearing had been approved in this matter. The public hearing was held on June 12, 1991, commencing at 9:00 a.m. The hearing was held before Commissioner Russell S. Howell, with Phillip A. Ayers, Esquire, serving as panel advisor. Both counsel, prior to public hearing, waived the requirement of the three-Commissioner panel, and agreed to proceed with one Commissioner. Larry E. Coploff, Esquire,

appeared on behalf of the Respondent, and Margaret D. Blough, Esquire, . represented the state's interest in the complaint. Both counsel filed post-hearing briefs in this matter.

The issue before the Commission is whether the Respondent unlawfully terminated the Complainant as a police officer because of his handicap/disability, Variant (Prinzmetal's Angina: Coronary Artery), in violation of Section 5(a) of the PHRA. Section 5(a) provides, in relevant part, ". . .that it 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 in Section 4(p) of the PHRA 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.

The term "handicap or disability," with respect to a person, is defined in Section 4(p.1) of the Act as follows:

- (1) a physical or mental impairment which substantially limits one or more of such person's major life activities;
- (2) a record of having such an impairment; or
- (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance, as defined in Section 102 of the Controlled Substances Act (Public Law 91-513, 21 U.S.C. §802).

These definitions have been upheld as a valid exercise of the Commission's legislative rulemaking 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 disparate treatment case, the allocation of proof is fairly straightforward. The Complainant is required to establish a prima facie case of handicap discrimination. Once the Complainant has made his prima facie showing, normally the burden shifts to the Respondent to simply articulate a legitimate, nondiscriminatory reason for its action. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981). However, in this matter the Respondent has asserted the defenses of job-relatedness and undue hardship. This view was set forth in National Railroad Passenger Corporation (AMTRAK) v. PHRC, 70 Pa. Commw. 62,452 A.2d 301 (1982) that it is the employer's burden to establish job-relatedness. Clearly, the Respondent in this matter does not dispute the prima facie showing, but relies on the affirmative defenses of job-relatedness and undue hardship. However, we will still proceed with the elements of the prima facie showing.

In the instant case, the Complainant can establish a prima facie case by showing:

- (a) that he is handicapped, and therefore a member of a protected class;
- (b) Complainant was otherwise qualified for the position in question;
- (c) the Complainant was terminated from the position; and
- (d) the Respondent was aware of the handicap.

Firstly, the Complainant is a handicapped individual within the meaning of the Commission's regulations at 16 Pa. Code §44.4. A "handicapped or disabled person" is defined as:

- (i) A person who:
 - (A) has a physical or mental impairment which substantially limits one or more major life activities;
 - (B) has a record of such an impairment; or
 - (C) is regarded as having such an impairment.
- (ii) As used in subparagraph (i) of this paragraph, the phrase:
 - (A) "physical or mental impairment" means a physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin, and endocrine or a mental or psychological disorder such as mental illness, and specific learning disabilities.
 - (B) "major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
 - (C) "has a record of such an impairment" means has a history of or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.
 - (D) "is regarded as having an impairment" means having a mental or physical impairment that does not substantially limit major life activities but that is treated by an employer or owner, operator or provider of a public accommodation as constituting such a limitation; has a physical or mental impairment that substantially limits major life activities only as the result of the attitudes of others toward such impairment; or has none of the impairments defined in subparagraph i(A) of this paragraph but is treated by an employer or owner, operator or provider of a public accommodation as having such an impairment.

There is no dispute that the Respondent has a physical impairment which affects the cardiovascular system within the meaning of 16 Pa. Code §44.4. The impairment clearly affects one or more major life activities in that the Respondent terminated him because of the impairment. Therefore., the Complainant is a handicapped individual.

The second prong of the prima facie case is whether the Complainant was otherwise qualified for the position. The Complainant clearly was "otherwise qualified" for the position in that he had been employed by Respondent for approximately twelve years prior to his angina attack on November 16, 1982. Also, the Complainant has met the third and fourth prongs of the prima facie showing in that the Respondent has not disputed that it was aware of the Complainant's handicap/disability, and furthermore, the Respondent has specifically stated that the Complainant was terminated due to his handicap/disability.

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 nondiscriminatory reason for its action. However, the Respondent has asserted that the Complainant was terminated because his handicap was job-related, and no reasonable modifications could be made to eliminate the threat of harm to Complainant and to the health and safety of others. In the case of National Railroad Passenger Corp. (AMTRAK) v. PHRC, as aforementioned, Commonwealth Court 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.

Commission regulations at 16 Pa. Code §44.4 defines "non-job- related handicap or disability" as follows:

- (i) Any handicap or disability which does not substantially interfere with the ability to perform the essential functions of the employment which the handicapped person applies for, is engaged in, or has been engaged in.
- (ii) A handicap or disability is not job-related merely because the job may pose a threat of harm to the employe or applicant with the handicap or disability unless the threat is one of demonstrable and serious harm.
- (iii) A handicap or disability may be job-related if placing the handicapped or disabled employe or applicant in the job would pose a demonstrable threat of harm to the health and safety of others.

Therefore, it is clear that a handicap or disability is job-related if it substantially interferes with the employee's ability to perform the essential functions of the particular position in question. In the record before the Commission, it is undisputed that the Complainant is subject to physical restrictions that do not permit him to perform all of the functions of the position of police officer, including those he performed prior to his disability. Specifically, the Complainant's physician, Dr. James Dolan, recommended that the Complainant avoid confrontational situations and stressful activities. These restrictions were placed upon the Complainant in an effort to avoid increases in heartbeat and blood pressure.

