

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

CHARLES JUSINSKI,
Complainant

v.

BOROUGH OF SHENANDOAH,
Respondent

DOCKET NO. H-7235

FINDINGS OF FACT
CONCLUSIONS OF LAW
OPINION
RECOMMENDATION OF PERMANENT HEARING EXAMINER
FINAL ORDER

FINDINGS OF FACTS

1. The Respondent is the Borough of Shenandoah, (hereinafter "The Borough").
2. The Borough's population is approximately 5,000 to 6,000 people. (N.T. 50).
3. Approximately 60% of the population is over 65 years of age. (N.T. 87).
4. The majority of houses in the Borough are row houses, constructed without driveways or garages. (N.T. 91, 99, 100).
5. The majority of parking in the Borough is on street parking on a first-come basis. (N.T. 100).
6. Prior to the relevant time frame of this case, the Borough's Police Chief developed a policy that allows disabled Borough residents to request permission to erect a handicap parking sign on a public street adjacent to their home. (N.T. 85, 92; J.E. 3).
7. The Borough's Council approved the policy developed by the Police Chief.
(N.T. 92).
8. Resident requests under the policy are given to a sub-committee of the Borough Council which reviews the requests and, without full Council consideration, either approves or denies them. (N.T. 86).
9. The Borough's Police Department is involved only when there are extraordinary circumstances. (N.T. 86).

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
J.E. Joint Exhibit

10. Prior to August 1996, the Complainant, Charles Jusinski, (hereinafter "Jusinski"), lived in the Borough at 24 West Laurel Street. (N.T. 34-35, 43).
11. In August 1996, Jusinski moved to 121 North West Street, in the Borough. (N.T. 15-16, 35, 43).
12. In approximately 1987, Jusinski fell from a ladder resulting in a severe ankle injury. (N.T. 16, 17, 44).
13. Prior to this injury, Jusinski had been a Correction Officer. (N.T. 17).
14. Over the years, Jusinski's ankle injury has required five operations on his left foot and hips. (N.T. 28).
15. Jusinski's ankle fused twice. (N.T. 16, J.E. 2).
16. Secondary to the ankle injury, and approximately a year after the injury, Jusinski also developed a progressive sciatica problem that, at times, causes his legs to go numb. (N.T. 17, 44).
17. Jusinski receives medication for the sciatica problem. (N.T. 45, J.E. 2; RE 1).
18. Jusinski also has emphysema. (N.T. 27).
19. Jusinski's medical conditions are permanent. (J.E. 2).
20. Jusinski walks with a cane and a leg brace and is unable to walk more than two blocks because everything locks up. (N.T. 16, 18).
21. As the distance Jusinski walks increases, the pain he experiences also increases. (N.T. 17-18, 28).
22. Whenever he can, Jusinski parks in front of his residence. (N.T. 26).
23. Often, when Jusinski leaves his residence, upon his return, others have taken all the parking spaces near his residence. (N.T. 26).

24. At times, the only parking space available is two to three blocks away.
(N.T. (N.T. 26).
25. In the winter, ice on the sidewalks makes it extremely difficult for Jusinski to walk. (N.T. 17).
26. In the summer the heat poses a problem for Jusinski. (N.T. 27).
27. The sidewalks near Jusinski's residence increase Jusinski's fear of falling because they are not in a good condition. (N.T. 27).
28. Jusinski has been on social security disability since 1988. N.T. 25-26).
29. The Commonwealth of Pennsylvania had determined Jusinski was eligible to receive a specially marked handicap/disability license plate and a removable placard commonly hung from a vehicle's rear mirror.
(N.T. 74).
30. In 1995, Jusinski began to feel the need to request a parking space near his residence so he went to the Borough Hall to inquire about the process and to find out what the guidelines were. (N.T. 46).
31. Jusinski was not given a copy of the Borough's guidelines at this time, but was told to write to the Borough and attach a doctor's note. (N.T.46).
32. By letter to the Borough Police Department, dated June 15, 1996, Jusinski requested a handicapped parking sign. (N.T. 18; J.E. 1).
33. Jusinski attached to his request a letter dated June 14, 1996, from his Orthopedic Surgeon, Landis C. Heistand, M.D., which generally outlined Jusinski's medical condition. (N.T. 18; J.E. 2).
34. Doctor Heistand's letter states that Jusinski "has severe physical problems including a fused left ankle secondary to a very severe fracture. He is using a cane and a leg brace. He is having increased

problems with his lower back secondary to his abnormal gait. He is unable to get around very well at home. He is on pain and muscle relaxant medication ... " (N.T. 18; J.E. 2).

