

COMMONWEALTH OF PENNSYLVANIA  
GOVERNOR'S OFFICE  
PENNSYLVANIA HUMAN RELATIONS COMMISSION

JENNIFER BECK,  
Complainant

v,

PYRAMID OPERATING GROUP, INC.,  
d/b/a INTERNATIONAL HOUSE OF  
PANCAKES,  
Respondent

PHRC CASE NO. 200707106

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER



COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

JENNIFER BECK, :  
Complainant :  
 : PHRC Case No. 200707106  
v. :  
 :  
PYRAMID OPERATING GROUP, INC. :  
d/b/a INTERNATIONAL HOUSE OF :  
PANCAKES, :  
Respondent :

INTERLOCUTORY ORDER

AND NOW, this 30th day of September, 2009, upon consideration of the PHRC Philadelphia Regional Office's *Motion To Have Commission's First Request For Admissions Be Deemed Admitted*, it is hereby

**ORDERED**

pursuant to 16 Pa. Code § 42.131(b)(1) that the Motion be granted. Accordingly, the following facts are hereby deemed admitted:

1. The Complainant herein is Jennifer Beck (hereinafter "Complainant").
2. The Respondent herein is Pyramid Operating Group, Inc. d/b/a International House of Pancakes (hereinafter "Respondent").
3. Respondent, at all times relevant to the case at hand, employed four or more persons within the Commonwealth of Pennsylvania.
4. On or about September 4, 2008, Complainant filed a verified complaint with the Pennsylvania Human Relations Commission (hereinafter "Commission") against Respondent at Commission Case Number 200707106. A copy of the complaint will be included as a docket entry in this case at time of hearing.



5. On or about January 30, 2009, Complainant filed a verified amended complaint with the Commission against Respondent at Commission Case Number 200707106. A copy of the amended complaint will be included as a docket entry in this case at time of hearing.

6. At all times relevant to the case at hand, Respondent failed to file a written, verified answer to the complaint and the amended complaint.

7. On or about March 19, 2009 a Petition for a Rule to Show Cause why the failure of Respondent to file a timely answer should not result in a finding of probable cause and a judgment for the Complainant on the issue of liability pursuant to 16 Pa. Code § 42.33 was filed.

8. On or about March 24, 2009, the Petition for Rule to Show Cause was granted and Respondent was ordered to respond on or before April 24, 2009.

9. At all times relevant to the case at hand, Respondent failed to respond to the Rule to Show Cause.

10. Due to Respondent's failure to provide a verified answer to the amended complaint, on or about June 22, 2009, the Commission found probable cause, pursuant to 16 Pa. Code § 42.33(d)(4), and ordered judgment for the Complainant on the issue of liability.

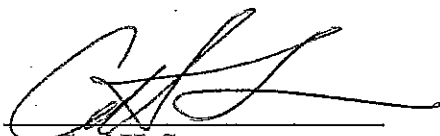
11. In correspondence dated June 22, 2009, Commission staff notified Complainant and Respondent that probable cause was found and judgment was entered for Complainant on the issue of liability.

12. Subsequent to the order of probable cause and finding of liability, Commission staff attempted to resolve the matter in dispute between the parties by conference, conciliation and persuasion but was unable to do so.

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

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

BY:



**Carl H. Summerson**  
**Permanent Hearing Examiner**



## FINDINGS OF FACT\*

1. On or about September 4, 2008, Complainant, Jennifer Beck, (hereinafter "Beck"), filed a PHRC Complaint against Pyramid Operating Group, Inc., d/b/a International House of Pancakes, (hereinafter "Pyramid"), in which Beck alleged that she had been terminated because of her sex, female, pregnancy. (O.D. 1).
  2. Under cover letter date March 19, 2000, the PHRC's Philadelphia regional office filed a Petition for Rule to Show Cause. (O.D. 1).
  3. On March 24, 2009, PHRC Motions Commissioner Daniel L. Woodall, Jr., issued a Rule to Show Cause which, in effect, notified Pyramid that it had until April 24, 2009 to file a properly verified answer to Beck's complaint. (O.D. 2).
  4. Pyramid did not file an answer. (O.D. 4).
  5. On April 28, 2009, Motions Commissioner Woodall recommended to the full PHRC that Pyramid be found liable for Beck's allegation. (O.D. 4).
  6. By Order dated June 22, 2009, the PHRC found Pyramid liable for terminating Beck because of her sex, female, pregnancy . (O.D. 4).
  7. A public hearing on the issue of what, if any, damages are appropriate was held on October 5, 2009 in Norristown, Pennsylvania.
  8. Beck worked 40 hours a week plus for Pyramid as a Waitress. (N.T. 12).
- 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:

O.D. Official Docket  
N.T. Notes of Testimony





9. Beck's wages were \$2.83 per hour plus tips. (N.T. 21).
10. Beck's total weekly earnings while employed with Pyramid totaled approximately \$863.20 per week. (N.T. 21, 26).
11. Beck was terminated on May 12, 2008. (O.D. 1).
12. After being terminated by Pyramid, Beck began looking for a job right away. (N.T. 13).
13. During the first week of June 2008, Beck began working approximately 25 hours per week with True Green Chem Lawn, where she earned \$11.00 per hour, plus approximately \$10.00 per week in commissions. (N.T. 15).
14. Beck worked with True Green Chem Lawn until mid-August 2008. (N.T. 15).
15. The position with True Green Chem Lawn involved contacting potential clients by telephone. (N.T. 15).
16. By mid-August, Beck's pregnancy made it difficult for Beck to sit all day and she was unable to continue working with True Green Chem. Lawn. (N.T. 16,23).
17. On October 23, 2008, Beck gave birth. (N.T. 16).
18. Beck testified, because of her pregnancy, she was unable to work the month before giving birth and the month after: September 23, 2008 through November 23, 2008. (N.T. 23).
19. By the end of November 2008, Beck began working as a Waitress for Perkins. (N.T. 17, 18).
20. Beck worked approximately 22 ½ hours a week with Perkins where she earned \$2.83 per hour plus tips. (N.T.18).
21. Beck testified that she earned between \$200.00 and \$300.00 per week in tips at Perkins. (N.T. 19).



22. Beck worked with Perkins for only approximately one month and, because she was not earning enough, she decided to change jobs. (N.T. 24, 27).
23. In the first week of January 2009, Beck began working as a Waitress at Ruby Tuesdays. (N.T. 18).
24. Beck worked approximately 32 ½ hours a week with Ruby Tuesdays where she earned \$2.83 per hour plus tips. (N.T. 18).
25. Beck testifies that she earned between \$300.00 and \$400.00 per week in tips at Ruby Tuesdays. (N.T. 19).
26. Beck worked with Ruby Tuesdays until the last week of May 2009, and, once again, because she was not earning enough money there, she again decided to find a better paying job. (N.T. 19, 24, 27).
27. During the first week of June 2009, Beck began her job as a Waitress with the restaurant, Bahama Breeze. (N.T. 20).
28. Beck worked approximately 35 hours per week with Bahama Breeze where she earned \$2.83 per hour plus tips. (N.T. 20).
29. Beck testified that she earned between \$300.00 and \$500.00 per week in tips. (N.T. 20).
30. Beck testified that during the summer months, she earned the higher amount of tips with Bahama Breeze, but by September, the amount she could earn in tips became much less. (N.T. 25).
31. Beck continues to work with Bahama Breeze. (N.T. 25).
32. Beck incurred travel-expenses in the amount of \$20.00 associated with her pursuit of her PHRC claim. (N.T. 21, 22).
33. Beck seeks reinstatement. (N.T. 24).



## CONCLUSIONS OF LAW

1. A combination of Section 9(b)(3) of the Pennsylvania Human Relations Act and 16 Pa. Code §42.31(c) requires a Respondent to file a written, verified answer to a complaint within thirty days of service of the complaint.
2. 16 Pa. Code §42.31(d) declares that the failure of a Respondent to timely answer a complaint places a Respondent in default.
3. Under 16 Pa. Code §42.33, when a Respondent has not answered a complaint, a Rule to Show Cause may be issued.
4. Under Pa. Code §42.33(d)(4), when a Respondent does not respond to a Rule to Show Cause, the Pennsylvania Human Relations Commission ("PHRC") may make a finding of probable cause and enter a judgment for a Complainant on the issue of liability, to be followed by a public hearing on the issue of damages.
5. In this matter, Pyramid's failure to file a properly verified answer resulted in the entry of a judgment for Beck on the issue of liability.
6. The PHRC has broad discretion in fashioning a remedy.
7. The Commission may also order a Respondent to cease and desist from discriminatory practices and to take affirmative action as, in the judgment of the Commission, will effectuate the purposes of the PHRA.



## OPINION

This case arose on a complaint filed by Jennifer Beck, against Pyramid Operating Group, Inc., d/b/a International House of Pancakes. Beck's complaint alleged that Pyramid terminated Beck because of her sex, female, pregnancy. Beck's complaint states a claim under Sections 5(a) of the Pennsylvania Human Relations Act ("PHRA").

Beck's verified complaint was filed on or about September 4, 2008. By correspondence dated March 19, 2009, the Pennsylvania Human Relations Commission ("PHRC") Philadelphia regional office petitioned Motions Commissioner Woodall for a Rule to Show Cause, indicating that Pyramid had not answered Beck's complaint. The petition declared that Pyramid had been served with Beck's complaint on November 3, 2008. The petition further indicated that by letter dated December 16, 2008 an effort had been made to obtain an answer from Pyramid.

On March 24, 2009, a Rule to Show Cause was issued, directing Pyramid to respond on or before April 24, 2009. After Pyramid failed to file a properly verified answer, on April 28, 2009, Motions Commissioner Woodall recommended a finding of liability to the full PHRC. On June 22, 2009, the full PHRC determined that Pyramid terminated Beck because of her sex, female, pregnancy.

After the finding of liability in this case, conciliation efforts were unsuccessfully attempted. Subsequently, this matter was approved for the public hearing on the issue of appropriate damages.

The public hearing on the issue of appropriate damages was held October 5, 2009, in Norristown, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The state's interest in the complaint was overseen by Lisa M. Kaplan,





PHRC Assistant Chief Counsel. Although duly notified, Pyramid failed to attend the public hearing.

Since liability had been found after Pyramid failed to file a properly verified answer, the only question at the public hearing was what damages Beck could establish.

Section 9(f) of the PHRA provides in pertinent part:

If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this Act, the Commission shall state its finding of fact, and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to reimbursement of certifiable travel expenses in matters involving the complaint, hiring reinstatement...with or without back pay...and any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice...as, in the judgment of the Commission, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance.

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

The first aspect we must consider regarding making Beck whole is the issue of the extent of financial losses suffered. When complainants prove an economic loss, back pay should be awarded absent special circumstances. See Walker v. Ford Motor Company, Inc., 684 F2d 1355, 29 FEP Cases 1259 (11<sup>th</sup> Cir. 1982). A proper basis for calculating lost earnings need not be mathematically precise but must simply be a "reasonable means to determine the amount [the complainant] would probably have earned..." PHRC v. Transit Casualty Insurance Co., 340 A.2d 624 (Pa. Commonwealth



Ct. 1975), aff'd. 387 A.2d 58 (1978). Any uncertainty in an estimation of damages must be borne by the wrongdoer, rather than the victim, since the wrongdoer caused the damages. See Green v. USX Corp., 46 FEP Cases 720 (3<sup>rd</sup> Cir. 1988).

In this case, during her employment with Pyramid, Beck testified that she worked 40 hours plus a week earning \$2.83 per hour plus tips. Beck testified that, as a Waitress with Pyramid, she earned between \$700.00 and \$800.00 per week in tips. Given this general information, the following calculation reflects Beck's approximate weekly earning while employed with Pyramid:

40 hour @ \$2.83 per hour =	\$113.20
tips per week approximately =	<u>\$750.00</u>
Total wages per week =	\$863.20

The amount Beck lost in wages because she was illegally terminated on May 12, 2008, is calculated as follows:

May 12, 2008 – through November 23, 2009 =	80 weeks
80 weeks @ \$863.20 per week =	\$66,896.00
Minus – 9 weeks off Sept 23 – Nov 23	
9 weeks @ \$836.20 =	- \$7,525.80
Minus -- 7 weeks where Beck testified that she could only work 1 day – August thru September 23 – 7 weeks @ \$663.56 =	<u>- \$4,644.92</u>
Total Lost Wages -----	\$54,725.28

Following her termination, Beck presented sufficient evidence that she made reasonable attempts to mitigate her damages. On this point, the evidence shows that shortly after being terminated by Pyramid, Beck applied for and obtained a sales position with True Green Chem Lawn. Beck remained in this position from the beginning of June 2008 through mid-August 2008, at which time, Beck resigned because she became unable to remain seated due to her pregnancy. During the time



Beck was employed by True Green Chem Lawn, Beck offered that she worked between 20 and 30 hours per week and earned \$11.00 per hour. Beck also indicated that each week she worked for True Green Chem Lawn, she earned an additional \$10.00 in commissions. Beck testified that if she had not been terminated from Pyramid, because the position of Waitress entailed standing, she would have been able to continue to work at least one day a week between August 2008 and September 23, 2008, at which time, Beck declared, her pregnancy prevented her from working.

Next, a month after having a baby on October 23, 2008, Beck applied for and at the end of November 2008 was hired as a Waitress by Perkins. Beck indicated that she only worked one month at Perkins because she did not earn enough money working there. Beck testified that Perkins did not schedule her to work enough hours. While with Perkins, Beck indicated that she worked between 20 and 25 hours per week, and earned \$2.83 per hour plus tips. Beck testified that her tips with Perkins averaged between \$200.00 and \$300.00 per week.

After leaving Perkins, beginning the first week of January 2009, Beck began as a Waitress with Ruby Tuesdays. Beck worked at Ruby Tuesdays from January 2009 through the end of May 2009. Beck testified that, like her experience with Perkins, she also left Ruby Tuesdays because she did not earn enough money. Beck indicated that at Ruby Tuesdays, she earned \$2.83 per hour plus tips. Beck testified that her tips at Ruby Tuesdays ranged between \$300.00 and \$400.00 per week.

After leaving Ruby Tuesdays, during the first week of June 2009, Beck was hired as a Waitress at another restaurant, Bahama Breeze. At the time of the Public Hearing, Beck continues to work at Bahama Breeze. Beck testified that at Bahama Breeze, she works between 30 and 40 hours per week and earns \$2.83 per hour plus tips. She



indicated that in the summer tips average \$500.00 per week, but beginning in September, her tips dropped off to approximately \$300.00 per week.

The following calculations illustrate the amount to be deducted as amounts Beck earned in mitigation of her damages:

True Green Chem Lawn	
25 hours per week at \$11.00 per hour = \$275.00 per week	
plus \$10.00 per week in commissions = \$285.00 per week	
11 weeks @ \$285.00 per week = .....	\$3,135.00
 Perkins	
22 ½ hours per week @ \$2.83 per hour = \$63.68 per week	
plus \$300.00 per week in tips = \$363.68 per week	
4 weeks @ \$363.68 = .....	\$1,254.72
 Ruby Tuesdays	
32 ½ hours per week @ \$2.83 per hour = \$91.98 per week	
plus \$350.00 per week in tips = \$441.98 per week	
21 weeks @ \$441.98 =.....	\$9,281.58
 Bahama Breeze	
35 hours per week @ \$2.83 per hour = \$99.05 per week	
plus tips of \$500.00 per week = \$599.05 per week	
13 weeks @ \$599.05 =.....	\$7,787.65
\$300.00 for 12 weeks = \$399.05 per week	
12 weeks @ \$399.05 =.....	<u>\$4,788.60</u>
 Total interim wages	\$26,247.55

Given these calculations, Beck's back pay award becomes:

Lost wages.....	\$54,725.28
Minus interim earnings.....	<u>\$26,247.55</u>
Back pay award	\$28,477.73

The PHRC is also authorized to award interest on back pay awards. Goetz v. Norristown Area School District, 16 Pa. Cmwlth Ct. 389, 328 A.2d 579 (1975).

Accordingly, interest shall also be ordered in this matter.

Further, Beck submits that she wants to be reinstated as a Waitress with Pyramid and seeks front pay until such time as Pyramid offers Beck employment or she rejects





such an offer. Clearly, it is appropriate to order Pyramid to reinstate Beck. It is also appropriate to order Pyramid to pay Beck front pay for a period of time if Pyramid does not offer Beck reinstatement. The amount of front pay per week is calculated as follows:

Wages per week with Pyramid.....	\$836.20
Beck's current weekly earnings with Bahama Breeze .....	<u>\$399.05</u>
Amount of lost wages per week – award of front pay.....	\$437.15

With respect to the length of time Pyramid shall be ordered to pay Beck front pay if Pyramid does have an opening to offer to Beck, we first note the continuous efforts Beck made attempting to find comparable employment and that such efforts resulted in her securing Waitress jobs that pay Beck substantially less than she had been earning working for Pyramid. Next, we note that within a year, Pyramid should have at least one Waitress opening. For these reasons, front pay shall be awarded for a period of one year or until reinstatement is offered, whichever comes first.

Finally, we turn to Beck's claim for certifiable travel expenses. Beck testified that she made 1 trip to Philadelphia and 1 trip to her private counsel's office regarding matters involving her PHRC claim. Beck testified that she paid \$10.00 in parking expenses on the two occasions she traveled to Philadelphia. Accordingly, she is entitled to an award of \$20.00 for certifiable travel expenses.

An appropriate order follows:







COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

JENNIFER BECK, :  
Complainant :  
v, : PHRC CASE NO. 200707106  
PYRAMID OPERATING GROUP, INC., :  
d/b/a INTERNATIONAL HOUSE OF :  
PANCAKES, :  
Respondent :

FINAL ORDER

AND NOW, this 26<sup>th</sup> day of October, 2009 after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Findings of Fact, Conclusions of law, and Opinion of the Permanent Hearing Examiner. Further, the Commission adopts said Findings of Fact, Conclusions of Law, and Opinion into the permanent record of this proceeding, to be served on the parties to the complaint and hereby.


ORDERS

1. That Pyramid shall cease and desist from terminating employees because of their sex, female, pregnancy.
2. That Pyramid shall pay Beck the lump sum of \$28,477.73 which amount represents lost wages following Beck's termination.
3. That Pyramid shall pay additional interest of 6% per annum on the back pay award calculated from May 12, 2008 until payment is made.

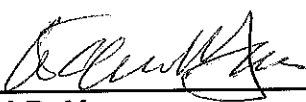


4. That Pyramid shall offer Beck reinstatement into the next available Waitress position.
5. That until either Pyramid offers Beck reinstatement into the next available Waitress position or Beck rejects such an offer or one year, which ever occurs first, Pyramid shall pay Beck front pay in the amount of \$437.15 per week.
6. That Pyramid shall reimburse Beck \$20.00, which represents certifiable travel expenses incurred by Beck in matters involving her complaint.
7. That, within thirty days of the effective date of this Order, Pyramid shall report to the PHRC on the manner of its compliance with the terms of this Order by letter addressed to Lisa M. Kaplan, Assistant Chief Counsel, Pennsylvania Human Relations Commission, 110 North 8<sup>th</sup> Street, Suite 501, Philadelphia, PA 19107.

**PENNSYLVANIA          HUMAN          RELATIONS  
COMMISSION**

By:   
**Stephen A. Glassman**  
**Chairperson**

**Attest:**

  
**Daniel D. Yun**  
**Secretary**

