

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

**THOMAS E. STRAX, M.D., ON BEHALF OF HIMSELF AND
ALL OTHERS SIMILARLY SITUATED, Complainant**

v.

**COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION, Respondent**

DOCKET NO. P2151

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

FINAL ORDER

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission 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 within the meaning of the Pennsylvania Human Relations Act ("PHRA").
4. The Respondent, a Commonwealth agency, is a public accommodation within the meaning of the PHRA.
5. The Complainant has a disability within the meaning of the PHRA.
6. It is an unlawful, discriminatory practice for a public accommodation to deny a disabled individual its privileges, facilities, or accommodations.

7. The Complainant has not shown that he has been denied privileges, facilities or accommodations granted to non-disabled individuals.
8. The Respondent has the authority to establish restrictions on the safe operation of motor vehicles in the Commonwealth.
9. The Respondent may require an applicant for a license to take and successfully pass such tests that Respondent finds necessary to determine the applicant's qualifications.

OPINION *

This case arises out of a complaint filed by Thomas E. Strax, M.D. (hereinafter "Complainant"), against Commonwealth of Pennsylvania, Department of Transportation (hereinafter "Respondent"), with the Pennsylvania Human Relations Commission (hereinafter "Commission") on or about December 3, 1984, at Docket No. P-2151. In his complaint, the Complainant alleged that the Respondent violated Section 5(i)(1) of the Pennsylvania Human Relations Act by discriminating against him and others similarly situated because of their disabilities by arbitrarily placing and/or attempting to place a "C" code on their drivers' licenses.

After the matter was investigated, on or about March 6, 1986, Commission staff found probable cause to credit the Complainant's allegations. The parties attempted to resolve this complaint through conference, conciliation and persuasion. However, these efforts were unsuccessful, and the matter was approved for public hearing on March 16, 1992.

A pre-hearing conference was held in this matter on July 6, 1992 before Phillip A. Ayers, Permanent Hearing Examiner. The parties were represented by Judith A. Gran, Esquire, for the Complainant; Steven Roth, Esquire, for the Respondent; and Pamela Darville, Assistant Chief Counsel, on behalf of the Commission. Subsequent to

* The foregoing "Stipulations of Fact 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 abbreviation will be utilized throughout this Opinion for reference purposes: SF
Stipulations of Fact

At the pre-hearing conference the parties agreed to submit the matter to the Commission on legal briefs. Also, the parties filed an extensive set of stipulations of fact. In essence, both Complainant's counsel and counsel for the Commission have filed Motions for Summary Judgment with accompanying briefs.

In order to resolve this matter, it is necessary to restate the basic factual scenario, as set forth in the stipulations. Generally, the Complainant alleges that the Respondent discriminated against him and others similarly situated, in violation of Section 5(i)(1) of the Pennsylvania Human Relations Act (hereinafter "PHRA") because of his disability, cerebral palsy. The Complainant has been a licensed driver in Pennsylvania since 1970, and in New York since 1960. The Complainant has never had any restriction placed on his license or his driving privileges. Also, the Complainant has never needed any special equipment to control a motor vehicle, nor has the Complainant ever needed a special vehicle. The Complainant's Pennsylvania license expired on March 31, 1984 and has not been renewed.

In July of 1983, a police officer stopped the Complainant for going through a red light while transporting a patient to the hospital. (SF 40.) In July 1983, the Respondent in this matter received a report from that police officer stating that the Complainant had a “deformity of hands and arms to the point I feel will impede his driving ability.” (SF 41-42.) Next, the Respondent sent the Complainant a letter directing him to undergo a physical examination. The Complainant took the medical form to Dr. Nathaniel Mayer who examined him on two occasions and reported to the Respondent that Complainant had a history and diagnosis of athetoid cerebral palsy that was non-progressive and did not impair his functional ability to drive. (SF 46-47.) Dr. Mayer also indicated that the Complainant was physically and mentally competent to drive a motor vehicle.

After receiving Dr. Mayer’s examination results, the Respondent directed the Complainant to undergo a driving examination in conjunction with the renewal of his license. (SF 53.) Furthermore, the Respondent will not renew the Complainant’s license without the special driving examination.

The Respondent’s practice in cases of this nature, when it (Respondent) receives a report from a police officer indicating that a licensed driver observed by the officer has a visible physical disability which in his opinion affects the driver’s ability to drive, and a physician’s report submitted to the Respondent indicates that the person’s disability does not affect his ability to drive, is to require the driver to undergo a special driver’s examination at the time of the renewal of his license, pursuant to 75 Pa. C.S. 1514. (SF 55.) If the ensuing examination indicates that the person’s disability does not affect his ability to drive, it is the practice of the Respondent to place a code “C” for “classified driver” on the individual’s license. Essentially, the code “C” indicates that the individual has an observable physical disability that does not affect his ability to drive.