The Respondent presented an expert witness, Leonard P. Keller, who testified as to the job functions of a police officer which would involve a risk of confrontation and also induce stress. The job functions were as follows:

1. In-Office
 - (a) fingerprinting and photographing arrested persons
 - (b) interrogation of suspects
 - (c) breathalyzer operator
2. Out-of-Office
 - (a) follow-up investigations
 - (b) answering complaints
 - (c) investigating serious crimes
 - (d) interviewing suspects
 - (e) assisting other departments in criminal cases
 - (f) attending arraignments and sentencings in courts

- (g) surveillance in criminal cases
 - (h) filling in as a traffic officer
 - (i) serving warrants
 - (j) drug raids
 - (k) running a speedcheck machine
 - (l) executing search warrants
 - (m) serving subpoenas
 - (n) in-service training
 - (o) transporting prisoners
- (N.T.72-78.)

The Respondent has also presented testimony, through Mr. Keller, that the ability to make forceful arrests is an essential function of a police officer. As Respondent counsel notes, the Complainant himself admits it is the ability to make arrests that sets police work apart from other careers. This is especially true in a small police department (like Respondent's) where all of the police officers are able to perform all of the functions of the job. Clearly, it would be impossible for a police officer to totally avoid confrontational situations and stressful activities. Since the Complainant is not able to perform the essential job functions of a police officer, his handicap is job-related.

The next point to be considered is whether the employment of the Complainant would pose a threat of demonstrable and serious harm to the Complainant and to others.

The Respondent clearly supports the proposition that all sworn police officers must be able to respond to confrontational situations. Even though there is testimony in the record concerning the large amount of time devoted to paperwork and the infrequency of confrontational situations, it is clear that returning Complainant to his former position would pose a "demonstrable threat of harm to the health and safety of others." Also, the Complainant himself admits that, given an emergency situation, he would ignore his restrictions and respond to the emergency. Clearly, this action would pose an additional risk to the other officers and to the public, because the Complainant could suffer another cardiac episode as a result of being involved in the emergency situation.

On the other hand, if the Complainant follows his own physician's limitations, there is still an increased demonstrable risk to other officers and the public because the Complainant could not be relied upon for backup. There is an increased risk to the public and other officers regardless of whether or not the Complainant chooses to become involved in potentially confrontational situations.

Lastly, we must look at the question of whether any reasonable accommodation can be made to permit Complainant's return as a police officer, or more precisely, whether any modifications to the work functions would eliminate the threat of harm to Complainant himself, co-workers and the public. In the instant case, an argument was put forth that there was possibly sufficient paperwork within the Lock Haven Police Department to enable the Complainant to have a full-time desk job. However, there are several points that conflict with that particular theory. Firstly, most paperwork for police officers appears to arise from field work. If the officer is not involved

in any field work, then this form of paperwork is not generated. Secondly, much of the police force's office work has been handled by civilian staff.

Also, as aforementioned in this Opinion, we must look at the small police force in the City of Lock Haven. As Respondent's witness, Leonard Keller, testified, when you have a small police force all members must be generalists prepared to fill all functions of the job. Mr. Keller also indicated that a force must reach a level of 40 to 50 officers before an officer can be absorbed into a full-time desk job without affecting the quality of community police protection. This is clearly not the situation before the Commission. Therefore, any modification of job functions would be inappropriate because of the impact on community police services and the risk of harm to Complainant and fellow officers.

After review of the record in this matter, having found that the Complainant's handicap/disability is job-related and would pose a demonstrable threat of harm to the health and safety of himself and others, and further finding that no reasonable accommodation can be made for Complainant, the Respondent has sustained its burden of job-relatedness and, therefore, this matter must be dismissed. As always, in cases involving issues of job-relatedness of a handicap/disability, we emphasize that this decision be limited to the factual setting in which it arose.

An appropriate Order follows:

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

**JOHN E. SHOEMAKER, JR., Complainant
v.
CITY OF LOCK HAVEN POLICE DEPARTMENT, Respondent**

DOCKET NO. E-28351

RECOMMENDATION OF HEARING COMMISSIONER

Upon consideration of the entire record in the above-captioned case, it is the Hearing Commissioner's Recommendation that the Complainant has failed to prove discrimination in violation of the Pennsylvania Human Relations Act. It is, therefore, the Hearing Commissioner'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, this Hearing Commissioner recommends issuance of the attached Final Order.



Russell S. Howell
Hearing Commissioner

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

JOHN E. SHOEMAKER, JR., Complainant
v.
CITY OF LOCK HAVEN POLICE DEPARTMENT, Respondent

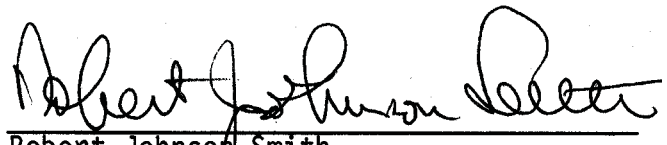
DOCKET NO. E-28351

FINAL ORDER

AND NOW, this 7th day of April, 1993, 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 Commissioner and hereby


ORDERS

that the instant complaint docketed at E-28351 be dismissed.



Robert Johnson Smith
Chairperson

ATTEST:



Russell S. Howell, Assistant Secretary