

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

THOMAS J. BECK, SR.,
Complainant

v.

DeGOVANNI'S COLLISION
MARTIN AND LORETTA
DeGOVANNI, Partners
Respondent

PHRC CASE NO. 200125671
EEOC CHARGE NO. 17FA201480

STIPULATIONS OF FACT

FINDINGS OF FACTS

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA HUMAN RELATIONS COMMISSION

THOMAS J. BECK, SR.

Complainant

v

DEGOVANNI'S COLLISION, AND
MARTIN AND LORETTA DEGOVANNI

Respondents

Case No. 200125671

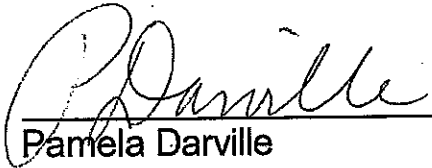
STIPULATIONS OF FACT

The following facts are admitted by all parties to the above-captioned case and no further proof thereof shall be required.

1. The Complainant herein is Thomas J. Beck, Sr., an adult male, (hereinafter "Complainant").
2. The Respondent herein is DeGovanni's Collision, partners.
3. At all times relevant to the case at hand, DeGovanni Collision employed four or more persons within the Commonwealth of Pennsylvania.
4. On or about February 19, 2002, the Complainant filed a verified complaint with the Pennsylvania Human Relations Commission (hereinafter "Commission") at Case No. 200125671.
5. On or about August 28, 2002, the Respondent filed an Answer in response to the complaint.
6. In correspondence dated July 28, 2003, Commission staff notified the Complainant and the Respondent via a Finding of Probable Cause that probable cause existed to credit the allegations found in the complaint.
7. Subsequent to the determination of probable cause, Commission staff

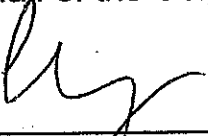
attempted to resolve the matter in dispute between the parties by conference, conciliation and persuasion but was unable to do so.

8. In subsequent correspondence, Commission staff notified the Complainant and Respondent that a public hearing had been approved.



Pamela Darville
Assistant Chief Counsel
(Counsel for the Commission
on behalf of the Complaint)

6-2-04
Date



Elizabeth F. Walker, Esquire
(Counsel for the Respondent)

6/2/04
Date



Sidney L. Gold, Esquire
(Counsel for the Complainant)

6/2/04
Date

FINDINGS OF FACTS *

1. The Respondent in this case is DeGovanni's Collision, an automobile body shop business that does collision repairs and is located at 5104 Umbria Street, in the Roxborough section of Philadelphia, Pennsylvania. (N.T. 16-17, 103, 246; S.F. 2)
2. In 2001, Martin and Loretta DeGovanni, (Husband and Wife), had a verbal understanding that DeGovanni's Collision was held in partnership by the two of them with Martin DeGovanni owning 51% of the business and Loretta DeGovanni owning the remaining 49%. (N.T. 17, 101, 102, 245, 270)
3. DeGovanni's Collision is now a Corporation with 100% of the shares held by Martin DeGovanni. (N.T. 102, 245)
4. In October 2001, DeGovanni's Collision employed 8 individuals in addition to Martin and Loretta DeGovanni. (N.T. 246; R.E. 13)
5. DeGovanni's Collision did automobile collision repair work mainly on the direct referral of vehicles from three major insurance companies and other referrals. (N.T. 246)
6. In the beginning of October 2001, DeGovanni's Collision employed individuals to do automobile body work, an individual to repair unibodies and frames, a painting prep-person, an automobile painter, a detailer who cleaned vehicles, and a shop manager. (N.T. 247; R.E. 13.)

*The foregoing "Stipulations of Fact" 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
R.E. Respondent's Exhibit
S.F. Stipulations of Fact

7. The Complainant in this case is Thomas J. Beck, Sr., (hereinafter "Beck"), and in October 2001, Beck was the Body Shop Manager for DeGovanni's Collision. (N.T. 16)
8. In October 2001, Beck's second wife's name was Cynthia, with whom he had one child, Jared. (N.T. 14, 84, 328)
9. Beck's first wife's name was Theresa, with whom he had two children. (N.T. 14, 83)
10. Intermittently, prior to October 2001, Beck worked for DeGovanni's Collision for approximately 5 to 6 years. (N.T. 14, 49, 250)
11. DeGovanni's Collision's 12 bay body shop is located on the ground floor and its offices are located on the second floor, and there is a paint shop in an adjacent room that is located 4 steps down from the main body shop area. (N.T. 18, 19, 247-248)
12. Beck's duties as Body Shop Manager included preparing estimates for customers, assisting Martin DeGovanni with insurance companies, ordering and checking in parts and placing delivered parts in the appropriate automobiles, setting up both repair persons and painters, and notification of customers when a job is complete. (N.T. 17, 18, 119, 247; R.E. 5)
13. Physically the job of Body Shop Manager involved lifting parts that weighed between 5 and 150 pounds. (N.T. 18, 19, 120)
14. Lifting a part that weighed 150 pounds was rare. (N.T. 59)
15. In performing the duties of Body Shop Manager, Beck had to climb the stairs from the body shop to the office between 50 to 60 times a day. (N.T. 119, 248, 280)
16. Beck worked from 7:30 a.m. to between 5:00 and 5:30 p.m. five days a week and every other Saturday, he worked from 8:00 a.m. to 1:00 p.m. (N.T. 20, 119)
17. Beck's rate of pay in October 2001 was \$21.68 per hour and DeGovanni's Collision paid for his health care. (N.T. 50-51, 197)

