

SENT

PROTHONOTARY

January 27, 2023

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

VERNEAL GRAY, :
 :
 :
 v. : **PHRC CASE NO. 201902964**
 : **EEOC CASE NO. 17F202060370**
 :
 JOE DARRAH, INC. d/b/a :
 J & K SALVAGE, :
 :

VERNEAL GRAY, :
 :
 : **PHRC CASE NO. 201903148**
 v. :
 :
 JOE DARRAH, :

VERNEAL GRAY, :
 :
 : **PHRC CASE NO. 202000391**
 v. :
 :
 CODY DARRAH, :

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

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

VERNEAL GRAY, :
 :
 : **PHRC CASE NO. 201902964**
 v. : **EEOC CASE NO. 17F202060370**
 :
JOE DARRAH, INC. d/b/a :
J & K SALVAGE, :
 :

VERNEAL GRAY, :
 :
 : **PHRC CASE NO. 201903148**
 v. :
 :
JOE DARRAH, :

VERNEAL GRAY, :
 :
 : **PHRC CASE NO. 202000391**
 v. :
 :
CODY DARRAH, :

FINDINGS OF FACT¹

1. The Complainant is Verneal Gray (Gray).
2. The Respondents are Joe Darrah Inc., d/b/a J&K Salvage, Joe Darrah, owner of J&K Salvage and Cody Darrah, owner of J&K Salvage, (collectively Respondents).
3. Gray was employed by Respondents from August 2019 through approximately October 18, 2019. Tr.

¹ Abbreviations
O.D.-Official Document
Tr.-Hearing Transcript

12-3.

4. On February 7, 2020, Gray filed three Complaints with the Pennsylvania Human Relations Commission (PHRC) at PHRC Case Nos. 201902964, 201903148 and 202000391. O.D.
5. Gray dual filed PHRC Case No. 201902964 with the Equal Employment Opportunity Commission (EEOC) at EEOC Charge No. 17F202060370. O.D.
6. All three Complaints contained the same allegations.
7. Throughout Gray's employment with the Respondents, Respondents subjected him to a hostile work environment because of his race, African American, and in retaliation for Gray expressing opposition to the hostile work environment. O.D.
8. On October 1, 2019, Respondent, Cody Darrah, hit Gray in the face with a slapjack and Gray fell to the ground unconscious. *Id.*
9. Gray contacted the police on October 4, 2019, to report the assault. *Id.*
10. On October 5, 2019, Gray went to UPMC Memorial Hospital emergency room for headaches and continued pain on the right side of his head and face where he had been hit with the slapjack. *Id.*
11. On or about October 18, 2019, Gray was terminated because of his race and in retaliation for Gray expressing opposition to the hostile work environment. *Id.*
12. Respondents did not pay Gray for his last two weeks of work. O.D.
13. The Complaints were served on Respondents on April 12, 2020, and no Answers were filed. Tr.8.
14. On January 26, 2021, the PHRC ordered a Finding of Probable Cause and Judgment for Gray on the issue of liability in all three cases based on Respondents' failure to file Answers to the Complaints. O.D.
15. The Commission found from August 2019 until October 4, 2019, Respondents subjected Gray to a hostile work environment because of his race and in retaliation for Gray expressing opposition to the

hostile work environment. O.D.

16. The Commission also found that on October 4, 2019, Gray was terminated because of his race and in retaliation for Gray expressing opposition to the hostile work environment. *Id.*
17. Finally, the Commission determined that Respondents failed to pay Gray for his last two weeks of work also because of his race and retaliation. *Id.*
18. A Public Hearing was held on August 30, 2022, before Hearing Examiner Shanon Levin. Tr. 1.
19. Although Respondents received notice of the Public Hearing, they were not present at the Public Hearing. Tr.7-8.
20. Gray earned \$10.00 an hour and usually worked approximately forty (40) hours a week while working at J & K Salvage. Tr. 13-14.
21. On or about October 11, 2019, Gray was terminated by Respondent Joe Darrah. Tr. 56, 58.
22. Gray did not get paid for his last two weeks of work. Tr. 16
23. Gray is owed pay for thirty-eight (38) hours and thirty-five (35) hours respectively, totaling seventy-three (73) hours. Tr. 16 -7.
24. Gray started working at the York County Housing Authority through a temporary service starting on November 25, 2019, for \$11.00 an hour. Tr. 21, 63.
25. Gray was unemployed for six (6) weeks. Tr. 39.
26. Gray paid an attorney \$600.00 to assist in his PHRC Complaints. Tr.72.
27. Gray had to take off work and meet with his lawyer on two occasions. Tr. 33,72.
28. Gray took off work for the Public Hearing on August 30, 2022, eight (8) hours at a pay rate of \$13.00 per hour. Tr. 33-4.

