



This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 09/01/06

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
AMBER M. CROXEN,)	
)	Charge No.: 2005CF1396
Complainant,)	EEOC No.: 21BA50398
)	ALS No.: 05-310
and)	
)	
UNIVERSITY PARK SUPERMARKET,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

This matter comes before me on a public hearing on damages held on May 12, 2006, after the Commission entered a Default Order against the Respondent on August 24, 2005. Complainant appeared with her attorney and testified in her own behalf. Complainant’s mother also testified. Respondent, although duly served, did not appear. Complainant declined the opportunity for post-hearing briefs. An order permitting and setting a schedule for a fee petition, if applicable, was entered on May 15, 2006. Complainant submitted a fee petition on May 30, 2006, along with a Motion to Extend the Time to File Fee Petition or in the Alternative to File Fee Petition Instantly. Respondent failed to file a response to the fee petition. This matter is now ready for disposition.

The Illinois Department of Human Rights (the “Department”) is an additional statutory agency that has issued state actions in this matter. Therefore, the Department is an additional party of record.

Findings of Fact

The following findings of facts were derived from the record file in this case and from events and evidence presented at the public hearing on damages.

1. Complainant filed Charge Number 2005CF1396 with the Department on October 10, 2004, alleging that Respondent wrongfully failed to allow her to return to work from an approved unpaid leave of absence due to her sex (Female) and race (White), as well as in retaliation for complaining about being sexually harassed by one of the managers.
2. On August 24, 2005, the Commission entered a Default Order and referred the matter to the Administrative Law Section for a hearing on damages.
3. On November 1, 2005, an order was entered that set this matter for a status hearing on January 5, 2006.
4. On January 5, 2006, a status hearing took place. Complainant appeared. Respondent failed to appear. An order was entered that set this matter for another status hearing on February 9, 2006.
5. On February 9, 2006 a status hearing took place. Complainant appeared. Respondent failed to appear. An order was entered setting this matter for another status hearing on February 22, 2006.
6. On February 21, 2006, an order was entered that rescheduled this matter for a status hearing on March 22, 2006.
7. On March 22, 2006, only complainant appeared. An order was entered on March 23, 2006 setting a damages public hearing for April 10, 2006.
8. On April 3, 2006 an order was entered granting Complainant's Motion to Continue and scheduling a status hearing for April 10, 2006 for purposes of setting a date for the damages public hearing.

9. On April 10, 2006 a status hearing took place. Complainant appeared with her attorney. Respondent failed to appear. An order was entered on April 10, 2006 rescheduling the damages hearing for May 12, 2006.
10. On May 12, 2006 Complainant and her attorney appeared. Respondent did not appear. Complainant presented her case on damages.
11. On May 15, 2006, an order was entered ordering that no post-hearing briefs will be ordered and that Complainant may file a fee petition by May 25, 2006.
12. Complainant filed her fee petition on May 30, 2006, along with a Motion for Extension of Time to File Fee Petition or in the Alternative to File a Fee Petition Instanter.
13. Respondent has failed to file an appearance and response to the fee petition.
14. The January 5, 2006, February 21, 2006, April 3, 2006, April 10, 2006 and May 15, 2006 Orders mailed to the Respondent at the address set forth in the charge have been returned to the Commission.
15. Complainant was an employee of Respondent who had been hired in October 2002 as an Assistant Manager.
16. Beginning on or about November 2002 and continuing through December 2002, Anthony (last name unknown), Respondent's Produce Manager, sexually harassed Complainant.
17. Complainant, on or about December 2002, reported the acts to Respondent's General Manager, Joshua Lydick.
18. On or around December 2002, after Complainant reported the sexual harassment, Respondent conducted an investigation.
19. Respondent's store videotape had recorded at least one instance of Anthony engaging in sexually harassing conduct towards Complainant.

