

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

CAROLYN HAYFORD,

COMPLAINANT,

v.

DOCKET NO.: ES-238-75

WV COLLEGE OF GRADUATE STUDIES

RESPONDENT,

ORDER

On the 18 day of July, 1985, the Commission reviewed Hearing Examiner James Gerl's Findings of Fact and Conclusions of Law. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

It is hereby ORDERED that the Hearing Examiner's Findings of Fact and Conclusions of Law be attached hereto and made a part of this Order.

The Commission hereby ORDERS that the Complaint be dismissed and that the Complainant take naught.

By this Order, a copy of which to be sent by certified mail, the parties are hereby notified that THEY HAVE TEN DAYS TO REQUEST A RECONSIDERATION OF THIS ORDER AND THAT THEY HAVE THE RIGHT TO JUDICIAL REVIEW.

Entered this 18 day of July, 1985.

Respectfully submitted,



RUSSELL VAN CLEVE
CHAIRPERSON
WEST VIRGINIA HUMAN RIGHTS COMMISSION

STATE OF WEST VIRGINIA
HUMAN RIGHTS COMMISSION

CAROLYN HAYFORD,

COMPLAINANT,

V.

DOCKET NO. ES-238-75

WV COLLEGE OF GRADUATE
STUDIES,

RESPONDENT.

RECEIVED

JUN 28 1985

W.V. HUMAN RIGHTS COMM.

PROPOSED ORDER AND DECISION

This matter is before me upon the Motions to Dismiss filed by the Human Rights Commission and by respondent. Complainant has not filed a response to these motions.

The basis for the motions is complainant's alleged failure to proceed. In support of his motion, counsel for the Commission alleges that complainant has indicated a desire not to proceed and has failed to cooperate with requests made by counsel and by the Hearing Examiner that she formalize her intentions.

The record for this matter reveals that complainant has not diligently prosecuted her complaint. On January 16, 1985, counsel for the Commission wrote to complainant informing her of certain deadlines and requesting that she contact him. See Exhibit A. On

February 1, 1985, complainant wrote to counsel for the Commission expressing a desire not to proceed. See Exhibit B. On February 7, 1985, counsel for the Commission again wrote to complainant to ensure that her desire to withdraw her complaint was not based upon a misunderstanding. See Exhibit C. On April 3, 1985, counsel for the Commission again wrote to complainant. See Exhibit D. Upon being informed that counsel had still received no response, the Hearing Examiner wrote to complainant on April 29, 1985 to further ensure that her desire to withdraw was not based upon a misunderstanding. See Exhibit E. Complainant responded with a letter dated May 6, 1985 again indicating her desire to withdraw her complaint. See Exhibit F. Counsel for the Commission sent yet another letter to complainant on May 8, 1985 requesting her to respond immediately. See Exhibit G. Counsel for the Commission asserts that he has not heard from complainant since this letter.

A comprehensive prehearing memorandum was to be filed by the parties on April 8, 1985. That deadline was not complied with because of complainant's failure to cooperate and because of her failure to diligently prosecute her complaint. A hearing was scheduled for May 6-7, 1985, but said hearing had to be cancelled because it was apparent that complainant would not appear.

Although complainant's frustration is understandable, she does have a duty, once she files a complaint, to diligently prosecute her complaint and to cooperate with counsel for the

Commission. Complainant's failure to do so is inexcusable.
Emergency Rules Pertaining to Practice and Procedure Before the
Human Rights Commission, Rules 3.10(b), 7.06(a)(3).

Because complainant has failed to diligently prosecute
her complaint, and because she failed to cooperate with counsel
for the Commission, justice requires that the motions to dismiss
be granted.

PROPOSED ORDER

In view of the foregoing, the Hearing Examiner hereby
recommends that the Commission dismiss the complaint in this
matter, with prejudice.



James Gerl
Hearing Examiner

ENTERED: June 24, 1985

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served
the foregoing **PROPOSED ORDER AND DECISION**
by placing true and correct copies thereof in the United States
Mail, postage prepaid, addressed to the following:

Carolyn Hayford
2302 Windham Rd.
South Charleston, WV 25302

Ann V. Gordon
Assistant Attorney General
950 Kanawha Blvd
Charleston, WV 25301

John Richardson
Human Rights Commission
1036 Quarrier Street
Charleston, WV 25301

on this 24th day of June, 1985.


James Gerl



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE: 304-348-2618

January 16, 1985

JOHN D. ROCKEFELLER IV
Governor

HOWARD D. KENNEY
Executive Director

Ms. Carolyn Hayford
2002 Northwood Road
Charleston, West Virginia 25314

Re: Hayford v. WV College of
Graduate Studies/ES-238-75

Dear Ms. Hayford:

This letter will confirm the preliminary status conference held in this case on January 9, 1985, set for May 6 & 7, at Charleston, West Virginia and it is important that you retain a private attorney as soon as possible.

In order to comply with the prehearing order you or your attorney will need to follow the schedule established by the Hearing Examiner as follows:

- (1) All discovery requests to be served by March 7, 1985.
- (2) Prehearing memo to be sent to hearing examiner by April 8, 1985, which is to contain:
 - (A) All stipulations of fact that can be made.
 - (B) List of exhibits and status as to their authenticity (stipulated where possible).
 - (C) List of all witnesses, including experts, names and addresses.

I am enclosing a form which you or your attorney should sign indicating whether or not you desire to waive the hearing commissioner. This form should be signed and immediately mailed to the hearing examiner, Jim Gerl at his address which is, 216 S. Jefferson Street, Lewisburg, WV 24901.

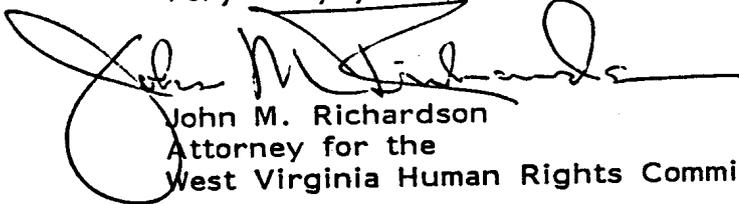
YOU MUST CONTACT HEARING EXAMINER OR COMMISSION NO LATER THAN JANUARY 25, TO LET THEM KNOW WHETHER OR NOT YOU INTEND TO PARTICIPATE.

EXHIBIT A

Ms. Carolyn Hayford
Page 2
January 16, 1985

Should you have any questions, you may call me or Mr. Gerl.

Very truly yours,



John M. Richardson
Attorney for the
West Virginia Human Rights Commission

JMR/kpv
CERTIFIED MAIL REGISTERED RECEIPT REQUESTED
Enclosure/Waiver
cc: Jim Gerl
Dick Hull, Assistant Attorney General

CAROLYN DAWSON HARMON
2302 Windham Road
South Charleston, West Virginia 25303
February 1, 1985

Mr. John M. Richardson
Attorney for the West Virginia
Human Rights Commission
215 Professional Building
1036 Quarrier Street
Charleston, West Virginia 25301

Dear Mr. Richardson:

After our discussion in your office on January 22, 1985, I am disappointed in and feel betrayed by the West Virginia Human Rights Commission. The injustice perpetrated by the West Virginia Human Rights Commission toward me far exceeds any humiliation or mental anguish caused by the College of Graduate Studies over the past ten years.

In 1975 when my grievance was first presented to your investigators and probable cause ruled in my favor, I was told that an attorney from the Office of the Attorney General would represent me in an attempt to right a wrong based on sex discrimination. In 1985, I am told that my complaint is as valid as ever but I must now hire an attorney at considerable personal expense if I expect to gain a favorable outcome because the attorney assigned to present the case before Mr. James Gerl, Hearing Examiner, does not have the time to adequately prepare a fair representation for me.

If the Human Rights Commission is not acting on my behalf, then I can only wonder who its client is and why I have been left dangling for ten years. For this reason I must apologize to the taxpayers of West Virginia for wasting their resources on a no-win situation since considerable expense has been involved in scheduling hearings, which were invariably cancelled, and communication expenses, specifically secretarial functions involved in the certified and other letters designed to keep me informed.

Should I pursue this matter, there appears to be only the opening of old wounds for me as well as any of the witnesses who also suffered during this period of employment with the College of Graduate Studies without benefit of help toward healing. As

EXHIBIT B

you pointed out to me, the persons who caused the problem moved away nine years ago and the punishment would fall to those who had nothing to do with the situation at that time. For this and many other reasons, both personal and professional, I am directing the Commission, through you, to cease any further action on my behalf.

Sincerely,

A handwritten signature in cursive script that reads "Carolyn Dawson Harmon".

