This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 11/18/05

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
MICHAEL J. DELONEY,	)	
	)	
Complainant,	)	**CHARGE NO. 2002CF1957**
	)	**ALS NO. 11971**
	)	
AND	)	
	)	
	)	
RAILWAY LIVERY TAXI, LTD.,	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

On December 27, 2002, the Illinois Department of Human Rights filed a *Complaint of Civil Rights Violation* on behalf of Complainant, Michael J. Deloney. That complaint alleged that Respondent, Railway Livery Taxi, Ltd., discriminated against Complainant on the basis of a physical handicap when it terminated him from its employment. Although Respondent was initially represented by an attorney before the Commission, on August 4, 2004 Respondent's attorney's *Motion to Withdraw as Respondent's Counsel* was granted by this tribunal. Respondent was served with both the motion and a copy of the August 4th order.

Subsequent to August 4, 2004, and up until the date of issuance of this *Recommended Order and Decision*, no one has appeared on behalf of Respondent. On October 29, 2004, Complainant's *Motion for Default* was granted. A public hearing to determine the amount of Complainant's damages was held on December 30, 2004 at 10:00 a.m. Complainant and his attorney appeared for the hearing. Respondent failed to appear. The matter is now ready for decision.

FINDINGS OF FACT

The following findings of fact were derived from both the record file in this matter and from the evidence presented at the damages hearing on December 30, 2004. Factual assertions made at the public hearing, but not addressed in these findings, were determined to be immaterial to the issues at hand.

1. In June of 2001, Respondent hired Complainant as a driver.
2. Complainant suffers from *quadriceps muscle atrophy* and is a handicapped individual within the meaning of the Illinois Human Rights Act.
3. Respondent was aware of Complainant's physical handicap.
4. Complainant's handicap did not affect his ability to perform his job duties with reasonable accommodation.
5. On February 19, 2002, Respondent terminated Complainant from its employment.
6. Respondent discharged Complainant because of his handicap.
7. Complainant suffered emotional distress as a result of his termination from Respondent's employ.
8. Complainant should be compensated $2,500.00 for the emotional distress caused by Respondent's actions.
9. At the time of his discharge, Complainant was earning $7.00 an hour. For the year 2001, the last full year that the Complainant worked for Respondent, he made $6,783.43. For the year 2002, Complainant made $1,358.
10. For the years 2003 and 2004, Complainant's lost wages were $6,783.43 for each of those years.

11. Complainant is seeking compensation for the work of attorney Andrew Levenfeld at the rate $250.00 per hour for 70 hours or $17,500.00.

12. The requested hourly rate and the requested number of hours are reasonable and should be accepted.

13. Complainant is also seeking recovery for the costs of medical records in the amount of $90.80.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" as defined by section1-103(B) of the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (hereinafter "the Act").

2. Respondent is an "employer" as defined by section 2-101(B)(1)(b) of the Act and is subject to the provisions of the Act.

3. Because it has been found in default, Respondent has admitted the allegations of the *Complaint of Civil Rights Violation* filed in this matter.

4. Because of its failure to file any objection to Complainant's request for attorney's fees, Respondent has waived its right to object to such fees.

DISCUSSION

On December 27, 2002, the Illinois Department of Human Rights filed a *Complaint of Civil Rights Violation* with the Illinois Human Rights Commission alleging discrimination on the basis of physical handicap. Both Complainant and Respondent in this matter were represented by counsel before the Commission. However, on August 4, 2004, this tribunal granted Respondent's counsel's motion to withdraw as its attorney of record. Despite being served with that motion and the August 4th order granting it, as of the date of this Recommended Order and Decision, no one has since appeared on Respondent's behalf.

In mid-September 2004, Complainant's attorney filed a motion for a default judgment. On September 21st, 2004, during a routine status hearing on that motion, at which time Complainant's attorney appeared and Respondent again failed to appear, this tribunal ordered Respondent to respond to Complainant's motion by October 1st, 2004. Despite being properly served with the September 21st order, Respondent never filed a response. Thus, on October 29th, 2004, a default judgment was entered against Respondent and a damages hearing was set for December 30th, 2004 at 10:00 a.m. Although Respondent was properly served with this tribunal's order of October 29th, no one appeared on Respondent's behalf on December 30th, the day of the scheduled hearing.