18. Martin and Loretta DeGovanni were satisfied with Beck's performance as the Body Shop Manager. (N.T. 149-150, 250)
19. DeGovanni's Collision maintained an employee handbook that sets forth its policies. (R.E. 1)
20. Among DeGovanni's Collision's policies, a sick leave policy provides that DeGovanni's Collision would not pay an employee out on sick leave. (N.T. 51; R.E. 1)
21. Additionally, leaves of absence were permitted at the discretion of the DeGovannis. (N.T. 52)
22. Prior to October 2001, Beck had been seeing a psychiatrist for stress he was experiencing in his life. (N.T. 155)
23. Loretta DeGovanni knew that Beck was experiencing stress and that he was under the care of a psychiatrist. (N.T. 1543, 192, 222)
24. In the beginning of October 2001, Beck was separated from his second wife and his first wife was pursuing him for child support for the two children from his first marriage. (N.T. 71-72)
25. In the early hours of Sunday October 7, 2001, while at his mother's home, Beck blacked out and fell down a flight of stairs. (N.T. 21, 25, 42)
26. After being transported by ambulance, Beck awoke in Jefferson Hospital. (N.T. 21)
27. Beck was admitted to the hospital's Cardiology Unit where he was advised that he was being treated as if he had had a heart attack. (N.T. 22-24, 70)
28. On October 7, 2001, Beck was visited by his wife, his wife's Mother and Father, Jane and Roy Land, and Loretta and Martin DeGovanni. (N.T. 24, 117, 150, 162, 188, 251, 264, 319)

29. In an effort to calm Beck, Martin DeGovanni informed Beck that he did not think he had a heart attack. (N.T. 25, 117)

30. Beck testified that the Doctors in the hospital told him that they wanted him to take a stress test within two weeks. (N.T. 26)

31. On October 8, 2001, Beck was released from the hospital. (N.T. 68)

32. Upon his release from the hospital, Beck was given a form entitled "Instructions to the Patient." (N.T. 68; R.E. 4)

33. On this form Beck's diagnosis was listed as "Muscle stain, non-cardiac chest pain", no medications were prescribed, instructions were given for no heavy lifting for 1 to 2 weeks and no running also for 1 to 2 weeks, Beck was instructed to call Philadelphia Family Medicine in 1 to 2 weeks for an appointment and to call a specific number to schedule an outpatient exercise stress test. (R.E. 4)

34. On October 8, 2001, Beck called DeGovanni's Collision and spoke with Loretta DeGovanni. (N.T. 113)

35. During this telephone conversation, Beck advised Loretta DeGovanni that he was being discharged from the hospital and inquired about the status of DeGovanni's Collision's Keystone HMO plan. (N.T. 113, 188, 212)

36. Loretta DeGovanni informed Beck that a DeGovanni's Collision policy indicated that DeGovanni's Collision did not pay for the medical insurance of employees who were on leave and if medical coverage was to continue, Beck had to pay for it. (N.T. 73, 188-189, 191)

37. Beck had health coverage for his present family and the two children from his first marriage. (N.T. 43)

38. When Beck was told what he would have to pay, he replied that he could not afford it. (N.T. 113)

39. Loretta DeGovanni then advised Beck that he could remove his dependents from the health coverage and keep himself on and suggested that he should at least pay to keep himself on the policy because he would need the insurance for the doctors and tests to come. (N.T. 113-114)

40. Beck agreed and Loretta DeGovanni prepared an enrollment/change form to delete all dependent coverage and replace it with single coverage only. (N.T. 114, 197; R.E. 5)

41. During this telephone conversation, Beck informed Loretta DeGovanni that he had a heart condition due to stress and a ruptured valve. (N.T. 122, 134, 150, 173, 192, 235)

42. Beck informed Loretta DeGovanni that he would be out until he took a stress test scheduled between the 15th and 17th of October and that he did not know if he could ever return to work. (N.T. 150, 213)

43. Loretta DeGovanni informed Beck that in order to return to work, she would need his complete history and physical records and a note from his psychiatrist all stating that he could return to work again. (N.T. 153, 154, 213-214)

44. Beck informed Loretta DeGovanni that he could not get his medical records and that he had never heard of anything like this before. (N.T. 153, 271-272)

45. On October 10, 2001, Beck was seen at the Philadelphia Family Medicine Association, P.C. (R.E. 3)

46. On October 11, 2001, Beck went to the body shop to pick up his paycheck at which time, Loretta DeGovanni asked Beck to sign the change of coverage form that she had prepared on the 8th of October. (N.T. 28, 76, 114, 190)

47. While there, Beck opened his shirt and asked Loretta DeGovanni if she wanted to feel the area that was swollen from the ruptured valve. (N.T. 122)

48. Beck also reminded Loretta DeGovanni that he was seeing a psychiatrist and that he was on nerve pills. (N.T. 122)

49. Beck informed her that a stress test was scheduled and that he would call on the 16th or 17th of October to advise her if he could return to work. (N.T. 112, 153, 192, 199)

50. Loretta DeGovanni testified that Beck indicated that he had no idea if he would be able to return to work and that when he was not sure he would be coming back, she and Martin DeGovanni decided to place an ad for a temporary replacement. (N.T. 192, 194)

51. Also, on October 11, 2001, Loretta DeGovanni received a subpoena from the Domestic Relations Division of the Court of Common Pleas of Philadelphia County, seeking earnings and health information on Beck in the matter of Beck's first wife's petition for child support. (N.T. 194-195; R.E. 7)

52. On October 15, 2001, Loretta DeGovanni responded to this subpoena by submitting an Earnings Report. (N.T. 195; R.E. 12)

53. In the Earnings Report, Loretta DeGovanni notified the Court that Beck cancelled his family health coverage as of October 1, 2001 and indicated that on October 6, 2001, Beck was called out of work due to "Stress", that he was not terminated, and that "when cleared from Doctors, Beck could return to full-time employment. (R.E. 12)

54. On October 22, 2001, Beck was seen by his family Doctor who provided Beck with a note that stated, "Mr Beck may return to light duty work on 10/23/04. He is to remain on light duty until further notice." (N.T. 33; C.E. 1)

55. On October 22, 2001, Beck also visited DeGovanni's Collision to get documentation he needed for a pending child custody hearing. (N.T. 54, 124, 198)

56. On October 22, 2001, Loretta DeGovanni told Beck he would have to return in a few days to allow her time to prepare the information he needed. (N.T. 198)
57. Early on the morning of October 23, 2001, Beck appeared at DeGovanni's Collision and was met by Martin DeGovanni who at the time was busy setting up the shop for the day. (N.T. 35, 254-255)
58. Beck informed Martin DeGovanni that he had a Doctor's note saying that he could return to work. (N.T. 253, 262)
59. Without reading the note, Martin DeGovanni informed Beck to call Loretta DeGovanni and make an appointment because he did not have the time to go over the matter with him at that time. (N.T. 124, 136, 263-264)
60. Later, Martin DeGovanni told Loretta DeGovanni that Beck had been there and had a Doctor's note. (N.T. 110-111, 257)
61. On October 25, 2001, Beck returned to DeGovanni's Collision and picked up the documents he had requested from Loretta DeGovanni on October 22, 2001. (N.T. 199)
62. Beck did not give Loretta DeGovanni the October 22, 2001 Doctor's note. (N.T. 199)
63. Later on October 25, 2001, Beck attended a child support hearing regarding the question of support for the two children of his first marriage. (N.T. 86, 88; R.E. 2)
64. Subsequently, Beck filed for unemployment compensation. (N.T. 40, 79, 234, 260)
65. Upon learning the Beck had filed for unemployment, Loretta DeGovanni was shocked. (N.T. 108, 234)
66. On October 31, 2001, Loretta DeGovanni provided information to the Philadelphia Unemployment Compensation Service Center that indicated that Beck had not been fired, but that he was out of work due to a medical problem and that he did not provided the necessary records to return to work. (N.T. 132, 134, 137, 211; C.E. 7)

67. In her response to the Service Center, Loretta DeGovanni emphatically stated "Employee was not discharged". (C.E. 7)

68. Loretta DeGovanni also stated "10/7/01 – Employee was hospitalized due to stress and he claimed heart problem. 911 was called – he never came back to work." (C.E. 7)

69. On November 1, 2001, a letter drafted by Loretta DeGovanni and signed by Martin DeGovanni was sent to Beck advising him that they had received the notice of Beck's intention to collect unemployment in which Beck had stated he was fired. (R.E. 2)

70. In this letter, the DeGovanni's state "Please except (sic) this letter as notice to you that you have NOT been fired, that your (sic) on a temporary absence from DeGovanni's due to your medical emergency on October 7, 2001." (N.T. 108; R.E. 2)

71. This letter also confirms that on October 8, 11, and 22, Beck had been verbally told that the DeGovannis needed written medical documentation from the facility that treated Beck, and a typed letter from both Beck's Doctor and Psychologist verifying that Beck is mentally and physically cleared to return to work as the Body Shop Manager. (N.T. 58, 118; R.E. 2)

72. In the letter, the DeGovanni's also state that Beck and his in-laws had previously told the DeGovannis that his medical emergency was due to a "ruptured valve" which caused Beck to fall down a flight of steps. (R.E. 2)

73. The letter further asks Beck to submit the medical information as soon as possible and that the DeGovannis wait to hear from Beck. (R.E. 2)

74. Beck did not respond to the DeGovanni's November 1, 2001 letter. (N.T. 168)

75. On October 29, 2001, DeGovanni's Collision hired Frank Craig, Jr. as an Assistant Manager as a temporary replacement for Beck until such time as Beck could return to the duties of Body Shop Manager. (N.T. 147, 148, 160; R.E. 13)

76. At the time of his hire, Craig was told that the job was temporary and that when Beck was ready to return, Craig would be terminated. (N.T. 148, 167)

77. After learning that Craig was not qualified for the Assistant Manager position, DeGovanni's Collision fired Craig on November 5, 2001. (N.T. 162)

78. After the November 1, 2001 letter to Beck, when Loretta DeGovanni had not heard from Beck, DeGovanni's Collision placed another want ad for an Assistant Manager. (N.T. 167, 193)

79. On November 26, 2001, DeGovanni's Collision hired Ernest Levy as an Assistant Manager. (N.T. 204)

80. On November 27, 2001, Beck appealed an initial denial of unemployment compensation stating "I was out of work due to potential heart problems..." (N.T. 80; R.E. 6)

81. By Court Order dated November 1, 2001, DeGovanni's Collision was ordered to withhold from Beck income the amount of \$837.72 per month for the support of Beck's children of his first marriage. (R.E. 8)

82. However, by not working, Beck filed to get the November 1, 2001 Order of support lowered and by Court Order dated November 5, 2001, the child support order was reduced to \$0. (N.T. 88; R.E. 9)

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (hereinafter "PHRC") has jurisdiction over the parties and the subject matter of this case.
2. The parties have fully complied with the procedural prerequisites to a public hearing in this case.
3. Beck is an individual within the meaning of the PHRA.
4. DeGovanni's Collision is an employer within the meaning of the PHRA.
5. To establish a *prima facie* case of a disability-based termination, a Complainant must show:
 - a. That he is a disabled person within the meaning of the PHRA;
 - b. That he is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodation; and
 - c. That he suffered an adverse employment action as a result of discrimination.
6. Beck failed to establish that he is a disabled person within the meaning of the PHRA.
7. Beck also failed to establish that he suffered an adverse employment action.

OPINION

This case arises on a complaint filed by Thomas J. Beck, Sr. (hereinafter "Beck") against DeGovanni's Collision, Martin DeGovanni and Loretta DeGovanni partners(hereinafter "DeGovanni's Collision"), on or about February 14, 2002, at PHRC Case Number 200125671. Generally, Beck alleged that DeGovanni's Collision discriminated against him because of a perceived disability (heart condition), when, on October 7, 2001, he was terminated from his position as Body Shop Manager. Beck claims that DeGovanni's Collision violated Section 5(a) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §§951 et seq. (hereinafter "PHRA").

Pennsylvania Human Relations Commission (hereinafter "PHRC") staff conducted an investigation and found probable cause to credit the allegation of discrimination. The PHRC and the parties attempted to eliminate the alleged unlawful practice through conference, conciliation and persuasion. The efforts were unsuccessful, and this case was approved for public hearing. The hearing was held on June 2 and 3, 2004, in Philadelphia, Pennsylvania, before Carl H. Summerson, Permanent Hearing Examiner. Briefs were submitted by the parties. The Respondent's brief was received on October 15, 2004, and the Complainant's brief was received on October 12, 2004.