Carolyn Dawson Harmon
(formerly Carolyn Dawson Hayford)

✓CC:Mr. James Gerl, Hearing Examiner
CC:Mr. Howard D. Kenney, Executive Director



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
1038 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE: 304-348-2616

ARCH A MOORE, JR.
Governor

February 7, 1985

Mrs. Carolyn D. Harmon
2302 Windham Road
So. Charleston, WV 25303

RE: Hayford v. COGS
ES-238-75

Dear Mrs. Harmon:

I have received your letter dated February 1, 1985, and feel compelled to respond and to assure you that your case has been scheduled for hearing and that presently Mr. Paul Richard Hull, of the Attorney General's Office, has been assigned to represent the College of Graduate Studies, and I have been assigned to represent the Human Rights Commission. I can assure you that both of us are ready and willing to bring this case on for hearing and that I will endeavor to do the best that I can to obtain a favorable result at the public hearing. It is the circumstances surrounding this case that prompted me to suggest to you that you obtain your own attorney to insure the best possible results for you, as an individual. It is regrettable that your case has not been heard, however, those circumstances do exist and cannot be altered.

The circumstances to which I refer, are namely, the passing of ten years, the change in location of many of the parties and witnesses, and cancellation of previous hearings, but those circumstances in of themselves should not prevent you from pursuing what you believe to be a legitimate claim unless you do so upon the advice of your attorney.

This brings me to the portion of the letter wherein you state that the Commission will not act in your behalf, let me assure you that your claim will be presented as thoroughly and fairly as possible given the limitations created by the afore-mentioned circumstances together with the fact that my primary duty is to represent the Commission in its pursuit of carrying out the public policy as set forth in the Human Rights Act. Even though I might agree with you concerning your reasons for not pursuing the claim as set forth in the last paragraph of your letter, that would not prevent me or the Commission from having a hearing and determining the status of your rights in this matter.

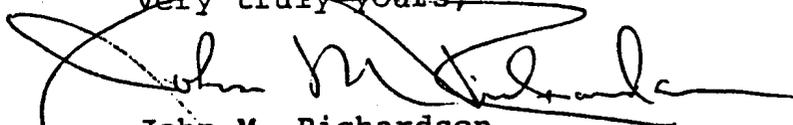
EXHIBIT C

Mrs. Carolyn D. Harmon
February 7, 1985
Page Two

For the afore-mentioned reasons, the Commission will take no action upon your letter of withdrawal within the next ten days unless you advise me in written form that your intent to withdraw is still desired. After ten days, I will recommend that your case be withdrawn unless you notify me in writing that you want to proceed to hearing.

I await your reply.

Very truly yours,



John M. Richardson
Attorney for the WV
Human Rights Commission

JMR:mst

cc: James Gerl ✓

CERTIFIED MAIL-RETURN RECEIPT REQUESTED



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE 304-348-2616

ARCH A. MOORE, JR.
GOVERNOR

HOWARD D. KENNEY
Executive Director

April 3, 1985

Mrs. Carolyn D. Harmon
formerly Carolyn D. Hayford
2302 Windham Rd.
So. Charleston, WV 25303

RE: Hayford v. WV College of
Graduate Studies
ES-238-75

Dear Mrs. Harmon:

I have not received any reply to my letter dated February 7, 1985. I am enclosing a copy of that letter together with a request of withdrawal.

If you are still inclined to withdraw your complaint and not proceed to hearing, please sign and return the withdrawal. In the event I do not receive the withdrawal or hear from you or your attorney by April 11, 1985, I will move for dismissal of your claim. Should the Motion be denied, your hearing will still be held on May 6, 1985, at 9:00 a.m.

Very truly yours,

A handwritten signature in black ink, appearing to read "John M. Richardson".

John M. Richardson
Attorney for the WV
Human Rights Commission

JMR:mst

Enclosures

CERTIFIED MAIL-RETURN RECEIPT REQUESTED
REGULAR MAIL

EXHIBIT D

SCOTTI & GERL
ATTORNEYS AT LAW
216 SOUTH JEFFERSON STREET
LEWISBURG, WEST VIRGINIA 24901

CAROLE L. SCOTT
JAMES GERL

April 29, 1985

(304) 645-7345

Ms. Carolyn D. (Hayford) Harmon
2302 Windham Road
South Charleston, WV 25303

RE: Hayford v. College of Graduate Studies
Docket No. ES-233-75

Dear Ms. Harmon:

A review of the file for this matter reveals that you submitted a request that your complaint be withdrawn on February 1, 1985. Because such request seemed to be based in part upon a misunderstanding regarding the role of counsel for the Human Rights Commission, John Richardson sent you a letter on February 7, 1985 clarifying his role and requesting that you contact him within ten days regarding whether you still intend to withdraw your complaint. On April 3, 1985, Mr. Richardson sent you a subsequent letter stating that you had not replied to his letter of February 7 and stating that if he did not hear from you by April 11 1985, he would move for dismissal of your claim. Mr. Richardson informs me that he has not yet heard from you.

