



This Recommended Order and Decision became the Order and Decision of the Illinois Human Rights Commission on 10/29/01.

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
JUANA MARIA ANGULO,)	
)	
Complainant,)	
)	Charge No.: 1999CA1210
and)	EEOC No.: 21B990421
)	ALS No.: 11391
THE HOME ADVANTAGE)	
MIDWEST, INC.,)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

On November 19, 1998, Complainant, Juana Maria Angulo, filed a charge of discrimination with the Illinois Department of Human Rights (IDHR) against Respondent, The Home Advantage Midwest, Inc. That charge alleged that Respondent discriminated against Complainant on the basis of her age when it laid her off, refused to recall her, and discharged her. The charge further alleged that Respondent retaliated against Complainant by refusing to recall her and by discharging her when she complained of age discrimination.

Respondent failed to file a verified response to the charge or to attend the IDHR's scheduled fact finding conference. As a result, the IDHR found Respondent to be in default and filed a Petition For Hearing To Determine Complainant's Damages with the Illinois Human Rights Commission. The Commission granted the

IDHR's motion, and the requested hearing was held on November 22, 2000. Although written notice of the hearing was mailed to Respondent's last known address, Respondent did not attend the hearing.

Subsequent to the hearing, the parties were given the opportunity to file briefs in support of their positions on damages. Neither party filed a brief and the time for filing has passed. 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. As of the time she lost her job with Respondent, Complainant was earning \$6.50 per hour for a forty-hour work week.

2. According to the check stubs offered as evidence, while with Respondent, Complainant averaged about four hours per week of overtime at \$9.75 per hour.

3. As of the date of the damages hearing, Complainant was earning \$5.15 per hour in her new job.

4. Respondent discharged Complainant on November 8, 1998.

5. Complainant earned \$6,989.00 working for a temporary agency in 1999.

6. In December of 1998, Complainant had to go to a hospital emergency room because of depression caused by

Respondent's actions. She incurred a bill of \$670.00 because of that hospital treatment.

CONCLUSION OF LAW

1. Ambiguities in damage calculations are resolved against the discriminating employer.

DISCUSSION

On September 6, 2000, a panel of the Human Rights Commission entered an order of default against Respondent. As a result, there are no liability issues to address. Only damages issues remain to be determined.

A prevailing complainant is presumptively entitled to reinstatement to the job lost because of unlawful discrimination. There is some question as to whether Respondent is still in business or still operating in Illinois. If it is still operating, it should be ordered to reinstate Complainant to her old position. Her pay, benefits, and seniority should be the same as they would have been if she had not left Respondent's employ.

Complainant also is entitled to an award of backpay. It is probably impossible to arrive at an exact backpay figure because Complainant worked irregular amounts of overtime while employed by Respondent. Under Commission case law, though, ambiguities involving backpay amounts 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). In deference

to the **Clark** rule, ambiguities in backpay were resolved against Respondent in the instant discussion.

As of the time she lost her job with Respondent, Complainant was earning \$6.50 per hour for a forty-hour work week. In addition, she averaged about four hours per week of overtime at \$9.75 per hour. Thus, for the average week, Complainant's gross pay was \$299.00.

Respondent discharged Complainant on November 8, 1998. Thus, there were about seven weeks remaining in calendar year 1998, so Complainant would have earned \$2,093.00 during that time. During the fifty-two weeks of 1999, she would have earned \$15,548.00, and she would have earned \$14,053.00 during 2000, considering that there were forty-seven weeks from the beginning of the year through the date of the damages hearing. Therefore, from the date of discharge through the date of the hearing, Complainant would have earned \$31,694.00. That is the gross backpay figure.

Of course, it is necessary to deduct Complainant's interim earnings from that total. There is no evidence that Complainant had another job in 1998, so no deduction is necessary for that year. Complainant testified that she earned \$6,989.00 in 1999. That amount must be deducted. During 2000, Complainant apparently had a job with a temporary agency. She earned \$5.15 per hour. Assuming a forty-hour work week, she earned \$206.00 per week. For the forty-seven weeks of 2000 through the hearing date, she should have earned \$9,682.00. Adding those amounts

together leaves total interim earnings of \$16,671.00. Subtracting the interim earnings from the gross backpay figure leaves a net recommended backpay figure of \$15,023.00.

Also, since Complainant still earns less than she would have earned with Respondent, backpay liability continues to accrue. She earned \$299.00 per week with Respondent and only earns \$206.00 per week now. As a result, Respondent should pay Complainant \$93.00 per week from the date of the damages hearing until Respondent offers her reinstatement.

In December of 1998, Complainant had to go to a hospital emergency room because of depression caused by Respondent's actions. She incurred a bill of \$670.00 because of that hospital treatment. Since Respondent's actions caused the need for medical help, it is recommended that Respondent be ordered to pay that hospital bill.

Because Complainant has had to wait so long for the damages to which she is entitled, prejudgment interest is necessary to make her whole. Such interest is recommended on all sums awarded.

In addition, Respondent should be ordered to clear Complainant's personnel records of references to this case. Finally, Respondent should be ordered to cease and desist from further discrimination on the basis of age and from further unlawful retaliation.

RECOMMENDATION

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

A. That Respondent reinstate Complainant to her former position, or to a substantially equivalent position, at the rate of pay and with the seniority and benefits (including pension benefits) she would have had if she had not left Respondent's employ;

B. That Respondent pay to Complainant the sum of \$15,023.00 for lost backpay through the date of the damages hearing;

C. That backpay liability continue to accrue at the rate of \$93.00 per week from the end of the public hearing until Respondent offers Complainant reinstatement;

D. That Respondent pay to Complainant the sum of \$670.00 as reimbursement for medical expenses incurred as a result of Respondent's actions;

E. That Respondent pay to Complainant prejudgment interest on all amounts awarded, such interest to be calculated as set forth in 56 Ill. Adm. Code, Section 5300.1145;

F. That Respondent clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof;

G. That Respondent be ordered to cease and desist from further unlawful discrimination on the basis of sex;

H. That Respondent be ordered to cease and desist from further unlawful discrimination.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: August 30, 2001