

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

JOHN H. HUDOCK,
Complainant

v.

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF MILITARY AFFAIRS,
Respondent

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DOCKET NO. E-37727

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF THE HEARING PANEL

FINAL ORDER

FINDINGS OF FACT

1. John H. Hudock (hereinafter "Complainant") is an individual residing at 12 Sara Street, Middletown, PA. (N.T. 22)
2. The Complainant was employed as a Military Technician for the 28th Aviator Division. (N.T. 23)
3. As a Military Technician, the Complainant helped to run the company or platoon in the absence of the Commander. (N.T. 23)
4. The Complainant was also a member of the National Guard. (N.T. 23)
5. In order to be a Military Technician, the Complainant had to be a member of the National Guard. (N.T. 23)
6. The Complainant's salary was paid by the federal government. (N.T. 36)
7. In the Complainant's position, he was required to follow federal regulations. (N.T. 36)
8. Diane Eshelman is the Personnel Officer for the Department of Military and Veterans Affairs. (N.T. 100)
9. Ms. Eshelman has been employed in the Department of Military and Veterans Affairs since January, 1986. (N.T. 101)
10. Ms. Eshelman is a state employee. (N.T. 101)
11. In Ms. Eshelman's position, she handles state matters involving state employees. (N.T. 101)
12. Ms. Eshelman did not find the Complainant's name in her complement report. (N.T. 104)

13. The monthly complement report lists the positions that are authorized, the positions that are filled, and the vacancies in the Department of Military Affairs. (N.T. 103)

14. The Complainant's position is not listed in the monthly complement report since his position is not a state position. (N.T. 103-104)

15. Ms. Eshelman could not locate the Complainant in any state computer system. (N.T. 104)

16. If an individual in the Complainant's position came to Ms. Eshelman's office, she would direct them to the Federal HRO office. (N.T. 105)

17. The personnel office that Ms. Eshelman heads does not hire or fire any technicians. (N.T. 104-105)

CONCLUSIONS OF LAW

1. John H. Hudock (hereinafter "Complainant") is a person within the meaning of the Pennsylvania Human Relations Act ("PHRA").

2. The Respondent is an employer within the meaning of the PHRA.

3. The Pennsylvania Human Relations Commission does not have jurisdiction in this matter, because the Complainant herein was not an employee of the Respondent.

4. The Complainant was a federal employee.

O P I N I O N

This matter arises out of a complaint filed by John H. Hudock (hereinafter "Complainant") on August 4, 1986, against the Commonwealth of Pennsylvania, Department of Military Affairs (hereinafter "Respondent"), Docket No. E-37727. The Complainant later amended his complaint on July 6, 1992. In his complaint, the Complainant alleges that the Respondent dismissed him because of his non-job related disability, heart by-pass surgery. The Complainant asserts that the Respondent's actions 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").

PHRC conducted an investigation of the complaint and found probable cause to credit the allegations raised in the complaint. After the finding of probable cause, PHRC staff endeavored to resolve the matter through conference, conciliation, and persuasion, but such efforts were unsuccessful. Thereafter PHRC staff notified the parties that the matter had been placed on the public hearing docket and approved for public hearing.

A public hearing in this matter was held on May 11, 2000 before a three Commissioner panel. The panel consisted of: Commissioner Gregory J. Celia, Jr., Chairperson of the Panel, Commissioner Russell S. Howell, and Commissioner Raquel Otero de Yiengst. The Commission's interest in the complaint was represented by Ronald W. Chadwell, Assistant Chief Counsel. The Respondent was represented by Lieutenant Colonel Thomas G. Kane, Esquire, and Eclemus Wright, Jr., Esquire.

In the instant case, all parties agreed that the public hearing would be bifurcated. The parties agreed that the first day of hearing would provide each side an opportunity to present evidence and legal argument on the jurisdiction issue. The remainder of the public hearing, if necessary, would be scheduled for a later date.

In the matter before the Commission, the facts addressed at the public hearing show that the Complainant was employed as a Military Technician by the Pennsylvania Army National Guard. The paramount question in this case is whether the Respondent was the Complainant's employer. Title 32 U.S.C. §709 clearly provides that a technician such as the Complainant employed by the Army or Air National Guard is an employee of the Department of Army and is an employee of the United States of America. The technicians are controlled by federal regulation and are funded by federal monies. The record before the Commission reveals that the Commonwealth of Pennsylvania is not involved in the administration or employment of technicians. The Respondent presented credible testimony by Diane Eshelman, Personnel Officer for the Respondent. Ms. Eshelman testified that she only handles issues involving state employees. She specifically does not handle anything involving federal technicians. (N.T. 103-104) Ms. Eshelman further testified that federal technicians do not appear anywhere on any reports or in Respondent's computer system. The Complainant is clearly not a state employee.

Most importantly, in this case, we can look at the testimony of the Complainant himself. The Complainant admitted

that, in his job, he was paid by the federal government. He followed federal regulations. The Complainant is receiving his medical retirement and other funds from the federal government. In his position, the Complainant handled a payroll that consisted of federal funds. (N.T. 44) The Complainant further testified that all of his administrative duties were in compliance with military and federal regulations. (N.T. 44-45) The Complainant testified that even though he was aware of Pennsylvania National Guard regulations, he knew the regulations that he had to follow were the Army Regulations (federal).

Having reviewed the testimony presented at the public hearing, the facts clearly reveal that the Respondent herein is not the complainant's employer.

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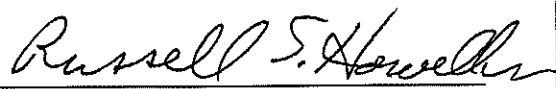
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RECOMMENDATION OF THE HEARING PANEL

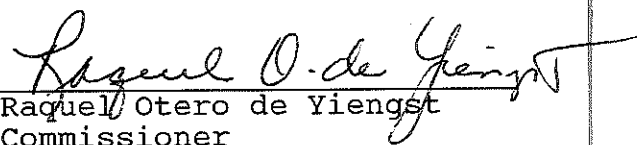
Upon consideration of the entire record in the above-captioned case, it is the Hearing Panel's recommendation that the Commission lacks jurisdiction over the Respondent in the above-captioned case. The Respondent is not the Complainant's employer. It is, therefore, the Hearing Panel's recommendation that the attached Findings of Fact, Conclusions of Law, Opinion, and Final Order be approved and adopted by the full Pennsylvania Human Relations Commission. If so approved and adopted, the Hearing Panel recommends issuance of the attached Final Order.



Gregory J. Celia
Commissioner



Russell S. Howell
Commissioner



Raquel Otero de Yiengst
Commissioner

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FINAL ORDER

AND NOW, this 29th day of August , 2000, 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 Findings of Fact, Conclusions of Law, Opinion, and Final Order recommended by the Hearing Panel and hereby

O R D E R S

that the instant complaint be dismissed.

PENNSYLVANIA HUMAN RELATIONS COMMISSION



By: Carl E. Denson, Chairperson

ATTEST:



Gregory J. Celia, Secretary