



This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 6/22/04.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:)		
)		
CLARA B. BEASLEY,)		
)		
Complainant,)		
)		
and)	CHARGE NO:	2000CE2249
)	EEOC NO:	N/A
)	ALS NO:	S11685
ARBY'S RESTAURANT a/k/a,)		
FRANCHISE MANAGEMENT SYSTEMS)		
)		
Respondent.)		

RECOMMENDED ORDER AND DECISION

On October 9 2002, a public hearing was held in this matter. The parties were given until January 27, 2003 to file post hearing briefs. Both Respondent and *pro se* Complainant have filed post hearing briefs, so the case is now ready for a decision.

Contentions of the Parties

Complainant Beasley contends that Respondent Arby's offered her a job as a dining room clerk, then failed to hire her because of her physical handicap, paraplegia. Respondent counters that it never offered Complainant a job or failed to hire her because: 1) the position of dining room clerk did not exist; and 2) the assistant manager that allegedly offered Complainant a job as a dining room clerk did not have the authority to do so.

Findings of Fact

The following facts I found were proved by a preponderance of the evidence:
1. In October of 1999, Carla Thomas Easterly worked as an Assistant Manager for Respondent Arby's Restaurant.

2. During October 1999, Arby's was hiring new employees when Thomas Easterly approached the general manager, Barbara Luttrell, and told her about Complainant Clara Beasley. Thomas Easterly told Luttrell that she knew Beasley really wanted to work and that Beasley was in a wheelchair. Thomas Easterly asked Luttrell if Beasley "could do the dining room." Luttrell asked if Beasley could walk, and upon learning that Beasley could, Luttrell gave Thomas Easterly permission to hire Beasley.
3. On October 28, 1999, Thomas Easterly left Arby's, went to Beasley's home during business hours in her Arby's uniform, wearing an "Assistant Manager" name tag and told Beasley if she wanted a job cleaning the dining room Arby's would hire her. Thomas Easterly told Beasley that she had "okayed" it with management and all she had to do was fill out an application and she had the job. Thomas Easterly specifically told Beasley that Barb Luttrell gave her permission to go to Beasley's home and hire her.
4. Thomas Easterly explained to Beasley that Arby's already employed someone to clean the dining room and that Beasley would work in addition to that person. Thomas Easterly further described to Beasley what her job duties would entail, such as cleaning tables, filling up sauce containers and general cleaning in the dining room. Finally, Thomas Easterly told Beasley her hourly pay rate would be \$7.00, and that she would work approximately 20 hours per week, from 11:00 a.m. to 2:00 p.m.
5. During the time period in question, Beasley would have received a 40 cent raise.
6. Beasley never solicited employment from Arby's before Thomas Easterly went to her home and offered her a job.
7. Beasley went to Arby's in her wheelchair on October 28, 1999, as Thomas Easterly instructed her to do, and filled out an application. Beasley waited a period of days to hear from Arby's as to when she could begin her employment cleaning the dining room.
8. When Beasley did not hear from anyone concerning the job, she called Arby's and spoke to an assistant manager named Kevin, who told her that her application had been

lost. The assistant manager then told her to come to the restaurant and fill out another application.

9. Beasley went back to Arby's a second time to fill out another application for the restaurant to have on file and Kevin told her "someone will get in touch with you in a day or two." (tr. 48)

10. Beasley waited four or five days to hear from Arby's and then called Luttrell who told Beasley that her second application was lost. Luttrell also told Beasley to come back to Arby's and fill out a third application.

11. Beasley waited a week to hear from Luttrell and then called Arby's, but was unable to speak with Luttrell. Beasley continued to call Arby's for a period of weeks.

12. Luttrell finally spoke with Beasley over the phone and told Beasley to come to Arby's for an interview. Luttrell gave Beasley five minutes to get to Arby's.

13. Beasley arrived at Arby's within the prescribed five-minute time frame to speak with Luttrell, but Luttrell had already left the restaurant.

14. Beasley spoke with Luttrell by telephone the following day and Luttrell told her that the dining room position had been changed to also include the duties of making sandwiches, cleaning broilers, and mopping the floors.

15. During the phone conversation Luttrell told Beasley that the mop bucket and the mop would be too heavy for her to use and that she was not sure Beasley could do the job in her condition.

16. Beasley was embarrassed and humiliated each time she was summoned to Arby's by Arby's management.

17. In 1999, Complainant Clara Beasley had a physical condition that resulted from a gunshot wound which affected the use of her legs. Beasley used the assistance of a walker to walk short distances and a wheelchair to travel lengthy distances.

18. Beasley has used the assist of a walker for over thirty years and in October 1999 could stand freely without using the assistance of her walker. She could release both hands from the walker and steady herself without its assistance.

19. No one at Arby's Restaurant ever asked Beasley if she could perform the functions of a dining room clerk, or made an individualized assessment of Beasley's capabilities.

20. Beasley demonstrated at hearing that she could have performed the functions of a dining room clerk, as were described to her by Thomas Easterly.

21. Arby's never allowed Beasley to work in its restaurant.

22. On May 5, 2000, Beasley filed a charge of discrimination with the Illinois Department of Human Rights. On December 2001, the Department filed a Complaint against Arby's on Beasley's behalf and Beasley represented herself before the Commission. The Complaint alleged that Beasley was discriminated against on the basis of her handicap in violation of section 2-102(A) of the Illinois Human Rights Act. See, **775 ILCS 5/2-102(A)**.

Conclusions of Law

1. The Illinois Human Rights Commission has jurisdiction over the parties and the subject matter in this case.

2. Complainant is an "employee" within the meaning of section 2-101(A)(1) of Illinois Human Rights Act. **775 ILCS 5/2-101(A)(1)**.

3. Respondent is an "employer" within the meaning of section 2-101(B)(1)(a) of the Act and was subject to the provisions of the Act. **775 ILCS 2-101(B)(1)(a)**.

4. Respondent gave its Assistant Manager express authority to offer Complainant a part-time job cleaning the dining room of its restaurant.

5. Respondent also gave its Assistant Manager apparent authority to offer Complainant a part-time job cleaning the dining room of its restaurant.

6. Complainant accepted the job but was refused the job once Respondent learned Complainant required the use of a wheelchair.
7. Complainant established a *prima facie* case of handicap discrimination in that Complainant established that : 1) Respondent had an open position of dining room clerk; 2) she had a handicap within the meaning of the Act; 3) she could perform the essential functions of the job of dining room clerk; and, 4) Respondent failed to hire her because of her handicap.
8. Respondent articulated a legitimate, non-discriminatory reason for its failure to hire Complainant.
9. Complainant proved Respondent's reasons were a pretext for unlawful discrimination.
10. Complainant is entitled to 78 weeks of back pay for 20 hours a week. Fifty-two weeks at \$7.00 per hour, and 26 weeks at \$7.40 per hour totaling \$11,118.00 plus interest.
11. Complainant is entitled to \$4400 in emotional distress for each of the three times Arby's employees asked her to come in and fill out applications and/or interview, totaling her requested amount of \$13,200 plus interest.

Determination

Complainant Clara B. Beasley proved by a preponderance of the evidence that Respondent Arby's failed to hire her because of her handicap in violation of the Illinois Human Rights Act. **775 ILCS 5/1-101 et al.**

Discussion

The Illinois Human Rights Act makes it a civil rights violation to discriminate against a person on the basis of the person's handicap. **775 ILCS 5/1-103(Q)**. To establish handicap discrimination, Clara Beasley must show either direct or indirect evidence of discrimination. The Complaint filed on her behalf in this case does not allege facts to support a claim of direct evidence of discrimination, so Beasley must establish

her case by submitting indirect evidence of discrimination. To do so, initially Beasley must establish a *prima facie* case of discrimination. The burden of production then shifts to Arby's to articulate a legitimate, non-discriminatory reason for its actions. If Arby's does so, then the burden of proof shifts back to Beasley to establish that the reason is merely a pretext for unlawful discrimination. See, **Zaderka v. Human Rights Commission**, 131 Ill.2d 172, 545 N.E.2d 684, 137 Ill. Dec. 31(1989).

