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STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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May 13, 1986

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Governor

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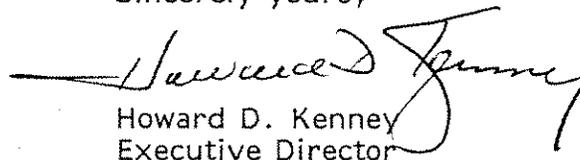
RE: Ardavaz Shahbazian V Appalachian Power Company
Docket No.: ENO-512-80

Dear Ms. Morton, Mr. Lawson and Mr. Price:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Ardavaz Shahbazian V Appalachian Power Company/ENO-512-80.

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
Executive Director

HDK/kpv
Enclosure

CERTIFIED MAIL / REGISTERED RECEIPT REQUESTED

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ARDAVAZ SHAHBAZIAN,

Complainant,

vs.

Docket No. ENO-512-80

APPALACHIAN POWER COMPANY,

Respondent.

O R D E R

On the 9th day of April, 1986, the Commission reviewed the Finding of Fact and Conclusions of Law of Hearing Examiner Michael C. Farber. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own with the exceptions and amendments set forth below.

The Commission hereby amends the Conclusions of Law on page 10 by deleting paragraph 3 thereof, and substituting therefor the following Conclusions of Law:

"3. The Complainant established a prima facie case of discrimination by showing that he was of Iranian descent and that during the period in question Iranians were an unfavored nationality in the wake of the hostage crisis and that, therefore, he was a member of a protected class; that he was qualified for the job he held; that he was discharged; and that he was replaced by someone of comparable qualifications.

4. The respondent articulated a legitimate non-

discriminatory reason for the complainant's discharge in that his performance reviews were to the effect that his performance was substandard during the latter part of the period of his employment.

5. The complainant established that the respondent's reasons were a pre-text in that the credible testimony of his immediate supervisor was that his performance was satisfactory and that his Iranian descent and the Iranian hostage crisis were, at least in significant part, responsible for his poor performance reviews and discharge in that these performance reviews became poor only after the advent of the hostage crisis.

6. It is well-established that in order to show the respondent's reasons are pre-textual complainant need not show that impermissible discrimination was the sole reason for his termination, but only tht it was a contributory cause or determining factor, and by the credible evidence complainant met this burden.

7. Complainant is entitled to recover from the respondent for lost wages the sum of Three Thousand One Hundred Seventy Dollars (\$3,172.00) plus prejudgment interest at the rate of ten percent (10%) per annum from July 1, 1980, until June 14, 1985, the date of the hearing in this case.

8. The complainant is entitled to recover the sum of Five Thousand Dollars (\$5,000.00) as incidental damages for humiliation and mental stress resulting from discrimination

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

ARDAVAZ SHAHBAZIAN,)
)
 Complainant)
)
 vs.)
)
 APPALACHIAN POWER COMPANY,)
)
 Respondent)

Approved
R.S.
1/22/86
Case No. ENO 512-80

FINDINGS OF FACT

1. Complainant was employed by the respondent, Appalachian Power Company, on August 1, 1977, as a performance engineer at respondent's Kanawha Run Plant. During the course of his first year of employment, the complainant was given two job performance reviews, both of which show his performance to have been generally acceptable for a new employee. (Respondent's Exhibit I, 1st and 2nd).

2. On March 23, 1978, the complainant requested a transfer of employment to an engineering position with the respondent's parent corporation in New York. The request was reviewed by James Bennett, the plant manager at the Kanawha River Plant. In his report on the transfer request filed with the central office of the respondent in Roanoke, Virginia, Mr. Bennett stated that the complainant's "work performance has been favorable during his employment with us" and further added

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that the complainant's "[f]uture experience should see him develop into a good engineer." Based upon his favorable review, Mr. Bennett offered his recommendation on the transfer to the central office. (Respondent's Exhibit II).

3. On July 7, 1978, however, James Bennett was advised by the Roanoke Office that there were no openings as of that date for performance engineers with the parent corporation in New York, and consequently there was no reason to interview the complainant for such a position. (See Respondent's Exhibit II).

4. On June 1, 1979, the complainant received a third job performance review which was compiled by Dayton Neil, the complainant's immediate supervisor and also the Performance Supervising Engineer at the Kanawha River Plant. In his review, Mr. Neil reported that the complainant's overall level of performance was that of a "poor performer." However, Mr. Neil also took the position that the complainant "shows potential for becoming an effective performance engineer." This latter statement would appear to have been based upon the fact that the complainant was still "too new in present job" for supervisory staff to make a final determination as to his overall job performance (Respondent's Exhibit I, 3rd). As a result of this report, the complainant was denied a merit pay increase.

