



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**

<b>IN THE MATTER OF:</b>	)		
	)		
<b>CHRISTINE M. CROXEN,</b>	)		
	)	<b>Charge No.:</b>	<b>2005CF1395</b>
<b>Complainant,</b>	)	<b>EEOC No.:</b>	<b>21BA50397</b>
	)	<b>ALS No.:</b>	<b>05-311</b>
<b>and</b>	)		
	)		
<b>UNIVERSITY PARK SUPERMARKET,</b>	)		
	)		
<b>Respondent.</b>	)		

**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. 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 2005CF1395 with the Department on October 10, 2004, alleging that Respondent wrongfully discharged her due to a physical handicap (Pulmonary Disorder), race (White), sex (Female), and age (42).
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 October 28, 2005, an order was entered that set this matter for a status hearing on February 9, 2006.
4. On February 9, 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 22, 2006.
5. On February 21, 2006, an order was entered that rescheduled this matter for a status hearing on March 22, 2006.
6. On March 22, 2006, only Complainant appeared. An order was entered on March 23, 2006 setting a damages public hearing for April 10, 2006.
7. 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.
8. 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.
9. On May 12, 2006 Complainant and his attorney appeared. Respondent did not appear. Complainant presented her case on damages.
10. 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.

11. 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.
12. Respondent has failed to file an appearance and response to the fee petition.
13. The March 23, 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.
14. Complainant was an employee of Respondent who had been hired in October 2002 as an Assistant Manager.
15. Complainant was performing her duties as an Assistant Manager in a satisfactory manner.
16. On or about June, 2004, Complainant was discharged by Belgee Falkner, Respondent's General Manager. The reason stated for the discharge was "economic conditions."
17. At the time of the discharge, Complainant was a white, 42 year old woman, who had a pulmonary disorder as a result of an on the job injury.
18. Complainant's pulmonary disorder was unrelated to her ability to perform the essential functions of her duties as Assistant Manager.
19. Immediately after being discharged, Complainant was replaced by James (last name unknown), a black male in his twenties (20's).
20. At the time of her discharge, Complainant made \$540.00 per week.
21. On May 15, 2006, an order was entered that set a schedule for filing a fee petition and response thereto.
22. 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.

23. 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, age, race and physical handicap discrimination.
4. Complainant has demonstrated lost wages/back pay as a result of Respondent’s actions in the amount of \$42,660.00.
5. 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.
6. Attorney Lindsay A. Parkhurst’s hourly rate of \$200.00 is reasonable.
7. The numbers of hours requested (11.6 hours) are reasonable.
8. 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.
9. In light of the findings of liability against Respondent, the Commission should order Respondent to cease and desist from any sex, age, physical handicap and race discrimination.

## Discussion

### Liability

By the Commission's Default Order entered on August 24, 2005, Respondent is liable for wrongfully discharging Complainant due to her physical handicap, age, sex and race.

### 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 (1<sup>st</sup> 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).

At the time of her discharge on June 13, 2004, Complainant testified that she was earning \$540.00 per hour. She testified that she was unemployed until July 20, 2005 when she was hired at Circle K Shell Gas Station where she makes \$6.75 per hour working forty (40) hours per week. Based on her unrefuted testimony, Complainant makes \$270.00 less than she would have made working for Respondent. Thus, for the period from June 13, 2004, until July 20, 2005, Complainant is entitled to back pay in the amount of \$31,320.00. In addition, for the period from July 20, 2005 until the date of the public hearing (May 12, 2006) Complainant is entitled to back pay in the amount of \$11,340.00. In total, I recommend that Complainant be awarded back pay in the amount of \$42,660.00.

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

Other Relief

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

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 race, sex and age discrimination, as well as discrimination based on physical handicap, in the future.

**Recommendation**

It is recommended that the Commission:

- (1) award back pay in the amount of \$42,660.00;
- (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, sex, age and physical handicap discrimination in the future.

**HUMAN RIGHTS COMMISSION**

**BY:** \_\_\_\_\_

**REVA S. BAUCH  
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION**

**ENTERED: July 5, 2006**