COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

Rachel Lanning,	:	
Complainant	:	
	:	
v.	:	**PHRC Case No. 201902180**
	:	**EEOC Case No. 17F202060103**
Electric City Aquarium &	:	
Reptile Den, LLC,	:	
Respondents	:	

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STATEMENT OF THE CASE

TAMARA SHEHADEH-COPE, HEARING EXAMINER. A public hearing was held in this matter in Lackawanna County, Pennsylvania, on April 3, 2024. Complainant Rachel Lanning (hereinafter Lanning or Complainant) filed a Complaint in PHRC Case No. 201902180 on or about November 7, 2019, against Electric City Aquarium and Reptile Den, LLC (hereinafter Electric City or Respondent). Complainant's Complaint alleged that Respondent discriminated against her on the basis of her sex, and retaliated against her when it terminated her employment after she reported alleged harassment by her colleague. Respondent filed a timely Answer denying the allegations set forth in the Complaint. Complainant was represented by Joshua J. Cochran Esquire. Respondent was represented by Gerald J. Hanchulak, Esquire. Stephanie Chapman, Esquire represented the Commonwealth's interest in the case.

FINDINGS OF FACT[1]

1. The Complainant herein is Rachel Lanning (hereinafter Lanning or Complainant).
2. The Respondent herein is Electric City Aquarium and Reptile Den, LLC (hereinafter Electric City or Respondent).
3. Electric City has been in operation since September 20, 2018. Tr. 128.
4. Clifford Grosvenor (hereinafter Grosvenor) is the owner of Electric City. Id.
5. Lanning was hired to work as a reptile curator for Electric City in 2018. Tr. 16.
6. Lanning handled day-to-day management of scheduling, staff, shows, and medical responsibilities. Tr. 16-17.
7. Lanning never received a job evaluation while she worked for Electric City. Tr. 17.
8. There was no discussion about unsatisfactory work performance by Lanning while she worked at Electric City. Id.
9. Prior to her employment with Electric City, Lanning was employed as senior keeper at Clyde Peeling's Reptiland (hereinafter Reptiland). Tr. 19.
10. Lanning knew Justin Elchynski (hereinafter Elchynski) from their work together at Reptiland, where Elchynski worked as reptile keeper. Id.
11. At the time of Lanning's interview, Grosvenor was hiring for one open reptile curator position at Electric City. Tr. 129.
12. Lanning asked Grosvenor to hire Justin Elchynski for the same position at her interview. Tr. 61, 129.
13. In 2018, Justin Elchynski was also hired as a reptile curator at Electric City. Tr. 180.

[1] Explanation of Abbreviations
Tr.= Hearing Transcript
C.E.= Complainant Exhibit
R.E.= Respondent Exhibit

14. Elchysnki oversaw the construction of the snake room exhibit as part of his duties at Electric City. Tr. 69.
15. On October 4, 2019, Lanning brought Elchynski's behavior to the attention of Director Melissa Rosevear (hereinafter Rosevear), after Rosevear signed a confidentiality agreement at Lanning's request. Tr. 23-25; C.E. 3.
16. On October 5, 2019, Lanning notified Rosevear that she would proceed with filing a formal harassment complaint against Elchynski. Tr. 27.
17. Rosevear informed Lanning that a meeting with Lanning, Rosevear, and Elchynski would be taking place. Tr. 29.
18. In preparation for the meeting, Lanning created a handwritten document listing her complaints against Elchynski in a bulleted format. Tr. 29. The meeting never took place. Tr. 31.
19. On October 8, 2019, Lanning provided Rosevear with the handwritten notes that she had prepared for the meeting. Tr. 31, 71; C.E.5.
20. Rosevear then drafted a formal harassment complaint based off the notes that she had received from Lanning and presented them to Lanning for her review and signature. Tr. 31-33; C.E. 4; C.E.5.
21. After the complaint was signed, Rosevear informed Lanning that another meeting would take place with Elchynski relating to the allegations set forth in the complaint. Tr. 32; C.E. 5.
22. Later that day, Lanning returned to Rosevear's office in an anxious and emotional state and experienced a panic attack. Tr. 33; C.E.5.
23. Rosevear suggested that Lanning return home for the remainder of the day. Tr. 34.