35. At the time of this request, Jusinski resided at 24 West Laurel Street. (N.T. 18).
36. After applying, Jusinski was contacted by Mr. Yezulinas, an employee of the Borough, who came to Jusinski's home for an evaluation. (N.T. 19).
37. A few days later, Jusinski received a certified letter dated July 3, 1996, from both, the Borough Handicap Parking Sub-Committee and the Police Department which, in effect, denied Jusinski's request (N.T. 20; J.E. 3).
38. The denial letter informed Jusinski that his request did not conform to the Borough's Guidelines and attached a copy of the applicable guidelines. (J.E. 3).
39. Under the Borough's guidelines, the following physical requirements are listed:
 - (a) Medical needs of the owner/operator living in dwellings who require two or more doctor and/or hospital visits per month.
 - (b) Owner/operator living in dwellings who is non-ambulatory and must rely solely on family-private vehicular transportation:
 - (c) Owner/operator has 90% to total loss of lower extremities and/or to such a degree which renders such person incapable of movement without personal attention from another. (J.E. 3).
40. The first time Jusinski saw the Borough's guidelines was when he received the Borough's July 3, 1996 denial. (N.T. 46).

41. In the Borough's denial, Jusinski was also advised to remove a sign Jusinski had erected in front of this residence. (J.E. 3).
42. The Borough's manager, Joseph Paluvinsky, (hereinafter "Paluvinsky"), indicated that Jusinski's request was denied under paragraph (c) of the Borough's policy. (N.T. 90-91).
43. In 1996, had Jusinski been approved, a designated handicap/disability parking space would have been the first on Jusinski's street. (N.T. 100).
44. Following his denial, Jusinski gave Doctor Heistand a copy of the Borough's guidelines. (N.T. 48).
45. Doctor Heistand told Jusinski that he was not disabled to the point required by the guidelines. (N.T. 47).
46. Subsequently, Jusinski met with Paluvinsky in Paluvinsky's office at the Borough Hall. (N.T. 53).
47. Paluvinsky informed Jusinski that he had no input in the process. (N.T. 25, 92).
48. Jusinski told Paluvinsky that he felt he was being discriminated against and Paluvinsky told him he would investigate. (N.T. 51).
49. Paluvinsky testified that he thinks the ADA "just came into being, or was revised in the late 90's ..." (N.T. 96).
50. Paluvinsky further testified that he has had no training with regards to municipal requirements under either the ADA or the PHRA. (N.T. 96).
51. Jusinski did not understand why he had been denied. (N.T. 22).
52. On or about September 1996, Jusinski re-applied and provided additional medical information. (N.T. 23; J.E. 4).

53. Jusinski testified that he applied a total of nine times and that each time he was denied. (N.T. 24, 52, 55, 56, 67; J.E. 4, 8).
54. By late October 1996, Jusinski was ready to give up. (N.T. 56).
55. Jusinski directed a letter dated October 25, 1996 to Paluvinsky expressing resignation. (N.T. 56; R.E. 2).
56. Later, Jusinski changed his mind and decided to persevere and go forward. (N.T. 57).
57. Jusinski's 22-year marriage suffered because Jusinski became hard to live with after being denied. (N.T. 30, 76).
58. Jusinski was very upset, distraught, and disappointed after the series of denials. (N.T. 28, 20, 76).
59. Jusinski lost sleep and worried over the circumstances. (N.T. 33).
60. He became obsessed with the problem, which was all he could think about. (N.T. 28).
61. Jusinski also felt embarrassed for several reason. (N.T. 31, 32, 69).
62. He felt his intelligence was being insulted and he was embarrassed because people who knew him and neighbors who knew he was seeking a parking space, knew he was unsuccessful in his efforts. (N.T. 31, 32, 69).
63. Jusinski, who already had psychological problems and feelings of worthlessness, had increased feelings of worthlessness and depression. (N.T. 76, 82, 83).
64. Jusinski's wife attributed a lot of his depression to having been denied a parking space. (N.T. 83).

