

STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

ARCH A. MOORE, JR.
Governor

TELEPHONE: 304-348-2616

February 7, 1986

COPY

Daniel F. Hedges, Esquire
Appalachian Research &
Defense Fund, Inc.
1116-B Kanawha Boulevard, E.
Charleston, WV 25301

Sally G. Jackson, Esquire
206 West Burke Street
Martinsburg, WV 25401

RE: HENRY HARDER V SHENANDOAH QUARRY & MILLVILLE QUARRY, INC.
REP-204-82

Dear Ms. Jackson and Mr. Hedges:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Harder v Shenandoah Quarry & Millville Quarry, Inc., REP-204-82.

Pursuant to Article 5, Section 4 of the WV Administrative Procedures Act [WV Code, Chapter 29A, Article 5, Section 4] any party adversely affected by this final Order may file a petition for judicial review in either the Circuit Court of Kanawha County, WV, or the Circuit Court of the County wherein the petitioner resides or does business, or with the judge of either in vacation, within thirty (30) days of receipt of this Order. If no appeal is filed by any party within (30) days, the Order is deemed final.

Sincerely yours,

Howard D. Kenney
Howard D. Kenney
Executive Director

HDK/kpv / jcp
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

HENRY HARDER
COMPLAINANT,

V.

DOCKET NO.: REP-204-82

SHENANDOAH QUARRY &
MILLVILLE QUARRY, INC.

ORDER

On the 13th day of November, 1985, the Commission reviewed Hearing Examiner Daniel C. Staggers' 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.

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 4 day of February, 1986.

RESPECTFULLY SUBMITTED,



CHAIR/VICE CHAIR
WV HUMAN RIGHTS COMMISSION

*Approved
Aug. 24, 1985
SRH*

WEST VIRGINIA SUPREME COURT OF APPEALS
FOR THE
WEST VIRGINIA HUMAN RIGHTS COMMISSION

HENRY HARDER,
Complainant

vs

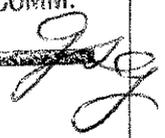
SHENANDOAH QUARRY and
MILLVILLE QUARRY, INC.,
Respondent

CASE NO. **RECEIVED**

SEP 11 1985

W.V. HUMAN RIGHTS COMM.

A HEARING EXAMINER'S RECOMMENDED ~~PROPOSED~~
FINDINGS OF FACT AND CONCLUSIONS OF LAW



This matter came on for a hearing on June 24, 1985, and June 25, 1985, in the Jefferson County Courthouse, Charles Town, West Virginia. The hearing panel consisted of Daniel C. Staggers, hearing examiner, both parties having waived the presence of a hearing commissioner. The Complainant appeared in person and by his counsel, Daniel F. Hedges. The Respondent appeared by its president, Manus Perkins, and by its counsel, Sally Jackson.

FINDINGS OF FACT

Respondent employed Complainant, Henry Harder as a nightshift maintenance foreman on the 3:30 to 12:00 p.m. shift from 1976 until November 28, 1980, when Respondent dismissed its employees working the nightshift, due to economic conditions.

In May of 1979, Complainant suffered an injury to his back. He missed work with the Respondent for a period of six (6) days. After returning to work, Complainant continued to work for Respondent without interruption because of his injury, until November 28, 1980, when Respondent laid off its nightshift employees.

In March 1981, Respondent began recalling several employees who had been terminated from the nightshift. On March 9, 1981, Complainant was offered a job as loader operator, which he refused

Respondent offered testimony that the position of night maintenance foreman, the position that the Complainant held with the Respondent, was eliminated in November of 1980, when the night-shift also was terminated. Respondent now has the position of production supervisor, rather than the night maintenance foreman.

Since February of 1983, Complainant has been totally disabled and receives total disability benefits from Workmen's Compensation Commission. Complainant testified that he believes that he will be able to return to work as of August, 1985.

In February of 1983, Complainant was offered a job with the Respondent as night security watchman. Complainant refused this job position.

Respondent operates a limestone quarry and is in the business of quarrying limestone rock for sale to various customers. Initially Respondent operated as Shenandoah Quarry Inc., until mid-1983, at which time it went to a joint venture with Millville Quarry Inc., for approximately one (1) year after which, Shenandoah ceased operations. The successor corporation to the Respondent Shenandoah Quarry Inc. is Millville Quarry Inc. Millville Quarry Inc. operates partly on the same location as Shenandoah Quarry Inc., and partly out of a new location which contains a new plant and new equipment.

The president of Respondent is Manus H. Perkins and the Secretary/Treasurer is Mark Lyon.

Shenandoah Quarry and Millville Quarry operate the same type of business, in effect the quarrying of limestone, in which it drills and shoots the stone, loads it, hauls it to the crusher, moves the stone up a conveyor to the point where it is graded, and loaded on trucks and railroad cars and transported to customers. The product is the same for both Shenandoah Quarry Inc. and Millville Quarry Inc. The same equipment or similar type of equipment is used by

both corporations, except Millville Quarry Inc. has upgraded the equipment it uses. Both Shenandoah Quarry Inc. and Millville Quarry Inc., have the same customers. Both Shenandoah Quarry Inc. and Millville Quarry Inc. operate out of the same post office box, namely Box C, Millville, West Virginia.

Millville Quarry Inc., uses the same general office, garage and maintenance areas as was used by Shenandoah Quarry Inc. During the period of time Millville Quarry Inc. and Shenandoah Quarry Inc. operated as a joint venture, much of the same work force of Shenandoah Quarry Inc. was transferred to Millville Quarry Inc.

Shenandoah Quarry Inc. was dissolved as a corporation by Order of the Circuit Court of Kanawha County, West Virginia, said Order being dated August 22, 1984.

The evidence indicates that the Complainant was not dismissed in November 1980, due to his handicap, and in fact the entire night-shift was laid off because the lack of profitability for their work.

The evidence indicates that any physical impairment by the Complainant was not considered by the Respondent or its officers when Respondent did not rehire the Complainant in the supervisory or foreman capacity. The evidence indicates that the Respondent moved Mark Lyon into a similar position the Respondent formerly held, and Mark Lyon is presently Secretary/Treasurer of Millville Quarry Inc. Mark Lyon's father is a stockholder in a closely held corporation that being Millville Quarry Inc.

CONCLUSIONS OF LAW

The Respondent is an employer within the meaning of West Virginia Code 5-11-3.

The Complainant filed a timely Complaint with the Human Rights Commission against the Respondent, alleging handicap discrimination

practiced by the Respondent against the Complainant. The Human Rights Commission has jurisdiction over the both parties to make an adjudication in this matter.

The Complainant failed to establish a prima facie case of handicap discrimination practiced by the Respondent against the Complainant. Respondent did not terminate Complainant's Employment in November 1980 due to Complainant's handicap. Respondent did not discriminate against Complainant by not rehiring Complainant to his former position of foreman.

R E C O M M E N D A T I O N

Based upon the foregoing findings and conclusions it is hereby RECOMMENDED as follows:

That Respondent has not discriminated against the Complainant and therefore Complainant should not recover any money damages nor be awarded reinstatement to his former position.

Done and Entered this 17th day of August, 1985.

ENTERED:

Daniel C. Staggers
HEARING EXAMINER
DANIEL C. STAGGERS