Beasley's *prima facie* case

To establish a *prima facie* case of handicap discrimination, Beasley must show that: 1) she is handicapped within the meaning of the Act; 2) her handicap is unrelated to her ability to perform the job; and 3) an adverse act was taken against her because of her handicap. **Whipple v. Illinois Department of Rehab. Servcs.**, 269 Ill. App. 3d 554, 646 N.E.2d 275, 206 Ill. Dec. 908 (4th dist. 1995); **Wright v. Shop'n Save Warehouse**, ___ Ill. HRC. ___, (1994SF0476, November 6, 1998). Here, Beasley has easily established the first prong of her *prima facie* case by testifying she suffered paraplegia from a gunshot wound to her spine. See, **56 Ill Admin. Code § 2500.20 (2)(c)**. Beasley, at the time of the allegations in her Complaint, was confined to the use of a walker and sometimes depended on the use of a wheelchair to travel long distances.

During the hearing, Beasley also established the second element of her case by demonstrating the job duties of an Arby's dining room clerk were unrelated to her handicap of paraplegia, as it existed in October of 1999. Beasley demonstrated how she would have performed the job duties as described to her by Carla Thomas Easterly in her offer of employment. Thomas Easterly told Beasley that she would be required to clean tables, fill up sauce containers and perform general cleaning in the dining room. These tasks were similar to the tasks already being performed by another employee.

Although, during the hearing Arby's insisted that Beasley would have been required to perform other tasks such as take out restaurant trash and reach heavy

condiment jars on high shelves, Beasley credibly testified that she could have performed the necessary tasks of the job because she was not totally confined to a wheelchair at the time she was offered a job with Arby's. Beasley testified, for example, that she would have asked co-workers to reach the condiment jars for her if the jars were placed high on a shelf and out of her reach, even from a standing position. She further demonstrated that she could have taken out the dining room trash using her walker and wheelchair, even though Arby's argued the task would have been impossible because the trash sometimes weighs ten to fifty-pounds.¹ Beasley credibly testified that she could have performed all of the tasks that the other employee, who was also assigned to dining room clean up, could perform. In fact, Beasley presented testimony to prove she later performed similar tasks at Papa John's Pizza, another fast food restaurant in the area.

Arby's, on the other hand, was required to present some type of evidence to counter Beasley's credible evidence that she could successfully clean the dining room. In fact, the Commission has held that in order to determine whether a handicapped complainant could perform particular job duties, an employer must make an *individualized* assessment of the complainant's condition. See, *Gatz v. Village of Lombard*, __ Ill. HRC. Rep. __, (1988CN2483, July 25, 1994). Respondent did not meet that requirement in this case. There is no evidence in the record that Respondent observed Beasley functioning in her wheelchair or walker, or that an Arby's employee ever bothered to ask Beasley about her capabilities. The only evidence presented to counter Beasley's claims was the scant observations of the franchise's corporate representative who looked at the layout of the restaurant after Beasley filed her charge of discrimination and determined someone who depended on a wheelchair and walker

¹ See, for example, **56 Ill Admin Code § 2500(d)(1)** stating "a condition is 'unrelated to a person's ability to perform' if it merely affects the person's ability to perform tasks or

could not work in the particular Arby's at issue. In weighing that specious evidence against Beasley's credible unchallenged testimony, there is no question Beasley established that her handicap was unrelated to her ability to perform the job of cleaning Arby's dining room in October of 1999.

Finally, Beasley proved the third element of her *prima facie* case by establishing Arby's failed to hire her because of her handicap. Beasley credibly testified that she went to Arby's in her wheelchair three times to fill out applications because she was told her initial application had been misplaced. It is also clear from the record that Beasley went to great lengths to talk with Arby's manager Barbara Luttrell about the Arby's job offer. After repeated attempts and when Beasley finally spoke with Luttrell, she learned that the job duties had suddenly changed and that Luttrell surmised Beasley couldn't perform the job in "her condition." That single comment alone is sufficient to establish the third prong of Beasley's *prima facie* case.

Arby's articulated reasons for failing to hire Beasley

Respondent maintains that even if Beasley could establish a *prima facie* case of discrimination, it is insulated from liability because it had two legitimate reasons for not hiring Beasley: 1) it did not have a position designated as dining room clerk; and, 2) Assistant Manager Carla Thomas Easterly did not have the authority to offer Beasley a job with Arby's. I will address each separately below.