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission ("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.
3. The property in which Jusinski lived was a housing accommodation within the meaning of the PHRA.
4. The Borough is a public accommodation within the meaning of the PHRA.
5. Jusinski established a prima facie case of discrimination under section 5(h)(3.2) by showing:
 - a. that he was a member of a protected class, in that he has a physical impairment which substantially limited a major life activity;
 - b. that the Borough was aware of his disability;
 - c. that Jusinski requested a disability parking space near his home;
 - d. that such a space near his home was necessary to afford Jusinski an equal opportunity to use and enjoy his home; and
 - e. that the Borough denied Jusinski's request.
6. The Borough failed to show that if Jusinski's request were granted that the Borough would either suffer an undue hardship or that the request was unreasonable.
7. Jusinski established a prima facie case under section 5(i) by showing:
 - a. that he has a disability;
 - b. that the Borough denied him the benefit of services; and

c. that the denial of services had a discriminatory effect.

8. Jusinski met his ultimate burden of persuasion that the Borough's action violated section 5(h)(3.2) and 5(i) of the PHRA.

9. Jusinski established that he suffered embarrassment and humiliation due to the Borough's actions.

10. The PHRC may award actual damages, including damages caused by humiliation and embarrassment for violations of section 5(h).

11. The PHRC may also order the Borough to cease and desist from the discriminatory practice.

OPINION

This case arises on a complaint filed by Charles Jusinski, (hereinafter "Jusinski"), against the Borough of Shenandoah, (hereinafter the "Borough"), on or about November 27, 1996 at Docket No. H-7235. On or about June 17, 1999, Jusinski filed an amended complaint. Jusinski alleged that on or about September 17, 1996, the Borough denied him a parking space designated for disabled drivers in front of his home because of his disability, fused ankle, chronic sciatica, and psychological problems. The complaint alleges that such allegations violate Sections 5(h)(3.2) and 5(i) of the Pennsylvania Human Relations Act, Act of October 25, 1995, P.L. 744, as amended, 43 P.S. § § 951 et seq. (hereinafter the "PHRA").

PHRC staff conducted an investigation and found probable cause to credit the allegations of discrimination. The PHRC and the parties then attempted to eliminate the alleged unlawful practices through conference, conciliation, and persuasion. The efforts were unsuccessful, and this case was approved for Public Hearing. The Public Hearing was held on June 21, 2001, in Pottsville, Pennsylvania, before Carl H. Summerson, Permanent Hearing Examiner.

Michael A. O'Pake, Esquire appeared on behalf of the Borough and the PHRC interest in this matter was overseen by Nancy L. Gippert, Esquire, Assistance Chief Counsel, PHRC. Post hearing briefs were simultaneously submitted by the parties in September 2001.

Section 5(h)(3.2) states in pertinent part:

It shall be an unlawful discriminatory practice ... [f]or

any person to [r]efuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford [a] person with a disability equal opportunity to use and enjoy a housing accommodation.

Section 5(i) states in pertinent part:

It shall be an unlawful discriminatory practice ... [f]or any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any public accommodation ... to [r]efuse, withhold from or deny to any person because of his ... handicap or disability ... any of the accommodations, advantages, facilities or privileges of such public accommodation ...

Section 5(p.1) states in pertinent part:

The word "**handicap or disability**"; with respect to a person, means ... A physical or mental impairment which substantially limits one or more of such person's major life activities ...

Regulations found at 16 Pa Code § 44.4, further define the phrase handicap or disability. Under this section a "physical or mental impairment" is defined as:

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.

Major life activities are defined as:

[f]unctions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

The present case presents a fundamental clash between the Borough's guidelines and what is required under the PHRA of both a public

accommodation, and one who provides services so a person with a disability has an equal opportunity to enjoy a housing accommodation. The clash is presented on the general issue of disability parking, one of the cornerstones of public policy towards people with disabilities.

We begin our analysis of Jusinski's 5(h)(3.2) claim by acknowledging that in the case of Allison v. PHRC, 716 A-2d 689 (Pa. Cmwlth 1988), appeal denied, 1999 Lexis 541 (Pa. March 3, 1999), the Commonwealth Court approved for use in housing cases the prima facie model first set forth in McDonnell-Douglass v. Green, 411 U.S. 792 (1973) and subsequently adopted in Pennsylvania in Allegheny Housing Rehabilitation Corporation v. PHRC, 516 Pa. 124, 532 A2d 315 (1987). A review of the parties' briefs reveals some similarities in the suggested elements of the requisite prima facie showing.

Here, to establish a prima facie case, under Section 5(h) (3.2) Jusinski must establish:

1. That he is a member of a protected class;
2. That the Borough was aware of Jusinski's disability.
3. That Jusinski applied for a disability parking space adjacent to his house;
4. That a disability parking space adjacent to his house was necessary to afford Jusinski an equal opportunity to use and enjoy his home; and
5. That the Borough denied Jusinski's request;

See Cummings v. Dedham Housing Authority, 1999 W. L. 442793 (1991).

If Jusinski can make this showing, the Borough may prevail if it can demonstrate that the request either imposes an undue financial or administrative burden on the Borough, or that the request is not reasonable.

Here, it is abundantly clear that Jusinski has a disability within the meaning of the PHRA. A combination of his permanent ankle injury, the secondary sciatica problem, and emphysema bring Jusinski squarely within the PHRA's definition of "disability". He has physical impairments which affect his musculoskeletal, and respiratory systems. Such impairments substantially limit the major life activities of walking and breathing. Accordingly, Jusinski successfully established the first element of the requisite prima facie case.

Second, although the Borough argues that Jusinski did not explain the extent of his physical problems, the Borough did receive sufficient information in the form of doctor notes submitted with several of Jusinski's requests. These notes adequately informed the Borough of the nature of Jusinski's medical condition and that the conditions substantially impaired Jusinski's walking. Further, if the Borough had any question regarding the extent of Jusinski's impairment they could have requested additional information. It is telling that the Borough's refusals merely told Jusinski that his requests did not conform to the Borough's guidelines. Understandably, Jusinski was confused.

Clearly, Jusinski repeatedly applied for a parking space adjacent to his house. There is no dispute on this issue.

On the question of whether a disability parking space was necessary to afford Jusinski an equal opportunity to use and enjoy his home, we find that such a space was necessary. The record establishes that Jusinski's physical pain varied directly with the distance he must walk. The record sufficiently

established that it was extremely difficult for him to walk long distances and when a space near his home was unavailable, the only available space was often several blocks away. Without access to a space near his home, at times Jusinski chose to stay home rather than go out and worry about losing his parking space. By doing so, Jusinski no longer had an equal opportunity to use and enjoy his home. Without a close parking space, Jusinski would continue to both fear re-injury and be subjected to a continued risk of re-injury. To have an equal opportunity to use and enjoy his home, Jusinski has demonstrated that it is necessary for him to have access to parking near his home.

Without question, the Borough denied each of Jusinski's requests. Accordingly, Jusinski has sufficiently established a prima facie case under section 5(h)(3.2). Therefore, we turn to the issue of whether the Borough can either demonstrate that the request imposes an undue financial or administrative burden or that the request was unreasonable.

In an effort to meet its burden, the Borough argues that Shenandoah is a small town and that the Borough needed a control mechanism which restricted the number of households to which parking privileges could be granted. The Borough submits that otherwise the Borough "would become a community of residentially restricted parking". This rationale falls far short of meeting the Borough's burden to show either undue hardship or that the request was unreasonable. Fundamentally, the articulated rationale does neither. On the issue of reasonableness, the Borough has made no attempt to establish the request was unreasonable, perhaps because Jusinski's request was abundantly reasonable given his severe mobility impairment.

