This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 9/26/05

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

IN THE MATTER OF:	)	
	)	
ROBBIN L. EDMOND,	)	
	)	
Complainant,	)	
	)	
AND	)	**CHARGE No: 2004CF0025**
	)	**ALS NO: 04-192**
MARIN PREPATORY ACADEMY,	)	
	)	
Respondent.	)	

RECOMMENDED ORDER AND DECISION

On July 7, 2003, the Complainant, Robbin L. Edmond, filed a charge of discrimination with the Illinois Department of Human Rights (IDHR). The charge alleged that her former employer, Cosmopolitan Preparatory School, harassed and discharged her on the basis of her race, black. Subsequently, Marin Preparatory Academy was named Successor Respondent to Cosmopolitan.

The Respondent failed to attend the IDHR's scheduled fact-finding conference. As a result, the IDHR found the Respondent to be in default, and filed a Petition for Hearing to Determine the Complainant's Damages. The Illinois Human Rights Commission ("Commission") entered an Order of Default against the Respondent on May 26, 2004. A public hearing to determine the Complainant's damages was held on November 17, 2004. The Complainant appeared and the Respondent failed to appear. The matter is now ready for decision.

Findings of Fact

Based on the record in this matter, I make the following findings of fact:

1. The Respondent Marin Preparatory Academy ("Marin"), then known as Cosmopolitan Preparatory School, employed the Complainant, a black female, as a teacher from September of 2002 through June of 2003.
2. On July 7, 2003, the Complainant filed a charge of discrimination with the Department of Human Rights, alleging harassment and discharge because of her race, black.
3. The Department scheduled a fact-finding conference for December 2, 2003 at 3:00 p.m. The Complainant attended the conference, but the Respondent failed to appear.
4. On May 10, 2004, the Department entered an order holding the Respondent in default. The Department cited the failure by the Respondent to attend the fact-finding conference, the failure by the Respondent to show good cause for its failure to do so, and the failure by the Respondent to file a timely Request for Review of the Department's Notice of Default.

5. A Petition for Hearing to Determine Complainant's Damages was filed with the Commission on May 12, 2004.
6. On May 26, 2004, the Commission entered an Order holding the Respondent in default and ordering a hearing on damages.
7. On August 9, 2004, the Complainant informed the Department and Commission that the school formerly known as Cosmopolitan Preparatory had changed its name to Marin Preparatory Academy, and had changed its address and phone number.
8. On September 14, 2004, the Complainant filed a *Motion to Add a Successor Respondent*, Marin Preparatory Academy.
9. On October 18, 2004, ALJ Lindt entered an Order granting the *Motion to Add a Successor Respondent*, and scheduled the damages hearing for November 17, 2004.
10. On November 17, 2004, a public hearing to determine the Complainant's damages took place at the Commission's Chicago office. The Complainant appeared *pro se*; the Respondent failed to appear.
11. The Complainant's last day of employment with the Respondent was June 25, 2003.
12. At the time of her discharge, the Complainant was earning approximately $100 per workday. Her gross pay fluctuated from paycheck to paycheck, although it appears from the Complainant's year to date breakdown of her income, that she worked approximately 40 hours per week.
13. The Complainant has mitigated her damages by working for the Board of Education as a substitute teacher.

Conclusions of Law

1. The Complainant is an "aggrieved party" as that term is defined under the Human Rights Act. 775 ILCS 5/1-103(B).
2. The Respondent Marin Preparatory Academy, as Successor Respondent to Cosmopolitan Preparatory School, is an "employer" as that term is defined under the Human Rights Act. 775 ILCS 5/2-101(B) (1) (a).
3. The Commission has jurisdiction over the parties and the subject matter of this action.
4. As a consequence of the default order entered on May 26, 2004, all of the allegations contained in the Complainant's Charge of Discrimination are deemed admitted by the Respondent.
5. Based on the Respondent's default in this matter and its failure to effectively dispute or oppose any of the requests made by the Complainant with regard to an award for back pay and emotional distress, the Complainant is entitled to an award for both in order to be made whole.

Discussion

Reinstatement

A prevailing Complainant is presumptively entitled to reinstatement to the position lost because of unlawful discrimination. *Odefey and Emergency Technical Serv. Corp*. ___ Ill HRC Rep. ___, (1965CF0335, June 13, 2000). However, the Complainant did not request reinstatement,

and she has testified that she presently works as a substitute teacher. Although she likely could meet the standards for the job, assuming she has obtained her teaching certificate, this tribunal is not recommending reinstatement.

Back Pay

The Complainant has prevailed through the default of the Respondent on her charge of unlawful discrimination. During the public hearing, the Complainant provided credible testimony and documentation that proved that she is entitled to an award for back pay. Specifically, the Complainant testified that she made $12.50 per hour and worked eight hours a day. Tr. 5. This totals $100 per day. This amount should be multiplied by the number of days from the last day she worked for the Respondent until the issuance of this Recommended Order and Decision.

Because the Complainant's rate of pay has never subsequently equaled or exceeded the salary she was receiving from the Respondent, she is entitled to receive back pay from the date of her discharge to the date of public hearing. Back pay will end with the date of public hearing in that the Complainant is no longer seeking reinstatement to her prior position. *Marta Leseiko and Chase/Ehrenberg & Rosene,Inc.*, ___ Ill HRC Rep. ___, (2000CF1882, August 22, 2003).

The time period from June 25, 2003, her effective date of termination, until November 17, 2004, the date of the public hearing, amounts to exactly 365 workdays.[1] The amount that she would have made in those 17 months totals $36,500.

After termination, the Complainant fulfilled her mitigation obligation by looking elsewhere for work. *Eddie J. Harrell and Barber-Colman Co. N/K/A/ Invensys Building Systems, Inc.*, __ Ill HRC Rep. __, (1997CF0248, September 10, 2001). From October 19, 2003 until October 30, 2004, the Complainant made $9,020.54 before taxes as a substitute teacher for Chicago Public Schools. This employment was reasonably close to her previous line of work. The Complainant did not describe other attempts to mitigate damages. However, it is the Respondent's duty to show that the Complainant failed to mitigate her damages. *Rulo and Modern Plumbing & Heating*, 43 Ill. HRC Rep. 399 (1988). Because of this and the veracity of the Complainant's testimony, the Complainant's testimony stands unchallenged.

This tribunal recommends an award of $27,479.46 in back pay, calculated as the lost pay of $36,500 minus the money she received from substitute teaching, $9,020.54. Any unemployment compensation benefits received should also be deducted. *Cliburn v. Veterans of Foreign Wars*, ___Ill.HRC Rep. ___, (1984SF 0403, February 10, 1989).

During testimony, while admitting that she received unemployment compensation, the Complainant was unable to provide an amount received. She also did not provide a weekly rate or the time in which she was receiving unemployment benefits. It is well established under

[1] This definition apparently includes holidays but not weekends. In a document provided at the public hearing, the Complainant comes up with 397 days, a difference of 32 days. Part of this discrepancy could result from using June 4, the date when she was informed of her termination, instead of June 25, the actual effective date of calculation.

Commission case law that any ambiguities involving a back pay calculation should be resolved against the discriminating employer. *Clark v. Human Rights Commission*, 141 Ill.App.3d 178, 490 N.E.2d 29 (1st Dist. 1986). For this reason, no amount will be deducted for unemployment compensation. However, should the Complainant be required by the state to repay these benefits, the Respondent should pay them to her upon her notifying the Respondent of that action. *Brown and Cresco Lines, Inc*., 46 Ill. HRC Rep. 184 (1985).

Emotional Distress

The Commission not only has the authority to award back pay and other actual damages, but also to award damages for emotional distress. *Village of Bellwood Bd. of Fire and Police Comm'n v. Illinois Human Rights Comm'n*, 184 Ill.App.3d 339, 541 N.E.2d 1248 (1st Dist. 1989). In this case, the Complainant's testimony during the public hearing on damages establishes sufficient cause to award her damages for emotional distress

While the Human Rights Act contemplates compensation for emotional harm and suffering, *Village of Bellwood Bd. of Fire and Police Comm'n*, 184 Ill.App.3d at 339, this harm must be proven. The Complainant, for instance, can present evidence of physical symptoms of emotional distress or clinical evidence of a psychological injury. *See Regina Kimborough and School District of Markham/Chateaux Elementary School and Warren Fortineaux*, ___Ill.HRC Rep. ___, (1997CF1540, August 10, 2004).

Portions of what the Complainant testified to in her plea for emotional damages are not applicable to this claim for relief. For instance, the Complainant detailed how she had sought unemployment benefits after termination, only to see the Respondent contest the payment of those unemployment benefits to the Complainant. She also discussed the manner in which her family car was nearly repossessed. After transferring the title of the car to the Complainant's mother, her mother was unable to make the required payments and was forced to declare bankruptcy. None of this information, however, relates to emotional harm.

The Complainant next described debts growing larger and larger, with interest accruing because of late fees. She does not request interest for those payments or provide any information on those costs, so we are unable to grant this relief. If she did provide information, this would fall under the category of actual damages, not emotional distress.

The Complainant here has presented some evidence of emotional harm. She has testified to sickness and, most significantly, elevated blood pressure. The Complainant's condition is clearly connected to the mental stress from her financial situation, which, of course, was caused by the Respondent's unlawful discrimination. She is on prescription medicine for this condition, paid for out of pocket, since she lacked insurance. Again, the Complainant did not cite anything to show how much she has paid out-of-pocket for this medicine. Had she done so, I would have been inclined to recommend repayment for this in actual damages.

The Complainant has presented credible evidence to show the effects of the termination and its consequences on her psychological health. While the Complainant has subsequently found

some financial support, she remains in debt and it is clear to this tribunal that her health has been impacted somewhat from this course of events. At the public hearing, the Complainant appeared shaken and needed a moment on at least one occasion to regain her composure. Tr. 18. For this reason, an additional $1,000.00 for emotional damages is warranted.

Other Forms of Relief

Although not specifically requested, there are other forms of relief that are recommended. The Respondent should be ordered to clear its records of any reference to this action or to the underlying charge of discrimination. Also, the Respondent should be ordered to cease and desist from further discrimination based upon race. Finally, because of the delay in her receipt of the back pay award, the Complainant should be awarded prejudgment interest on the back pay award.

Recommendation

For all of the above reasons, I recommend that:

1. The Respondent pay to the Complainant $$27,479.46 in back pay;
2. The Respondent pay to the Complainant prejudgment interest on the back pay award, calculated as set forth in 56 Ill. Admin. Code, Section 5300.1145;
3. The Respondent pay to the Complainant $1,000.00 as compensation for emotional distress suffered by the Complainant as a result of the Respondent's unlawful discrimination;
4. That the Respondent clear from the Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition;
5. The Respondent be ordered to cease and desist from further unlawful discrimination on the basis of race.

Entered: July 29, 2005

Human Rights Commission

Mariette Lindt
Administrative Law Judge
Administrative Law Section