



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
N.J.,)	
)	
Complainant,)	
)	Charge No.: 2004 CN 0988
and)	
)	ALS No.: 04-545
BYRON GRIFFIN,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

On December 28, 2004, the Illinois Department of Human Rights filed a Petition for an Order of Default on behalf of Complainant, N.J. That Petition alleged that Complainant filed her charge of discrimination on October 2, 2003, and thereafter, Respondent, Byron Griffn, although given multiple opportunities to do so, did not file a verified response to that charge. The Petition further alleged that on September 30, 2004, The Department issued a Notice of Default to the Respondent, and that no Request for Review was filed. On January 26, 2005, the Commission entered said order of Default and referred the matter for a hearing on damages by an Administrative Law Judge. Notice of the hearing issued on February 8, 2005, and when the notice was returned, the matter was continued to May 16, 2005 and a new notice issued.

A hearing on damages was held on May 16, 2005. Despite having been served with notice of that hearing, Respondent did not attend. At the hearing, a motion was made to identify Complainant only by her initials. That motion was granted as it was consistent with a sound public policy of protecting sexual assault victims from further humiliation by disclosing their names to the public. There was no request for posthearing briefing. The matter is ready

for decision.

FINDINGS OF FACT

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

1. Complainant, N.J., was employed by Copytec, Inc. Copytec is engaged in the business of document reproduction.

2. On or about September 24, 2003, Complainant was assigned to work typing labels in a closed room with Respondent. Unbeknownst to Complainant at that time, Respondent had a history as a sex offender.

3. At that time, Respondent approached Complainant while she was engaged in her work and told her he wanted to show her something. When Complainant turned up to look, she observed Respondent holding his exposed genitals in his hand.

4. Complainant looked at the Respondent with shock, and Respondent further approached her and grabbed her in the vaginal area.

5. Complainant pushed Respondent away. Respondent left the area, and Complainant immediately left the room and alerted Tion McNabb, (phonetic) Glenn Caldwell, and the Human Resources Manager, Sandy.

6. Subsequent to this occurrence, Complainant called the police, but the police elected to take no further action. She stayed home from work the next two days, too fearful to return.

7. When Complainant returned to work, the employer placed her back in proximity with the Respondent. Complainant was extremely distressed by having to be near Respondent, and fearful to be in those portions of the building which did not have security cameras.

7. As a result of this occurrence, Complainant has suffered great emotional distress. She became fearful and withdrawn in her relationship with her fiancé. She lost her

appetite, and became afraid to dress in anything other than slacks and clothes affording full coverage. She has become uncomfortable around members of the opposite sex, and afraid to go out unless accompanied by a family member, or to venture out after dark. She testified persuasively that her anxiety has become overwhelming, and that she fears she will never get over it.

8. Complainant's attorney has submitted a fee petition demonstrating 15.65 hours of attorney time, and seeking fees in the sum of \$3,940.75.

CONCLUSIONS OF LAW

1. Complainant is an "aggrieved party" and Respondent is a "person" as those terms are defined by the Illinois Human Rights Act, 775 ILCS 5-103(b) and 1-103(L) respectively.

2. The Commission has jurisdiction over the parties and the subject matter of the action. Because of the default order entered in this matter, Respondent has admitted the allegations of the Department Charge that Complainant was subjected to sexual harassment as prohibited in Section 2-102(D) of the Illinois Human Rights Act.

3. Complainant has demonstrated emotional suffering as a result of Respondent's unlawful acts of such great magnitude that she is entitled to compensation.

4. Complainant is entitled to an award of attorney's fees, and the requested fees are reasonable.

DISCUSSION

As a result of the default order, Respondent is deemed to have admitted the allegations of the complaint. *Bielecki and Illinois Family Planning Council*, 40 Ill. HRC Rep. 109 (1988). Accordingly, a finding of liability against Respondent is appropriate. The only remaining issues

involve Complainant's damages.

The Illinois Human Rights Act at 775 ILCS 5/8B-104(B) provides that actual damages may be awarded as a remedy. "Actual Damages" have been interpreted to include "compensation for emotional harm and mental suffering." ***Fire & Police Comm'rs v. Human Rights Comm'n***, 167 Ill. App. 3d 384, 133 Ill.Dec. 810, 541 N.E.2d 1248 (Ill App. 1 Dist 1989). Further illuminating the question of emotional damages, the Court in ***ISS International Service System v. Illinois Human Rights Comm'n***, 272 Ill.App. 3d 969, 209 Ill. Dec. 414, 651 N.E. 2d 592 (Ill. App. 1 Dist 1995) urged the Commission, in evaluating these damages, to examine the injury caused by the offending party "closely." Where sexual harassment results in significant emotional distress which affects a Complainant's ability to function in many areas of her life, a significant award is appropriate. See, e.g. ***Westley and C.L. Management, Inc.***, 2001 WL 474078 (Ill. Hum. Rts. Com.).

Complainant, in her testimony, described the egregious conduct of the Respondent in his assault on her. The behavior on the part of Respondent which she testified to demonstrates without a doubt that she is entitled to an award for the severe emotional distress she has suffered as a result of this conduct. Even after she left the employ of Copytec, she has remained in a state of vigilance, always on the lookout for a possible assailant. The Respondent's conduct has altered Complainant's manner of dress, her ability to leave her home, and her relationship with her family, - in short, many of the ordinary enjoyments of a normal life have been affected by this event.

Next, Complainant seeks damages for lost wages due to the actions of Copytec upon being advised of the occurrence. I find that Copytec was an independent actor, and its conduct cannot properly be attributed to Respondent on this record.

Finally, Complainant's counsel has submitted a petition for attorney's fees, seeking \$295.00 per hour for 7.2 hours expended by Attorney Carey Stein and \$215.00 per hour for

8.45 hours expended by Attorney Rachel Yarch. The fee petition falls somewhat short of the requirements of *Clark and Champaign National Bank*, 4 HRC Rep. 193 (1982), particularly in that it fails to provide a detailed record of time spent. Nevertheless, no objection has been filed and I find that the hourly rates sought therein are reasonable, as are the total of hours expended.

RECOMMENDATION

Based upon the foregoing, it is recommended that an order be entered awarding Complainant the following relief:

A. That Respondent pay to Complainant the sum of \$50,000.00 as emotional distress damages;

B. That Respondent be ordered to pay Complainant the sum of \$3,940.75 for attorney's fees reasonably incurred in the prosecution of this matter.

HUMAN RIGHTS COMMISSION

BY: _____
MARY KENNEDY
CHIEF ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: June 28, 2005