24. Lanning texted Rosevear to inform her that she was home that afternoon. C.E.5; C.E.6.
25. Later that evening, Rosevear called Lanning to inform her that she would receive a week of paid leave to decompress and to allow time for an investigation into the allegations to take place. Tr. 36; C.E.5.
26. Lanning texted Rosevear that evening at 8:44 p.m. to ask whether her job was at risk. She received no response to that message. Tr. 36-37; C.E.5; C.E.6.
27. The following day, October 9, 2019, Rosevear responded to a text from Lanning and stated that the complaint did not put Lanning's job at risk and reiterated that the time off was given for her to decompress and to conduct an investigation. Rosevear informed Lanning that she would be contacted at the end of the week. Tr. 36; C.E.6.
28. On October 10, 2019, Lanning e-mailed Rosevear a detailed statement expanding on the handwritten bullet points that she had provided her. Tr. 71; C.E.3; R.E.19.
29. On Thursday, October 10, 2019, Lanning texted Rosevear to offer to go in and work on Friday and Saturday so that Elchynski could have the weekend off. Rosevear replied that the offer was appreciated but that they "had it covered". Tr.38; C.E.6.
30. On Friday, October 11, 2019, Rosevear called Lanning and informed her that due to "business being considerably slow recently", the decision was made to terminate her employment effective immediately. Tr. 38; C.E.7.
31. A letter dated October 15, 2019, confirming the decision by Electric City was mailed to Lanning. Tr. 40; C.E.8.
32. Lanning never met with Rosevear or Elchynski together to discuss the complaint she filed. Tr. 37.

33. Lanning never received any updates on the status or outcome of the investigation into her complaint. Tr. 38.
34. Grosvenor was aware of the complaint filed by Lanning against Elchynski. Tr. 138, 148, 149. R.E.19.
35. Grosvenor investigated Lanning's claims and spoke with six individuals within and outside of her department regarding the allegations. Id.
36. Grosvenor made the decision to terminate Lanning's employment. Tr. 150.
37. Lanning earned $19.00 per hour ($39,520.00 per year) while working at Electric City. Tr. 49.
38. Lanning's rent when she lived in Scranton was $875.00 per month. Tr. 45, C.E.9.
39. Lanning moved to Spring City, PA, in November of 2019 to be closer to her then-spouse's job. Tr. 45.
40. Lanning continuously searched for employment after her termination. Tr. 48; C.E. 13.
41. In August 2020, Lanning began working full-time for VCA French Creek Animal Hospital (hereinafter French Creek). Tr.49.
42. Lanning earned approximately $13.00 per hour when she started working at French Creek in 2020.
43. In December 2023, Lanning received a raise to approximately $19.00 per hour at French Creek. Tr. 54.
44. In 2019, Lanning earned approximately $32,742.87. Tr. 50; C.E.14.
45. In 2020, Lanning earned approximately $8,606.28. C.E.15,
46. In 2021, Lanning earned approximately $31,435.49. Tr. 52; C.E. 16.
47. In 2022, Lanning earned approximately $30,641.94. Tr. 53; C.E. 17.

48. In 2023, Lanning earned approximately $35,500.28. Tr. 54, C.E.18.

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 and the Commission have fully complied with the procedural prerequisites to a public hearing in this case.
3. Complainant is an individual within the meaning of the Pennsylvania Human Relations Act (hereinafter PHRA).
4. The Respondent is an employer within the meaning of the PHRA.
5. Section 5(a) of the PHRA makes it an unlawful discriminatory practice " for any employer because of… sex… to refuse to hire or employ or contract with, or to bar or to discharge from employment such individual or independent contractor, or to otherwise discriminate against such individual or independent contractor with respect to compensation, hire, tenure, terms, conditions or privileges of employment or contract, if the individual or independent contractor is best able and most competent to perform the services required."
6. To establish a prima facie case of discrimination under section 5(a), Lanning must show that:
    a. She is a member of a protected class, sex, female;
    b. Lanning was performing at a satisfactory level;
    c. Lanning was discharged;
    d. Other factors indicate that she was treated differently because of her protected class, sex, female.

7. Lanning has established a prima facie case of discrimination in violation of Section 5(a) of the PHRA.
8. To successfully defend a violation of PHRA Section 5(a), Respondent must show a legitimate, non-discriminatory reason for the discharge.
9. Respondent has shown a legitimate, non-discriminatory reason for the discharge.
10. To succeed on a claim of discrimination after a reason has been set forth by Respondent, Lanning must show that the Respondent's stated reasons are a pretext to hide discrimination.
11. Lanning has failed to show that Respondent's stated reasons are a pretext to hide discrimination and therefore fails to establish a violation of Section 5(a) of the PHRA.
12. Section 5(d) of the Pennsylvania Human Relations Act makes it an unlawful discriminatory practice for "any… person… to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this Act…".
13. To establish a prima facie case of retaliation under section 5(d), Lanning must show that:
    a. She engaged in protected activity under the law;
    b. Electric City was aware that Lanning complained of harassment;
    c. Subsequent to reporting the harassment, Lanning was subject to an adverse action; and
    d. There is a causal connection between the Lanning's protected activity and the adverse action.
14. Lanning has established that Electric City unlawfully retaliated against her in violation of Section 5(d) of the PHRA.
15. Respondent has shown a legitimate, non-discriminatory reason for the adverse action.

