



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

1321 Plaza East

Room 104/106

Charleston, WV 25301-1400

Gaston Caperton
Governor

TELEPHONE (304) 558-2616
FAX (304) 558-0085
TDD - (304) 558-2976

Herman H. Jones
Executive Director

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

August 30, 1996

Sheria Maynard
RR 1, Box 309-C
Delbarton, WV 25670

Mingo County Sheriff's Dept.
PO Box 1270
Williamson, WV 25661

Lera K. VanMeter, Esq.
Ward & Associates
PO Box 628
Williamson, WV 25661

Sandra K. Henson
Assistant Attorney General
812 Quarrier St.
Charleston, WV 25301

Re: Maynard v. Mingo Co. Sheriff's Dept.
ES-57-95

Dear Parties:

Enclosed, please find the final decision of the undersigned administrative law judge in the above-captioned matter. Rule 77-2-10, of the recently promulgated Rules of Practice and Procedure Before the West Virginia Human Rights Commission, effective July 1, 1990, sets forth the appeal procedure governing a final decision as follows:

"§77-2-10. Appeal to the commission.

10.1. Within thirty (30) days of receipt of the administrative law judge's final decision, any party aggrieved shall file with the executive director of the commission, and serve upon all parties

or their counsel, a notice of appeal, and in its discretion, a petition setting forth such facts showing the appellant to be aggrieved, all matters alleged to have been erroneously decided by the judge, the relief to which the appellant believes she/he is entitled, and any argument in support of the appeal.

10.2. The filing of an appeal to the commission from the administrative law judge shall not operate as a stay of the decision of the administrative law judge unless a stay is specifically requested by the appellant in a separate application for the same and approved by the commission or its executive director.

10.3. The notice and petition of appeal shall be confined to the record.

10.4. The appellant shall submit the original and nine (9) copies of the notice of appeal and the accompanying petition, if any.

10.5. Within twenty (20) days after receipt of appellant's petition, all other parties to the matter may file such response as is warranted, including pointing out any alleged omissions or inaccuracies of the appellant's statement of the case or errors of law in the appellant's argument. The original and nine (9) copies of the response shall be served upon the executive director.

10.6. Within sixty (60) days after the date on which the notice of appeal was filed, the commission shall render a final order affirming the decision of the administrative law judge, or an order remanding the matter for further proceedings before a administrative law judge, or a final order modifying or setting aside the decision. Absent unusual circumstances duly noted by the commission, neither the parties nor their counsel may appear before the commission in support of their position regarding the appeal.

10.7. When remanding a matter for further proceedings before a administrative law judge, the commission shall specify the reason(s) for the remand and the specific issue(s) to be developed and decided by the judge on remand.

10.8. In considering a notice of appeal, the commission shall limit its review to whether the administrative law judge's decision is:

10.8.1. In conformity with the Constitution and laws of the state and the United States;

10.8.2. Within the commission's statutory jurisdiction or authority;

10.8.3. Made in accordance with procedures required by law or established by appropriate rules or regulations of the commission;

10.8.4. Supported by substantial evidence on the whole record; or

10.8.5. Not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

10.9. In the event that a notice of appeal from a administrative law judge's final decision is not filed within thirty (30) days of receipt of the same, the commission shall issue a final order affirming the judge's final decision; provided, that the commission, on its own, may modify or set aside the decision insofar as it clearly exceeds the statutory authority or jurisdiction of the commission. The final order of the commission shall be served in accordance with Rule 9.5."

If you have any questions, you are advised to contact the executive director of the commission at the above address.

Yours truly,



Robert B. Wilson
Administrative Law Judge

RW/mst

Enclosure

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

SHERIA MAYNARD,

Complainant,

v.

DOCKET NUMBER(S): ES-57-95

MINGO COUNTY SHERIFF'S DEPARTMENT,

Respondent.

FINAL DECISION

A public hearing, in the above-captioned matter, was convened on July 16, 1996, in Mingo County, at the City Council Chambers, in Williamson, West Virginia, before Robert B. Wilson, Administrative Law Judge.

The complainant, Sheria Maynard, appeared in person and by counsel for the West Virginia Human Rights Commission, Sandra K. Henson, Assistant Attorney General and Third Year Law Student, Kim Williams. The respondent, Mingo County Sheriff's Department, appeared by its representative Sheriff Gerald Chafin and by counsel, Lera K. VanMeter, with the firm Ward & Associates, L.C.

All proposed findings submitted by the parties have been considered and reviewed in relation to the adjudicatory record

developed in this matter. All proposed conclusions of law and argument of counsel have been considered and reviewed in relation to the aforementioned record, proposed findings of fact as well as to applicable law. To the extent that the proposed findings, conclusions and argument advanced by the parties are in accordance with the findings, conclusions and legal analysis of the administrative law judge and are supported by substantial evidence, they have been adopted in their entirety. To the extent that the proposed findings, conclusions and argument are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or not necessary to a proper decision. To the extent that the testimony of various witnesses is not in accord with the findings as stated herein, it is not credited.

A.

FINDINGS OF FACT

1. The complainant, Sheria Maynard is a thirty year old woman, who resides in Delbarton, West Virginia. Complainant filed a sex discrimination complaint against the respondent under the West Virginia Human Rights Act alleging that the respondent failed to hire her based upon unlawful considerations of her gender, female. Joint Stipulation No. 1.

2. The respondent, Mingo County Sheriff's Department is a person and an employer as those terms are defined by W. Va. Code §§ 5-11-3(a) and 5-11-3(d), respectively. Joint Stipulation No. 2.

3. To be eligible for the deputy sheriff's position with respondent, an applicant must take and pass, the Entry Level Deputy Sheriff Examination. Applicants must also pass a strength and agility test and receive a favorable psychological evaluation. Joint Stipulation No. 3.

4. Complainant took the Entry Level Deputy Sheriff Examination on July 12, 1993. Complainant received the third highest score of all applicants who took the July 12, 1993 Entry Level Deputy Sheriff Examination and who passed the strength and agility test and psychological examination. Joint Stipulation No. 4.

5. On or about December 15, 1993, Sheriff Gerald Chafin requested a certified list of eligible persons from the Mingo County Deputy Sheriffs Civil Service Commission to fill a vacant deputy sheriff position. He received a certified list including the names of Joseph Tackett, II, Sidney Gilman, and Sheria Maynard. Sheriff Chafin selected Joseph Tackett to fill the vacant deputy sheriff position. Joseph Tackett is a male. Joint Stipulation No. 5.

6. On or about December 15, 1993, Sheriff Gerald Chafin requested a second certified list of eligible candidates to fill a second vacant deputy sheriff position. This list contained the names of Sidney Gilman, Sheria Maynard, and Phillip Davis. Sheriff Chafin selected Sidney Gilman to fill the vacant position. Sidney Gilman is a male. Joint Stipulation No. 6.

7. On January 7, 1994, Sheriff Gerald Chafin again requested a certified list of eligible names to fill another deputy sheriff position. This list contained the names of Sheria Maynard, Phillip Davis and Barry Blair. This time Sheriff Gerald Chafin selected

Phillip Davis to fill the vacant position. Phillip Davis is a male. Joint Stipulation No. 8.

8. Sheriff Gerald Chafin filled one other deputy sheriff position on or about March 28, 1994. Sheriff Gerald Chafin filled the position with Barry Blair, who was the only remaining person on the eligibility list. Barry Blair is a male. Joint Stipulation No. 8.

9. Sheriff Chafin is charged with the responsibility of selecting deputy sheriffs for hire. Deputies are covered by the West Virginia Code which specifies that Sheriff Chafin is to obtain the list of certified candidates from the Mingo County Deputy Sheriff Civil Service Commission. By law he is given the three highest scores on the exam from which to chose. Sheriff Chafin is to select the best candidate from the list based upon merit and fitness pursuant to statute, although the statute does not specify factors to be considered in that regard. The code does however specify that when two or more positions are to be filled at the same time, each appointment is to be made separately and in accordance with the same procedure of obtaining the certified list after each appointment. Tr. pages 51, 52, 53 and 54; Joint Exhibit No. 5.

