

FINDINGS OF FACT*

1. On or about October 16, 2012, Complainant, Sharon L. Emmons, (hereinafter "Emmons"), filed a PHRC Complaint against Paksh LLC d/b/a Dunkin Donuts/Baskin Robbins, (hereinafter "Paksh LLC"), in which Emmons alleged that in May and June 2012, Paksh LLC failed to hire Emmons as a Cashier because of her age. (O.D. 1)
 2. On or about March 6, 2013, Emmons filed an Amended Complaint. (O.D. 1)
 3. Under cover letter dated May 31, 2013, the PHRC's Harrisburg regional office filed a Petition for a Rule to Show Cause. (O.D. 1)
 4. On June 5, 2013, PHRC Motions Examiner Carl H. Summerson issued a Rule to Show Cause which, in effect, notified Paksh LLC that it had until June 25, 2013 to file an answer to Emmons' complaint. (O.D. 2)
 5. On June 13, 2012, a Respondent representative signed a PS Form 3811, indicating receipt of the certified mailing of the Rule to Show Cause.
 6. Paksh LLC neither filed an answer to Emmons' complaint nor responded to the June 5, 2013, Rule to Show Cause. (O.D. 4)
 7. On July 30, 2013, Motions Examiner Summerson recommended to the full PHRC that Paksh LLC be found liable for Emmons' allegations. (O.D. 4)
- 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
O.D. Official Docket

8. A public hearing on the issue of what, if any, damages are appropriate was held on January 24, 2014, in Chambersburg, Pennsylvania.
9. Emmons applied for work with Paksh LLC both by submitting an application via the computer and by submitting a written application in person at the Paksh LLC location at 1479 Lincoln Way East, Chambersburg, Pa. (N.T. 9)
10. The position for which Emmons applied was a part-time position that would have paid the rate of \$7.35 per hour. (N.T. 10-11)
11. When Emmons was not hired by Paksh LLC, Emmons initially looked in the local newspaper and on line for possible part-time employment . (N.T. 16, 18, 20)
12. Beginning the week of August 27, 2012, Emmons returned to her regular part-time job as a school health nurse for the Chambersburg Area School District. (N.T.11-12)
13. Emmons testified that upon returning to her regular job as a school nurse, she would have been available to work part-time for Paksh LLC on Friday evenings, Saturdays and Sundays and other evenings in an emergency. (N.T. 12)
14. After the end of September 2012, Emmons stopped looking for part-time work. (N.T. 21)
15. Emmons filed her PHRC complaint by mail, thereby incurring no travel expenses in relation to the filing of her complaint. (N.T. 13)
16. Emmons did incur the following reasonable out-of-pocket expenses caused by Paksh LLC's discrimination:
 - a. \$.50 parking expense to attend the Public Hearing on January 27, 2014;

b. Driving of 4 miles to attend the Public Hearing – 4 miles at \$.56.5 per mile
= \$2.26; and

c. 2.25 hours of lost work to attend the Public Hearing – 2.25 x \$17.00 per =
\$38.25.

(N.T. 13, 15, 22-23).

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, Paksh LLC's failure to answer or respond to a Rule to Show Cause resulted in the entry of a judgment for Emmons on the issue of liability.
6. The PHRC has broad discretion in fashioning a remedy. *Murphy v. Pa. Human Relations Commission*, 486 A.2d 388 (1985).
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 Sharon L. Emmons, (hereinafter "Emmons"), against Paksh LLC, d/b/a Dunkin Donuts/Baskin Robbins, (hereinafter "Paksh LLC"). Emmons complaint alleged that Paksh LLC failed to hire her as a Cashier in May and June 2012. On March 6, 2103, Emmons filed an Amended Complain. Emmons' complaint states a claim under Section 5(a) of the Pennsylvania Human Relations Act ("PHRA").

By correspondence dated May 31, 2013, the Pennsylvania Human Relations Commission ("PHRC") Harrisburg regional office petitioned Motions Examiner Summerson for a Rule to Show Cause, indicating that Paksh LLC had not answered Emmons' complaint. The petition declared that Paksh LLC had been served with Emmons' complaint on November 31, 2012. The petition further indicated that by correspondence dated April 9, 2012 (sic) an additional effort had been made to obtain an answer from Paksh LLC.