To establish a prima facie case under Section 5(h)(i), Jusinski must establish the following:

1. That he is an individual with a disability;
2. That he was denied the benefits of a service provided by the Borough; and
3. That such a denial of a service had a discriminatory effect.

As already noted, Jusinski easily establishes that he is disabled within the meaning of the PHRA. Equally clear is that Jusinski applied for a service and was denied a handicapped parking space near his residence. By denying Jusinski's request, the Borough failed to provide Jusinski with an equally effective opportunity to participate in parking in the Borough's streets. Thus, denying Jusinski's request, the Borough discriminated against Jusinski on the basis of his disability.

The public accommodation provision of the PHRA applies whenever a denial of a service of a public accommodation has a discriminatory effect. Here, the effect of the denial was to enable persons without mobility impairments to enjoy the benefit of first-come curbside parking more than Jusinski.

The police chief's effort to create a policy appears to stem from an early era where the conception of such programs was modest and extremely limited. Beginning in the late 1960's the federal government adopted a series of increasingly comprehensive regulations dealing with parking for individuals with disabilities. In 1968, the Architectural Barriers Act generally required that persons with disabilities, where possible, have quick access to, and use of, federal facilities. 42.U.S.C. 4154 (1995). Of course, this legislation was limited

to federal facilities. Later enactments have significantly expanded the laws with respect to parking for persons with disabilities. For instance, the Rehabilitation Act of 1973 extended rights to persons with disabilities to all federally-funded facilities. 29 U.S.C. 794 (a) § 1995. This Act provides, in pertinent part:

No otherwise qualified individual with a disability ... shall, solely by reason of her or his disability, be excluded from ... participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Finally, and most important in the Federal context, the Americans with Disabilities Act of 1990 generally requires reasonable accommodations for the needs of individuals with disabilities, 42 U.S.C. 12112 (a)-(b) (1995).

The legal framework governing parking spots can be generally divided into two spheres: (1) rules governing the issuance and form of parking permits; and (2) site regulations (rules for siting parking spaces for individuals with disabilities at locations including public streets). At issue in this matter is the Borough's implementation of a site regulation.

It appears that Jusinski has always been able to locate a parking space. In other words, his vehicle has always been parked on a public street. The issue here is where his vehicle is to be parked. Without a space near his home, Jusinski did not have accessibility comparable to the accessibility available to the general public.

It is a practical necessity that set asides result in periods of vacancy for specifically designated spaces. In Jusinski's case, the periods of vacancy would be minimal as he infrequently leaves his residence. Under the

circumstances present here, the direct benefits to Jusinski far outweighs any cost associated with resultant temporary space vacancies.

Under 53 P.S. § 46202, Boroughs such as Shenandoah are authorized "to regulate parking and provide parking accommodations so as to promote the convenience and protection of the public and to establish or designate, at the discretion of ... authorities, areas exclusively reserved for parking by handicapped individuals and to post signs regulating such areas ... "

In summary, the Borough's baseline rules, which define eligibility are too restrictive. U.S. Department of Transportation's Uniform System for Parking for Persons with Disabilities sets out six qualifying conditions to obtain a parking permit: (1) inability to walk 200 feet without stopping to rest; (2) inability to walk without the use of or assistance from a device or person; (3) severe lung disease as measured by respiratory volume or arterial oxygen level; (4) use of portable oxygen; (5) cardiac condition of American Heart Association Class III or IV; or (6) severe limitation in the ability to walk due to an arthritic, neurological, or orthopedic condition. 23 C.F.R. 1235.

Similarly, under Pennsylvania law persons with disabilities can obtain a disability license plate and placard under the following qualifying conditions:

- (1) is blind;
- (2) does not have full use of an arm or both arms;
- (3) cannot walk 200 feet without stopping to rest;
- (4) cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair or other assistive device;
- (5) is restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than 0 mm/hg on room air at rest;
- (6) uses portable oxygen;

- (7) has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to the standards set by the American Heart Association;
- (8) is severely limited in his or her ability to walk due to an arthritic, neurological or orthopedic condition; or
- (9) is a person in loco parentis of a person specified in paragraph (1), (2), (3), (4), (5), (6), (7) or (8); the department shall issue a special registration plate for one passenger car or truck with a registered gross weight of not more than 9,000 pounds, designating the vehicle so licensed as being used by a person with a disability. Special plates for persons with disabilities may also be issued for vehicles operated exclusively for the use and benefit of persons with disabilities. In the case of a motorcycle, the department shall issue a decal containing the international symbol for access for persons with disabilities for display on the registration plate. 75 Pa. C.S.A § 1338 (a).

To obtain a special plate or placard, an applicant needs to only present a doctor's statement which indicates that the person has one of the disabilities listed above.

Under the PHRA, the Borough cannot deny the significant benefits of services to individuals with serious mobility impairments simply out of either a fear of opening the floodgates to additional requests or a misplaced perception that the Borough will become "a community of residentially restricted parking". The population of the Borough is what it is and a socially optimal allocation of resources is necessary to effectively meet the changing needs of those who live in the Borough.

Given the importance of disability parking to literally millions of U.S. citizens, and consistent with the mandate of Section 12(a) of the PHRA, we find that it is desirable as a matter of public policy to liberally advance the creation of site spots near the homes of individuals with severe mobility impairments.

Such liberal set-aside programs are justified on the basis that individuals who have severe mobility impairments value parking spaces close to their homes far more than others who, because of a space assignment, might be required to park elsewhere.

In this case, no evidence was presented that any of Jusinski's neighbors had expressed opposition to the idea of creating a disability parking space near Jusinski's home. In fact, Jusinski's testimony provides grounds to believe that neighbor support existed for his quest.

In the present case, the Borough's guidelines must be modified so that they do not automatically disqualify individuals with severe mobility impairments who otherwise qualify as an individual with a disability under the PHRA. The only way the Borough can avoid granting accommodations to individuals with disabilities is to demonstrate that the granting of an accommodation would create an undue hardship. In this case, there had been no effort to present evidence that the granting of Jusinski's request would have created an undue hardship. Accordingly Jusinski has successfully proven by a preponderance of the evidence violations of both Section 5(h)(3.2) and 5(i) of the PHRA. Therefore, we turn to the question of an appropriate remedy.

The PHRC has broad discretion to fashion a remedy where unlawful discrimination has been proven. Murphy, et. al. v. Com., Pennsylvania Human Relations Commission, 506 Pa. 549, 486 A.2d 388 (1985). In fashioning a remedy the victim of discrimination is entitled to "make whole relief, which will restore the victim to his or her pre-injury status". Murphy. When a violation of Section 5(i) has been established, the main remedy is limited to a cease and desist order. However, in cases alleging a violation of section 5(h), in addition

to a cease and desist order, the PHRC may also take whatever affirmative actions may be necessary and award actual damages including damages caused by humiliation and embarrassment as, in the judgment of the Commission, will effectuate the Act. When appropriate a civil penalty may also be imposed.

Clearly, a cease and desist order is appropriate. The questions in this matter are what is an appropriate award for humiliation and embarrassment and should a civil penalty be imposed.

Humiliation and embarrassment can be inferred from the circumstances as well as established by testimony. Seaton v. Sky Realty Co. Inc., et al., 491 F.2d 634, 636 (7th Cir. 1974). See also HUD v. Blackwell, 2 FHFL ¶ 25,001 (HUD A.L.J. Dec. 21, 1989), aff'd. 908 F.2d 844 (11th Cir. 1990). The key factor in determining the size of an award for humiliation and embarrassment is a victim's reaction to discriminatory conduct. HUD v. Banaj, FHFL ¶25,095 (HUD ALJ 1995) aff'd 102 F.3d 1203 (11th Cir. 1997).

In housing cases, damages are to be measured on the injuries actually suffered by the victims of discrimination not on the basis of injuries that a reasonable person would suffer. See, HUD v. Kelley, 2 FHFL ¶25,034 (HUD ALJ Aug 26, 1992).

Here, the record reveals that Jusinski had psychological problems that caused depression before he applied for and was denied a disability parking spot near his home. The evidence further reveals that Jusinski's depression was intensified by his requests which, had they been granted, would have afforded him a greater enjoyment of his life.