10. Sheriff Chafin testified that he selected Mr. Tackett for the first vacancy because he finished highest on the Civil Service list, he had a bachelor's degree in Criminal Justice and passed his background check. Sheriff Chafin testified that in filling the second vacancy he chose Mr. Gilman because he was second highest on the Civil Service score, highest on the list, and had passed his background check. When asked by respondent's counsel if there were other factors he considered in filling the second vacancy he did not identify other

considerations. In filling the third vacancy, Sheriff Chafin testified that he chose Mr. Davis due to his good work as a correctional officer and because he was a veteran. Tr. pages 58, 59, 60 and 61.

11. Complainant obtained her Bachelor's degree in Criminal Justice from West Virginia State College in 1991; after obtaining an Associates degree in Accounting and General Business from Southern West Virginia Community College. Complainant is working toward her Masters degree in Criminal Justice from Marshall University; and currently operates her own beauty shop as she has done since July of 1988. Tr. page 12, and Joint Exhibit No. 8.

12. Joseph Tackett, II, at the time of his application, had a Bachelor's degree in Criminal Justice from Marshall University; after having obtained an Associates degree in that field from Southern West Virginia Community College. Mr. Tackett had no previous law enforcement experience or military service to his credit. Tr. page 58, Joint Exhibit No. 5 and Joint Exhibit No. 9.

13. Sidney Gilman, at the time of his application, had attended Southern West Virginia Community College for one and a half years, majoring in Criminal Justice without earning any degree. Mr. Gilman had served in the army for three years, followed by three years as a supervisor of security guards in the private sector. Joint Exhibit No. 5 and Joint Exhibit No. 10.

14. Mr. Davis at the time of his application, had worked for the Sheriff as a Correctional Officer since April of 1991. Mr. Davis had no college education but had a history of military service, both in

the Army National Guard and the U.S. Navy. Joint Exhibit No. 5 and Joint Exhibit No. 11.

15. Barry Blair at the time of his application, had obtained his Bachelor's degree in Criminal Justice from West Virginia State; after obtaining an Associates degree in the same field from Southern West Virginia Community College. Mr. Blair at the time of his application had been working toward his Masters degree in Criminal Justice from Marshall University. Mr. Blair had no prior military service and no relevant work history. Joint Exhibit No. 12.

16. The Entry Level Deputy Sheriff Examination Score List indicates that Mr. Tackett scored 81, Mr. Gilman scored 80, the complainant scored 77, Mr. Davis scored 74 and Mr. Blair scored 70. Joint Exhibit No. 19.

17. During her course work for her Criminal Justice degree, complainant served a 96 hour field training course with the Mingo County Sheriff's Department. During her stay she heard Chief Deputy Don Bush, who supervises the field deputies, state that, "Women had no place in the field as a deputy, in the office, but never out in the field and on the road." This comment was made in October 1991. Tr. pages 12, 13, 15 and 16.

18. Complainant did not suspect that she was being discriminated against on the basis of her gender until Mr. Davis was selected instead of her for the deputy sheriff position filled by him. Until that time Sheriff Chafin had selected the individual who had scored highest on the civil service list. When she was skipped over once she was high score on the list, she was removed from the list pursuant to statutory provision calling for the removal of a candidate from the

list once they have been passed over three times. Tr. pages 17, 18 and 19.

19. Complainant was not contacted at any point by respondent regarding her background or qualifications; nor was she ever informed that she was not selected for any of the positions, or that she would have her name removed from the list. Tr. pages 19 and 20.

20. Neither of the references on the complainants' application were ever contacted by the respondent. Affidavits of Carla Preece and Ralph Gilman.

21. Deputy James H. Pack worked for the respondent for seven years as a deputy sheriff. He testified credibly that Sheriff Chafin makes the decision as to hiring deputy sheriffs, but that Chief Deputy Bush is involved in that process, with Sheriff Chafin relying on Chief Deputy Bush's longtime experience in police work, including service with the State Police, while Sheriff Chafin had previously been a funeral home director and had no experience in law enforcement prior to his being elected Sheriff in 1989. Tr. pages 29, 30, 31, 36, 37 38, 51 and 71.

22. Deputy Pack testified credibly that Chief Deputy Bush had stated that, "Women are stupid cunts" and that Chief Deputy Bush told him that he did not want to see the complainant come to work for the Sheriff's Department. Deputy Pack testified credibly that Sheriff Chafin had shortly after the Civil Service test in July 1993, stated that he didn't really want women to come work for the Sheriff's Department. Tr. pages 31 and 32.

23. Sheriff Chafin's testimony was contradictory. He testified that Chief Deputy Bush played no role in his hiring decision. Tr.

page 57. He testified that Chief Deputy Bush does perform background checks. Tr. pages 70 and 71. He testified that he performs a background check on each of the three candidates each time he receives a list of eligibles. Tr. page 70. He testified that he considers "background checks to check their backgrounds as far as their credit standings, criminal background, their standing in the community, as far as being where their considered good neighbors, their reputation" as part of merit and fitness; that "The background check means quite a bit"; and that, "The degree doesn't always impress me. I like background checks better than degrees." Tr. pages 54, 60 and 69. Yet Sheriff Chafin couldn't recall who performed the background check on complainant. Tr. page 71. Despite not having any recollection of who performed the background check or records from the background checks in the file, Sheriff Chafin nevertheless could testify that there had been no negative information regarding complainant in her background check. Tr. pages 72, 82 and 84. When questioned about the importance of the background check by complainant's counsel, he downplayed its importance. Tr. page 73. Sheriff Chafin never spoke to the officers with whom complainant had interned when her name appeared on the hiring list, claiming he was already aware of their opinions from the time of their internship. Tr. page 75. Yet on direct, he testified that he had not worked with complainant during her internship and had formed no opinions about her abilities for the post of deputy prior to the hiring decisions. Tr. page 62.

24. Since 1990 Sheriff Chafin has been presented with a total of three female candidates for consideration by the Civil Service Commission, including the complainant. Of those three who have ever

been presented on list of eligibles, Sheriff Chafin has hired one woman, Dottie Brewer, on February 14, 1992. Dottie Brewer resigned in 1994, after learning that she was under internal investigation for assaulting a prisoner and a juvenile. Complaints for battery are pending; while Ms. Brewer has a civil suit pending against respondent. Deputy Brewer was assigned to the field. Sheriff Chafin was the Sheriff at the time a prior discrimination suit for failure to hire a woman deputy was decided against the respondent, although he had no involvement with the incident leading to that case. There are currently 14 field deputies employed by respondent, none of whom are women. Tr. pages 64, 76, 77, 78 and 84; Joint Exhibit No. 5 and Joint Exhibit No. 7.

25. Complainant was hurt and disappointed when she was told by the Sheriff that he had the right to bypass her on the list. She was frustrated by the fact that she had invested four years getting an education to assist her in obtaining this employment, which did not even get consideration. Tr. page 20. It was important to her to get the deputy position because she had had a relative murdered and felt no adequate investigation had been performed at the time, and she wanted to see that people got help in legal matters instead of having things put aside. Tr. pages 20 and 21.

26. The respondent, by the actions of Sheriff Chafin, engaged in unlawful discrimination against the complainant in failing to hire her when her name appeared at the top of the list of eligibles he received from the Civil Service Commission.

27. Based upon the stipulated benefits paid to deputies and earnings of the successful candidate, Deputy Davis; as well as the

Affidavit of complainant regarding her earnings in mitigation; the complainant is entitled to back wages in the amount of \$52,005.52, plus interest of \$7,689.31, for a total of \$59,694.83 award of back pay through August 31, 1996. See damage calculation attached to Commission's Proposed Findings Of Fact and Memorandum Of Law.

B.

DISCUSSION

In order to make out a prima facia case of employment discrimination under the West Virginia Human Rights Act, W. Va. Code § 5-11-1 et seq. (1979), the complainant must offer proof of the following:

1. That the complainant is a member of a protected class;
2. That the employer made an adverse decision concerning the complainant;
3. But for the complainant's protected status, the decision would not have been made.

Conaway v. Eastern Associated Coal Corporation, 178 W.Va. 164, 358 S.E.2d 423, at 429 (1986); see also Kanawha Valley Regional Transportation Authority v. West Virginia Human Rights Commission, 181 W.Va. 675, 383 S.E.2d 857, 860 (1989). Criterion number three (3) of this formulation, inappropriately labeled the "but for" test, is merely a threshold inquiry, requiring only that a complainant show an inference of discrimination. Barefoot v. Sundale Nursing Home, 193 W.Va. 475, 457 S.E.2d 152 (1995).

A discrimination case may be proven under a disparate treatment theory which requires that the complainant prove a discriminatory intent on the part of the respondent. The complainant may prove discriminatory intent by the three step inferential proof formula first articulated in McDonnell Douglas Corporation v. Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), and adopted by the West Virginia Supreme Court in Shepardstown Volunteer Fire Department v. West Virginia Human Rights Commission, 172 W.Va. 627, 309 S.E.2d 342 (1983). Under this formula, the complainant must first establish a prima facie case of discrimination; the respondent then has the opportunity to articulate a legitimate nondiscriminatory reason for its action; and finally the complainant must show that the reason proffered by the respondent was not the true reason for the adverse employment decision, but rather pretext for discrimination.

The term "pretext" has been held to mean an ostensible reason or motive assigned as a color or cover for the real motive; false appearance, or pretense. West Virginia Institute of Technology v. West Virginia Human Rights Commission, 181 W.Va. 525, 383 S.E.2d 490 (1989). A proffered reason is pretext if it is not the true reason for the decision. Conaway, supra. Pretext may be shown through direct or circumstantial evidence of falsity or discrimination. Barefoot, supra. Where pretext is shown discrimination may be inferred, Barefoot, supra, though discrimination need not be found as a matter of law. St. Mary's Honor Society v. Hicks, 509 U.S. ___, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993).

There is also the "mixed motive" analysis under which a complainant may proceed to show pretext, as established by the United

States Supreme Court in Price Waterhouse v. Hopkins, 490 U.S. 228, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989); and recognized by the West Virginia Supreme Court in West Virginia Institute of Technology, supra. "Mixed motive" analysis applies where the respondent articulates a legitimate nondiscriminatory reason for its decision which is not pretextual, but where a discriminatory motive plays a part in the adverse decision. Under the "mixed motive" analysis, the complainant needs to show that gender played some role in the decision, and the employer can avoid liability only by proving that it would have made the same decision even if it had not considered complainant's gender. Barefoot, 457 S.E.2d at 162, n.16; 457 S.E.2d at 164, n. 18.

Once the complainant establishes a prima facia case of discrimination the burden shifts to the respondent to offer evidence that the complainant was not offered employment or someone else preferred, for a legitimate nondiscriminatory reason, which must be clearly and reasonably specific. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed. 2d 207 (1981). Should the respondent articulate a legitimate nondiscriminatory reason for rejecting the complainant, "then the complainant has the opportunity to prove by a preponderance of the evidence that the reasons offered by the respondent were merely pretext for unlawful discrimination." Shepardstown, 309 S.E.2d at 352. The complainant "may succeed in this either directly by persuading the Court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered reason is unworthy of credence." Burdine, 450 U.S. at 256.

See also O.J. White Transfer Storage Company v. West Virginia Human Rights Commission 181 W.Va. 519, 383 S.E.2d 323, 327 (1989).

The complainant has established a prima facia case of employment discrimination in that she is a woman, she was passed over for employment when her name was top of the eligibility list for deputies, and a man was selected for employment in her stead from lower on the eligibility list. The complainant has established by a preponderance of the evidence that the respondent's explanation that she was passed over for employment was pretext for unlawful discrimination both by demonstrating that a discriminatory reason more likely motivated the respondent than considerations of merit and fitness and by demonstrating that the respondent's explanation for not selecting the complainant was not worthy of credence. The complainant has offered credible testimony that Chief Deputy Bush did not want women as deputies, that he has a low opinion of women generally and that he specifically didn't want her as a deputy, which was confirmed by the testimony of Deputy Pack. It is clear that Chief Deputy Bush played a significant role in the hiring process both due to his vastly greater experience and Sheriff Chafin's reliance upon him on that account; as well as his role as the person who conducts background checks, which Sheriff Chafin claims to perform on each candidate on the list. Sheriff Chafin also made comments that generally indicated that he did not like women working as deputies according to Deputy Pack. The other circumstantial evidence of record supports an inference of unlawful discriminatory motive in Sheriff Chafin's decision. It is clear that no contact was made with either of the complainant's character references. Thus no effort was made to inquire into

complainant's standing in the community as he said was a factor he considered in the relative merit and fitness as part of that background check. The fact of the matter is that out of fourteen current deputies, there are no women deputies. The fact that Sheriff Chafin hired a woman deputy at one point is not very persuasive as to his lack of discriminatory motive, when the one woman who was hired as a deputy was hired right after the respondent had been hit with a judgment for sex discrimination, especially in light of her subsequent resignation just two years later under what appears to be highly questionable circumstances surrounding an internal investigation by the respondent. This finding of discriminatory motive on the part of Sheriff Chafin is bolstered by the fact that including the complainant only two other women appeared on lists from the Civil Service Commission; neither woman was selected.

Similarly, pretext has been shown through the implausibility of the explanations offered by Sheriff Chafin for the selection of deputies at issue in this case. He has indicated that he does not view education as a preeminent concern in the selection of the most qualified individual. Yet when he made his initial selection for deputy, he chose Deputy Tackett over Deputy Gilman. The score for Mr. Tackett was 81 and that of Mr. Gilman was 80. At the time he made that decision, Mr. Gilman had three years of military service as well as three years supervisory experience with a security firm, while Mr. Tackett had no relevant work history. Sheriff Chafin indicated his positive impression of military service in selecting who is most qualified. Similarly when Sheriff Chafin selected Deputy Gilman, he indicated he did so because he was the second highest score. When he

made that selection, Sheriff Chafin also had before him on the list, Correctional Officer Davis. The glowing observations regarding his experience as a correctional officer, were equally applicable when Sheriff Chafin made this selection, as was the fact that Correctional Officer Davis had prior military service in both the Army National Guard and the U.S. Navy. He did not see fit to select Deputy Davis at that time however, and instead considered these overwhelming positives of his good attributes displayed as a correctional officer and prior military service only when it was complainant's turn at the top of the list, and when bypassing the complainant would coincidentally remove her from subsequent consideration. The fact of the matter is that Sheriff Chafin was clearly going by standing on the list from the Civil Service Commission when he made each of his employment offers for field deputies, until complainant's name came to the top. Then suddenly other factors become of paramount importance. The clear preponderance of the evidence establishes that the unlawful consideration of gender was a motivation in respondent's decision not to hire complainant when her name came to the top of the list. The other considerations are clearly pretense for skipping over complainant given the fact that her credentials were essentially equivalent to those of Deputy Tackett at the time he was selected, other than score. These relative qualifications vis a viz those of Deputy Gilman as far as experience in relevant work experience, including military service, did not cause him to jump ahead of Deputy Tackett on the list for selection as a deputy. Thus it seems implausible that an analogous difference in experience, given complainant's education should have caused Deputy Davis to jump ahead

of complainant on the list for selection when he was hired. The respondent has not demonstrated that it would have selected Deputy Davis over complainant absent consideration of her gender.

Complainant is entitled to an order requiring that she be hired as deputy for the next available opening, to back pay, and to front pay until hired for a deputy position, as a result of respondent's unlawful sex discrimination in refusing to hire complainant. See Childress v. West Virginia Human Rights Commission, 190 W.Va. 58, 436 S.E.2d 293, 294 (1993); Casteel v. Consolidation Coal Company, 181 W.Va. 501, 383 S.E.2d 305 (1989); and Frank's Shoe Store v. West Virginia Human Rights Commission, 179 W.Va. 53, 365 S.E.2d 251 (1986). Complainant was hurt and disappointed; and is further entitled to an award of incidental damages in the amount of \$3,277.45, for humiliation, embarrassment, emotional distress and loss of personal dignity; as a result of respondent's unlawful sex discrimination. Pearlman Realty Agency v. West Virginia Human Rights Commission, 161 W.Va. 1, 239 S.E.2d 145 (1977). A cap on incidental awards for non jury trials is set at \$3,277.45, as this is the amount of damages approved in cases before the West Virginia Human Rights Commission by the West Virginia Supreme Court in Bishop Coal Company v. Salyers, 181 W.Va. 71, 380 S.E.2d 238 (1989), as adjusted to conform to the consumer price index.

C.

CONCLUSIONS OF LAW

1. The complainant, Sheria Maynard, is an individual aggrieved by an unlawful discriminatory practice, and is a proper complainant under the Virginia Human Rights Act, WV Code §5-11-10.

2. The respondent, Mingo County Sheriff's Department, is an employer as defined by WV Code §5-11-1 et seq., and is subject to the provisions of the West Virginia Human Rights Act,

3. The complaint in this matter was properly and timely filed in accordance with WV Code §5-11-10.

4. The Human Rights Commission has proper jurisdiction over the parties and the subject matter of this action pursuant to WV Code §5-11-9 et seq.

5. Complainant has established a prima facie case of sex discrimination.

6. The respondent has articulated a legitimate nondiscriminatory reason for its action toward the complainant, which the complainant has established, by a preponderance of the evidence, to be pretext for unlawful sex discrimination.

7. As a result of the unlawful discriminatory action of the respondent, the complainant is entitled to backpay in the amount of \$59,694.83, plus statutory interest.

8. As a result of the unlawful discriminatory action of respondent, the respondent is entitled to be hired for the next open position as deputy sheriff, and front pay until so hired by respondent.

9. As a result of the unlawful discriminatory action of the respondent, the complainant is entitled to an award of incidental

damages in the amount of \$3,277.45 for the humiliation, embarrassment and emotional and mental distress and loss of personal dignity.

10. As a result of the unlawful discriminatory action of the respondent, the Commission is entitled to an award of reasonable costs in the aggregate amount of \$416.23.

D.

RELIEF AND ORDER

Pursuant to the above findings of fact and conclusions of law, it is hereby **ORDERED** as follows:

1. The respondent shall cease and desist from engaging in unlawful discriminatory practices.

2. Within 31 days of receipt of this decision, the respondent shall pay to the complainant \$59,694.83, in back pay and prejudgment interest.

3. Within 31 days of receipt of this decision, the respondent shall pay to the Commission costs in the amount of \$416.23.

4. Within 31 days of receipt of this decision, the respondent shall pay to complainant incidental damages in the amount of \$3,277.45 for humiliation, embarrassment, emotional distress and loss of personal dignity suffered as a result of respondent's unlawful discrimination.

5. The respondent shall hire complainant for the next available opening as a deputy sheriff; and shall pay complainant front pay until she is hired.

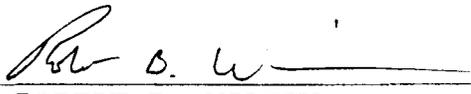
6. The respondent shall pay ten percent per annum interest on all monetary relief.

7. In the event of failure of respondent to perform any of the obligations hereinbefore set forth, complainant is directed to immediately so advise the West Virginia Human Rights Commission, Norman Lindell, Deputy Director, Room 106, 1321 Plaza East, Charleston, West Virginia 25301-1400, Telephone: (304) 558-2616.

It is so ORDERED.

Entered this 30th day of August, 1996.

WV HUMAN RIGHTS COMMISSION

BY: 
ROBERT B. WILSON
ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

I, Robert B. Wilson, Administrative Law Judge for the West Virginia Human Rights Commission, do hereby certify that I have served the foregoing FINAL DECISION by depositing a true copy thereof in the U.S. Mail, postage prepaid, this 30th day of August, 1996, to the following:

SHERIDA MAYNARD
RR 1 BOX 309-C
DELBARTON WV 25670

MINGO COUNTY SHERIFFS DEPT
PO BOX 1270
WILLIAMSON WV 25661

LERA K VANMETER ESQ.
WARD & ASSOCIATES
PO BOX 628
WILLIAMSON WV 25661

SANDRA K HENSON
ASSISTANT ATTORNEY GENERAL
812 QUARRIER ST
CHARLESTON WV 25301



ROBERT B. WILSON
ADMINISTRATIVE LAW JUDGE