On June 5, 2013, a Rule to Show Cause was issued directing Paksh LLC to respond on or before June 25, 2013. After no response was filed, on July 30, 2013, Motions Examiner Summerson recommended a finding of liability to the full PHRC. On August 27, 2013, the full PHRC determined that Paksh LLC failed to hire Emmons into the position of Team Member/Cashier because of her age..

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

The public hearing on the issue of appropriate damages was held January 24, 2013, in Chambersburg, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The state's interest in the complaint was overseen by Kelly M. Matos, PHRC Assistant Chief Counsel. Although having been duly notified, Paksh LLC failed to attend the public hearing.

Since liability had been found after Paksh LLC failed to file an answer, the only question at the public hearing was what damages Emmons 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 a 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 Emmons 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 (11th 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 (3rd Cir. 1988).

In this case, Emmons claim initially involves a loss of wages following Paksh LLC’s failure to hire her after she applied for the part-time position of Team Member/Cashier. Beginning April 18, 2012 until August 27, 2012, Emmons lost approximately 25 hours per week at \$7.35 per hour. Beginning the week of August 27, 2012, Emmons had returned to her regular part-time job as a School Health Nurse and indicated that she would have been available to work less hours for Paksh LLC. From August 27, 2012 until April 2013, it is reasonable to award Emmons an amount equal to 15 hours per week at \$7.35 per hour because Emmons testified that, in effect, she would have worked for Paksh LLC approximately 15 hours per week. The back pay award should cease as of April 2013 because Emmons testified that beginning in September 2012, she stopped seeking additional part-time work. Accordingly, any lost wages in this case are calculated as follows:

25 hours per week @ \$7.35 per hour @ 19 weeks (April 18, 2012 – August 27, 2012) = \$3,491.25

15 hours per week @ \$7.35 per hour @ 30 weeks (September 1, 2012 – April 15, 2013) = \$3,307.50

Emmons testified that she also incurred reasonable out-of-pocket expenses in the following amounts:

\$.50 for parking expenses on January 24, 2014

\$2.26 travel expenses on January 24, 2014

\$ 38.25 - wages lost to attend Public Hearing on January 24, 2014

Emmons is entitled to the reasonable out-of-pocket expenses she incurred.

Additionally, Emmons is entitled to 6% interest on the award from April 18, 2012 until payment is made. *Goetz v. Norristown Area School Dist.*, 328 A.2d 579 (Pa. Cmwlth. Ct. 1975).

An appropriate order follows.

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

SHARON L. EMMONS,
Complainant

v,

**PAKSH LLC, d/b/a DUNKIN DONUTS/
BASKIN ROBBINS,**
Respondent

:
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: **PHRC CASE NO. 201201502**
: **EEOC CHARGE NO. 17F201360145**
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RECOMMENDATION OF PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, I find that Sharon L. Emmons suffered damages. It is, therefore, my recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted. If so, approved and adopted, I further recommend issuance of the attached Final Order

PENNSYLVANIA HUMAN RELATIONS COMMISSION

Feb 7, 2014
Date

By: 

Carl H. Summerson
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

SHARON L. EMMONS,
Complainant

v,

PAKSH LLC, d/b/a DUNKIN DONUTS/
BASKIN ROBBINS,
Respondent

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: PHRC CASE NO. 201201502
: EEOC CHARGE NO. 17F201360145
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FINAL ORDER

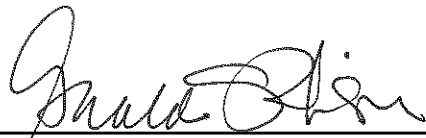
AND NOW, this 24th day of February, 2014 after a review of the entire record in this matter, the Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Findings of Fact, Conclusions of law, and Opinion of the Permanent Hearing 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 Paksh LLC shall cease and desist from failing to hire applicants because of their age.
2. That Paksh LLC shall pay Emmons the lump sum of \$6,839.76 which amount represents both lost wages between April 18, 2012 and April 15, 2013, and various expenses incurred by Emmons.

3. That Paksh LLC shall pay additional interest of 6% per annum on the award in paragraph 2 above, calculated from April 18, 2012 until payment is made.
4. That, within thirty days of the effective date of this Order, Paksh LLC shall report to the PHRC on the manner of his compliance with the terms of this Order by letter addressed to Kelly M. Matos, Assistant Chief Counsel, Pennsylvania Human Relations Commission, 333 Market Street, 8th Floor, Harrisburg, PA 17126-0333.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: 

Gerald S. Robinson, Esquire
Chairperson

Attest:



Rev. Dr. James Earl Garmon, Sr.
Secretary