

COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

ASMA ZARASH,
Complainant

v,

PENN HEALTH AMBULANCE,
Respondent

:
:
:
:
:
:
:
:
:
:

PHRC CASE NO. 201104619

FINDINGS OF FACT

CONCLUSIONS OF LAW

OPINION

RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

FINDINGS OF FACT*

1. On or about March 19, 2012, Complainant, Asma Zarash, (hereinafter "Zarash"), filed a PHRC Complaint against Penn Health Ambulance, (hereinafter "Penn Health"), in which Zarash alleged that on October 20, 2011, Zarash was sexually harassed by her supervisor and subsequently terminated a short while later. In her complaint Zarash also alleged that approximately a week after her termination she was rehired, however, since the rehire, Zarash alleged that she suffered from retaliatory harassment which included: (1) being assigned to lift heavier patients; (2) being denied assistance when requested; (3) made to do "charts on-line" while others were not made to perform this duty and not being provided with training to perform this duty; (4) being issued written warnings for not completing EMS charts; (5) being made to perform transports when Zarash was not scheduled; (6) being made to apologize to patients for problems not Zarash's fault; and (7) being asked if the Respondent could rehire the individual who had harassed Zarash. (O.D. 1)
 2. On September 10, 2012, PHRC Motions Examiner Carl H. Summerson issued a Rule to Show Cause which, in effect, notified Penn Health that it had until October 10, 2012 to file an answer to Zarash's complaint. (O.D. 2)
 3. Under cover letter dated August 10, 2012, the PHRC's Philadelphia regional office filed a Petition for a Rule to Show Cause. (O.D. 1)
- 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
 - C.E. Complainant's Exhibit

4. On October 5, 2012, a Respondent representative signed a PS Form 3811, indicating receipt of the certified mailing of the Rule to Show Cause.
5. Penn Health neither filed an answer to Zarash's complaint nor responded to the September 10, 2012, Rule to Show Cause. (O.D. 4)
6. On October 11, 2012, Motions Examiner Summerson recommended to the full PHRC that Penn Health be found liable for Zarash's allegations. (O.D. 4)
7. By Order dated October 23, 2012, the PHRC found Penn Health liable for all of Zarash's allegations. (O.D. 4)
8. A public hearing on the issue of what, if any, damages are appropriate was held on August 13, 2013, in Bristol, Pennsylvania.
9. Zarash worked for Penn Health as an Emergency Medical Technician beginning on September 8, 2011. (O.D. 1)
10. Zarash earned \$500.00 per week when employed by Penn Health. (N.T. 8-9; C.E. 1)
11. On October 20, 2011, Zarash was sexually harassed by her supervisor and when Zarash complained to Samad Chagtai, the owner of Penn Health, Zarash was told never to call him or text him again. (N.T. 22; O.D. 1)
12. Subsequent to Zarash's expression of opposition to sexual harassment, she was terminated. (N.T. 11; O.D. 1)
13. After approximately one week, Zarash was returned to work and the individual who had harassed Zarash was terminated. (N.T. 11)
14. Upon returning to work, Zarash suffered retaliation as alleged in her complaint. (O.D. 1)

15. Although not specifically alleged in her complaint, Zarash was continually assigned to work with a defective stretcher. (N.T. 11)
16. For approximately 3 months, Zarash complained about being required to use a defective stretcher. (N.T. 14)
17. Despite her complaints, Penn Health insisted that Zarash use the defective stretcher. (N.T. 11)
18. On March 22, 2012, Zarash injured muscles in her back and her groin while using the defective stretcher. (N.T. 15, 18)
19. Zarash's manager sent Zarash to see a Chiropractor where Zarash made four visits for treatments. (N.T. 17)
20. On March 23, 2012, Zarash also visited Jeanes Hospital where she was instructed to take pain medications and apply ice packs for the injuries to her back and groin. (N.T. 18)
21. Subsequent to March 22, 2012, Zarash did not work for Penn Health again. (N.T. 35)
22. After Zarash filed her March 19, 2012 PHRC complaint, negotiations between Zarash and Penn Health resulted in Penn Health paying Zarash for the week she was off following her earlier termination in October 2011 and for continuing to pay Zarash's salary from March 22, 2012 through July 29, 2012. (N.T. 9, 14-15, 26, 35, 37; C.E. 1)
23. Beginning July 29, 2012, Penn Health ceased paying Zarash's salary. (N.T. 8, 26, 35)
24. Penn Health also paid for Zarash's four visits to a chiropractor following her injury. (N.T. 17)

25. Beginning in April 2012, Zarash began to seek alternate employment. (N.T. 26-27; C.E. 7)
26. By letter dated November 30, 2012, Zarash was notified that she had been hired by SPIN in the position of Direct Support Professional at Claridge. (C.E. 8)
27. Zarish began her employment with SPIN on December 16, 2012 where she received wages equal to the wages she had received while an employee of Penn Health. (N.T. 27; C.E. 8)
28. Zarash also incurred the following expenses:
- a. A \$39.10 fee to file a private criminal complaint against her harasser.
 - b. A \$450.00 bill for the March 23, 2012 treatment at Jeanes Hospital.
 - c. The purchase of pain medications:
 - (1) Aleve – 17 Months @\$70.00 per month - \$1,190.00
 - (2) Flexeril as prescribed at the hospital - \$15.00
 - d. The cost of forwarding documents during the period of negotiation - \$42.35.
 - e. Certifiable Travel Expenses:
 - (1) Two trips to Zarash's family doctor – approximately 8 miles round trip – 16 miles @ \$56.5 per mile = \$9.04
 - (2) Four round trip visits to Chiropractor – approximately 8 miles round trip – 32 miles @ \$56.5 per mile = \$18.08
 - (3) Round trip to the emergency room – approximately 8 miles round trip – 8 miles @ 56.5 per mile = \$4.52

(4) Two trips to the PHRC approximately 90 minute drive round trip
– 60 miles @ \$56.5 per mile = \$33.90

(5) Travel to the Public Hearing approximately 90 minute round trip
– 30 miles @ \$56.5 per mile = \$16.95

(N.T. 17, 18, 20-25, 29-30; C.E. 4, 5, 10, 11)

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, Penn Health's failure to answer or respond to a Rule to Show Cause resulted in the entry of a judgment for Zarash 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 Asma Zarash, (hereinafter "Zarash"), against Penn Health Ambulance, (hereinafter "Penn Health"). Zarash's complaint alleged that she was sexually harassed and then subjected to harassment in retaliation for Zarash's expression of opposition to the sexual harassment. Zarash's complaint states claims under Sections 5(a) and 5(d) of the Pennsylvania Human Relations Act ("PHRA").

By correspondence dated August 10, 2012, the Pennsylvania Human Relations Commission ("PHRC") Philadelphia regional office petitioned Motions Examiner Summerson for a Rule to Show Cause, indicating that Penn Health had not answered Zarash's complaint. The petition declared that Penn Health had been served with Zarash's complaint on April 26, 2012. The petition further indicated that by correspondence dated July 20, 2010 and July 31, 2012 efforts had been made to obtain an answer from Penn Health.

On September 10, 2012, a Rule to Show Cause was issued directing Penn Health to respond on or before October 10, 2012. After no response was filed, on October 11, 2012, Motions Examiner Summerson recommended a finding of liability to the full PHRC. On October 23, 2012, the full PHRC determined that Zarash had been sexually harassed and that Penn Health harassed Zarash in retaliation for Zarash's expression of opposition to sexual harassment.

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 August 13, 2013, in Bristol, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The state's interest in the complaint was overseen by Ryan Allen Hancock, PHRC Assistant Chief Counsel. Zarash was represented by Gloria M. Gilman, Esquire. Penn Health failed to attend the public hearing. Attorney Gilman filed a post-hearing brief on November 11, 2013.

Since liability had been found after Penn Health failed to file an answer, the only question at the public hearing was what damages Zarash 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 Zarash 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, Zarash’s claim initially involves a loss of wages following her termination in October 2011. However, it became clear that, approximately a week after this initial termination, Penn Health reinstated Zarash and later paid her for this short period of lost wages. Subsequently, following Zarash’s return to work in October, 2011, Zarash suffered an injury that caused her to cease work for a period of time, after which, Penn Health, in effect, refused to put Zarash back on the scheduled. This period of lost wages began on March 23, 2012 and ceased on December 16, 2012. On December 16, 2012, Zarash began alternate employment that paid her wages equal to the wages she earned as an employee with Penn Health. In this case, the record is clear that between March 23, 2012 and July 29, 2012, Penn Health continued to pay Zarash’s salary. Accordingly, any lost wages in this case are calculated for the period from July 30, 2012 until December 16, 2012. These calculations are as follows:

\$500.00 per week @ 20 weeks = \$10,000

Zarash testified that she also incurred medical expenses in the following amounts:

\$450.00 for medical care at Jeanes Hospital on March 23, 2012

Pain medication expenses of \$1,205.00

Zarash is entitled to reimbursement for the medical expenses she incurred.

Next, we turn to Zarash's claim for other expenses she incurred. Zarash testified that she incurred the following additional expenses:

\$39.10 to file a private criminal complaint.

\$42.35 to forward documents during a period of negotiation.

\$82.49 - A total of approximately 146 miles @\$56.5 per mile


\$163.94 Total expenses incurred.

Additionally, Zarash is entitled to 6% interest on the award from July 30, 2012 until payment is made.


An appropriate order follows.

3. That Penn Health shall pay additional interest of 6% per annum on the award in paragraph 2 above, calculated from January 30, 2012 until payment is made.
4. That, within thirty days of the effective date of this Order, Penn Health shall report to the PHRC on the manner of his compliance with the terms of this Order by letter addressed to Ryan Allen Hancock, Assistant Chief Counsel, Pennsylvania Human Relations Commission, 110 North 8th Street, Suite 501, Philadelphia, PA 19107.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: 
Gerald S. Robinson, Esquire
Chairperson

Attest:


Rev. Dr. James Earl Garmon, Sr.
Secretary