Dining Room Clerk Position

The record in this case establishes that in 1999 Arby's had a position designated and available as a dining room clerk. Arby's had an employee by the name of Kay Mosser who's only task was to clean the dining room. While Arby's argues that Mosser's position was a cooperative effort between the restaurant and a support service for the disabled, the position did in fact exist. Also, Arby's own witness, Carla Thomas Easterly,

engage in activities that are...only incidental to the job in question."

asked management at Arby's if they would hire Beasley to "do the dining room." According to Thomas Easterly's credible testimony, management "okayed" Beasley to work a part-time job in the dining room. The record establishes that Beasley would have assisted Mosser or worked the hours Mosser was not scheduled to work.

Express and Apparent Authority

Arby's assistant manager, Carla Thomas Easterly testified that her job description did not include the hiring and firing of employees at Arby's. However, in this case Thomas Easterly found herself in the unique position of having both express and apparent authority to offer her acquaintance, Clara Beasley, a job. Thomas Easterly's express authority to offer Beasley a job is derived from her own testimony at hearing, which corroborated Beasley's testimony, that Barb Luttrell gave Thomas Easterly permission to offer Beasley a job cleaning Arby's dining room. A close review of Thomas Easterly's credible testimony reveals that she did, in fact, talk to Barbara Luttrell about hiring Beasley, and after learning Beasley could walk, Luttrell told her to tell Beasley to put in an application and she had the job. Therefore, from Thomas Easterly's and Beasley's testimony, there is no question that Thomas Easterly had the express authority from Barbara Luttrell to offer Beasley a job.

As noted above, Thomas Easterly also had the apparent authority to offer Beasley a job cleaning Arby's dining room. In its brief, Arby's correctly lays out the necessary elements as set forth in *Bethany Pharmacol Co. Inc. v. QVC, Inc.*, 241 F.3d 854 (7th Cir. 2001) that Beasley is required to prove to establish the legal theory of "apparent authority." Under *Bethany Phamacol, Inc.*, the record must reveal: 1) Arby's consented or knowingly acquiesced in Thomas Easterly's offer of employment to Beasley; 2) Beasley had a reasonable belief that Thomas Easterly had authority to act on Arby's behalf; and, 3) Beasley relied to her detriment on Thomas Easterly's apparent authority. *Id* at 859.

Initially, Arby's argues that Beasley is unable to establish the threshold element of "apparent authority" because both Thomas Easterly's and Beasley's testimony is contradictory concerning an actual job offer from Easterly. I disagree. As stated earlier in this decision, both Thomas Easterly and Beasley agreed that Barbara Luttrell gave Thomas Easterly permission to go to Beasley's house and hire her. A portion of Thomas Easterly's testimony under re-direct examination from Arby's, when taken out of context, initially purports to say that Beasley was required to interview for a job, but the testimony in this case cannot be picked through and isolated to rout liability. Thomas Easterly's testimony, reviewed as a whole, and in conjunction with Beasley's credible testimony, indubitably supports the fact that Beasley was never required to interview with Luttrell at the time of Thomas Easterly's job offer. Beasley's credible testimony that: "[Thomas Easterly]... told me when she came to the house...Ms. Luttrell, you know had given her the permission to hire me,"(tr. 47) establishes the threshold element for apparent authority. It was not until after Beasley placed a third application on file with the restaurant, at the request of Luttrell, that the subject of an interview arose, and only because of Beasley's persistent calls to the restaurant.

However, even if the record did not contain such a direct statement of consent by Arby's manager Barbara Luttrell, the threshold element of apparent authority would still be present. In fleshing out the legal requirements for establishing apparent authority, the **Bethany Pharamcal** Court gave direction in situations where a principal is "silent," and stated that: "In such a situation, the scope of the apparent agent's authority is determined by the authority that a reasonably prudent person might believe the agent to possess based on the actions of the principal." **Id** at 859.

The credible evidence in this case supports the notion that Luttrell knew Thomas Easterly had made or was going to make some sort of contact with Beasley about a job cleaning Arby's dining room. Thomas Easterly testified that she told Luttrell about

Beasley before getting the permission to offer her a job. Beasley testified that she attempted to talk with Luttrell over a period of weeks, tried to schedule an appointment to meet with Luttrell at the restaurant, and finally talked to Luttrell over the phone to learn that the duties of the dining room position had suddenly changed. During this period of weeks, Arby's was silent as to Beasley's ability to work at Arby's. Meanwhile, Beasley was under the impression that Arby's wanted her to work in the dining room and could not understand why she was repeatedly being shuffled from person to person for answers. Beasley testified that she twice spoke to Luttrell, told her who she was and asked Luttrell if she was going to hire her. However, Beasley testified, "...[Luttrell] never told me I wasn't hired, I didn't have the job, [or that] there was no such job." (tr. 69) In short, Arby's acquiesced in silence.