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

VERNEAL GRAY,	:	
	:	
	:	PHRC CASE NO. 201902964
v.	:	EEOC CASE NO. 17F202060370
	:	
JOE DARRAH, INC. d/b/a	:	
J & K SALVAGE,	:	
	:	

VERNEAL GRAY,	:	
	:	
	:	PHRC CASE NO. 201903148
v.	:	
	:	
JOE DARRAH,	:	

VERNEAL GRAY,	:	
	:	
	:	PHRC CASE NO. 202000391
v.	:	
	:	
CODY DARRAH,	:	

CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission (PHRC) has jurisdiction over Gray, Respondents, and the subject matter of the Complaint under the Pennsylvania Human Relations Act (PHRA).
2. The parties and the PHRC have fully complied with the procedural prerequisites to convene a Public Hearing.
3. The PHRA requires the Commission to construe its provisions liberally.

4. The PHRC has broad discretion in fashioning a remedy and their actions are entitled to deference by a reviewing Court.
5. In an employment discrimination case, the PHRC may award affirmative action, including, but not limited to, reimbursement of certifiable travel expenses in matters involving the complaint, compensation for loss of work in matters involving the complaint, hiring, and reinstatement.
6. The only limitation upon the Commission's authority is that its award may not seek to achieve ends other than the stated purposes of the PHRA.
7. This purpose is not only to restore the injured party to his pre-injury status and make him whole but also to discourage future discrimination.
8. The question of mitigation of damages lies within the sound discretion of the Commission.
9. It is a respondent's burden to establish that the complainant failed to mitigate his damages to limit a complainant's entitlement to an award.
10. Gray has established he is entitled to back pay.
11. Gray's damages in lost income representing back pay are \$3,130.00.
12. Under Pennsylvania law, punitive damages are awardable for conduct which is:
outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant.
13. Courts have reasoned that punitive damages are an appropriate remedy under the PHRA because although Title VII does not allow for punitive damages, the PHRA authorizes

relief beyond that provided by the federal law, including ‘any other legal or equitable relief as the court deems appropriate.

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

VERNEAL GRAY,	:	
	:	
	:	PHRC CASE NO. 201902964
v.	:	EEOC CASE NO. 17F202060370
	:	
JOE DARRAH, INC. d/b/a	:	
J & K SALVAGE,	:	
	:	

VERNEAL GRAY,	:	
	:	
	:	PHRC CASE NO. 201903148
v.	:	
	:	
JOE DARRAH,	:	

VERNEAL GRAY,	:	
	:	
	:	PHRC CASE NO. 202000391
v.	:	
	:	
CODY DARRAH,	:	

OPINION

These consolidated cases arise out of three Complaints filed by Verneal Gray, (Gray), on February 7, 2020, against his former employer, Joe Darrah Inc. d/b/a J&K Salvage, Joe Darrah, owner of Joe Darrah Inc. and Cody Darrah, manager of Joe Darrah Inc, (collectively Respondents). Gray was employed by Respondents from August 2019 through approximately October 18, 2019.²

All three Complaints contained the same allegations. Throughout Gray's employment with the

²In the liability Orders, the PHRC found that Gray was terminated on October 4, 2019. However, the hearing testimony established that Gray was terminated the week of October 18, 2019.

Respondents, Respondents subjected him to a hostile work environment because of his race, African American, and in retaliation for Gray expressing opposition to the hostile work environment. O.D. On October 1, 2019, Respondent, Cody Darrah, hit Gray in the face with a slapjack and Gray fell to the ground unconscious. *Id.* Gray contacted the police on October 4, 2019, to report the assault. October 5, 2019, Gray went to UPMC Memorial Hospital emergency room for headaches and continued pain on the right side of his head and face where he had been hit with the slapjack.

On or about October 11, 2019, Gray was terminated because of his race and in retaliation for Gray expressing opposition to the hostile work environment. *Id.* Respondents failed to pay Gray for his last two weeks of work.