16. Lanning has satisfied her burden in showing that Respondent's stated reasons were pretext for retaliation.
17. The PHRC has broad discretion in fashioning a remedy.
18. In an employment discrimination case, the PHRC may award affirmative action, including, but not limited to, reimbursement of certifiable travel expenses, compensation for loss of work, hiring, reinstatement, and verifiable out-of-pocket expenses.
19. 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.
20. This purpose is not only to restore the injured party to her pre-injury status and her whole, but also to discourage future discrimination.
21. The question of mitigation of damages lies within the sound discretion of the Commission.
22. It is the Respondent's burden to establish that the Complainant failed to mitigate her damages in order to limit a Complainant's entitlement to an award.
23. A duty to mitigate is met even if Complainant could have more aggressively searched for employment.

OPINION

This case arises out of a Complaint filed by Rachel Lanning (hereinafter Lanning or Complainant) against Electric City Aquarium and Reptile Den, LLC (hereinafter Electric City or Respondent). Complainant's PHRC Complaint was filed on or about November 7, 2019, at PHRC Case Number 201902180. Complainant's Complaint alleged that Respondent discriminated against her on the basis of her sex, and retaliated against her when it terminated her employment after she reported alleged harassment by her colleague.

PHRC staff investigated the Complaint and found probable cause to credit Complainant's allegations of discrimination. The PHRC and the parties attempted to resolve the case through conference, conciliation, and persuasion. A public hearing was held on April 3, 2024, in Lackawanna County, PA before Permanent Hearing Examiner Tamara Shehadeh-Cope. Complainant was represented by Joshua J. Cochran Esquire. Respondent was represented by Gerald J. Hanchulak, Esquire. Stephanie Chapman, Esquire represented the Commonwealth's interest in the case.

I. Sex Discrimination

This tribunal first addresses Complainant's allegation of discrimination based upon her sex. Section 5(a) of the PHRA provides in pertinent part:

> It shall be an unlawful discriminatory practice…For any employer because of … sex… to refuse to hire or employ or contract with, or to bar or to discharge from employment such individual or independent contractor, or to otherwise discriminate against such individual or independent contractor with respect to compensation, hire, tenure, terms, conditions or privileges of employment or contract, if the individual or independent contractor is the best able and most competent to perform the services required.

In support of her claim and in the absence of direct evidence, Complainant cites the factors and burden-shifting framework set forth in *McDonnell Douglas Corp v. Green*, 411 U.S. 792 (1973) and adopted in Pennsylvania in *Allegheny Housing Rehabilitation Corporation v. PHRC*, 516 Pa. 124. To establish a prima facie case of discrimination based on sex, Lanning must establish that (1) She is a member of a protected class; (2) She was performing at a satisfactory level; (3) She was discharged, and (4) Other factors indicate that she was treated differently because of her protected class. If a prima facie case is made, the burden then shifts to Respondent to articulate a legitimate, non-discriminatory reason for taking the adverse action. If a legitimate reason has been sufficiently articulated, the Complainant is provided the opportunity to prove that the articulated reason is a pretext for discrimination.

Elements 1 and 3 are undisputed. Complainant is an adult female and is in the protected class of sex. Complainant complained about Elchynski's behavior to Rosevear on October 4, 2019, and then filed a formal harassment complaint against Elchynski on October 5, 2019. Tr. 27, C.E. 4. Complainant experienced a panic attack on October 8, 2019, upon being informed by Rosevear that she would be meeting with Elchysnki to discuss her complaint against him. Tr. 33. She was sent home for the day and later told to take the entire week off. Tr. 34-36. Respondent owner Grosvenor admitted that Complainant was laid off from her employment at Respondent on or around October 11, 2019. Tr. 145; R.E. 2.

Regarding element 2, Complainant provided sufficient evidence to establish that she was performing at a satisfactory level. She testified that while she was employed as a reptile curator with Electric City, she never received a job evaluation, nor was there any discussion about unsatisfactory work performance with her employer. Tr. 16-17, 149; C.E. 1. Though Grosvenor

later testified to issues with Complainant's job performance, nothing was formally documented in Complainant's personnel file. Tr. 149-150.

Complainant also meets her burden regarding element 4 of the *prima facie* case. After filing her complaint against Elchynski, Complainant experienced a panic attack and was sent home for the day. Tr.33. Later that evening on October 8, Complainant texted Rosevear to ask whether her job was at risk. C.E.6. Rosevear responded the following day in the negative, informing Complainant that Electric City had "given [Complainant] this time off to decompress." and was "using this week to conduct an investigation" before contacting Complainant again at the end of the week. *Id.* Complainant was terminated two days later, on October 11, 2024. Elchynski, the alleged perpetrator of the reported harassment, holds the same position of reptile curator as Complainant and as a male is outside of Complainant's protected class. However, while Respondent suspended and eventually terminated Complainant's employment, Elchynski was permitted to continue working throughout the investigation and remain in the employment of Electric City. Tr. 152. Elchynski was ultimately promoted to Director of Animal Care in 2020, which replaced and superseded both reptile curator positions. Tr. 171; R.E. 16.

Complainant also alleges additional factors, including that Respondent Electric City had a culture of being a "boy's club." Complainant testified that it was an inside joke among some of the female employees that there was a "boy's club" at Respondent. Tr.21. Per Complainant, she became aware of the male-dominated culture after she began working at Respondent. She alleged that male employees were favored over female employees, and that she was subjected to "regular and routine" verbal abuse from employees". C.E.1. She states that after Elchynski began to work at Respondent, he became part of this culture and would belittle and denigrate Complainant in

how she looked, spoke, and did her job. *Id.* Complainant references a 2018 employee Christmas party where Elchynski criticized her dress, stating that her "boobs [were] out for all to enjoy", and later "openly ridiculed Complainant in front of other employees for her dress at the party, even going so far as to zoom in on her breast in a photo that he was discussing with other employees. *Id.* Complainant also states that Elchynski and Morris would pressure her to do things she did not want to do, once asking her to engage in a popular dance named the "floss dance" and once asking her to name which animal's feces material she would eat. Tr. 41-42. Complainant alleges that Grosvenor perpetuated this "boy's club culture" by "preferring Mr. Elchynski over Complainant in the daily operation of Respondent and marginalizing her within the company and effectuating the sexist culture" *Id.*

As Complainant establishes a *prima facie* case of discrimination, the burden now shifts to Respondent to articulate a legitimate, non-discriminatory reason for taking the adverse action.

Looking only at the sex discrimination claim, Respondent has sufficiently articulated a legitimate, non-discriminatory reason for Complainant's termination. Respondent owner Grosvenor testified that his decision to terminate Complainant was not related to her sex but accompanied several layoffs made as a result of financial losses at the time. Tr. 131. Grosvenor testified to laying off a number of men and women, including employee Adam Morris (hereinafter Morris), who also testified at public hearing. Tr. 132. Grosvenor's testimony regarding Respondent's financial woes was supplemented by testimony from Respondent's Business Manager Margaret Daniels (hereinafter Daniels), and by the company's financial records that were entered into evidence. Tr. 164-169; R.E. 13 – R.E. 17. Per the Profit and Loss statements presented that span August through October 2019, Electric City was operating at a net loss in the tens of thousands of dollars. R.E. 13- R.E. 15. Between September 11 and October 11,

2019, Electric City's losses amounted to $79,178. R.E. 14. The October 2019 statement shows a loss of 21,533.36. R.E. 15.

Grosvenor also testified that his decision to retain Elchynski as his sole reptile curator was because "Rachel was good at defining the problems, but [Elchynski] was good at fixing the problems." Tr. 133. Per Respondent's testimony, Complainant would lash out at teachers and chaperones about student behavior, whereas Elchynski would handle any issues with patrons in what he perceived to be a more professional manner. Tr. 133. Grosvenor also testified that staff at Electric City had in the past threatened to quit because of how Complainant treated them, and this aided in his decision to retain Elchynski over Complainant. Tr. 134. Finally, Grosvenor credited Elchynski with the ability to work through issues more independently than Complainant, who would request to meet several times per week when issues arose. Tr. 135. The Hearing Examiner finds that the reasons set forth by Respondent constitute legitimate, nondiscriminatory reasons for discharging Complainant.

The burden now shifts back to Complainant to show that Respondent's stated reasons are a pretext for discrimination. To show that Respondent's reasons are pretext, Complainant must demonstrate "such weaknesses, implausibilities, inconsistencies, incoherencies or contradictions in the employer's proffered legitimate reasons for its actions that a reasonable factfinder could find it unworthy of credence." *Krouse, v. American Sterilizer Co*., 126 F.3d 494, 504

In response to Respondent's stated financial reasons for terminating her employment, Complainant alleges that Grosvenor failed to notify either Lanning or Elchynski that having two reptile curators was unnecessary and one of them had to go. Tr. 151. Complainant also alleges that Respondent had enough money during this time to expand and construct a snake room at an amount just under $100,000. C.E.1; H.T. 142. However, there is no additional information

provided to show that the funds allocated for the snake room would have been sufficient to retain employees, or to otherwise resolve the other financial issues cited by Respondent.