Next, the second legal element required to create Thomas Easterly's apparent authority to offer Beasley a job is also present. It is unequivocal in the record that Thomas Easterly went to Beasley's house, in an Arby's uniform, during work hours, wearing her "Assistant Manager" name tag. She described the dining room clerk job duties to Beasley, told her the number of hours she would be expected to work, and told her she would earn \$7.00 per hour for her efforts. It is of most import, though that Beasley never sought a position at Arby's or anywhere in the restaurant industry *before* Thomas Easterly came to her, in her home. This fact gives considerable credence to Beasley's version of Thomas Easterly's job offer, as well as to the events that followed. Given the nature of Thomas Easterly's job offer, and under the conditions in which it was made to Beasley, any reasonable person would have believed that Thomas Easterly had authority to offer Beasley a job. Essentially, Thomas Easterly's conduct breathed life into the first two elements of the legal theory of "apparent authority."

Finally, the third element needed to assign apparent authority to Thomas Easterly is simple. Beasley clearly relied on Thomas Easterly's offer of employment to

her detriment. Upon receiving the offer, Beasley immediately went to Arby's to fill out an application as Thomas Easterly instructed her to do, only to be told they lost her application. She was asked by Arby's management to fill out two more applications to no avail, and was skirted by Luttrell after being invited to speak with her at Luttrell's request. Through no fault of her own, she was repeatedly thwarted in her efforts and it can be deduced from the record, did not seek alternate employment for weeks because she relied on Arby's offer of employment. When it became clear that Arby's did not intend to uphold its original offer, Beasley would have had no choice but to seek other opportunities.

Pretext

Arby's articulated reasons for not hiring Beasley were pretexts for discrimination. The credible testimony in the record suggests that Thomas Easterly was given express as well as apparent authority by Arby's to hire Beasley, and that the position of dining room clerk existed in 1999 to assist Kay Mosser, who was also performing the job. As previously mentioned, Thomas Easterly credibly testified that Luttrell, upon learning that Beasley used a wheelchair, asked if Beasley could walk. When Thomas Easterly told Luttrell she could walk, Luttrell gave her permission to tell Beasley about the dining room position. However, when Beasley went into the Arby's restaurant she was sitting in her wheelchair. Suddenly, she garnered little attention from Arby's staff when she made repeated inquiries about the position and was repeatedly told Arby's lost her application on three separate occasions. However, when Luttrell finally spoke to Beasley it was only to tell her the position changed and was not for someone in Beasley's "condition."

It is clear to me that once Arby's management observed Beasley in a wheelchair, they further determined that she could not perform the job of dining room clerk, or any job in the restaurant, for that matter. Unfortunately, Arby's led Beasley to believe she would be employed by them as a dining room clerk and then avoided her after they

learned she was in a wheelchair. Beasley did not actively seek out a position with Arby's. Thomas Easterly went to Beasley's apartment in her Arby's uniform and told Beasley that if she wanted a job at Arby's , all she had to do was "come in and put in an application and that [she] had the job."(tr. 35) Beasley said it best in her closing argument by stating all she "wanted from Arby's was a 'chance' or either be told [she was] not going to be hired."(tr. 154) She received neither.

Discussion on Damages

Section 8(A)-104 of the Illinois Human rights Act authorizes a complainant to receive damages upon a finding of a civil rights violation. In this case, Clara Beasley proved by a preponderance of the evidence that she was discriminated against because she is handicapped. Accordingly, to make her whole she has requested \$30,000 in actual damages. Specifically, Beasley requested \$16,800 in back pay and \$13,200 in damages for emotional distress.

The Act defines "actual damages" as those damages "reasonably determined by the Commission for injury or loss suffered by the complainant." **775 ILCS 5/8-104(B)**. Through her testimony and tax returns, Beasley established that she was entitled to a portion of the back pay she requested from Respondent. Beasley only requested back pay from October 28, 1999 through 2001. However, a close examination of Beasley's testimony at hearing reveals that she is only entitled to back pay from October 28, 1999 to April 30, 2001.