On January 26, 2021, because Respondents failed to answer Gray's Complaints, the PHRC found probable cause and entered judgment for Gray on the issue of liability in all three cases. O.D. After the finding of liability in these cases, conciliation efforts were unsuccessful. Subsequently, these cases were approved for a public hearing on the issue of appropriate damages.

The public hearing on the issue of appropriate damages was held on August 30, 2022, before Permanent Hearing Examiner Shanon S. Levin. Tr 1. Stephanie Chapman, Esquire, appeared on behalf of the Commonwealth's interest in the Complaints. No one appeared on behalf of the Respondents. Since liability attached because Respondents failed to file Answers, the only question at the public hearing was what damages Gray could establish. Gray filed a post-hearing brief in October 2022.

The Pennsylvania Human Relations Commission (PHRC) has broad discretion in fashioning a remedy and its actions are entitled to deference by a reviewing Court. *Murphy v. Pa. Human Relations Comm'n*, 486 A.2d 388 (Pa. 1985). The PHRC may award actual damages including lost wages and reinstatement. 43 P.S. § 959(f)(1). The only limitation upon the Commission's authority is that its award may not seek to achieve ends other than the stated purposes of the Act. *Consol. Rail Corp. v. Pa. Human*

Relations Comm'n, 582 A.2d 702, 708 (Pa. Commw. Ct. 1990). This purpose is not only to restore the injured party to her pre-injury status and make her whole but also to discourage future discrimination. *Williamsburg Cmty. Sch. Dist. v. Pa. Human Relations Comm'n*, 512 A.2d 1339 (Pa. Commw. Ct. 1986).

In this case, the PHRC found Respondents liable for discriminatory discharge, retaliation, and a hostile work environment. Gray testified that he earned \$10.00 per hour and worked approximately forty (40) hours per week totaling \$400.00 per week. Tr. 13-4. Respondents failed to provide any evidence to establish a contradictory amount. On or about October 11, 2019, Gray was terminated by Respondents. Gray testified that he was not paid for his last two (2) week of employment by Respondents. Tr. 17. Gray testified that he worked 73 hours his last two weeks of work. Tr. 18. Gray is owed \$730.00 for his last two (2) weeks of work. He obtained employment earning the same amount on November 25, 2019. Tr. 21. Gray is owed \$3,130.00 in back pay.

It is the Respondents' burden to establish that the Complainant failed to mitigate his damages to limit Complainant's entitlement to an award. *Raya & Haig Hair Salon v. Pa. Human Rels. Comm'n*, 915 A.2d 728, 735 (Pa. Commw. Ct. 2007). In the instant case, Respondents failed to introduce any evidence to establish Gray failed to mitigate his damages. After six (6) weeks Gray secured employment through a temporary agency earning the same amount that he made with Respondents. Testimony by Gray and his wife clearly demonstrate that he continually secured employment both through temporary employment and self-employment and worked making the same or more than he earned with Respondents.

Regarding other damages, damages for emotional distress are available to compensate victims of violations of the PHRA. *Jones v. Pennsylvania State Police*, WL 2214812 (E.D. Pa. 2018). Courts have held that intangible injuries such as sleeplessness, headaches, and feelings of humiliation and embarrassment are sufficient to support an award of compensatory damages." *Id.* (internal quotations omitted). In addition,

Under Pennsylvania law, punitive damages are awardable for conduct which is: outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the trier of fact can properly consider the character of the defendant's act, the nature and extent of the harm to the plaintiff that the defendant caused or intended to cause and the wealth of the defendant. *Gallo v. John Powell Chevrolet, Inc.*, 779 F.Supp. 804 (M.D. Pa. 1991).

While the Pennsylvania Supreme Court has never decided whether punitive damages are available under the PHRA, the Eastern District of PA has reasoned that punitive damages are an appropriate remedy under the PHRA because although Title VII does not allow for punitive damages, the PHRA authorizes relief beyond that provided by the federal law, including ‘any other legal or equitable relief as the court deems appropriate[.]’ *Kim v. City of Philadelphia*, 1997 WL 277357, at 2 (E.D. Pa. 1997)(quoting PA ST 43 P.S. § 962). Whether punitive damages are recoverable under the PHRA requires this Court “give proper regard to Pennsylvania’s intermediate courts.” *Id.* (citing *City of Erie v. Guaranty Nat. Ins. Co.*, 109 F.3d 156, 159–60 (3d Cir. 1997)). In *Kim*, The Eastern District of Pennsylvania, predicted the Supreme Court of Pennsylvania would “adopt the reasoning of the persuasive line of federal cases which have permitted punitive damages under the PHRA.” *Kim* at 2

