



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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Herman H. Jones
Executive Director

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October 24, 1997

Kathleen Steele
Lot 13
Northern Trailer Park
Ripley, WV 25271

Jackson County Emergency
Medical Services
PO Box 800
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Paul R. Sheridan
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Leah R. Taylor
Jackson County Prosecuting
Attorney
PO Box 811
Ripley, WV 25271

Re: Steele v. Jackson County Emergency Medical Services
ES-21-91

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 an 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 an 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 an 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,



Gail Ferguson
Administrative Law Judge

GF/mst

Enclosure

cc: Herman H. Jones, Executive Director

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

KATHLEEN (MCCAFFERTY) STEELE,

Complainant,

v.

DOCKET NUMBER: ES-21-91

JACKSON COUNTY EMERGENCY
MEDICAL SERVICES,

Respondent.

FINAL DECISION

A public hearing, in the above-captioned matter, was convened on February 22, 1995, in Jackson County, West Virginia, before Gail Ferguson, Administrative Law Judge. Briefs were received through May 17, 1995.

The complainant, Kathleen (McCafferty) Steele, appeared in person. Her case was presented by Senior Assistant Attorney General Paul R. Sheridan, counsel for the West Virginia Human Rights Commission. The respondent, Jackson County Emergency Medical Services, appeared by its representative EMS Director Earl Wolfe and by counsel, Assistant Prosecuting Attorney Leah R. Taylor.

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 respondent, Jackson County Emergency Medical Services, (EMS) is a county owned and operated emergency medical service, and was founded in 1987 to serve what was then a volunteer ambulance service from the local volunteer fire department.

2. Earl Wolfe currently serves as the director of the EMS, and he has held that position since its creation as a county service. Part-time employees of EMS are hired by the director, sometimes with the consent of the Jackson County Commission.

3. Currently, the EMS employs 16 full-time emergency medical technicians (EMTs) and paramedics. Earlier in its history, in 1988 as Mr. Wolfe recalls, the EMS employed 12 full-time EMTs and paramedics. Paramedics are more highly trained than EMTs and can perform a greater range of functions.

4. Throughout the history of the Jackson County EMS, the hiring of full-time employees has been done by the Jackson County Commission. For full-time positions, the county commissioners interview candidates for the position and make the decision as to which candidate to select.

5. The complainant, Kathleen Steele, a female, first went to work for the Jackson County EMS as a driver in October 1987. She worked part time in that position for respondent until November 1987, when she quit her job to move out of state.

6. Ms. Steele returned to West Virginia within a matter of months, took the training and testing for emergency medical technician (EMT) certification, and applied to the Jackson County EMS for work as a part-time EMT. She was interviewed by EMS Director Earl Wolfe who hired her in April 1988. Ms. Steele made \$5.00 per hour as a part-time EMT.

7. On or about September 29, 1988, the complainant submitted an application with the Jackson County EMS for a position as a full-time EMT.

8. At the time Ms. Steele was qualified for the position of full-time EMT. She held her certification as an emergency medical technician and had performed successfully as a part-time EMT with the service for six months.

9. After some period of time had elapsed and after she had become concerned that she might not be contacted for an interview, Ms. Steele called the secretary of the County Commission to inquire as to what she needed to do in order to be interviewed. Ms. Steele was advised to come to the County Commission that evening.

10. Kathleen Steele was not hired following her interview with the County Commission.

11. Ms. Steele made it clear to respondent that she wanted her application for a full-time EMT position to be kept on file so that she could be considered for future positions.

12. Although the complainant was eventually hired as a full-time EMT, it did not occur until 1990, three years after she applied. In the intervening years, respondent hired four male candidates ahead of her. These four candidates were Stan Johnson, Randall Hughes, Mike Morrison and Charles Rogers.

13. The only other full-time employee hired before the complainant was Penny Streight, a female.

14. Stan Johnson applied with the EMS for full-time employment on October 12, 1988, and was hired into a full-time employment position less than a month later on November 2, 1988. According to respondent, Stan Johnson was hired over the complainant because he was a certified paramedic at the time of hire, while the complainant was not.

15. Randall Hughes was hired into a full-time position on August 11, 1989. According to respondent, Hughes was hired over the complainant because he was a certified paramedic at the time of hire, while the complainant was not. Mr. Hughes also had prior experience.

16. Both of the respondent's witnesses testified that respondent hires paramedics over EMTs, even if the position is for an EMT, because paramedics are more qualified in that they are able to perform more tasks and because scheduling is more flexible with paramedics.