5. On October 31, 1979, the complainant requested a

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special review of his job performance based upon the findings of the previous report and also to protest the denial of his merit pay increase. This fourth review showed essentially no improvement. As Mr. Neil found, "although some improvement has been made in some areas since the last review they have not been broad enough nor great enough to warrant special attention." It is also related in the report that the complainant "was very upset, displeased and displayed aggressive anger at the review and the fact that there was no merit increase." (Respondent's Exhibit I, 4th).

6. On November 5, 1979, the American Embassy in Tehran, Iran was stormed by Iranian students and other militants and a number of American citizens were taken hostage for what subsequently turned out to be an extended period of captivity. This act of terrorism was a momentous event on the international scene and raised feelings of hostility and resentment toward Iranian students here at home.

7. The complainant's claim is predicated upon his Iranian nationality, although he is a naturalized American citizen and Christian rather than Moslem.

8. On November 9, 1979, the respondent placed the complainant on probation for a period of sixty days based upon Mr. Neil's findings that "employee is not performing present job satisfactorially." (Respondent's Exhibit I, 4th).

9. On November 12, 1979, Mr. R. L. Bowen, Jr., a

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senior performance engineer at the respondent's Plant and also a co-worker of the complainant, wrote a memorandum to his immediate supervisors regarding the complainant's progress as a performance engineer. The document, identified as Plaintiff's Exhibit I, states as follows:

It has come to my attention that Ardie Shahbazian has been given a letter stating that he is on a two-month probationary period. This was initiated because of his poor performance since his last progress review. Gentlemen, I personally feel that this letter was a harsh act. Although Ardie has not made a so called outstanding improvement, he has made great improvement in his attitude, initiative, and willingness to help accomplish our job assignments in the Performance Department. Also, during the strike Ardie worked as hard or even harder than the average person in the plant. However, this seems to have been of no concern to the judges of his performance.

At the present, his spirit is so low that I feel no one could possibly make an outstanding performance under the same conditions (and I have been there).

Although our judg[e]ment [sic] may be influenced by the present situation in Iran, I feel that anyone that has worked with Ardie in the past few months could verify my above feelings and judg[e]ment [sic]. Anyone that has made improvement as Ardie has does not warrant such a harsh act as to be put on probation for termination.

Another item that I would like to mention is the proposed training with the Operations Department. I feel that under the present situation, Ardie does not stand a chance of making a showing in the next two months because of feelings over our foreign situation....

10. Similarly, the complainant expressed the type of predicament in which he found himself with regard to his job performance at the Plant during the first months of the Iranian hostage crisis. As stated during the course of the hearing in this matter, the complainant responded to the following questions:

Q. Do you recall when you were placed on probation?

A. I was put on probation I believe it was in November 15 or something. It was very close -- it was almost two days -- a week after the Iranian hostages crisis. That was my first probation and that lasted two months. Supposedly I was -- for two months as I explained to you earlier.

And I was given certain tasks to do and I performed everything that was expected of me in satisfactory or maybe even better than satisfactory in some fashion, especially in the operation department. And since they have not found anything they're just looking for an excuse.

They're just trying -- what the -- the whole object was to try to put me under a mental stress by giving me all these tasks, you know, expecting this, expecting that. And just try to put me so much in pressure I had to, you know, to make me to quit. And I don't think -- but they were trying to force me to quit.

And so after two months was ended they couldn't find anything valid, that I'm not capable of performing what they expected me to perform, they couldn't find any facts. So they extended my probation just to give me, again, more time to look for a job, again, forcing me to quit. They did not want me to -- they didn't want to fire me because they felt they didn't have any solid evidence to be able to do it.

So what they were trying to do just by

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me, again, under more pressure and more pressure. And I was, you know, my child was just born at that time, you know. My family -- I was starting a new family and we were trying to settle down here and there -- work. They put me through so much pressure to make me leave the job.

And as far as -- first of all, I wasn't in the situation financially to start moving out of this state or to find a job. And second of all, I had no, you know, intention, you know, to leave the job. And I got the picture that it was so obvious that they did not want me to work there.

Q. What do you mean it was so obvious? What specifically did they do other than the performance ratings? What did they do?

A. It was obvious in the fact that in everything that he put down in the progress review was not valid. And I objected each time and I had a long discussion each time. And I told him what it should have been and what it is. And I felt it was a unfair to get a rating like that. And I felt that I did the job well above satisfactory or satisfactory in every case.

And Bob Bowen being my immediate tech leader and he felt the same way. And he felt that I'm performing in a satisfactory fashion. I didn't believe that the rating that was given to me was fair and I objected each time. (Transcript of hearing, pp. 168-170).

11. On January 25th, 1980, Mr. Neil compiled a fifth job performance review of the complainant based upon certain tasks that had been assigned to the complainant during the course of his probation period. Neil rated the complainant as a "poor performer" once again and further stated that "future employment is not recommended." (Respondent's Exhibit I, 5th).

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12. On February 7, 1980, Mr. Bennett, the plant manager, reviewed the job performance report compiled by Mr. Neil but he made a determination not to act upon the recommendations set forth therein. In fact, Bennett assigned the complainant a second period of probation based upon his finding that the complainant "had shown an acceptable progress during the probation period." Bennett further directed that Mr. Bowen be involved in the training and supervision of the complainant during the second probation period and specifically required that Bowen report "weekly in writing in detail" as to the complainant's progress. (Respondent's Exhibit I, 7th).

13. On March 24, 1980, Mr. Bowen filed an assignment report with the Performance Department concerning the job assignments performed by the complainant during that month. In the report, Bowen relates that "considering the mental stress of employee, he seems to show considerable interest in all performance department's functions and is more than willing to carry his share of the work load." Additionally, Mr. Bowen notes that the complainant "accepts all job assignments in a pleasant manner [and] employee seems to have good study habits and shows interest in many things throughout the plant." (Complainant's Exhibit 7).

14. In early May of 1980, following the completion of the second probation period, the complainant's job performance was reviewed once again the by supervisory staff at

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the Plant. Mr. Bowen alone found the complainant to have reached the level of an acceptable employee. (See Respondent's Exhibit I, 7th(B)).

On May 12, 1980, S.V. Candle, an Assistant Plant Manager, submitted a consolidated job performance review to Mr. Bennett with a handwritten memorandum relating his professional opinion of the complainant:

His overall performance rates him in my opinion about like a summer student engineer or a 1st year Engr. B.

I see no potential in him beyond that of a mediocre Performance Engineer. Thus there is no real gain from keeping him on the payroll. He will be a body to take up space, do routine jobs that require too much supervision and follow to get the job done correctly.

Our overall aim for Perf. Engr's is to have trainable people to fill future advanced job openings. This is not the case. I believe his employment should be terminated even though it will create another vacancy in our engineer category. Continuing investment by the company in Ardie is not warranted.

15. On May 15, 1980, the complainant was informed that he would be terminated as an employee on July 1, 1980, unless he desired to resign prior to that date. On June 30, 1980, the complainant had remain steadfast as to his right of employment with the respondent and consequently it was necessary for the respondent to have the complainant physically escorted from the plant site on that date. The complainant's termination of employment was effective July 1, 1980.

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16. The complainant obtained new employment on October 20, 1980, at a substantially higher annual salary. Complainant's out-of-pocket salary loss for the period between jobs was stipulated by the parties as being \$3,172.00.

17. The complainant seeks damages in the amount of \$1,600.00 based upon the fact that he was forced by his change of employment to sell his home at a loss. Although there is ample evidence of record to confirm the actual purchase price and selling price of the complainant's home, it is the opinion of the undersigned that such a loss is too speculative for damages to be assessed on that basis. Market values on residential property constantly fluctuate based upon a number of factors, none of which relate directly to the termination of employment at issue here.

18. The complainant was subject to an unlawful practice within the meaning of the West Virginia Human Rights Act and specifically within the meaning of W.Va. Code 5-11-9(a) of said Act, based upon national origin.

19. The complainant's claim of discrimination is supported by substantial evidence and consequently he is entitled to recover compensatory damages in the amount of \$15,000.00 for his pain and suffering brought on by mental stress due to the circumstances hereinbefore found and as further confirmed by the transcript of hearing.

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CONCLUSIONS OF LAW

1. The complainant is entitled to the protection of the West Virginia Human Rights Act, W.Va. Code 5-11-1, et seq.

2. The respondent is an employer within the meaning of W. Va. Code 5-11-3.

3. The conduct of the respondent in this matter amounts to an unlawful discriminatory practice under W. Va. Code 5-11-9(a), in that the respondent acted in a retaliatory manner in terminating the employment of the complainant. The Iranian hostage crisis may not have been entirely responsible for the dismissal of the complainant, but the Commission is of the opinion that said dismissal was proximately related to the taking of the hostages and consequently the complainant is entitled to damages for loss of salary in the amount of \$3,172.00, and further is awarded damages in the amount of \$15,000.00 as compensation for his pain and suffering brought on by the termination of his employment.

Enter this 20th day of January, 1986.


MICHAEL C. FARBER
Hearing Examiner