In the instant case, the Commission finds that Respondent Cody Darrah’s act of hitting Gray in the head with a slapjack was outrageous and an example of reckless indifference regarding the rights of Gray. Regarding the results of being hit in the head with a slapjack, Gray testified,

“On a lot of days I was working, I had to go home. I don't know if this helps the situation. But I had to go home because where they hit me at, it was still hurting. It hurt like a year and a half, two years. You know, like I had to go home because I had this headache because he hit me right here, slapjack.” Tr. 36.

Gray further testified, “Basically I get, you know, like I can't get something right or get frustrated some, and then the headache comes back like a migraine headache. And you can't take nothing for it. Medicine won't work.” Tr. 36-7. Gray also testified that

“It's just messed my whole thinking up. Like I used to be smarter, you know. And the reading and figuring out stuff, I can't do it like I used to with a pen and pencil like I used to. I can just work hard. But all that other stuff I could do, I can't do it.” *Id.*

Based on this testimony, the Commission finds that Gray is entitled to additional damages in the amount of \$ 25,000.00. In determining the amount of additional damages, the Commission reviewed verdicts and settlements from constitutional and civil rights cases in the Commonwealth from 2017-2022.

Respondents shall also pay Gray \$730.00 in wages owed from working weeks ending October 4 and October 11, 2019. Respondent shall pay Gray \$3,130 for the six weeks he was unemployed. Respondents shall reimburse Gray out of pocket expenses of \$600.00 for the attorney to file the PHRC Complaint, \$160.00 in lost pay to file the Complaint and \$104.00 for lost pay to attend the Public Hearing.

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

VERNEAL GRAY,	:	
	:	PHRC CASE NO. 201902964
v.	:	EEOC CASE NO. 17F202060370
	:	
JOE DARRAH, INC. d/b/a	:	
J & K SALVAGE,	:	

VERNEAL GRAY,	:	
	:	PHRC CASE NO. 201903148
v.	:	
	:	
JOE DARRAH,	:	

VERNEAL GRAY,	:	
	:	PHRC CASE NO. 202000391
v.	:	
	:	
CODY DARRAH,	:	

RECOMMENDATION OF THE PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, the Permanent Hearing Examiner finds that Gray has proven he was discriminatorily terminated and was retaliated against because of his race in violation of the PHRA. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Findings of Fact, Conclusions of Law, and Opinion be approved and adopted. If so, approved and adopted, the Permanent Hearing Examiner further recommends issuance of the attached Final Order.

Pennsylvania Human Relations Commission

Darlene Hemerka

Darlene Hemerka Hearing Examiner

Date 01/03/2023

**COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION**

VERNEAL GRAY, :
 :
 v. : **PHRC CASE NO. 201902964**
 : **EEOC CASE NO. 17F202060370**
 :
 :
 JOE DARRAH, INC. d/b/a :
 J & K SALVAGE, :

VERNEAL GRAY, :
 :
 v. : **PHRC CASE NO. 201903148**
 :
 :
 :
 JOE DARRAH, :

VERNEAL GRAY, :
 :
 v. : **PHRC CASE NO. 202000391**
 :
 :
 :
 CODY DARRAH, :

FINAL ORDER


AND NOW, this 23rd day of January, 2023, upon consideration of the entire record in this matter, the Commission adopts the foregoing Proposed Findings of Fact and Conclusions of Law pursuant to Section 9(f) of the Pennsylvania Human Relations Act, and hereby

ORDERS

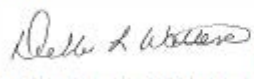
1. That Respondents cease and desist from discriminating against employees because of their race.
2. That Respondents shall cease and desist from retaliating against employees because of their race.
3. That each Respondent is jointly and severally liable for Gray's damages and that within forty-five (45) days of the effective date of this Order, Respondents shall pay Gray the lump sum of \$29,620.00 in a check made payable to Verneal Gray

delivered in care of Stephanie M. Chapman, Esq., at the Commission's Harrisburg
Regional Office.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

By: 
_____ **M. Joel Bolstein**

ATTEST:

By:  O/B/O Commissioner Mayur Patel
_____ **Mayur Patel, Secretary**