Section 5(a) of the PHRA provides in relevant part:

It shall be an unlawful discriminatory practice...for any employer because of the...non-job-related handicap or disability...of any individual to discharge from employment...such individual...or to otherwise discriminate against such individual ...with respect to compensation, hire, tenure, terms, conditions or privileges of employment,...if the individual...is the best able and most competent to perform the services required...(43 P.S. 955(a))

Sections 4(p) and 4(p.1) provide the Act's only clarification of the reach of the cited portion of Section 5(a). Section 4(p) states:

The term "non-job-related handicap or disability" means 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...

Section 4(p.1) states:

The term "handicap or disability," with respect to a person, means:

- (1) a physical or mental impairment which substantially limits one or more of such persons major life activities;
- (2) a record of having such an impairment; or
- (3) being regarded as having such an impairment...

(43 P.S. 954(p) and (p.1))

The PHRA provisions are supplemented by applicable regulations promulgated by the PHRC which provide:

Handicapped or disabled person - Includes the following:

- (i) A person who has or is one of the following:
 - (A) A physical or mental impairment, which substantially limits one or more major life activities.
 - (B) A record of such impairment.
 - (C) 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; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine or 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 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 such an impairment" means has a physical or mental 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 a 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.

(16 Pa. Code §44.4)

Non-job-related handicap or disability – The term includes the following:

- (i) 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.
- (ii) A handicap or disability is not job-related merely because the job may pose a threat of harm to the employee 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 employee or applicant in the job would pose a demonstrable threat of harm to the health and safety of others.

(16 Pa. Code §44.4)

These definitions have been upheld as a valid exercise of the PHRC's legislative rule-making authority. See Pennsylvania State Police v. PHRC, 72 Pa. Commonwealth Ct. 520, 457 A.2d 584 (1983) and Pennsylvania State Police v. PHRC, 85 Pa. Commonwealth Ct. 624, 483 A.2d 1039 (1984), reversed on other grounds, 517 A.2d 1253 (1986) (appeal limited to propriety of remedy).

The Complainant's post-hearing brief correctly observes that to establish a *prima facie* case of disability discrimination under the PHRA, a Complainant must prove that: (1) he is a

disabled person within the meaning of the PHRA; (2) he is otherwise qualified to perform the essential functions of the job, with or without reasonable accommodation; and (3) he has suffered an adverse employment decision as a result of discrimination. Williams v. Philadelphia Housing Authority Police Department, 380 F.3d 751, 10 AD Cases 1607 (3rd Cir. 2004); and Taylor v. Phoenixville School District, 184 F.3d 296, 9 AD Cases 1187 (3rd Cir. 1999), citing Gaul v. Lucent Technologies, 134 F.3d 576, 580, 7 AD Cases 1223 (3rd Cir. 1998).

On the first required element of the requisite *prima facie* showing there is substantial dispute between the parties. The Complainant's post-hearing brief generally submits that the gravamen of Beck's claim is that DeGovanni's Collision regarded Beck as suffering from a "heart condition". The Complainant's post-hearing brief argues that Loretta DeGovanni believed that Beck suffered from a ruptured valve, that he would be unable to walk up and down stairs, and he would be unable to perform heavy lifting as a result of his "heart condition". Conversely, the Respondent's post-hearing brief correctly argues that Beck did not suffer from an actual disability and further, that Beck cannot show that DeGovanni's Collision regarded him as having a disability.

The principal question regarding the first element of the *prima facie* showing rests on whether DeGovanni's Collision regarded Beck as having a disability within the meaning of the PHRA. Here, the record never revealed the cause of Beck blacking out and falling down a flight of stairs on October 7, 2001. Further, there is only sketchy information in the record regarding Beck's visits to a psychiatrist. All we really know about the incident in the early mourning hours of October 7, 2001 is that Beck did fall down a flight of stairs after he blacked out. We also know that upon his release from the hospital on October 8, 2001, the medical diagnosis at that time was that Beck experienced "Muscle strain, non-cardiac chest pain". He

was given no medications and simply told not to either lift heavy things or run for one to two weeks. Beck was also instructed to call for a Doctor's appointment in one to two weeks, and to schedule an exercise stress test. Next, we do know that Beck took and passed a stress test and that on October 22, 2001, his family doctor gave him a return to work slip that simply stated "Mr. Beck may return to light duty on 10/23/01. He is to remain on light duty until further notice." Finally, we know that by the latter part of November 2001, Beck was released to return to work without restriction.

As far as the psychological component of Beck's condition, all that is really known is that, prior to his fall on October 7, 2001, Beck had been seeing a psychiatrist for stress that appears to have been caused by events in his personal life. Also, Loretta and Martin DeGovanni were aware that Beck visited a psychiatrist prior to his fall. Further, on October 11, 2001, Beck showed Loretta DeGovanni a bottle of pills saying that the pills had been given to him for his stress.

Had DeGovanni's Collision innocently and mistakenly perceived that Beck had a heart condition and acted on this perception, DeGovanni's Collision may well have regarded Beck as having a disability under the PHRA. However, under the circumstances present here, the mistake in perception erroneously held by the DeGovannis is principally attributable to Beck. The evidence shows that on a number of occasions, Beck indicated that he had experienced a ruptured valve. As early as October 8, 2001, Beck began telling Loretta DeGovanni that he had a ruptured valve and that he had to have a stress test. He further told her that he was not even sure he would be able to ever return to work.

Rather than give the DeGovannis a copy of the release from the hospital or, at least, convey the essence of what the release said, Beck chose to wildly exaggerate his diagnosis. After passing his stress test, he again did not inform the DeGovannis of that development.

Further, and importantly, while told on numerous occasions to submit documentation regarding his hospital stay, his family doctor's evaluation and a report from his psychiatrist's, Beck never did. He simply responded that he could not get this information. On this point, it can be noted that being asked to provide medical information before returning to work is not evidence that an employer regards an employee as disabled. See Parker v. Port Authority of Allegheny County, 90 Fed. Appx. 600 (3rd Cir. 2004), citing Somers v. City of Minneapolis, 245 F.3d 782, 788 (8th Cir. 2001).

Of course, employers do have an initial responsibility to evaluate an employee correctly. See Taylor v. Pathmark Stores, 9 AD Cases 497, 504 (3rd Cir. 1999). Further, an employer's mistake as to an employee's condition can lead to a finding that that employer regarded an employee as disabled. See Deane v. Pocono Medical Center, 142 F.3d 138, 7 AD Cases 1809 (3rd Cir. 1999). However, when an employer is factually mistaken about the extent of an employee's impairment and the employee is responsible for the employer's mistake through unreasonable actions or omissions, the employer should not to be found liable. Taylor v. Pathmark Stores supra at 506.

Here, Beck was both unreasonable in his actions and intentionally omitted to relay medical information in his possession. Martin DeGovanni testified credibly that he was suspicious of Beck and felt that Beck was faking. His suspicions were swayed both by the inaccurate information Beck conveyed to the DeGovannis and by the medical information he withheld.

As to the mental aspect of Beck's condition, Beck made no attempt to show how DeGovanni's Collision regarded him as disabled because of his visits to a psychiatrist. Beck's post-hearing brief lists the purported major life activities DeGovanni's collision supposedly regarded as substantially limited as working, lifting, and climbing stairs. The entire emphasis

of the post-hearing brief rests on the premise that DeGovanni's Collision regarded Beck as having a "heart condition".

Under all the relevant circumstances present here, Beck fails to establish that he was regarded as having a disability that substantially limited him in a major life activity. On the contrary, Beck's own actions caused DeGovanni's Collision to even approach regarding him as having a disability that substantially limited a major life activity. Accordingly, Beck cannot establish the first element of the requisite *prima facie* showing.

On the question of whether Beck was otherwise qualified to perform the essential functions of the job, there are two prongs to this requirement. First, the disabled individual must satisfy the requisite skill, experience, education, and other job-related requirements of the position held. Here, clearly, Beck had worked as the Body Shop Manager of DeGovanni's Collision and had done more than satisfactory work. The DeGovannis had no problems with Beck's performance. Without question, Beck easily meets the first prong of the required showing that he possessed the requisite skill and experience to do the job of Body Shop Manager. The second prong is that Beck must show that he was capable of performing the essential functions of the job, with or without accommodation. On this prong, a question does arise after October 23, 2001, the time when Beck was released by his family doctor to work with a light duty restriction.

Beck's post-hearing brief argues that on and after October 23, 2001, DeGovanni's Collision failed to engage Beck in an interactive process to assess whether Beck was able to perform the essential functions of the job of Body Shop Manager given that Beck had been given a doctor's release to return to work that indicated he should be on light duty until further notice. The evidence finds Beck arriving at DeGovanni's Collision in the early hours on the morning of October 23, 2001, and being met by Martin DeGovanni. At that time, in effect,

Beck advised Martin DeGovanni that he had a doctor's note saying he could come back to work. However, rather than immediately stopping the work he was doing setting up the shop for the day, Martin DeGovanni instructed Beck to make an appointment to see Loretta DeGovanni about his return to work.