Regarding the "boy's club" culture at Respondent, when asked about the culture at Electric City by Respondent's counsel, Complainant conceded that the exclusion included instances where she would "come back into work" after time off and Elchynski would inform her that a meeting had taken place, or that Elchynski would "sometimes come back with ideas that they had discussed", indicating that Elchysnki still sought her input on conversations that she had not participated in. Tr.85-87. Adam Morris, who worked at Respondent with Complainant, testified that there was no "boy's club" culture at Respondent, and that he never referred to himself as part of the club or heard or saw the phrase used at any time prior to Complainant's use of the term. Tr. 116 -118. This was echoed by Grosvenor, Elchynski, and Daniels, who all testified at hearing and denied hearing the term used or implied.

With respect to the alleged belittling and denigration, Complainant testified that Elchynski "found flaws in everything" she did and would micromanage her work. Tr. 81. Elchynski denied this allegation, and Morris, in his testimony, stated that the aquarium served an educational purpose, and that Complainant would need to be corrected when she sometimes used the wrong terminology. Tr. 120. Regarding the Christmas party, it was not clear whether Elchynski had made a statement about her dress directly to Complainant, to Adam Morris, or to another individual. When asked about the statement about her breasts, Complainant initially testified that Elchynski did not make a statement, and upon being shown her deposition transcript stated, "I believe he spoke it to another person, but I cannot confirm that". Tr. 83-84. Morris testified that he did not witness any open ridicule of Complainant after the Christmas party, and that it was Complainant who had come to him to ask whether her "boobs were sticking out" at

the party and had taken him to the room with employees and Elchynski. Tr. 115. Elchynski denied saying anything inappropriate about or to Lanning at the Christmas party, nor on the day that the conversation with the other employees happened. Tr. 195. Regarding the floss dance, Elchynski conceded that he may have asked Complainant to do it after it came up in conversation but denied pressuring or bribing her. Tr. 196-197, 203. Complainant admitted to having performed the floss dance before for female employees and that there was nothing sexual about the dance. Tr. 90. Regarding the "poop" question, Morris testified that the question had stemmed from conversation about specialty coffee brewed from the feces of a feline species. Tr. 118. Morris also testified that the question about which fecal matter would be appetizing was being deliberated by all in the group before Complainant entered the room and was asked the same. Tr. 119. He also testified that Complainant did not appear to be offended by the conversation. *Id*. There is no indication that the allegations made by Complainant about the culture and employee behavior at Respondent were discriminatory based on her sex, or sexual in nature.[2]

Because of the inconsistencies in Complainant's testimony and Respondent's responses to the allegations made, the Hearing Examiner finds that Complainant has failed to show that Respondent's proffered reasons were pretextual.

II. Retaliation

[2] The Complaint filed with the PHRC (C.E. 1) references sexual harassment among its allegations against Respondent. However, the case presented by the Complainant and Complainant's post-hearing brief only reference Complainant's sexual harassment complaint to her superiors. There is no information or legal reasoning provided to support a finding of either *quid pro quo* or hostile work environment sexual harassment; therefore, the Hearing Examiner finds the sexual harassment allegation to be waived by Complainant.

Section 5(d) of the PHRA, 43 P.S. §§955 provides in pertinent part:

> [i]t shall be an unlawful discriminatory practice…[f]or any…person…to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this act, …

As with the sex discrimination analysis outlined above, circumstantial evidence requires the Hearing Examiner to apply the *McDonnell Douglas* burden-shifting framework.

In order to establish a *prima facie* case of retaliation, Complainant must show that: (1) She was engaged in a protected activity; (2) Respondent was aware of the protected activity; (3) Subsequent to participation in the protected activity Complainant was subjected to an adverse employment action, and (4) There is a causal connection between participation in the protected activity and the employment action. Upon showing a prima facie case, the burden shifts to the Respondent to articulate a legitimate, non-discriminatory reason for its action. Finally, the burden shifts to the Complainant to show that the Respondent's proffered reasons are pretextual. *Spanish Council of York v. Pa. Human Relations Comm'n*, 879 A.2d 391, 399 (Pa. Cmwlth. 2005), citing *Robert Wholey Company, Inc. v. Pennsylvania Human Relations Commission*, 146 Pa. Cmwlth. 702, 606 A.2d 982, 983 (1992) and *McDonnell Douglas,* supra.

Title VII of the Civil Rights Act recognizes retaliation as a form of discrimination that is actionable on its own. The Supreme Court has also held that a retaliation claim may succeed even where no actual sex-discrimination occurred, provided the complainant had a reasonable, good-faith belief that such discrimination took place. *Jackson v. Birmingham Bd. Of Educ.,* 544 U.S. 167 (2005).