Beasley testified that during October 1999 and continuing until April 2001, she was employed in a number of part-time, temporary and odd jobs. She further explained that Arby's would have supplemented these jobs and would not have taken their place, because the jobs were performed on evenings or weekends, and the Arby's position was an afternoon position. However, in April or May of 2001, Beasley became self-employed as a day care operator from the hours of 8:00 a.m. to usually 3:00 p.m. each day. This

job would have prevented Beasley from working at Arby's during afternoon hours, so her back-pay must be cut-off sometime between April and May of 2001. Because the record is silent as to the exact date Beasley started her day care business in 2001, it is reasonable to compensate Beasley up to April 30, 2001. Beasley established that Thomas Easterly offered her a job at Arby's for twenty hours a week and at the hourly pay rate of \$7.00. Additionally, the record indicates that as an Arby's employee she would have received a forty-cent raise annually. Therefore, Beasley is entitled to 78 weeks of back-pay. Fifty-two weeks will be calculated at \$7.00 per hour and twenty-six weeks will be calculated at \$7.40 per hour, to include one annual raise of forty cents, totaling \$11,128.

Next, Beasley requested \$13,200 in emotional distress because she was humiliated by getting the "run-around" from Arby's. Beasley testified that she was embarrassed and humiliated by, repeatedly having to go to Arby's fill out multiple applications because the others were "lost," and, among other things, being summoned to Arby's to talk to Barbara Luttrell who was not even there when she arrived. Beasley credibly testified she was humiliated, embarrassed and hurt by essentially jumping through hoops at Arby's request, when they had no intention of making good on Thomas Easterly's job offer.

The Commission has held that credible evidence of embarrassment and humiliation is sufficient to establish an award of emotional distress in employment cases as long as it is clear that back-pay and other pecuniary compensation will not make a complainant whole. See, In the Matter of: **Helga Palumbo, and Palos Community Hospital**, ___ Ill HRC Rep. ___ (1996CA0145, January 10, 2000, Recommended order and decision June 17, 1999); *citing*, **Nichols and Boyd A. Jarrell & Co., Inc.**, 14 Ill. HRC Rep. 149 (1984), and **Smith and Cook County Sheriff's Office**, 19 Ill. HRC Rep. 131 (1985).

I find particularly egregious Arby's actions of stringing Beasley along for weeks and repeatedly summoning her to the restaurant knowing she would not be hired to clean the dining room. I also believe, based on Beasley's testimony, that she was humiliated and embarrassed Arby's actions, insomuch that back pay alone will not make her whole. Accordingly, Beasley is entitled to the full amount of emotional distress she requested. She is entitled to \$4400 for each time she was summoned to return to Arby's, totaling \$13,200 in damages.

Additionally, the complaint in this matter requested Arby's instate Beasley to the job of dining room clerk, but Beasley did not request that relief during the public hearing. The record indicates that Beasley is now self-employed as a day care operator, so I can assume she does not wish to be employed by Arby's. Therefore, reinstatement is not proper in this case. Finally, Beasley represented herself in this matter so the issue of attorney's fees does not need to be addressed.

Recommendation

Based on the above findings of fact and conclusions of law I recommend that the Illinois Human Rights Commission sustain the Complaint of Clara B. Beasley against Arby's Restaurant a/k/a Franchise Management Systems, together with underlying charge number 2000CE2249, and further recommend that:

- a) Respondent pay Complainant the sum of \$11,128 in back pay from October 28, 1999 to April 30, 2001;
 - b) Respondent pay Complainant the sum of \$13,200 in damages for emotional distress;
 - c) Respondent pay Complainant prejudgment interest for the sums indicated above in paragraphs (a) and (b) to be calculated as provided in **56 Ill. Admin. Code, §5300.1145**;
- and,

d) Respondent cease and desist from further discrimination on the basis of physical handicap.

ILLINOIS HUMAN RIGHTS COMMISSION

KELLI L. GIDCUMB
Administrative Law Judge
Administrative Law Section

ENTERED THE 28TH DAY OF MARCH, 2003.