Beck's post-hearing brief suggests that Martin DeGovanni's failure to immediately stop what he was doing and review Beck's doctor's note amounts to a failure to engage Beck in the required interactive process. On this issue, the record clearly establishes that Martin DeGovanni was not involved in the administrative personnel aspects of DeGovanni's Collision's business and that Loretta DeGovanni was solely responsible for such matters. Under this circumstance, and given that Martin DeGovanni was very busy preparing for the day, it was reasonable for him to instruct Beck to come back later to see Loretta DeGovanni. The disturbing fact of the matter is that Beck did not. Exactly why Beck did not remains unclear. There is no question that Beck visited DeGovanni's Collision just two days later on October 25, 2001. Beck came to the collision shop to pick up financial information he had previously requested from Loretta DeGovanni on the 22nd of October. The information he had requested was needed for a child support hearing that he was to attend on October 25th. Why Beck did not give his doctor's note to Loretta DeGovanni on October 25, 2001 is unclear. What is clear is that he did not. It is also clear that, although requested to do so at least three times, Beck had not provided the DeGovannis with medical clearance information.

On the issue of the requisite interactive process, we have previously held that requiring employers to engage disabled employees in an interactive process is consistent with the remedial goals of the PHRA. Remick v. Wilkins & Associates Real Estate, Inc., PHRC Docket No. E-91253-H, Final Order dated September 28, 2004; and Weber v. Canteen Corporation Division of Compass Group, PHRC Docket No. E-90886-AH, Final Order dated April 22, 2002,

aff'd Canteen Corp. v. PHRC, 814 A.2d 805, 13 AD Cases 1647 (Pa. Commonwealth Ct. 2003). See also, Beck v. Univ. Of Wisconsin Board of Regents, 5 AD Cases 304 (7th Cir. 1996).

Beck argues that DeGovanni's Collision broke off the requisite interactive process prematurely and by doing so failed to even consider whether Beck needed an accommodation. Beck argues that he was not afforded an opportunity to demonstrate that he could have done the essential functions of the job.

Without question, there had been no meaningful interactive process regarding Beck's condition. Even if Martin DeGovanni had accepted Beck's doctor's note on October 23, 2001, there was ambiguity in the note regarding Beck's overall fitness to return. Any refusal to accept Beck's note as a complete medical work clearance should not be faulted. Further, and more importantly, as noted previously, requiring an employee to submit a medical release is not evidence that an employee is regarded as disabled. Also, to request medical information prior to allowing an employee to return to work is a prudent course of action under proper circumstances.

Here, DeGovanni's Collision repeatedly instructed Beck to obtain medical certification that he can perform the functions of Body Shop Manager. Fundamentally, an employer may require a medical release for the purpose of assessing an employee's ability to safely perform the job. See i.e. In the Matter of Office of Federal Contract Compliance Programs, U.S. Dept. of Labor v. Exide Corp., 1991 WL 1188741 (U.S. Dept. of Labor), citing Cook v. The U.S. et al, 1 AD Cases 455 (D.C. Colorado 1984), and Bento v. I.T.O. Corp., 36 FEP Cases 1031 (D.C. R.I. 1984).

Under the circumstances present here, the responsibility for any breakdown rests with Beck. By the 23rd of October, Beck had already been asked three times to provide medical information. Employers may make inquiries about the ability of an employee to return to work where the circumstance of the employee's absence raise legitimate safety concerns. See Tice v. Centre Area Transportation Authority, et al., 247 F.3d 506, 11 AD Cases 1185 (3rd Cir. 2001). Here, the position of Body Shop Manager involved going up and down a flight of stairs 50 to 60 times per day. Beck had just been hospitalized for blacking out and falling down a flight of stairs. Under this circumstance, it was prudent and within a reasonable business practice to be mindful to ensure Beck's safety.

Principally, the burden of clearing the obstacle to returning to work was Beck's. All he had to do was to provide requested medical clearance information but he failed to do so. Where the missing information is of the type that can only be provided by one of the parties, failure to provide the information may be the cause of the breakdown and the party withholding the information may be found to have obstructed the interactive process. See Beck v. University of Wisconsin Board of Regents, 75 F.3d 1130, 1136, 5 AD Cases 304 (7th Cir. 1996). Here, Beck's failures were the cause of the breakdown of the interactive process and Beck is thus found to have obstructed the process.

This brings us to the fundamental question of whether Beck had ever been terminated. On this critical point, much of the evidence is in sharp conflict. Invariably, assessment of the credibility of conflicting evidence is necessary. Here, there is considerable reason not to give full credibility to Beck's version of many events. For instance, Beck testified that he spent three days in the hospital when, in fact, he was admitted on the 7th of October and released the next day. (N.T. 23) Beck also testified that he was not aware of the diagnosis given to him when he left the hospital, however, clearly, Beck signed the discharge papers on which a

diagnosis was indicated. (N.T. 69; R.E. 4) Indeed, as late as November 27, 2001, Beck wrote to the Unemployment Compensation Board of Review that he had been "out of work due to potential heart problems." (R.E.6) This was simply a grossly inaccurate statement. At one point, Beck testified that it was his understanding that DeGovanni's Collision had cut off his health insurance while he was in the hospital. (N.T. 42-43) However, it is clear that, on October 8, 2001, Beck was given the option of either paying for continued coverage for himself and his dependents or just covering himself. The evidence shows that he chose to continue coverage on just himself. (R.E. 5) DeGovanni's Collision simply offered him the option.