Complainant succeeds in establishing a *prima facie* case of retaliation. She satisfied element 1 by engaging in a protected activity and reporting harassment to before signing a written complaint against Elchynski on October 8, 2019. Tr. 27.

Element 2 requiring the Respondent to be aware of the protected activity is also satisfied. Respondent contends that the first mention of protected activity was the reference to sex discrimination made in Complainant's October 10, 2019 e-mail to guest services (C.E. 3), and that the e-mail was never seen by Grosvenor before being laid off the following day. However, Respondent fails to account for earlier statements made to Melissa Rosevear. In addressing this issue, the court in *Mikell v. Marriott Intern., Inc.*, 789 F.Supp.2d 607 states the following:

> Protected activity extends beyond formal complaints filed with the EEOC or PHRC, and can include informal protests of discriminatory employment practices, [such as] making complaints to management, writing critical letters to customers, [and] protesting against discrimination by industry or society in general. *Curay Cramer v. Ursuline Acad. Of Wilmington, Del., Ince,* 450 F.3d 130, 135 (3d Cir. 2006). However, the Third Circuit has also held that "[a] general complaint of unfair treatment is insufficient to establish protected activity under Title VII" and that "opposition to an illegal employment practice must identify the employer and the practice—if not specifically, at least by context." *Id*. "[C]omplaints must be specific enough to notify management of the particular type of discrimination at issue in order to constitute 'protected activity.' " *Sanchez v. SunGard Availability Servs. LP*, 362 Fed.Appx. 283, 288 (3d Cir.2010) (citing *Barber v. CSX Distrib. Servs*., 68 F.3d 694, 702 (3d Cir.1995)).

Complainant testified that she first brought her allegations against Elchynski to the attention of Rosevear, then Director of Operations for Respondent, on October 4, 2019. Tr. 25. When asked what this meeting was about, Complainant stated, "I wanted to talk to her about whether or not I should report [Elchynski] for harassing me and what I deemed to be sexual harassment." *Id.* Complainant then states that she officially reported the harassment to Rosevear and to Respondent's Assistant Director the following day. Tr. 27-28. Respondent owner Grosvenor also testified that he was aware that a complaint had been filed and that the October 8, 2019 document initiated his investigation. Tr. 138, 148, 158. Based on the aforementioned facts and Grosvenor's corroborating testimony, we find that element 2 of the *prima facie* retaliation case is satisfied.

On October 8, 2019, Complainant was subjected to an adverse employment action when she was sent home on October 8, 2019, and her employment terminated on October 11, 2019. The first three elements of retaliation are therefore satisfied.

Regarding element 4, causation can be established by in showing a temporal proximity between the protected activity and adverse action. Temporal proximity that is "unduly suggestive" of a retaliatory animus satisfies the causation element of a *prima facie* retaliation case. *Farrell v. Planters Lifesavers Co.*, 206 F.3d 271, 279-80 (3d Cir. 2000) citing *Jalil v. Avdel Corp.*, 873 F. 2d 701, 708 (3d Cir. 1989). The protected activity and alleged retaliation must be extremely close in time for such proximity to raise in inference of discrimination on its own. The Third Circuit has held that two days between protected activity and an adverse action is unusually suggestive of a retaliatory motive. *Culler v. Shinseki*, 840 F. Supp 2d 838 citing *Jalil v. Avdel Corp*, supra.

Complainant succeeds in establishing causation through temporal proximity. Complainant verbally made a complaint to Rosevear on October 4, 2019. Respondent owner Grosvenor admitted that the October 8, 2019 written complaint as the document that initiated his investigation. Tr. 158. Complainant was sent home later that day following a panic attack and was asked to remain home pending an investigation into her claims. Complainant's employment was terminated on October 11, 2019. The Hearing Examiner finds that 7 days between an initial complaint and termination is "unduly suggestive" of a retaliatory animus and therefore satisfies the causation element of a *prima facie* retaliation case.

Once again, Respondent offers financial distress as the legitimate, non-discriminatory reason for why Complainant was terminated. On this claim, the Hearing Examiner finds that the evidence showed that the proffered reason was pretext for retaliation.

Respondent argues that the decision to terminate Complainant was made prior to the filing of a complaint. Grosvenor testified that he began looking at Respondent's financials in September 2019, and the decision to terminate Complainant was made in September or October 2019 due to the financial issues outlined above. Tr. 150. However, Respondent never informed Complainant of this possibility before actually terminating her employment. Tr. 151-152. Instead, Respondent waited several weeks to discharge Complainant on October 11, 2019, mere days after Complainant first complained of Elchynski's behavior, and three days after she was sent home for the week. Complainant testified that she was instructed to take the week off when she did not request nor want the time off. Tr. 36-38. She even volunteered to come into work and help Elchynski with the busy schedule but was denied. *Id.*; C.E.6. The next day, she was terminated. Tr. 38. Meanwhile, Elchynski, the other party to the complaint, was permitted to continue working. Tr. 152.