17. Mike Morrison, was hired as a full-time EMT by the respondent on September 1, 1989. According to respondent, Mr. Morrison was hired over the complainant because he had been employed as a part-time employee longer than complainant. Mr. Morrison had 22 months of seniority in September of 1989. Mr. Morrison was not a paramedic.

18. Mike Morrison first began working part-time with the EMS on November 1, 1987. The complainant first worked part-time for EMS in October 1987, left her part-time position at the end of 1987, and returned for employment with respondent early in 1988. The complainant had 17 months of seniority in September of 1989.

19. According to respondent, part-time EMS seniority starts over if a part-time EMS employee leaves and comes back. The complainant acknowledged this unwritten policy.

20. Respondent's personnel manual, in effect between August 30, 1988 and August 24, 1993, contains a list of factors taken into consideration in making full-time hiring decisions. They are:

- (a) Qualifications
- (b) Part-time employees [sic]
- (c) Recommendations of EMS personnel and director
- (d) Appearance
- (e) Past records and references
- (f) Physical abilities
- (g) Mental stability
- (h) Must be West Virginia certified in appropriate classification
- (i) Must hold a valid West Virginia driver's license
- (j) All applicants must give permission to investigate their past medical, criminal and civil backgrounds.

21. During the summer of 1990, the respondent hired three more part-time employees as full-time EMTs: Charles Rogers, Penny Streight and Kathleen Steele (the complainant).

22. In the summer of 1990, respondent had in its employ one full-time female EMT, Amy McGinley, the complainant's sister who was a certified paramedic.

23. In July of 1990, Ms. McGinley resigned her position as a full-time EMT with respondent.

24. Penny Streight, a certified paramedic, was hired by respondent to replace Amy McGinley as a full-time EMT. Ms. Streight's hire date was August of 1990.

25. At the time of the full-time hire in July of 1990, Charles Rogers, who is male, had been the Jackson County Airport Manager, which was a full-time position, and had worked as a part-time EMT for the County EMS since July 1987.

26. According to respondent, Charles Rogers was hired in July 1990 over the complainant because of his seniority as a part-time EMS employee and as a full-time county employee. On an earlier occasion, respondent maintained that its decision to hire Rogers was based on two additional grounds: an employee rating system it utilized; and on cost savings to the county resulting from interdepartmental transfer.

27. Testimony by respondent's witnesses revealed that there was no monetary savings to the county by hiring Rogers.

28. Earl Wolfe testified that prior to the hiring of Rogers in July of 1990, he gave each of his full-time incumbents a list of the candidates for the available full-time position and asked each to

rate them with one being the highest and ten the lowest. Aside from Rogers, the candidates, at that time, included the complainant, the sole female. The name of Penny Streight was not on the list of candidates scored. Rogers scored the highest and the complainant scored mid-range. According to Mr. Wolfe this rating system was spontaneous and was not used by respondent as a factor in making any other hiring decisions.

29. According to respondent, notwithstanding the rating system, Charles Rogers would have been hired rather than the complainant based on his accrued seniority. In July of 1990, the complainant had 28 months of seniority and Rogers had 36 months.

30. County Commissioner Dick Casto testified that he could not recall why the Jackson County Commission preferred any candidates chosen over Kathleen Steele, other than Charles Rogers. According to Mr. Casto, Rogers was preferred because he had seniority and because he was transferred from one position to another.

31. In July of 1990, complainant attended a county commission meeting, at which time she became aware that Charles Rogers was being hired for the full-time position of EMT. Shortly thereafter, Ms. Steele filed a complaint alleging gender discrimination with the West Virginia Human Rights Commission.

32. Ms. Steele was hired full-time by the respondent in August 1990. Mr. Wolfe testified that the hiring of Kathleen Steele as a full-time employee was because she was a qualified EMT and because she had the most part-time seniority at that time.

33. While the complainant waited for full-time work with the respondent, between September 1988 and August 1990, she continued to work part-time for the respondent.

34. In 1992, while she was employed as a full-time EMT for the respondent, Kathleen Steele completed her paramedic training, passed her examinations and became certified as a paramedic.

35. In June of 1993, the complainant married, quit her full-time position with the EMS and left the state. The complainant later returned and reapplied for employment with the respondent. The complainant was eventually hired back into a full-time position in September of 1994.

36. Full-time employees of the respondent Jackson County EMS are paid pension benefits and health insurance benefits, while part-time employees are not. The retirement benefits are 4.5% of the employee's gross wages. The respondent pays approximately \$185 per month per employee for medical insurance.

B.

DISCUSSION

The Human Rights Act, as amended, prohibits discrimination on the basis of sex. Employment discrimination on the basis of sex is specifically barred by WV Code 5-11-9(a).

The term "discriminate" or "discrimination" as defined in WV Code § 5-11-3(h) means "to exclude from, or fail or refuse to extend to, a person equal opportunities because of...sex...." This

includes equal opportunity with regard to hire, tenure, terms and conditions or privileges of employment. WV Code §5-11-9.

Given this statutory framework, to recover against an employer on the basis of a violation of the Act, a person alleging to be a victim of unlawful sex discrimination, or the Commission acting on her behalf, must ultimately show by a preponderance of the evidence that sex was a motivating or substantial factor for the employer's failure to extend an equal opportunity.

Under the West Virginia Human Rights Act, a discrimination case may be proved on a disparate treatment theory or by a disparate impact theory. See, Barefoot v. Sundale Nursing Home, 457 S.E.2d 152 (1995); West Virginia University v. Decker, 447 S.E.2d 259 (1994); Guyan Valley Hospital, Inc. v. West Virginia Human Rights Commission, 382 S.E.2d 88 (1989). A disparate treatment case requires proof of discriminatory intent. Discriminatory intent may be established by showing that the decision maker acted out of stereotypical thinking, such as gender stereotypes, and need not involve some type of malice or hatred. Disparate impact has no "intent" requirement, but rather a showing that a facially neutral employment practice has a disproportionate adverse impact on a protected class.

There are three different analyses which may be applied in evaluating the evidence in a disparate treatment discrimination case. The first, and most common, uses circumstantial evidence to prove discriminatory motive. Since discriminating employers usually hide their biases and stereotypes, making direct evidence unavailable, a complainant may show discriminatory intent by the three-step inferential proof formula first articulated in McDonnell

Douglas Corp. v. Green, 411 U.S. 792, (1973), and adopted by our Supreme Court in Shepherdstown Volunteer Fire Dept. v. WV Human Rights Commission, 309 S.E.2d 342 (1983). The McDonnell Douglas method requires that the complainant or commission first establish a prima facie case of discrimination. The burden of production then shifts to the respondent to articulate a legitimate, nondiscriminatory reason for its action. Finally, the complainant or commission may show that the reason proffered by the respondent was not the true reason for the employment decision, but rather a pretext for discrimination.

Cases analyzed under the McDonnell Douglas test often turn on the credibility of the explanation offered by the respondent for its decision. The term "pretext," as used in the McDonnell Douglas formula, has been held to mean "an ostensible reason or motive assigned as a color or cover for the real reason or motive; false appearance; pretense." WV Institute of Technology v. WV Human Rights Commission, 383 S.E.2d 490, 496 (1989), A proffered reason is pretext if it is not "the true reason for the decision." Conaway v. Eastern Associated Coal Corp., 358 S.E.2d 423, 430 (1986).

Second, there is the "mixed motive" analysis. This analysis may also work with circumstantial evidence; the difference is that here the pretext aspects of the McDonnell Douglas analysis are not applicable. Where an articulated legitimate, nondiscriminatory motive is shown by the respondent to be nonpretextual, but is in fact a true motivating factor in an adverse action, a complainant may still prevail under the "mixed motive" analysis. This analysis flows from the legal requirement that employment decisions must not be

motivated, even in part, by discriminatory intent or gender or racial stereotypes.

The mixed motive analysis was established by the United States Supreme Court in Price Waterhouse v. Hopkins, 490 U.S. 228, (1989), and recognized by the West Virginia Supreme Court of Appeals in WV Institute of Technology v. WV Human Rights Commission, supra. If the complainant proves that his race played some role in the decision, the employer can avoid liability only by proving that it would have made the same decision even if it had not considered the complainant's race. Barefoot, supra.

Finally, a complainant or the commission may prove a disparate treatment claim by direct evidence of discriminatory intent. Proof of this type shifts the burden to the respondent to prove by a preponderance of the evidence that it would have rejected the complainant even if it had not considered the illicit reason. Trans World Airlines v. Thurston, 469 U.S. 111 (1985).

In O.J. White Transfer Storage Co. v. WV Human Rights Commission, 383 S.E.2d (1989), the West Virginia Supreme Court specifically addressed the formulation of the prima facie burden in a failure to hire case,

is upon the complainant to prove by a preponderance of the evidence a prima facie case of discrimination, which burden may be carried by showing (1) that the complainant belongs to a protected group under the statute; (2) that he or she applied and was qualified for the position or opening; (3) that he or she was rejected despite his or her qualifications; and (4) that after the rejection, the respondent continued to accept applications of similarly qualified persons.

The complainant, Kathleen Steele, has de minimis established a prima facie case of sex discrimination. There is no dispute that

complainant, a female part-time emergency medical technician, applied for full-time employment with the respondent in September of 1988, as an emergency medical technician. It is further uncontested that the complainant was minimally qualified for the position, given her certification as an EMT; that she was rejected; and that she asked that her application be considered for a future position. In addition, complainant has satisfied the final element of proof required for a prima facie showing by introducing evidence that for each available opening, in four separate instances, respondent selected similarly qualified male applicants.

The establishment of a prima facie case shifts the burden to the respondent to rebut the presumption of discrimination by producing evidence that the [complainant] was rejected, or someone was preferred, for a legitimate, nondiscriminatory reason. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1981). Though the burden on respondent under this test is only one of production, to accomplish it a respondent "must clearly set forth through the introduction of admissible evidence the reason for the [complainant's] rejection." Burdine, 450 U.S. at 254.

In this case, the reasons articulated by the respondent for its selection of the male candidates over the complainant take more than one form. Respondent claims that two of the male candidates were preferred over the complainant because they were better qualified as they were certified as paramedics and the complainant was not. The respondent claims that a third male candidate was preferred over the complainant because he had more part-time EMS seniority. Respondent's explanation for why the fourth male candidate was

preferred over the complainant, included his greater seniority as a part-time EMS employee; his seniority as a full-time county employee; a high rating by other full-time EMTs; and because of cost savings to the county.

The first male candidate hired over the complainant was Stan Johnson, hired on November 2, 1988. The respondent explained its preference for Johnson by asserting that he was more qualified than the complainant. Mr. Johnson had his paramedic certification at the time, while the complainant did not. Similarly, respondent's decision to hire Randall Hughes, rather than the complainant, on September 11, 1989 was based on the same reason as the Johnson decision; Mr. Hughes had paramedic credentials at a time when Ms. Steele did not. According to respondent, candidates with paramedic credentials are hired over EMTs because they are more skilled. In other cases, seniority as a part-time EMT is a hiring factor. There is no evidence that this was not a reasonable explanation for preferring Mr. Johnson or Mr. Hughes over Ms. Steele. The next person hired as a full-time EMT was Mike Morrison. Neither Mr. Morrison nor the complainant had their paramedic certification at the time Morrison was hired on September 1, 1989. This hiring of Mike Morrison over the complainant was explained by the respondent as a decision to hire the candidate with the most seniority. The evidence reveals that Mr. Morrison had several months more continuous part-time employment with the EMS than did Ms. Steele.

Respondent's decision to hire Charles Rogers rather than the complainant on July 3, 1990, as in the case of Mike Morrison centered on his greater seniority as a part-time EMT; as well as his status as

a full-time county employee at the airport at the time of his hire and is substantiated in the record. Although respondent earlier contended in its reply to the original charge that an additional reason it selected Rogers was a county cost savings of \$5,700.00 because it involved an interdepartmental transfer, the evidence does not bear this out as was made clear by both of respondent's witnesses.'

Finally, respondent relied on higher ratings Rogers received from incumbent full-time employees of the Emergency Medical Service. These explanations for complainant's rejection although varied satisfy the respondent's burden.

The complainant at this time may prove by a preponderance of the evidence that respondent's reasons are pretext for discrimination. 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 explanation is unworthy of credence." Burdine, 450 U.S. at 256. There has been no such showing.

The complainant acknowledges she understood as a matter of unwritten policy that when she left in 1987 she would be forfeiting any seniority she had accumulated in 1987. Clearly, the complainant was aware when she returned to her employment in April, 1988, that she would not have accumulated seniority which would be considered by respondent in determining subsequent full-time employment. Although the complainant attempted on several occasions to point out that this policy was not expressly written in the Jackson County Employee Handbook which was in effect at that time, the complainant's own

testimony clearly establishes that she knew of respondent's practice of using part-time seniority as a factor in selecting full-time emergency personnel. Moreover, respondent's handbook speaks of part-time employment as a factor for promotion. There is no evidence that respondent deviated from its articulated practice. Clearly all candidates selected before the complainant for available full-time EMT positions from 1988 to 1990 including Penny Streight, were more qualified and/or possessed more seniority than the complainant.

The complainant next argues as an indicator of pretext that respondent's explanations for its actions are internally inconsistent. The complainant urges that, if the respondent had approached all of its hiring decisions with the consistent criteria of superior qualifications and seniority as alleged, it would have necessarily reached a different conclusion in at least one of its subsequent decisions. A close scrutiny of the record does not bear this out.