Because of the uncertainty regarding your intentions, I have cancelled the hearing scheduled for May 6, 1985. If you wish to have your complaint dismissed, it shall be. Before I dismiss it, however, I would like to ensure that your desire to have your complaint dismissed is not based in part or in whole upon a misunderstanding. If you have any questions, please write or telephone me on or before May 9, 1985. If you do wish to have a hearing, the parties have been directed to hold May 13, 1985 free on their schedules. If I do not hear from you on or before May 9, 1985, I shall assume that you do not wish to proceed to hearing and I shall dismiss your complaint.

Very truly yours,

James Gerl
Hearing Examiner

cc: John Richardson
Ann V. Gordon
Brenda Farker

EXHIBIT E

CAROLYN DAWSON HARMON
2302 Windham Road
South Charleston, West Virginia 25303
May 6, 1985

Mr. James Gerl
Attorney At Law
216 South Jefferson Street
Lewisburg, West Virginia 24901

Dear Mr. Gerl:

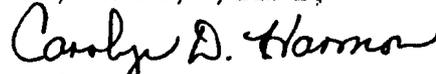
Thank you for your persistence in determining the status of my intentions to continue or withdraw my complaint scheduled for May 6, 1985. It is unfortunate that you are ten years behind schedule. I shall always feel that a greater injustice was done to me by the West Virginia Human Rights Commission than any discrimination perpetrated by the College of Graduate Studies. The emotional agony associated with false hope and, ten years later, facing the stark realization that the Human Rights Commission has become a presenter of my case and not a defender of my rights is more than I can bear.

There was no misunderstanding between me and Mr. John Richardson when he informed me that I would be well-advised to invest \$5000-\$10,000 in the services of a private attorney for the purpose of locating witnesses and gathering their statements because his case load and time limitations were not conducive to the thoroughness required for success in this matter. This observation is not intended as a reflection on the competence of Mr. Richardson, rather an observation on the depth of commitment held by the Human Rights Commission to eliminate conditions of injustice and discrimination.

When my position at the College of Graduate Studies was taken away from me, I suffered professionally and personally but the greatest loss to me was ten years of my life. At age 41, when this "retrenchment" took place, there was still time for professional advancement; today, at age 51, there are few opportunities available to me.

In my mind and heart, the College of Graduate Studies is not on trial; the West Virginia Human Rights Commission is.

Very truly yours,



Carolyn Dawson Harmon
(formerly Carolyn Dawson Hayford)

cc: John Richardson
Howard Kenney

EXHIBIT F



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE: 304-348-2616

ARCH A. MOORE, JR.
Governor

May 8, 1985

Ms. Carolyn D. (Hayford) Harmon
2302 Windham Rd.
So. Charleston, WV 25303

RE: Hayford v. COGS ES-238-75

Dear Ms. Harmon:

I received a copy of your letter directed to Mr. Gerl, Hearing Examiner. Again, I find that you have some misunderstanding which has resulted in misrepresentation of my communication with you. Specifically, I call your attention to my letter of February 7, 1985, wherein I explain carefully the role I, as the attorney presenting the complaint, will undertake. Nowhere do I mention or even suggest that you pay a private attorney \$5,000 - \$10,000 for services. For the purposes of simplification, let me say that: "You have the right to retain your own attorney to represent your interests, whose fees may be awarded, in whole or in part, if you are successful in the pursuit of your claim."

More at point, at this time, is the fact that in your letter dated February 1, 1985 addressed to me and your letter dated May 6, 1985 addressed to Mr. Gerl, you failed to address the point of whether you intend to proceed with your claim. In my letter of April 3, 1985, I enclosed a form for you to sign, if it was your desire, which you did not sign or otherwise indicate a desire to proceed.

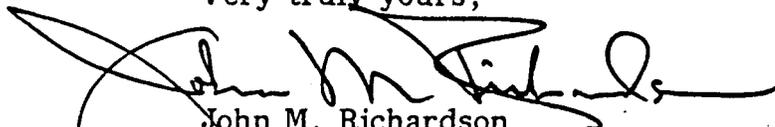
In order that the record be kept absolutely clear, the Commission's attorney will present your complaint and represent your interests so long as they do not conflict with each other. As previously stated, on several occasions, "You have the right to retain your own attorney to represent your interests, whose fees may be awarded, in whole or in part, if you are successful in the pursuit of your claim."

EXHIBIT 6

Ms. Carolyn D. (Hayford) Harmon
May 8, 1985
Page Two

Please respond by telephone or letter immediately.

Very truly yours,



John M. Richardson
Attorney for the WV
Human Rights Commission

JMR/mst

cc: James Gerl, Esq.