As the Public Hearing progressed, it became clear that Beck outright exaggerated his medical condition and withheld critical documentation that would have revealed the extent of his medical status. Accordingly, in those instances where the testimony of the DeGovannis conflicted with Beck's, the testimony of the DeGovannis was credited with greater credibility.

Returning to the question of whether Beck had ever been terminated. Beck argues that, in effect, as early as October 8, 2001, Martin DeGovanni told Roy and Jane Land, Beck's Father and Mother-in-law, that Beck was terminated. The record considered as a whole reveals that the Lands did visit DeGovanni's Collision on October 8, 2001 and spoke with both Loretta and Martin DeGovanni, but, the exact purpose of their visit is in question. Both Roy and Jane Land testified that they had received a telephone call from either Beck or his wife that led them to perceive that Beck had been terminated. It is far more plausible that the telephone conversation they received indicated to them that the health insurance for their daughter and grandson was being curtailed. Not understanding the reasons for this, they likely assumed that this meant that Beck was being terminated. Clearly, the evidence reveals that Beck had not been terminated at that time. What was occurring was that, for financial

reasons, Beck had opted to change the coverage of his health plan from coverage of his dependents to coverage of himself only. Hearing this, the Lands must have assumed that this meant that Beck had been terminated when, in fact, he had not been.

It is undisputed that Beck came to DeGovanni's Collision on the 11th of October and spoke with Loretta DeGovanni and advised her that he did not know precisely when he might be available to return to work. At that time, he advised her that he would have a stress test between October 15th and the 17th and that he would keep her advised on the results. Further, it is clear that on the 8th, the 11th, and again on the 22nd of October, Loretta DeGovanni verbally told Beck that before he could return to work, he would need to provide her with medical documentation from the hospital where he had been treated and letters from his physician and psychologist verifying that he was both physically and mentally cleared to return to work as the Body Shop Manage.

It is also undisputed that on October 15, 2001, Loretta DeGovanni filed a written response to a court subpoena for wage information on Beck regarding a child support matter. Beck's first wife was pursuing Beck for child support for the two children born during his first marriage. In her response, Loretta DeGovanni verified to the court that the last day Beck had worked was 10/6/01 and that he was "NOT Terminated", and that once cleared from his doctors he would be called back to work. (R.E. 12) Additionally, on October 31, 2001, Loretta DeGovanni filed verified information with the Philadelphia Unemployment Compensation Service Center in response to Beck's application for unemployment compensation that indicated that Beck was "Not fired – was out of work due to medical problems. He never provided necessary records to return to work if able." Additionally, Loretta DeGovanni responded to the question, "Explain fully the circumstance which caused the discharge..." by stating "Employee was NOT discharged." (C.E. 7) Finally, after receiving notice that Beck

had filed for unemployment compensation, on November 1, 2001, Loretta DeGovanni directed a letter to Beck in which she stated, "Please except (sic) this letter as notice to you that you have NOT been fired, that your (sic) on a temporary absence from DeGovanni's due to your medical emergency on October 7, 2001." (R.E. 2)

Considered as a whole, the evidence reveals that Beck was not actually terminated until 2003 when DeGovanni's Collision hired Steve Brooks as a permanent Body Shop Manager. Up until that point, the DeGiovannis would have brought Beck back. All he would have had to do was to provide the medical documentation that confirmed that he would be able to perform the essential functions of Body Shop Manager. For reasons unknown, Beck never did.

For these reasons, Beck cannot show that he suffered an adverse action. Accordingly, Beck fails to establish the requisite *prima facie* case. For this reason, an order dismissing Beck's complaint follows.

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

THOMAS J. BECK, SR.,
Complainant

v.

DeGOVANNI'S COLLISION
MARTIN AND LORETTA
DeGOVANNI, Partners
Respondent

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PHRC CASE NO. 200125671
EEOC CHARGE NO. 17FA201480

RECOMMENDATION OF PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned case, the Permanent Hearing Examiner finds that the Complainant has failed to prove 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 Stipulations of Fact, Findings of Facts, Conclusions of Law, and Opinion be approved and adopted. If so approved and adopted, the Permanent Hearing Examiner recommends issuance of the attached Final Order.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

December 8, 2004
Date

By: 

Carl H. Summerson
Permanent Hearing Examiner