The complainant points to the hiring of Penny Streight, another female hired before the complainant, as proof of respondent's pretext. Although, this incident could serve to undercut complainant's claim of sex discrimination, complainant raises its probativeness for another reason. Complainant argues that the hiring of Ms. Streight demonstrates that respondent's assertions regarding Johnson and Hughes and their superior qualifications as paramedics are either not valid or should not be given enough weight to overcome gender bias by respondent. The complainant submits that Charles Rogers, who was not a paramedic, should not have been hired in July of 1990 for a full-time EMT position before Penny Streight, a

certified paramedic hired in early August of 1990 for an identical position. According to complainant, this inconsistency belies respondent's explanation that applicants with paramedic credentials were always preferred.

However, the complainant also concedes that the hiring of Ms. Streight coincided with the departure of Amy McGinley, also a certified paramedic, from the full-time ranks of the EMS. Further buttressing this is evidence that during the decision making process which involved the candidacy of Charles Rogers, Penny Streight's name was not on the roster of part-time candidates rated by respondent's other employees indicating as corroborated by respondent's witness that Ms. Streight's hiring was already a done deal before Rogers was hired.

It is the duty of the factfinder to make the ultimate determination whether there was intentional discrimination on the part of respondent. Shepherdstown V.F.D. v. WV Human Rights Commission, supra. In short, the factfinder "must decide which party's explanation of the employer's motivation it believes." United State Postal Service Board of Governors v. Aikens, 460 U.S. 711. In this regard, the trier of fact should consider all the evidence, giving it whatever weight and credence it deserves, and decide whether, in the final analysis, respondent treated complainant less favorable than others" because of her sex. Furnco Construction Corp. v. Waters 438 U.S. 567 (1978).

In determining which side to believe, it is up to the factfinder to assess the credibility of witnesses and the persuasiveness of the evidence. Westmoreland Coal Co. v. WV Human Rights Commission,

supra. The critical evidence, for the purpose of this case, regards respondent's motives for hiring Stan Johnson, Randall Hughes, Mike Morrison and Charles Rogers, in each event, instead of the complainant, Kathleen Steele. In a circumstantial case such as this, this, this turns largely upon an assessment of the credibility of the respondent's explanations.

The complainant has failed to establish by a preponderance of the evidence that respondent's articulated reason for its selection of the full-time hirees, namely superior qualifications and seniority are pretext for unlawful gender discrimination.

Complainant also points to the example of respondent's alleged actions toward her when she sought reemployment in 1994 and to other alleged instances of respondent's disparate treatment of male and female employees occurring in 1994 to support her claim of gender bias by respondent occurring in 1990. However, under the instant facts, these subsequent allegations are neither probative of respondent's motive in 1988-1990 nor dispositive of the merits of this case.

C.

CONCLUSIONS OF LAW

1. The complainant, Kathleen Steel, 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, Jackson County Emergency Medical Services, is and was at all times relevant hereto, an employer as defined by WV

Code §5-11-3 (d), and a person within the meaning of WV Code §5-11-3(a), and is therefore subject to the provisions of the West Virginia Human Rights Act and the jurisdiction of the West Virginia Human Rights Commission.

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. The complainant is a member of a protected class in that she is a woman.

6. The complainant has established a prima facie case of sex discrimination.

7. The complainant has failed to establish by a preponderance of the evidence respondent's articulated nondiscriminatory reasons for its treatment of complainant to be pretexts for unlawful discrimination.

D.

RELIEF AND ORDER

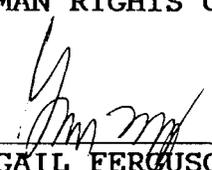
Pursuant to the above findings of fact and conclusions of law, it is hereby **ORDERED** that this case be dismissed with prejudice and be closed.

It is so **ORDERED**.

Entered this 28 day of October, 1997.

WV HUMAN RIGHTS COMMISSION

BY



GAIL FERGUSON
ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

I, Gail Ferguson, 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
24th day of October, 1997, to the following:

Kathleen Steele
Lot 13
Northern Trailer Park
Ripley, WV 25271

Jackson County Emergency
Medical Services
PO Box 800
Ripley, WV 25271

Paul R. Sheridan, Esq.
Civil Rights Division
PO Box 1789
Charleston, WV 25326-1789

Leah R. Taylor
Jackson County Prosecuting Attorney
PO Box 811
Ripley, WV 25271



GAIL FERGUSON
ADMINISTRATIVE LAW JUDGE