Jusinski described himself as very upset, distraught and disappointed. He could think of little else as he obsessed over the problem. He lost sleep worrying about his circumstances. Feelings of worthlessness and depression increased and his relationship with family members was adversely affected. Finally, Jusinski was embarrassed knowing that his neighbors were observing that the Borough kept refusing his requests.

Based on the Borough's refusal of Jusinski's request, we conclude that Jusinski suffered humiliation and embarrassment damages. At the public hearing, Jusinski placed a price on his embarrassment and humiliation. Jusinski requested that consideration be given to the amount of \$1,000 per year for the past five years. We agree that an award of the requested \$5,000 is both reasonable and appropriate.

Under Section 9(f)(2)(i) of the PHRA, a civil penalty not exceeding \$10,000 may be imposed on first-time offenders of Section 5(h) of the PHRA. HUD v. Weber, P.H, Fair Housing Fair Lending, § 25,041 (HUD ALJ, 1993), lists factors which can be used to consider an appropriate civil penalty. These factors are:

1. The nature of the violation;
2. The degree of culpability;
3. The Respondent's financial resources;
4. The goal of deterrence; and
5. Other matters as justice may require.

In the post-hearing brief filed by the PHRC housing division, the suggested civil penalty is \$1,500. This brief correctly observes that the Borough is small and submits that for this reason, the appropriate civil penalty should be small. We agree. Accordingly, a civil penalty of \$1,500 should be assessed.

The PHRC Housing Division's brief also requests an order that directs the Borough to grant Jusinski's request and to erect an appropriate sign at no cost to Jusinski. This too should be ordered.

Finally, the PHRC Housing Division's brief requests an order directing an amendment of the Borough's guidelines. Since the current guidelines are far too restrictive, an order directing an amendment of the guidelines is also appropriate.

An appropriate order follows:

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Respondent

DOCKET NO. H-7235

RECOMMENDATION OF PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that Jusinski has proven discrimination against the Borough in violation of Sections 5(h)(3.2) and 5(i) of the Pennsylvania Human Relations Act.

It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion 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.

By:



Carl H. Summerson
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

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DOCKET NO. H-7235

FINAL ORDER

AND NOW, this 20th day of November,

2001, 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 as its own finding in this matter and incorporates the same into the permanent record of this proceeding, to be served on the parties to the complaint and hereby

ORDERS

1. The Borough shall permanently cease and desist from engaging in any acts or practices which have the purpose or effect of denying services of a public accommodation specifically in the form of denying reasonable requests for disability parking spaces.

2. The Borough shall cease and desist from actions which deny individuals with disabilities an equal opportunity to use and enjoy their homes,

specifically, by denying applications by individuals with severe mobility impairments disability parking spaces adjacent to their homes.

3. The Borough shall pay Jusinski the lump sum of \$5,000 in compensatory damages for the embarrassment and humiliation he suffered.

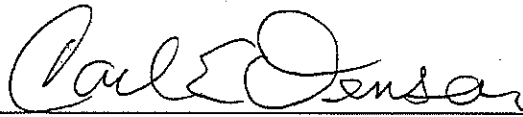
4. That within thirty days of the effective date of this Order, the Borough shall deliver to PHRC Housing Division Assistant Chief Counsel Nancy Gippert, a check payable to the Commonwealth of Pennsylvania in the amount of \$1,500 which represents an assessment of a civil penalty pursuant to Section 9(f)(2)(i) of the PHRA.

5. That the Borough shall expeditiously designate a disability parking space in front of Jusinski's residence and, without cost to Jusinski, erect an appropriate sign.

6. That the Borough shall amend its guidelines in such a manner so as to give reasonable consideration to all applications for disability parking spaces of all individuals who have a disability as defined by the PHRA.

7. That within thirty days of the effective date of this Order, the Borough shall report to the PHRC on the manner of their compliance with the terms of this Order by letter addressed to Nancy Gippert, Assistant Chief Counsel, PHRC Housing Division, P.O. Box 3145, Harrisburg, PA 17105-3145.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: 

Carl E. Denson
Chairperson

Attest:



Gregory J. Celia, Jr., Secretary