Of the three individuals terminated, Complainant was also the first employee to be laid off. Tr. 150. Grosvenor also terminated her employment before even informing her of the result of the investigation into her allegations. The first time Complainant heard the findings of the investigation was at the public hearing. Grosvenor stated that his findings were that Complainant and Elchynski were two friends that were joking around and that it needed to stop. Tr. 151. While he informed Elchynski of the results, Grosvenor stated that he did not inform Complainant because "she wasn't there to tell". Tr. 152. Grosvenor was unable to remember the exact duration of the investigation, but he testified that it was approximately the first two days after her written complaint was filed. Tr.161. Yet, he was unable to first inform Complainant of his findings into an investigation that she initiated before terminating her employment.

Grosvenor also provided several performance-related reasons as to why he retained Elchynski over Complainant. However, he acknowledges that he did not give either a job performance evaluation at any point during Complainant's time at Respondent. Tr. 149. It was not until 2020 that Elchynski was provided with an employee review where "general horseplay needs to be kept to a minimum" was cited as an area of improvement- a reiteration of what Grosvenor found the year prior. R.E. 20.

A review of the record supports a finding that the legitimate, non-discriminatory reasons proffered by Respondent are pretextual. Complainant is entitled to damages on her claim of retaliation.

III. Damages

We now turn to the issue of damages. Section 9(f)(1) 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,… and any other verifiable, reasonable out-of-pocket expenses caused by such unlawful discriminatory practice, provided that, in those cases alleging a violation of Section 5(h)… the Commission may award actual damages, including damages caused by humiliation and embarrassment, 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 Commission is given wide discretion in fashioning remedies where unlawful discrimination has been proven. *PHRC v. Alto-Reste Park Cemetery Association*, 306 A.2d 881 (1973). The purpose of the remedy is not only to restore the injured party to her pre-injury status and make her whole but also to discourage future discrimination. *Williamsburg*

County School District v. Pa. Human Relations Comm'n, 512 A.2d 1339 (Pa. Comwlth 1986).

The first aspect we must consider regarding making Complainant whole is the issue of the extent of financial losses suffered. 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).

In this case, Complainant testified to earning approximately $39,520 annually at Respondent. Tr. 49. Given this information, the following calculation reflects Complainant's approximate weekly earnings while employed with Respondent:

$39,520 annually / 52 weeks per year = $760.00 per week

The amount Complainant lost in wages because she was unlawfully terminated on October 11, 2019, is calculated as follows:

October 11, 2019 through April 3, 2024 = 234 weeks

Total Lost Wages = 234 weeks @ $760.00 per week = $177,840.00

Complainant is entitled to back pay, less the amount earned in subsequent employment and reinstatement or future wage loss payments. It is the Respondent's burden to establish that the Complainant failed to mitigate her damages in order to limit Complainant's entitlement to an award. *Raya & Haig Hair Salon v. Pa. Human Rels. Comm'n*, 915 A.2d 728, 735 (Pa Cmwlth 2007). A duty to mitigate is met even if complainant could have more aggressively searched for employment. See *Merrell v. Chartiers Valley School District*, 51 A.2d 286 (Pa. Cmwlth 2012). In the instant case, Respondent failed to introduce any evidence to establish that Complainant failed to mitigate her damages.

Notwithstanding, Respondent is entitled to offset back pay damages with interim earnings received after Complainant's discharge. Complainant presented sufficient evidence that following the termination, she made reasonable attempts to mitigate her damages following her termination. On this point, the evidence shows that after being terminated by Respondent, Complainant obtained employment with VCA French Creek Animal Hospital (hereinafter VCA) and began working there in August of 2020. Tr. 53. In 2019, Complainant earned approximately $32,742.87 with Electric City. Tr. 50; C.E. 14. In 2020, Complainant earned approximately $8,606.28 with VCA. C.E. 15. In 2021, Complainant earned $31,435.49. Tr. 52; C.E. 16. In 2022, Complainant earned $30,641.94. Tr. 53; C.E. 17. In 2023, Complainant earned $35,500.28. Tr. 54; C.E. 18. As of December 2023, Complainant earns $19.00 per hour at VCA (approximately $703.00 per week at 37 hours per week). Tr. 54, 100.

The following calculations illustrate the amount to be deducted as amounts Complainant earned in mitigation of her damages:

VCA	$ 8,606.28 (2020)
	$31,435.49 (2021)
	$30,641.94 (2022)
	$35,500.28 (2023)
	$ 9,139.00 (13 weeks in 2024 @ $703.000/week)
Total replacement pay =	$115,322.99[3]

[3] An earlier version of this recommendation erroneously attributed Complainant's earnings in 2019 (prior to the termination of her employment) to VCA and included them as part of the final replacement pay amount. This revised recommendation and order corrects this typographical error and amends the final damages calculation only; all findings remain unchanged. See *Kentucky Fried Chicken of Altoona, Inc. v, Unemployment Compensation Board of Review,* 10 Pa. Cmwlth 90 (An administrative agency may, on its own motion, having provided the proper notice and explanation, correct typographical, clerical, and mechanical errors obviated and supported by the record. It may likewise correct undisputed factual errors and factual misconceptions.). On September 13, 2024, The Office of the Hearing Examiner notified the parties via e-mail that it would be bringing this issue to the attention of the Commissioners.

Given these calculations, Complainant's back pay award becomes:

Unmitigated back pay	=	$177,840.00
Minus replacement pay	=	$115,322.99
Mitigated wage loss	**=**	**$ 62,517.01**

The PHRC is also authorized to award interest on back pay awards. *Goetz v. Norristown Area School District*, 16 Pa. Cmwlth Ct. 389, 328 A.2d 579 (1975). Accordingly, interest shall also be ordered in this matter. Complainant's total award with 6% simple interest follows:

Lost back pay	=	$62,517.01
plus 6% simple interest	=	$ 3,751.02
TOTAL AWARD	**=**	**$66,268.03**

Complainant also seeks to be compensated for her moving expenses and increase in rent related to her move from Scranton, PA, to Sinking Spring, PA in November 2019. Tr. 45. However, the Hearing Examiner finds that Complainant is not entitled to damages relating to her move. When asked for the reason for the move to Sinking Spring, Complainant testified "My husband and I had to decide what we were going to do next. We knew we needed to move out [of] Scranton. And since I was unemployed, we made the decision to move closer to his job at the time." Tr. 44. Complainant then reiterates the reason for moving being to be closer to her spouse's job. *Id.* It is only when she is prompted by Counsel that she states otherwise. Later in the proceedings, she is

asked, “Now, you moved to Spring City in order – I think you said to find a job- a better job?” to which she answered, “It was closer to my husband’s job, but there were other zoo opportunities nearby, so that also favored me.”. Tr. 48. At no point earlier in the proceedings did Complainant state that she was moving to find new employment, nor is there any other indication that Complainant’s termination from Electric City necessitated the move. Rather, Complainant’s ongoing job search was tangential to the relocation. Additionally, on cross-examination Complainant was unable to provide any information or detail on the actual location of her husband’s employer, or confirmation other than assurances that they were closer to where he was employed. Tr. 58-60. Therefore, no damages related to moving expenses will be awarded.

An appropriate order follows.

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

Rachel Lanning,	:	
Complainant	:	
	:	
v.	:	**PHRC Case No. 201902180**
	:	**EEOC Case No. 17F202060103**
Electric City Aquarium &	:	
Reptile Den, LLC,	:	
Respondents	:	

RECOMMENDATION OF PERMANENT HEARING EXAMINER

Upon consideration of the entire record in the above-captioned matter, I find that Complainant Rachel Lanning has proven that Respondent engaged in discriminatory retaliation against her by suspending and then terminating her employment in violation of Section 5(d) of the PHRA. 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

BY: _____
Tamara Shehadeh-Cope
Permanent Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
GOVERNOR'S OFFICE
PENNSYLVANIA HUMAN RELATIONS COMMISSION

Rachel Lanning,	:	
Complainant	:	
	:	
v.	:	**PHRC Case No. 201902180**
	:	**EEOC Case No. 17F202060103**
Electric City Aquarium &	:	
Reptile Den, LLC,	:	
Respondents	:	

FINAL ORDER

AND NOW, this 28th day of October, 2024, 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 approved 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 Respondent Electric City Aquarium & Reptile Den, LLC, shall cease and desist from engaging in retaliation against its employees;
2. That Respondent shall pay Complainant Rachel Lanning the lump sum of $66,268.03 which amount represents mitigated backpay and additional interest of 6% per annum following Complainant's termination;

3. That, within thirty (30) days of the effective date of this Order, Respondent shall report to the PHRC on the manner of its compliance with the terms of this Order by letter addressed to Stephanie Chapman, Assistant Chief Counsel, Pennsylvania Human Relations Commission, 333 Market Street, 8th Floor, Harrisburg, PA 17101; and
4. That this signed Order supersedes the August 26, 2024 Final Agency Order in this matter in its entirety.

PENNSYLVANIA HUMAN RELATIONS COMMISSION

BY: _____
M. Joel Bolstein
Chairperson

Attest:

_____ O/B/O Commissioner Mayur Patel