As a result of the default finding, Respondent is deemed to have admitted the allegations of the *Complaint of Civil Rights Violation*. *Bielecki and Illinois Family Planning Council,* 40 Ill. HRC. Rep. 109 (1988). Thus, Respondent is deemed to have violated the Illinois Human Rights Act (the Act) by discriminating against Complainant on the basis of physical handicap, which in Complainant's case is *quadriceps muscle atrophy*. The only remaining issues involve Complainant's damages.

Complainant is entitled to an award of back pay. In 2001, the last full year that Complainant worked for Respondent, his annual income was $6,783.43. At the time of his termination in February of 2002, Complainant had made $1,358.00 for that year. The difference between his $6,783.43 yearly income and the $1,358.00 is $5,425.43, the amount that he would have earned for the remainder of 2002. In addition, if Complainant had not been unlawfully discharged by Respondent, for the years 2003 and 2004, Complainant would have earned $6,783.43 for each of those consecutive years. Because Complainant was unable to find another job, despite very diligent efforts to do so

(*See* Complainant's Exhibit 1), it is recommended that Complainant receive a total back pay award of $18,992.29. In addition, because of the delay in Complainant's receipt of the back pay due to him, prejudgment interest is necessary to make him whole. Therefore, it is further recommended that Complainant receive such interest on the back pay award.

A prevailing Complainant is presumed to be entitled to reinstatement to the position lost due to unlawful discrimination in violation of the Act. However, at the damages hearing, Complainant and his counsel revealed that Respondent was in the process of filing bankruptcy. Thus, it is unlikely that Complainant's reinstatement to the job would serve as a viable option here. Complainant has requested an award of two (2) years front pay. That request should be granted, as reinstatement in this case is most likely impossible due to Respondent's impending bankruptcy. It is therefore recommended that Complainant be awarded front pay of $13,566.86.

In general, the Commission presumes that a Complainant's recovery of pecuniary losses is enough to compensate he or she for any emotional distress. *See Smith and Cook County Sheriff's Office*, 19 Ill. HRC Rep. 131 (1985). In this case, however, Complainant has clearly suffered from emotional distress that exceeds the norm. Complainant not only became an alcoholic due to his inability to deal mentally with his unlawful discharge from employment by Respondent, but he also suffered from insomnia and severe depression. In addition, Complainant was unable to continue the necessary medical treatment for his physical condition due to the fact that he no longer had a job. Being forced to discontinue necessary treatment just added to the intensity of the Complainant's emotional distress in this case.

Lastly, Complainant is entitled to an award for reasonable attorney's fees, as well as the cost of obtaining his medical records. Specifically, Complainant is seeking compensation for the work of Illinois licensed attorney Andrew W. Levenfeld at a rate of $250.00 per hour for 70 hours worth of work. Mr. Levenfeld has been licensed to practice law in this state for over thirty (30) years and has extensive experience in employment litigation. *See Marvin Banks and Railway Livery & Taxi, Ltd.,* Charge No. 2003CF1031 and ALS No. 04-033, *Recommended Order and Decision*, entered August 30th, 2004. The requested hourly rate and the number of hours Mr. Levenfeld worked on the case appear to be quite reasonable. *Id.* It is therefore recommended that Complainant's fee request be granted in its entirety. The recommended attorney's fee is $17,500.00. It is also recommended that Complainant recover $90.80, which represents the costs associated with obtaining his medical records.

RECOMMENDATION

Based on the foregoing, it is recommended that the complaint in this matter be sustained and that an order be entered awarding the following relief:

1. That Respondent pay to Complainant the sum of $18,992.29 for lost back pay;
2. That Respondent pay to Complainant prejudgment interest on the back pay award, with such interest to be calculated as set forth in 56 Ill. Adm. Code, Section 5300.1145;
3. That Respondent pay to Complainant the sum of $13,566.86 which represents two (2) years of front pay;
4. That Respondent pay to Complainant the sum of $2,500.00 as compensation for the emotional distress suffered by Complainant as a result of Respondent's actions;

5. That Respondent pay to Complainant the sum of $17,500.00 for attorney's fees reasonably incurred in the prosecution of this matter;

6. That Respondent pay to Complainant the sum of $90.80 for costs reasonably incurred in the prosecution of this matter.

ENTERED: September 29th, 2005

HUMAN RIGHTS COMMISSION

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MARIETTE LINDT
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION