



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

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| IN THE MATTER OF: |) |
| |) |
| TIFFANY SANDERS, |) |
| Complainant, |) |
| and |) |
| |) Charge No:2001CF1893 |
| |) EEOC NO:21BA11106 |
| |) ALS No: 11873 |
| CITGO GASOLINE STATION, |) |
| Respondent. |) |

RECOMMENDED ORDER AND DECISION

The Commission transmitted this matter to the Administrative Law Section for a hearing on damages after the entry of an Order of Default on August 28, 2002. A damages hearing was held on May 8, 2003. Complainant appeared prose and offered evidence and testimony on the issue of damages. Respondent did not appear at the public hearing. This matter is ready for a Recommended Order and Decision.

CONTENTIONS OF THE PARTIES

In the underlying Charge of Discrimination, Complainant alleges she was the victim of sexual harassment and sex discrimination when she arrived at Respondent’s place of business to apply for a job, asked the male owner/operator if there were any openings and was told that she would only be hired if she performed sexual acts with him in the bathroom. Complainant contended during the public hearing that she suffered lost wages and emotional damages arising out of the discrimination that she endured at Respondent’s place of business.

FINDINGS OF FACT

Based upon the record, I make the following findings of fact:

1. The Commission issued an Order of Default against Respondent on August 28, 2002.
2. The matter was transferred to the Administrative Law Section to set a hearing on damages.
3. Pursuant to the default order, Respondent admits the charges of sexual harassment and sex discrimination in the Charge of Discrimination filed May 2, 2001, amended August 18, 2001, in accordance with section 5/7A-102(B) of the Illinois Human Rights Act, 775 ILCS 5/1-101 et. seq.
4. Respondent did not appear at the public hearing.
5. On November 23, 2000, Complainant arrived at Respondent’s premises to apply for a job as a full time cashier.
6. Complainant was accompanied by a female friend, Felicia Lloyd.

7. Complainant asked the male owner/operator (unknown name, East Indian origin) if there were any openings and requested an employment application.
8. The aforementioned male owner/operator told Complainant that she would be hired only if she performed certain sexual acts in Respondent's bathroom; called her a "bitch" and told Complainant that she could "suck his dick."
9. Complainant left the premises, did not complete an application and was not hired.
10. Complainant was traumatized at Respondent's conduct.
11. Complainant suffered a loss in wages as a result of not being hired.
12. Complainant would have been paid \$6.00/hour had she been hired.
13. Complainant suffered emotional distress as a result of Respondent's conduct.

CONCLUSIONS OF LAW

1. Respondent is an "employer" as that term is defined under the Illinois Human Rights Act.
2. Respondent is an "aggrieved party" as that term is defined under the Illinois Human Rights Act.
3. As a consequence of the default order entered August 28, 2002, all of the allegations contained in Complainant's Charge of Discrimination are deemed admitted.
4. Complainant is entitled to lost wages.
5. Complainant is entitled to emotional distress damages.

DETERMINATION

Complainant is entitled to a default judgment on the issue of liability pursuant to the Order of Default issued August 28, 2002. Complainant is entitled to lost wages due to Respondent's failure to hire her. Complainant is entitled to emotional damages in the amount of \$15,000.00. Complainant is not entitled to any attorney's fees, as Complainant was not represented by an attorney.

DISCUSSION

Complainant credibly testified that she entered Respondent's gas station on November 23, 2000, and asked the owner/operator if he was hiring and requested an application. Complainant was seeking a full-time, 40 hours a week, position as cashier. Following her request, the owner/operator pointed at her through a bullet proof glass, called her a "bitch" and told her that he would pay her for whatever she could do for him in the bathroom, that she could "suck his dick" in the bathroom and that he would only pay her if she were to engage in that particular sexual act.

Complainant described the owner/operator as having had so much anger, tension and stress in his gestures that she could see the spit coming from his mouth and depositing on the bulletproof glass that separated him from her. Complainant further credibly testified that she was terrified and startled; that she had never experienced anyone speaking to her in as vulgar a manner; that the day of the incident was one of the most mentally disturbed

days of her life; and that the incident resulted in her leaving Chicago and returning only on occasion to visit her mother or to litigate this matter. During Complainant's testimony, I noted that she was visibly upset, her legs were shaking vigorously, her arms were trembling and she was crying.

Back pay

Complainant requests \$12,408.00 in back pay. Complainant offers no evidence to support this request and I find this amount unsupported by the record. Complainant is entitled to \$1,320.00 in back pay for \$6.00/hour for 5 ½ weeks for 40 hours a week from November 23, 2000 until January 1, 2001. Complainant credibly testified that she contacted several gas stations to determine what the hourly pay was for cashiers and concluded from this research that the normal pay was \$6.00 per hour. Complainant began a better paying job on January 1, 2002 for America's Best, an eyeglass retailer, for \$7.30 /hour; therefore, Complainant's back pay damages ended when she began the higher paying position.

Emotional Damages

Complainant requests a total of \$3,120.00 in emotional damages. The presumption under the Act is that recovery of all pecuniary losses will fully compensate an aggrieved party for his losses. **Smith v. Cook County Sheriff's Office**, 19 Ill. HRC Rep. 131,145 (1985). However, the Commission will award damages beyond pecuniary loss if it is absolutely clear from the record that the recovery of pecuniary loss will not adequately compensate the Complainant for his actual damages. **Kincaid v. Village of Bellwood, Bd. of Fire and Police Commissioners**, 35 Ill. HRC Rep. 172, 182 (1987). The amount awarded must be appropriate in light of the nature and duration of the suffering experienced by the complainant. **Smith, supra**, at p.13.

Actual damages as reasonably determined by the Commission, for injury or loss suffered by the Complainant may be awarded as a remedy. 775 ILCS 5/8(B)-104. Actual damages include compensation for emotional harm and mental suffering. However, the 1st District Appellate court reminds the Commission to keep awards for emotional distress "within reasonable parameters." **Village of Bellwood Bd. of Fire and Police Commissioners v. Human Rights Commission**, 184 Ill.App.3d 339, 541 N.E.2d 1248, 133 Ill.Dec. 810 (1st Dist. 1989).

The Commission accepts a Complainant's own testimony as a sufficient basis for awarding emotional distress damages. **Nichol and Boyd A. Jerrell & Co., Inc.** 14 Ill HRC Rep. 149 (1984). I find Complainant's testimony as to the degree of emotional distress she sustained credible. Complainant testified that the incident caused her to look at people -- especially men -- differently, and to be very cautious with them. Complainant moved to a different state and testified that, because of the incident, she no longer wants to come to Chicago and only comes to litigate this case and to visit her mother. Complainant testified that the incident left her terrified and startled; that she had never experienced anyone speaking to her in as vulgar a manner; that the day of the incident

was one of the most mentally disturbed days of her life and that she will never forget the expression on the owner/operator's face.

Complainant's lack of composure during her testimony was indicative of the high level of distress the Respondent's conduct caused her and continues to cause her. Complainant was visibly upset, seemed to struggle to catch her breath, her legs were shaking vigorously, her arms were trembling and she was crying uncontrollably.

Complainant's mother, Dawn Sanders, (Mrs. Sanders) credibly testified that on the date of the occurrence, Complainant arrived home in tears, trembling and shaking. Complainant's girlfriend accompanied her and comforted her and had to explain to Mrs. Sanders the reason Complainant was so upset since Complainant was so traumatized, she was not able to personally talk to her mother at the time. Mrs. Sanders described Complainant as traumatized and testified that she had never seen Complainant as upset as she was then, that it took a few days before Complainant would open up and talk to her, and that Complainant doesn't like to visit Chicago anymore. Mrs. Sanders further testified that her belief is that the memories of this incident will stay with her daughter for the rest of her life.

Based on Complainant's and her mother's convincing testimony, I have no doubt that the Complainant suffered emotional stress because of Respondent's conduct. In **ISS Intern'l Service Sys., Inc., v. Illinois Human Rights Comm'n**, 272 Ill App.3d 969, 651 N.E.2d 592, 209 Ill Dec. 414 (1st Dist. 1995), the Appellate Court chastised the Commission for failing to award adequate amounts for emotional distress and cautioned the Commission to examine more closely the injury caused by the offending party. In **Village of Bellwood Bd. Of Fire and Police Commissioners v. Human Rights Commission**, 184 Ill.App.3d 339, 541 N.E.2d 1248 (1st Dist. 1989), the Appellate Court affirmed the decision of the Commission awarding \$10,000 in emotional damages stemming from "opprobrious, continuous and outrageous" racial harassment conduct spanning a one year period. In **Savage and State of Illinois Depart. of Corrections**, 37 Ill HRC Rep.265 aff'd sub nom **Illinois Dept. of Corrections v. Illinois Human Rights Commission**, 178 Ill App. 3d 1003, 534 N.E.2d 161 (4th Dist. 1989), the Commission's decision, adopting a recommended award of \$10,000 in emotional distress damage, was affirmed where a supervisor regularly subjected Complainant to offensive language.

In **Thorn and Illinois Depart. Of Veterans' Affairs**, __ Ill HRC Rep. __ (1190CF1159, March 22, 1996), the Commission affirmed a \$30,000.00 award in emotional damages (minus a \$1,000.00 set off) noting that the complainant had been "subjected to virtually constant physical and mental abuse" as well as threats and that she had testified convincingly concerning her mental and physical symptoms occurred as a result of the conduct.

Considering the vulgarity of Respondent's verbal attack on Complainant and the obvious extreme negative affect the incident had on Complainant's emotional state, and further considering that Respondent's conduct traumatized Complainant and was so disturbing to Complainant that memories of the occurrence currently prevent Complainant from

visiting the City of Chicago except to visit her mother, \$15,000.00 is an amount more commensurate with Complainant's emotional injuries.

RECOMMENDATION

Based on the foregoing, it is recommended that the Commission order:

1. Respondent to cease and desist refusing to hire based on sex discrimination and sexual harassment;
2. Respondent to pay Complainant \$1,320.00 in lost wages;
3. Respondent to pay Complainant \$15,000.00 in emotional damages;
4. Respondent to pay Complainant prejudgment interest at the rate and manner set forth in section 8A-104(J) of the Act.

HUMAN RIGHTS COMMISSION

By: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section

ENTERED: June 23, 2003