20. On or around January 2003, Respondent terminated Anthony. Two (2) days after terminating him, Respondent rehired Anthony. A few days after being rehired, Anthony quit.
21. On or about February 2003, Complainant requested and received unpaid leave of absence from Belgee Falkner, Respondent's General Manager (Black, Male).
22. Belgee Falkner made it clear to Complainant that she could return to her job upon her return. No time frame was set for her return.
23. On or around May 2004, Complainant was denied the opportunity to return to work from her unpaid leave of absence by Billie Woods, Respondent's Customer Service Manager (Black, Female). The reason stated was that they were no longer able to hire white people.
24. Complainant made \$7.50 per hour while working for Respondent.
25. Complainant's was working thirty-two (32) hours per week.
26. Complainant was devastated by Anthony's sexually harassing actions, feeling dirty and violated. She cried constantly, did not want to leave the house, did not want to work, had bad dreams and began sleeping regularly with her mother at night. Complainant also sought counseling.
27. On May 15, 2006, an order was entered that set a schedule for filing a fee petition and response thereto.
28. Complainant filed a fee petition on May 30, 2006, requesting attorney's fees totaling \$2,365.00, based on an hourly rate of \$200.00 for Attorney Lindsay A. Parkhurst for 11.6 hours, as well as costs of \$45.00 for parking.
29. Respondent failed to file an appearance and submit a response to the fee petition.

Conclusions of Law

1. Complainant is an “aggrieved party” and Respondent is an “employer” as those terms are defined in the Illinois Human Rights Act, 775 ILCS 5/1-103(B) and 5/2-101(B).
2. The Commission has jurisdiction over the parties and the subject matter of this action.
3. In accordance with the Commission’s August 24, 2005 Default Order, Respondent is in violation of the Illinois Human Rights Act that prohibits sex and race discrimination, as well as retaliation.
4. Complainant has demonstrated lost wages/back pay as a result of Respondent’s actions in the amount of \$3,120.00.
5. Complainant failed to sustain her burden of proof that she suffered emotional distress from Respondent’s failure to allow her to return to work after her unpaid leave of absence.
6. Complainant is entitled to prejudgment interest in accordance with the Illinois Human Rights Act and the Commission’s procedural rules.
6. Because of its failure to file an appearance, and respond to Complainant’s fee petition, Respondent has waived the issue of fees.
7. Attorney Lindsay A. Parkhurst’s hourly rate of \$200.00 is reasonable.
8. The numbers of hours requested (11.6 hours) are reasonable.
9. Complainant has demonstrated that she is entitled to attorney’s fees in the amount of \$2,320.00, and costs in the amount of \$45.00.
10. In light of the findings of liability against Respondent, the Commission should order Respondent to cease and desist from any sex and race discrimination, as well as retaliatory conduct.

Discussion

Liability

By the Commission's Default Order entered on August 24, 2005, Respondent is liable for: (1) failing to allow Complainant to return to work from an unpaid leave of absence due to sex and race discrimination; and (2) failing to allow her to return to work in retaliation for Complainant's report of sexual harassment by one of Respondent's managers.

Damages

Back Pay

The first element of damages to be considered is back pay. Often, a calculation of back pay can be somewhat speculative. The task is more difficult when the only evidence is the Complainant's own testimony without any supporting documentation. Any ambiguity in this process must be resolved in favor of a prevailing complainant and against the discriminating employer, since the employer's wrongful act gave rise to the uncertainty. **Clark v. Human Rights Comm'n**, 141 Ill. App. 3d 178, 183, 490 N.E. 2d 29, 95 Ill. Dec. 556 (1st Dist. 1986). This principle must be rigorously followed when a respondent has failed to participate in the case in any way. **Taylor and Amerienviromental, Inc.**, ___ Ill. HRC Rep. ___ (2001CE1961, Feb. 23, 2004).

Complainant testified that she was earning \$7.50 per hour prior to taking her leave of absence. She also testified that prior to taking her unpaid leave of absence, she was working thirty-two (32) hours per week. Complainant testified that she had two jobs. She stated that she worked at her other job for only a few hours per week. Complainant testified that it took her approximately thirteen (13) weeks to reach the level of hours and pay that she lost from Respondent. Thus, based on Complainant's unrefuted testimony, I recommend that Complainant is entitled to back pay in the amount of \$3,120.00 (\$7.50 times 32 hours per week times 13 weeks).

Prejudgment Interest

Respondent should also be ordered to pay Complainant interest on the back pay as contemplated by Section 8A-104(J) of the Human Rights Act (735 ILCS 5/8A-104(J)), and calculated as provided in Section 5300.1145 of the Commission's Procedural Rules.

Attorney's Fees

On May 30, 2006, Complainant's attorney submitted a Motion for Extension of Time to File Fee Petition or in the Alternative to File Fee Petition Instantly. Respondent failed to file a response. Complainant's Motion is granted.

In considering petitions for the award of attorney's fees and costs, the Commission requires that any award be fair and reasonable. The most common measure of fees remains the charging of a set rate per hour for work performed in consideration of the client's matter at hand, and multiplying that figure by the number of hours expended. The standard for determining the proper fee award by the Commission is found in **Clark and Champaign National Bank**, 4 Ill. HRC Rep. 193 (1982).

Respondent chose not to file a response. Since no response was filed, all issues related to the petition are waived. **Marta Leseiko and Chase/Ehrenberg & Rosene, Inc.**, ___ Ill. HRC Rep. ___ (2000CF1882, Mar. 23, 2004).

Here, Complainant's attorney is claiming an hourly rate of \$200.00 for her time. Even without Respondent's waiver of fee petition objections, this rate is reasonable and in accordance with Commission's recent orders on attorney's fees. Complainant's attorney further lists 11.6 hours spent on Complainant's case. All of the hours specified in the petition appear to be reasonable under any standard of evaluation, but will likewise be accepted as uncontested by Respondent. In addition, Complainant's attorney lists \$45.00 for costs to cover parking on two separate occasions. The costs are assumed not to be normal overhead. They are reasonable and are recoverable.

Therefore, Complainant's should be awarded \$2,320.00 for attorney's fees, as well as \$45.00 in costs.

Emotional Distress

Complainant has requested damages for emotional distress. It is apparent from the record that Complainant suffered a severe emotional reaction to the sexual harassment she suffered while employed by Respondent. Notwithstanding the same, Complainant failed to file a charge of sexual harassment with the Department. The three charges that were filed, and for which liability has been determined by the Default Order, relate to Respondent's failure to allow Complainant to return to work from an unpaid leave of absence due to sex and race discrimination, as well as in retaliation for Complainant's report of sexual harassment by one of Respondent's managers.

Since Complainant failed to file a sexual harassment charge, and failed to testify or introduce evidence that proves she suffered emotional distress from the pending allegations in the Charge (*i.e.*, Respondent's failure to allow her to return to work from an unpaid leave of absence), I do not recommend that Complainant be awarded emotional distress damages.

Other Relief

Although reinstatement is presumptively the relief sought and given in discrimination cases under the Illinois Human Rights Act, Complainant did not request such relief, and, under the circumstances, no such relief is recommended.

Complainant requested punitive damages. The Illinois Human Rights Act does not authorize punitive damages. As such, no punitive damages may be awarded.

However, since a Default Order has been entered and there has been a finding of liability against Respondent, it is recommended that Respondent be ordered to cease and desist from any discriminatory race, sex and retaliatory conduct in the future.

Recommendation

It is recommended that the Commission:

- (1) award back pay in the amount of \$3,120.00;
- (2) award prejudgment interest on the back pay award in accordance with the Illinois Human Rights Act and the Commission's Procedural Rules;
- (3) award attorney's fees of \$2,320.00 and costs of \$45.00; and
- (4) order Respondent to cease and desist from any race and sex discrimination, and retaliatory conduct in the future.

HUMAN RIGHTS COMMISSION

BY: _____
REVA S. BAUCH
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: July 5, 2006