In the matter before the Commission, the Respondent will not renew the Complainant’s license without a special driving examination. (SF 57.) If the Respondent, following a special driving examination, finds that the Complainant’s disability does not affect his driving and that he needs no special equipment or controls, it will place the “C” classification on his license. (SF 58.) The Respondent will not renew the Complainant’s license without placing the “C” classification on the driver’s license. (SF 58.)

As stated above and in the stipulations, the Complainant has previously met all of the standards as those for non-disabled drivers. He requires no special equipment and has had a satisfactory driving record. Basically, the Respondent in this matter asserts that the “C” classification prevents unnecessary police reporting of observably disabled drivers whose disability neither affects their ability to drive nor requires special equipment and/or controls. The relevant provision that the Respondent relies upon is 67 Pa. Code §79.5, which provides:

(a) Determination. A driver’s license shall be coded to indicate that a licensee is a classified driver when it is determined, after examination:

(1) that the person has a physical disability or condition of significance to be reported to the Department; and

(2) that the person does not require special equipment or controls on any vehicle driven by such person.

(b) Significance. A classified driver coding on a license shall indicate to any investigating police officer that, although the licensee has a physical disability, he does not require special equipment or controls to drive a vehicle.

Further, the Respondent regards a driver with a “C” classification as being just as competent to drive as a person without a “C” classification. (SF 31.)

Section 5(i)(1) of the Pennsylvania Human Relations Act provides, in relevant part:

“It shall be an unlawful discriminatory practice. . . for any person being the owner, lessee, proprietor, manager, superintendent, agent or employe of any public accommodation. . . to refuse, withhold from, or deny to any person because of his handicap or disability. . . any of the accommodations, advantages, facilities or privileges of such place of public accommodation. . .”

In the instant case, the Complainant has not shown how he has been denied, refused, or had withheld from him any accommodation, privilege or advantage. The only argument in this regard is that the Complainant feels that he would be stigmatized by having the “C” coding on his driver’s license. The Respondent argues quite credibly that, firstly, the code would only be seen by a small number of individuals. Secondly, any negative stigma would be erroneous, since it actually indicates that the person can drive safely without any restrictions whatsoever. Finally, and most importantly, the Complainant has obtained both license plates and placards which clearly identify him as a person with a disability. Clearly, plates and placards are more stigmatizing than a “C” code, the significance of which many individuals would not even understand. Certainly, a license plate is visible to all, while a driver’s license is kept relatively private.

Assuming *arguendo* that the Complainant has shown that he had been denied, refused or had withheld from him an accommodation, the Respondent still has justification for its coding system. Firstly, as stated above, the coding system does not adversely affect disabled persons driving in the Commonwealth of Pennsylvania. The coding prevents repeated reporting by traffic police which results in repeated physical examinations and driving retests of persons who have already been determined to be competent to drive in the Commonwealth. Secondly, the Respondent’s coding system appears to provide the opportunity for persons with a disability to drive in the Commonwealth without the harassment and embarrassment of police reports. The “C” coding alerts the police officer to the fact that the person’s disability is already known to the Respondent, and that the person has an observable physical disability that does *not* affect his ability to drive.

The Complainant also alleges that he and others similarly situated are treated differently than non-disabled individuals with respect to the application and renewal processes which amounts to a denial of equal access to the full accommodations, advantages, and privileges of the application and renewal processes.

Generally, an individual’s driver’s license expires on the month of his or her birth, every four years or less. Said license is renewable on or before its expiration date upon application, payment of the required fee, and “satisfactory completion of any examination required or authorized by [the Code].” 75 Pa. C.S. §1514(a). Also, 75 Pa. C.S. §1514(b) provides, in relevant part: If the Department of Transportation “has reason to believe, either based on the knowledge of the person or on statistical inference, that the person [seeking renewal of a driver’s license] may be a traffic hazard,”

then it “may require the applicant to take and successfully pass such. . . tests as [the Respondent] may find reasonably necessary to determine the applicant’s qualifications.” Furthermore, the Respondent clearly has the authority to impose appropriate restrictions to assure safe operation of motor vehicles in the Commonwealth

Upon review of the documents before the Commission, the Respondent has acted with appropriate concern for the traffic safety of the Commonwealth of Pennsylvania in its application and renewal processes.

Accordingly, an appropriate Order follows.

COMMONWEALTH OF PENNSYLVANIA

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DOCKET NO. P2151

RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned case, it is the Permanent Hearing Examiner's recommendation that the Complainant has not proven discrimination in violation of the Pennsylvania Human Relations Act. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Stipulations of Fact, Conclusions of Law, Opinion and Order be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted, the Permanent Hearing Examiner recommends issuance of the attached Final Order.

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FINAL ORDER

AND NOW, this 30th day of March, 1995, following review of the entire record in this case, including briefs and pleadings, the Pennsylvania Human Relations Commission hereby adopts the foregoing Stipulations of Fact, Conclusions of Law, and Opinion, and in accordance with the Recommendation of the Permanent Hearing Examiner, pursuant to Section 9 of the Pennsylvania Human Relations Act, therefore

ORDERS

that the complaint docketed at P2151 is hereby dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION