



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

1321 Plaza East

Room 108A

Charleston, WV 25301-1400

TELEPHONE (304) 558-2616

FAX (304) 558-0085

TDD - (304) 558-2976

TOLL FREE: 1-888-676-5546

Bob Wise
Governor

Ivin B. Lee
Executive Director

VIA CERTIFIED MAIL-
RETURN RECEIPT REQUESTED

July 17, 2002

Elizabeth A. Brammer
PO Box 564
Daniels, WV 25832

City of Beckley/
Beckley City Police Dept.
Drawer AJ – 340 Prince St.
Beckley, WV 25802

William D. Turner, Esq.
Crandall, Pyles, Haviland & Turner, LLP
206 W. Randolph St.
Lewisburg, WV 24901

John R. Teare Esq.
Mark H. Dellinger, Esq.
Bowles, Rice, McDavid, Graff & Love
PO Box 1386
Charleston, WV 25325-1386

Re: Brammer v. City of Beckley/Beckley City Police Dept.
ESREP-70-00; EEOC Number: 17J990349

Dear Parties:

Enclosed please find the **Final Decision on Attorney's Fees and Costs** 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 January 1, 1999, 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, party aggrieved shall file with the executive director of the commission, and serve upon

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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 administrative law 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 administrative law 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.a. In conformity with the Constitution and laws of the state and the United States;

10.8.b. Within the commission's statutory jurisdiction or authority;

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

10.8.d. Supported by substantial evidence on the whole record; or

10.8.e. 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 Ivin B. Lee, Executive Director of the commission at the above address.

Yours truly,



Phyllis H. Carter
Administrative Law Judge

PHC/mst

Enclosure

cc: Ivin B. Lee, Executive Director
Lew Tyree, Chairperson

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ELIZABETH ANN BRAMMER,

Complainant,

v.

**Docket Number: ESREP -70-00
(ALJ Phyllis Carter)**

CITY OF BECKLEY,

Respondent.

ADMINISTRATIVE LAW JUDGE'S
FINAL DECISION ON ATTORNEY FEES AND COSTS

Comes now the undersigned administrative law judge, after a review of all evidence of record, and upon a prior determination of liability against respondent, and submits the following findings of fact and conclusions of law, relief and order related to Complainant's Motion for attorney fees and costs. Respondent did not file exceptions.

I.

FINDINGS OF FACT

1. On March 28, 2002, the undersigned administrative law judge issued a final decision in favor of the complainant and ordered that "complainant, as a prevailing party, is entitled to recover her costs, expenses, and reasonable attorney fees. Complainant's counsel had thirty (30) days from the effective date of the order to submit an affidavit containing an

itemized statement of costs, expenses and reasonable attorneys' fees. Respondent had fifteen (15) days from the date of receipt of complainant's affidavit to file exceptions to said affidavit."

2. The Complainant requested and received an extension of time in which to file her affidavit containing an itemized statement of costs, expenses and attorney's fees. Complainant filed her affidavit and Motion for Attorney's Fees and Costs and Complainant's Memorandum in Support of Motion for Attorney's Fees and Costs with the Commission on May 17, 2002. The Respondent did not file exceptions.

3. The gravamen of the complainant's case is whether the complainant was discriminated against because of her sex. On this issue, the complainant prevailed entirely.

4. The complainant is entitled to attorney fees and costs.

5. The complainant is entitled to attorney fees in the amount of \$45,767.50 and costs in the amount of \$3,351.83 minus an adjustment of \$58.31 for a grand total of **\$49,060.82**.

6. Complainant submitted a very detailed, clear and sufficient description of the work performed and costs incurred by her counsel in this case identifying the fees and costs by date, activity, time spent on each activity and hourly fee. See Exhibit A.

7. Since January 1, 1989, complainant's counsel, Mr. William Turner, has been a partner in the firm now known as Crandall, Pyles, Haviland, Turner & Twyman, LLP. He joined the firm as an associate in October, 1986. He served as a law clerk to the Honorable Elizabeth

V. Hallanan, Judge of the United States District Court for the Southern District of West Virginia.

8. Mr. Turner is admitted to practice before the West Virginia Supreme Court of Appeals (1986); U.S. District Courts for the Southern and Northern Districts of West Virginia (1986 and 1994 respectively); and the U.S. Supreme Court (1998).

9. One of Mr. Turner's areas of practice is employment claims arising under various federal and state statutes including the West Virginia Human Rights Act.

10. Mr. Turner is an active member of the West Virginia Employment Lawyers Association ("WVELA") and the National Employment Lawyers Association ("NELA"). He attended several CLE presentations presented by both organizations including NELA CLE programs in Seattle, Washington on June 28-30, 2001, and Philadelphia, Pennsylvania on March 15-16, 2002, as well as the WVELA Annual CLE conference in Charleston, West Virginia on February 9, 2002.

11. In addition, Mr. Turner has made several presentations to various groups on employment.

12. During 2000-2001, Mr. Turner's regular hourly rate for employment cases was \$175.00.

13. In 2002, Mr. Turner changed his hourly rate to \$200.00 for employment cases.

14. The hourly fee requested by the Complainant is reasonable and the costs incurred by Complainant are likewise reasonable. See Exhibits B through E.

II.

DISCUSSION

Counsel for complainant filed a Motion for Attorney's Fees and Costs for a total of \$49,060.82. Respondent did not file a reply.

The general rule provides that each party bears his own attorneys' fees unless there is an express statutory authorization to the contrary. Where there is an express statutory authorization to the contrary then that provision must be followed. The West Virginia Human Rights Act at W. Va. Code §5-11-13 modifies the general rule because it provides that where actions are brought under the Act and the court finds that respondent engaged in or is engaging in an unlawful discriminatory practice charged by the complainant, the court in its discretion can award reasonable attorney fees.

In making discretionary fee awards the court must find that the party seeking to have the fees and costs shifted is the prevailing party and that the requested fees and costs are reasonable. See *Hensley v. Eckerhart* 461 U.S. 424, 433, 103 S. Ct. 1933 (1983).

The undersigned administrative law judge in her final decision of March 28, 2002, found that the respondent had engaged in discriminatory acts against the complainant and had therefore violated the West Virginia Human Rights Act. The undersigned administrative law judge ordered that respondent cease and desist from engaging in unlawful discriminatory practices. The respondent, was ordered to pay the complainant \$41,323.46 in net back pay, and \$14,117.65 interest through March 31, 2002 within 31 days of the receipt of this Final

Decision plus any additional statutory interest at 10 percent simple interest per annum that might be assessed against the net back pay should the respondent fail to pay the aforementioned back pay and interest within 31 days of the receipt of the final decision. Also, respondent was ordered to reinstate complainant in the next available clerk's position in the Records Division of the Beckley Police Department. Complainant was awarded front pay until such time she is reinstated to a comparable position like the one she was unlawfully and constructively discharged from. Within 31 days of receipt of the undersigned order, the respondent was ordered to pay the 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 respondents' unlawful discrimination, plus statutory interest at 10 percent simple interest per annum that might be assessed against the incidental damages should the respondent fail to pay within 31 days of the receipt of this final decision. Furthermore, respondent was ordered, within thirty-one (31) days from receipt of this final decision to conduct appropriate awareness training for all employees, uniformed and non-uniformed, of the Beckley Police Department. This training is to consist of at least eight hours of education about sexual harassment to include instruction on the sexual harassment policies of the City and Police department. Documentation to the effect that every uniformed and non-uniformed employee of the Beckley Police Department has completed the required eight (8) hours shall be provided to the Commission and the complainant within six (6) months of the date of this final order. In addition, **Complainant, as a prevailing party, is entitled to recover her costs, expenses, and reasonable attorney fees.** Complainant's counsel had thirty (30) days from the effective

date of the order to submit an affidavit containing an itemized statement of costs, expenses and reasonable attorneys' fees. Respondent had fifteen (15) days from the date of receipt of complainant's affidavit to file exceptions to said affidavit. Clearly, the complainant is the prevailing party.

In determining whether the requested fees and costs are reasonable, the undersigned administrative law judge looks to the West Virginia Supreme Court's decisions in Aetna Casualty and Surety Co. v. Pirolo, 176 W. Va. 190, 342 S. E. 2d 156 (1986) and Brown v. Thompson, 192 W. Va. 412, 452 S. E. 2d 728 (1994) in which the Court set forth a twelve factor test for determining reasonableness of attorneys' fees. Those factors are: (1) the time and labor required; (2) the novelty and difficulty of the question presented; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee charged in similar cases; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and the length of the professional relationship with the client; and, (12) awards in similar cases.

Complainant retained Mr. Turner two years ago to represent her in this matter. His experience and reputation among his peers is reflected in the affidavits attached to this order. See Exhibits B-E. These affidavits reflect that Mr. Turner is competent to handle employment cases and his hourly rates are well within the hourly rates charged by other attorneys who take the same types of cases in West Virginia. Although the complexity of the legal issues is no

greater than in comparable cases arising under the West Virginia Human Rights Act, the case was defended very aggressively and with extraordinary skill by respondent's counsel. A review of the hours claimed by the complainant is what would be expected given the pre-hearing discovery involved

Hourly rates previously awarded by the West Virginia Human Rights Commission have ranged from \$100.00 to \$300.00 per hour. The rate of \$175.00-\$200.00 per hour is well within the parameters of recent fees awarded given the experience of complainant's counsel and the high quality of representation by counsel for both parties. The case was taken on a contingency fee basis and therefore the case is not very desirable in light of the risk that no fee would have been recovered in prosecuting the complainant's claim if complainant had lost. Public policy dictates that when the complainant prevails, reasonable fees and costs are awarded so that private counsel is encouraged to prosecute actions seeking enforcement of the state's Human Rights Act. Furthermore, employment discrimination cases tend to involve claims that are difficult to prove as direct evidence of discrimination and retaliation rarely exists. Often, proof is circumstantial and requires intensive discovery.

The administrative law judge is vested with wide discretion in determining awards of attorneys' fees and costs. Such determinations should only be disturbed if there has been an abuse of that discretion. Louden v. Division of Environmental Protection, 2001 WL 913962 (W. Va.), W. Va June 8, 2001 (no.28664).

The West Virginia Supreme Court of Appeals recognized the need for adequate fee awards in human rights cases. The Court's position is that "the goal of the West Virginia

human rights law is to protect the most basic, cherished rights and liberties of the citizens of West Virginia . Effective enforcement of the human rights law depends upon the action of private citizens who, from our observations of these matters, usually lack the resources to retain legal counsel necessary to vindicate their rights. Full enforcement of the Act requires adequate fee awards. Bishop Coal Co. v. Salyers, 181 W. Va.. 71, 380 S. E. 2d 238 (1989) and Orndorff v. West Virginia Department of Health, 165 W. Va.1, 267 S. E. 2d430, 432 (1980)and Casteel v. Consolidation Coal Co., 383 S. E.2d 238 (W. Va. 1989).

Absent any evidence of bad faith by counsel for the complainant, this administrative law judge finds that the attorney fees and costs are reasonable and should be granted at the amount requested.

III.

CONCLUSIONS OF LAW

1. The West Virginia Human Rights Act, WV Code §5-11- 13 authorizes the Commission to award attorney fees and costs to the successful party.
2. The complainant prevailed on the issues of liability and damages and is entitled to be made whole.
3. Complaint is entitled to attorney fees and costs in the amount of \$49,060.82.

IV.

RELIEF AND ORDER

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

1. Within 31 days of receipt of this final decision on Attorney's Fees and Costs, the respondent shall pay complainant \$49,060.82.
2. In the event of failure of the respondent to perform any of the obligations hereinbefore set forth, the complainant is directed to immediately so advise the West Virginia Human Rights Commission, Ivin B. Lee, Executive Director, 1321 Plaza East, Room 108-A, Charleston, West Virginia 25301-1400, Telephone (304) 558-2616.

IT IS SO ORDERED.

Entered this 17th of July 2002.

WV HUMAN RIGHTS COMMISSION

BY: Phyllis H. Carter
PHYLLIS H. CARTER
ADMINISTRATIVE LAW JUDGE
ROOM 108A
1321 PLAZA EAST
CHARLESTON, WV 25301-1400
PH: 304/558-2616

ADMINISTRATIVE LAW JUDGE'S

EXHIBIT A

**Administrative Law Judge Phyllis H. Carter's
Final Decision on Attorney's Fees and Costs
Entered July 17, 2002**

**Itemized List of Attorneys Fees and Costs
Affidavit of William D. Turner, Esq.**

WILLIAM D. TURNER, ESQ.
CRANDALL, PYLES, HAVILAND,
TURNER & TWYMAN, LLP
206 West Randolph Street
Lewisburg, WV 24901

Invoice submitted to:
Liz Brammer

May 16, 2002
In Reference To: Employment
Invoice # 12506

Professional Services

	Hrs/Rate	Amount
5/22/2000 Conference with client	0.50 175.00/hr	87.50
9/21/2000 Phone Conference with client	0.50 175.00/hr	87.50
Preparation for mediation	0.50 175.00/hr	87.50
9/27/2000 Preparation for mediation; review of file	2.00 175.00/hr	350.00
Appearance at mediation	1.80 175.00/hr	315.00
Travel to Mediation	1.20 175.00/hr	210.00
10/21/2000 Preparation and review of discovery requests	2.80 175.00/hr	490.00
11/16/2000 Phone conference with opposing counsel	0.20 175.00/hr	35.00
11/30/2000 Telephone conference with witness	0.30 175.00/hr	52.50
12/4/2000 Review of and revision to discovery response	1.40 175.00/hr	245.00

EXHIBIT

A

	<u>Hrs/Rate</u>	<u>Amount</u>
12/10/2000 Review and revision to discovery responses	2.20 175.00/hr	385.00
Phone conference with client	0.20 175.00/hr	35.00
12/11/2000 Review, preparation and revision of discovery responses	1.20 175.00/hr	210.00
4/12/2001 ph conf w/opposing attorney	0.20 175.00/hr	35.00
4/4/2001 Phone Conference w/ client	0.10 175.00/hr	17.50
4/9/2001 Phone Conference w/client	0.30 175.00/hr	52.50
Preparation of motion	0.20 175.00/hr	35.00
Phone Conference w/judge and opposing attorney	0.30 175.00/hr	52.50
Review of file	2.80 175.00/hr	490.00
Preparation for hearing	1.80 175.00/hr	315.00
4/10/2001 Phone conference with client	0.20 175.00/hr	35.00
Review and revision to depo notices	0.10 175.00/hr	17.50
Phone Conference w/judge	0.10 175.00/hr	17.50
Preparation for hearing	5.20 175.00/hr	910.00
Phone Conference w/ witnesses	0.60 175.00/hr	105.00
4/11/2001 Phone Conference w/witness	0.30 175.00/hr	52.50
Phone Conference w/ witness	0.30 175.00/hr	52.50

	<u>Hrs/Rate</u>	<u>Amount</u>
4/12/2001 Preparation for depositions and hearing	5.60 175.00/hr	980.00
Law Research for hearing	1.00 175.00/hr	175.00
Phone conference with client	0.20 175.00/hr	35.00
Phone Conference with opposing attorney	0.20 175.00/hr	35.00
4/13/2001 Travel for Depositions	2.30 175.00/hr	402.50
Depositions of opposing party	5.00 175.00/hr	875.00
Phone conference with client	0.10 175.00/hr	17.50
Conference with client	0.60 175.00/hr	105.00
4/14/2001 law research re: hearing issues	6.20 175.00/hr	1,085.00
Phone conference with client	0.10 175.00/hr	17.50
4/15/2001 Conference with client	4.00 175.00/hr	700.00
Preparation for hearing and depositions	4.20 175.00/hr	735.00
4/16/2001 Travel for depos	2.20 175.00/hr	385.00
Deposition of witness	2.80 175.00/hr	490.00
Phone Conference w/witness	0.20 175.00/hr	35.00
Preparation for depos	0.20 175.00/hr	35.00
Law research and Preparation for hearing	2.40 175.00/hr	420.00

		<u>Hrs/Rate</u>	<u>Amount</u>
4/17/2001	Telephone call with opposing Attorney	0.20 175.00/hr	35.00
	Preparation for depos	2.20 175.00/hr	385.00
	Preparation for hearing	2.40 175.00/hr	420.00
4/18/2001	Depositions of opposing party	1.70 175.00/hr	297.50
	Conference with client	0.20 175.00/hr	35.00
	travel for depos	2.50 175.00/hr	437.50
	Preparation for hearing	4.20 175.00/hr	735.00
	Review of medical records	1.20 175.00/hr	210.00
4/19/2001	Phone conference with client and expert witness	0.60 175.00/hr	105.00
	Preparation for hearing	4.80 175.00/hr	840.00
	Letter to opposing attorney	0.30 175.00/hr	52.50
	Telephone call with opposing Attorney	0.10 175.00/hr	17.50
	Phone Conference w/expert witness	0.50 175.00/hr	87.50
4/20/2001	Conference with witness	1.70 175.00/hr	297.50
	Preparation for hearing	7.20 175.00/hr	1,260.00
4/21/2001	Research and Preparation for hearing, conf w/client	8.60 175.00/hr	1,505.00
4/22/2001	Preparation for hearing	8.20 175.00/hr	1,435.00

	<u>Hrs/Rate</u>	<u>Amount</u>
4/23/2001 travel for hearing	2.00 175.00/hr	350.00
Court Appearance for hearing	7.00 175.00/hr	1,225.00
Conference with opposing attorney	0.40 175.00/hr	70.00
Preparation for hearing	2.20 175.00/hr	385.00
4/24/2001 Travel for hearing	2.00 175.00/hr	350.00
Court Appearance for hearing	6.00 175.00/hr	1,050.00
Preparation for hearing	2.80 175.00/hr	490.00
4/25/2001 Travel for hearing	2.00 175.00/hr	350.00
Court Appearance for hearing	7.00 175.00/hr	1,225.00
Conference with client	0.30 175.00/hr	52.50
6/2/2001 Review of transcript, preparation of proposed decision	3.00 175.00/hr	525.00
6/4/2001 Phone conference with client	0.20 175.00/hr	35.00
6/5/2001 Review of transcript, Preparation of proposed decision	5.20 175.00/hr	910.00
6/4/2001 Review of transcript ; Preparation of Proposed Decision	1.80 175.00/hr	315.00
7/17/2001 Phone Conference w/ HRC, letter to opposing attorney	0.20 175.00/hr	35.00
7/20/2001 Review of transcript and preparation of proposed decision	5.40 175.00/hr	945.00
7/21/2001 Review of transcripts, preparation of proposed decision	5.00 175.00/hr	875.00

	<u>Hrs/Rate</u>	<u>Amount</u>
7/24/2001 Review of transcripts, preparation of proposed decision	4.60 175.00/hr	805.00
7/26/2001 Preparation of proposed decision and brief	5.60 175.00/hr	980.00
7/27/2001 Preparation of and revision to proposed decision	5.80 175.00/hr	1,015.00
7/28/2001 Preparation of and revision to proposed decision	7.20 175.00/hr	1,260.00
7/29/2001 Preparation of and revision to proposed decision	9.40 175.00/hr	1,645.00
7/30/2001 Phone Conference w/ AG's office	0.10 175.00/hr	17.50
Preparation of proposed decision	0.60 175.00/hr	105.00
7/31/2001 Review of transcripts, preparation of proposed decision	7.40 175.00/hr	1,295.00
8/1/2001 Law research for proposed decision & brief	3.80 175.00/hr	665.00
8/2/2001 Legal Research proposed decision & brief	3.60 175.00/hr	630.00
8/3/2001 Legal Research for Brief & proposed decision	3.80 175.00/hr	665.00
Telephone conference with opposing Attorney	0.10 175.00/hr	17.50
Preparation of & revision to brief	1.40 175.00/hr	245.00
8/4/2001 Legal Research for, and preparation of brief	10.20 175.00/hr	1,785.00
8/5/2001 Legal Research for and preparation of brief; preparation of and revision to proposed decision	11.20 175.00/hr	1,960.00
8/6/2001 Legal Research for and preparation of brief; revision to brief and proposed decision	7.40 175.00/hr	1,295.00
Telephone opposing Attorney	0.20 175.00/hr	35.00

	<u>Hrs/Rate</u>	<u>Amount</u>
8/6/2001 Letter to client & letter to Judge	0.10 175.00/hr	17.50
12/10/2001 Phone Conference with client	0.10 175.00/hr	17.50
11/18/2001 Phone Conference with client	0.20 175.00/hr	35.00
3/19/2002 Phone Conference w/Client	0.20 200.00/hr	40.00
Phone Conference w/Client	0.20 200.00/hr	40.00
2/3/1999 Conference with client	2.00 175.00/hr	350.00
3/15/1999 Phone conference with client	0.20 175.00/hr	35.00
4/23/1999 Phone conference with client	0.10 175.00/hr	17.50
6/14/1999 Phone conference with client	0.20 175.00/hr	35.00
6/21/1999 Phone conference with client	0.10 175.00/hr	17.50
6/22/1999 Review of and revision to HRC charge; review of file	1.00 175.00/hr	175.00
7/1/1999 Review of and revision to HRC charge; phone conference with client	0.50 175.00/hr	87.50
8/30/1999 Phone conference with client	0.20 175.00/hr	35.00
9/30/1999 Phone conference with client	0.30 175.00/hr	52.50
10/6/1999 Phone Conference with WVHRC Investigator	0.20 175.00/hr	35.00
Letter to WVHRC Investigator	0.10 175.00/hr	17.50
11/8/1999 Phone Conference with client.	0.20 175.00/hr	35.00

	<u>Hrs/Rate</u>	<u>Amount</u>
12/8/1999 Conference with client; Review of documents.	2.20 175.00/hr	385.00
12/13/1999 Preparation of Reply regarding Position Statement; Review of Documents	0.70 175.00/hr	122.50
1/14/2000 Conference with client; Conference with HRC Investigator	1.20 175.00/hr	210.00
4/8/2002 Phone Conference w/Client; Review of Decision	0.70 200.00/hr	140.00
4/1/2002 Phone Conference with client to review Decision	0.70 200.00/hr	140.00
4/6/2002 Preparation and Revision of Attorney Fee Petition and Supporting Memo	1.50 200.00/hr	300.00
5/13/2002 Preparation and revision of Attorney Fee Petition and Supporting Memo	1.80 200.00/hr	360.00
For professional services rendered	<hr/> 260.80	<hr/> \$45,767.50
Additional Charges :		
11/10/2000 Mileage Beckley to Charleston and return- 9/27/00		35.64
Tolls 9/27/00		5.00
12/12/2000 Copying tape by Radio Shack		8.42
11/13/2000 Postage		0.66
12/11/2000 12/11/00		5.10
12/12/2000 12/12/00		1.33
12/11/2000 12/11/00		17.00
2/15/2001 Postage 1/22/01		0.34
Postage 1/31/01		0.55
1/22/01		0.25
fax 1/23/01		3.00
3/12/2001 Mileage to Beckley		33.66
2/1/2001 Copying cost (February)		28.75

	<u>Amount</u>
2/1/2001 Postage (February)	4.60
2/14/2001 Deposition Cost for Elizabeth Brammer	388.10
4/22/2001	22.25
4/23/2001	19.00
4/21/2001	33.00
4/15/2001	60.50
4/12/2001	21.50
4/17/2001	1.50
4/19/2001	5.25
4/20/2001	5.50
4/22/2001	19.00
4/11/2001	0.34
4/13/2001	1.02
4/17/2001	0.34
4/16/2001	4.18
4/18/2001	1.10
4/19/2001	1.36
4/9/2001	10.00
4/10/2001	12.00
4/11/2001	43.00
4/13/2001	7.00
4/17/2001	1.00
4/18/2001	2.00
4/19/2001	17.00
	3.00
4/16/2001 Mileage Lwb to Beckley Ramada	38.94

	<u>Amount</u>
4/16/2001 Lunch Subway	4.10
4/9/2001 Copying cost	22.25
Postage	11.06
3/14/2001 Copying Cost Med Recs	15.00
3/30/2001 Copying cost 3/1-3/30/2001	10.75
3/14/2001 Postage 3/1 thru 3/31/2002	7.43
4/23/2001 lunch	4.10
4/24/2001 Mileage HRC hearing Lwb to Beckley - Round Trip	33.00
4/25/2001 Lunch	4.43
Mileage HRC hrg Lwb to Beckley	33.00
4/18/2001 Mileage Depos Lwb to Beckely	35.64
5/25/2001 Transcript Cost	1,000.45
4/30/2001 Long distance charges month of April, 2001	23.37
4/11/2001 Service Fee Westlaw Research	20.00
4/12/2001 Service Fee Westlaw Research	20.00
4/14/2001 Service Fee Westlaw Research	20.00
4/22/2001 Service Fee Westlaw Research	20.00
3/16/2001 Long distance charges	0.69
3/21/2001 Long distance charges	0.90
7/17/2001 Fax	2.00
Postage	1.02
Copying cost	0.75
7/30/2001 Copying cost	9.00
7/31/2001 Fax	1.00
8/1/2001 Fax	3.00
8/6/2001 Fax	2.00

	<u>Amount</u>
8/6/2001 Postage	10.13
Copying cost	63.00
4/18/2001 Deposition Costs for E. Pugh & Billy J. Cole	319.71
4/19/2001 Cost of Room for Pugh & Cole Depositions	86.87
4/16/2001 Deposition Costs: Rogers; Sutphin; Meadows; Blume; Perkowski; Cooper	484.00
7/30/2001 Long distance charges	0.27
8/17/2001 Copying cost	0.75
Postage	0.34
7/30/2001 Service Fee Westlaw Research	20.00
8/6/2001 Long distance charges	0.26
8/15/2001 Long distance charges	0.06
8/30/2001 Long distance charges	0.33
8/2/2001 Service Fee Westlaw Research	20.00
8/3/2001 Service Fee Westlaw Research	20.00
8/4/2001 Service Fee Westlaw Research	20.00
8/5/2001 Service Fee Westlaw Research	20.00
8/6/2001 Service Fee Westlaw Research	20.00
2/28/2002 Copying cost February. 2002	1.00
3/1/2002 Postage for February, 2002	1.36
2/1/1999 Postage	0.33
6/1/1999 Postage	0.55
Copying cost	2.50
7/1/1999 Postage	2.55
Copying cost - July, 1999	2.50
10/1/1999 Fax October, 1999	2.00
11/9/1999 Postage November, 1999	0.66

	<u>Amount</u>
11/9/1999 Copying cost November, 1999	0.50
12/13/1999 Copying cost December, 1999	1.00
1/18/2000 Photocopies January, 1999	0.50
2/29/2000 Fax February, 2000	50.00
3/31/2002 Fax (March, 2002)	3.00
Copying cost (March, 2002)	11.50
4/30/2002 Copying cost April, 2002	14.50
Fax April, 2002	4.00
Postage April, 2002	0.34
 Total costs	 \$3,351.63
 Total amount of this bill	 \$49,119.13
5/25/2001 Payment check# 2726	(\$369.25)
4/8/2002	\$369.25
5/16/2002 Payment f/Trust Account	(\$58.31)
 Total payments and adjustments	(\$58.31)
 Balance due	\$49,060.82

5/16/2002
11:22 AM

WILLIAM D. TURNER, ESQ.
Billing Worksheet Invoice Summary

Page 1

Client	Billable: Fees Costs Hours	Unbillable: Fees Costs Hours	Interest Fin charge Tax fees Tax costs	Payments Credits Wrt offs Refunds	Prior bal New charges New A/R New bal
Brammer, Liz					
3/9/2000	45767.50	0.00	0.00	(58.31)	0.00
5/13/2002	3351.63	0.00	0.00	0.00	49119.13
12506	260.80	0.00	0.00	0.00	(58.31)
			0.00	0.00	49060.82
Grand Total	45767.50	0.00	0.00	(58.31)	0.00
	3351.63	0.00	0.00	0.00	49119.13
	260.80	0.00	0.00	0.00	(58.31)
			0.00	0.00	49060.82

STATE OF WEST VIRGINIA

COUNTY OF GREENBRIER, TO-WIT:

AFFIDAVIT OF WILLIAM D. TURNER

Comes now the Affiant, William D. Turner, Esq., and being first duly sworn, deposes and states as follows:

1. Since January 1, 1989, I have been a partner in the firm now known as Crandall, Pyles, Haviland, Turner & Twyman, LLP. I joined the firm as an associate in October, 1986. From its inception, one of my practice areas of emphasis has been employment law. From May, 1985 through May, 1986, I was a Law Clerk to the Honorable Elizabeth V. Hallanan, Judge of the United States District Court for the Southern District of West Virginia.

2. I graduated from law school at the University of North Carolina with a J.D. in 1985. I am admitted to practice before the West Virginia Supreme Court of Appeals (1986); U.S. District Courts for the Southern and Northern Districts of West Virginia (1986 and 1994, respectively); U.S. Courts of Appeals for the Fourth and Third Circuits (1990 and 1992, respectively); and U.S. Supreme Court (1998).

3. I am a member of the National Employment Lawyers' Association ("NELA"), and the West Virginia Employment Lawyers' Association ("WVELA"), both of which are comprised of plaintiffs' (employee only) counsel in employment law matters. I have attended several CLE presentations by both organizations in the last year, including NELA CLE programs in Seattle, WA, on June 28 - 30, 2001, and Philadelphia, PA, on March 15 - 16, 2002, and the WVELA Annual CLE conference in Charleston, WV, on February 9, 2002. I have made numerous CLE presentations to various groups on employment law topics.

EXHIBIT

B

4. I seek an hourly rate of \$175.00 per hour for my time on this matter in 2000-01, and \$200.00 per hour for my time during 2002. These are my regular hourly rates for such work.

5. I have not submitted any petitions for attorney's fees and expenses before the West Virginia Human Rights Commission ("HRC") in the last five (5) years. All of the employment discrimination matters I have handled in recent years have been litigated in state or federal courts, and attorney's fees have been resolved on a contingent fee basis as part of a total settlement.

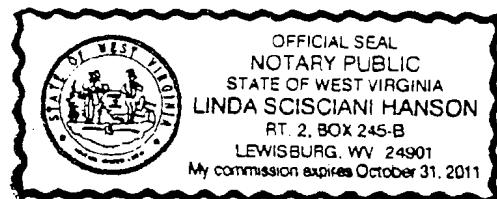
Further this Affiant sayeth not.

William D. Turner
William D. Turner

Taken, sworn to, and subscribed before me by William D. Turner this 10th day of May, 2002.

My Commission expires October 31, 2011.

Linda Scisciani Hanson
Notary Public



ADMINISTRATIVE LAW JUDGE'S

EXHIBIT B

**Administrative Law Judge Phyllis H. Carter's
Final Decision on Attorney's Fees and Costs**

Entered July 17, 2002

Affidavit of Allan N. Karlin, Esq.

AFFIDAVIT OF ALLAN N. KARLIN, ESQ.

STATE OF WEST VIRGINIA,

COUNTY OF MONONGALIA, To-wit:

I, Allan N. Karlin, being first duly sworn upon my oath, hereby come forth and state as follows:

I am a practitioner in Morgantown, West Virginia. Since beginning the private practice of law in November 1981, one of the primary specialties of my practice has been employment law. My background includes the following degrees: A B.A. from Yale University in 1969, and a J.D. from Boalt Hall at the University of California (Berkeley) in 1974.

Through the course of my employment, and employment-related activities, I have become quite familiar with the law firm now known as Crandall, Pyles, Haviland, Turner & Twyman, LLP, and with Mr. William Turner. I have known Mr. Turner for over ten (10) years. I have read legal memoranda prepared by Mr. Turner, analyzed employment law strategies and tactics with him, attended CLE programs with him, and discussed his firm's reputation among West Virginia attorneys specializing in employment law.

I understand that Mr. Turner seeks \$175.00 per hour for his work in 2000-2001 and \$200.00 per hour for his work in 2002. I am quite familiar with the hourly rates

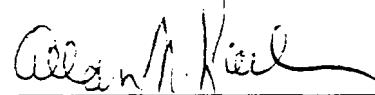


charged by competent attorneys who specialize in representing employees in employment-related contingent fee litigation in West Virginia.

In view of the regular hourly rates charged by competent lawyers representing employees in employment litigation, and the reputation and ability of Mr. Turner, his requested rates of \$175.00-\$200.00 per hour are reasonable and justified.

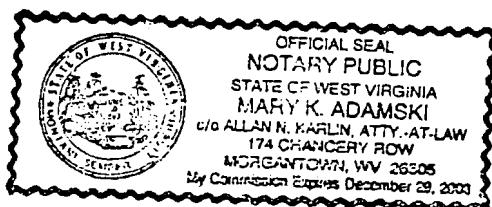
It is my opinion the rates requested by Mr. Turner are consistent with the market rate for plaintiff employment lawyer specialists, and are necessary to ensure that attorneys with expertise in employment law will be willing to continue to take cases representing the victims of discrimination.

Further this affiant sayeth not.


ALLAN N. KARLIN, ESQUIRE
174 CHANCERY ROW
MORGANTOWN, WV 26505

Taken, sworn to and subscribed before me this 14th day of May 2002.

My commission expires December 29, 2003.




NOTARY PUBLIC

ADMINISTRATIVE LAW JUDGE'S

EXHIBIT C

**Administrative Law Judge Phyllis H. Carter's
Final Decision on Attorney's Fees and Costs**

Entered July 17, 2002

Affidavit of Kathryn Reed Bayles, Esq.

STATE OF WEST VIRGINIA

COUNTY OF MERCER, TO-WIT:

AFFIDAVIT OF KATHRYN REED BAYLESS

Comes now the Affiant, Kathryn Reed Bayless, Esq., and being first duly sworn, deposes and states as follows:

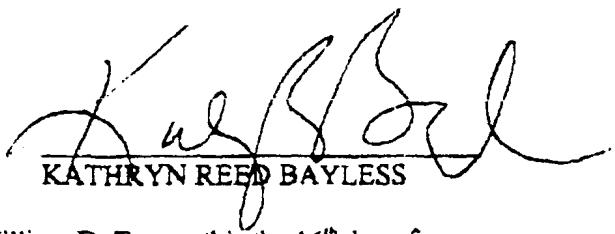
1. Since January 1, 1995, I have been a partner in the firm now known as Bayless & McFadden, L.L.P. I have practiced law in Mercer County, West Virginia, since July 1982 and during that time I have been a partner in several firms and also practiced as a solo. One of the areas of emphasis of my law practice is employment law. From January 1980 through June 1982, I was a Law Clerk to the Honorable William M. Kidd, Judge of the United States District Court for the Southern District of West Virginia.

2. I graduated from law school of West Virginia University with J.D. in 1979. Currently, I am a member of the National Employment Lawyers' Association, and the West Virginia Employment Lawyers' Association, both of which are comprised of plaintiffs' (employers') counsel in employment law matters. I also represent employers in discrimination cases.

3. At this time, my usual and customary hourly rate for work involving the West Virginia Human Rights Act is \$200.00 per hour and \$75.00 per hour for my legal assistant's time.

4. I am generally familiar with the work and reputation of Mr. William D. Turner and the law firm of Crandall, Pyles, Haviland and Turner, LLP. I believe that a reasonably hourly rate for his legal services would be \$175.00 per hour for work performed in 2000-01 and \$200.00 per hour for work performed in 2002.

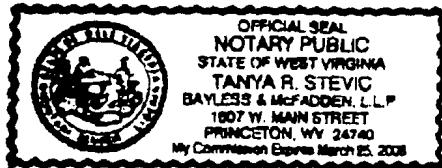
Further this Affiant sayeth not.



KATHRYN REED BAYLESS

Taken, sworn to, and subscribed before me by William D. Turner this the 16th day of April, 2002.

My Commission expires March 25, 2008.



Tanya R. Stevic
NOTARY PUBLIC

ADMINISTRATIVE LAW JUDGE'S

EXHIBIT D

**Administrative Law Judge Phyllis H. Carter's
Final Decision on Attorney's Fees and Costs**

Entered July 17, 2002

Affidavit of Jerome J. McFadden, Esq.

STATE OF WEST VIRGINIA

COUNTY OF MERCER, TO-WIT:

AFFIDAVIT OF JEROME J. McFADDEN

Comes now the Affiant, Jerome J. McFadden, Esq., and being first duly sworn, deposes and states as follows:

1. Since January 1, 1995, I have been a partner in the firm now known as Bayless & McFadden, L.L.P. I have practiced law in Mercer County, West Virginia, since 1987. One of the areas of emphasis of my law practice is employment law.
2. I graduated from law school of West Virginia University with J.D. in 1987.
3. At this time, my usual and customary hourly rate for work involving the West Virginia Human Rights Act is \$175.00 per hour and \$75.00 per hour for my legal assistant's time.
4. I am generally familiar with the work and reputation of Mr. William D. Turner and the law firm of Crandall, Pyles, Haviland and Turner, LLP. I believe that a reasonably hourly rate for his legal services would be \$175.00 per hour for work performed in 2000-01 and \$200.00 per hour for work performed in 2002.

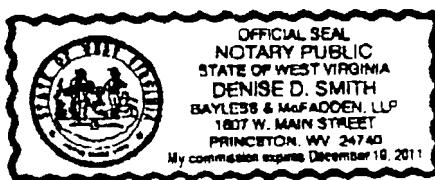
Further this Affiant sayeth not.

Jerome J. McFadden
JEROME J. McFADDEN

Taken, sworn to, and subscribed before me by William D. Turner this the 16th day of April, 2002.

My Commission expires 12/19/11

Denise D. Smith
NOTARY PUBLIC



ADMINISTRATIVE LAW JUDGE'S

EXHIBIT E

**Administrative Law Judge Phyllis H. Carter's
Final Decision on Attorney's Fees and Costs**

Entered July 17, 2002

Affidavit of Walt Auvil, Esq.

STATE OF WEST VIRGINIA

COUNTY OF WOOD, TO-WIT:

AFFIDAVIT OF WALT AUVL

Comes now the Affiant, Walt Auvil, Esq., and being first duly sworn, deposes and states as follows:

1. Since June 1, 1989, I have been a partner in the firm now known as Auvil & Davitian. My sole area of emphasis in my law practice is employment law. From 1981 through 1983, I was a Law Clerk to the West Virginia Supreme Court of Appeals.

2. I graduated from West Virginia University College of Law with a J.D. in 1981. Currently, I am a member of the National Employment Lawyers Association, and the West Virginia Employment Lawyers' Association, both of which are comprised of Plaintiffs' (employees') counsel in employment law matters. I am also a member of The American Bar Association, The Association of Trial Lawyers of America, and The West Virginia Trial Lawyers' Association.

3. I am a founder of the West Virginia Employment Lawyers' Association (WVELA), state affiliate of the National Employment Lawyers' Association (NELA). WVELA has over 30 members practicing law in all counties in West Virginia representing employees. NELA has over 4000 members throughout the United States and abroad.

4. I regularly author articles on employment law and civil procedure published in the West Virginia Lawyer, the NELA Advocate, and American Bar Association publications. I have also edited the WVELA newsletter, the Employee Advocate, for eight years. I have spoken on employment law and civil procedure before the West Virginia Trial Lawyer Association, NELA, and WVELA.

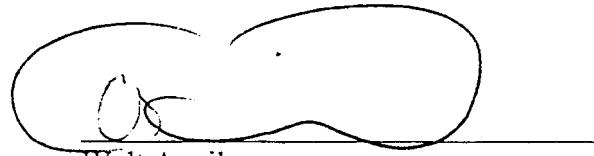
EXHIBIT

F

5. My usual and customary hourly rate for all work - including West Virginia Human Rights Act litigation - is \$200.00 per hour. This rate has been approved as fair and reasonable by the Circuit Court of Wood County, the West Virginia Bureau of Employment Programs Board of Review, the Equal Employment Opportunity Commission, and other courts and government agencies.

6. I am generally familiar with the work and reputation of William D. Turner and the law firm on Crandall, Pyles, Haviland and Turner, LLP. I believe that a reasonable hourly rate for his legal services would be \$200.00 per hour.

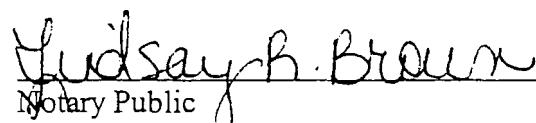
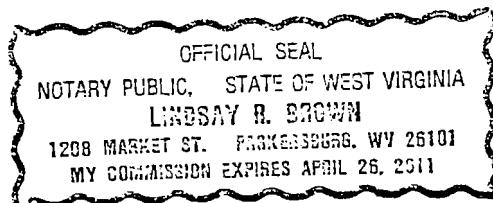
Further this Affiant sayeth not.



Walt Auvil

Taken, sworn to, and subscribed before me by Walt Auvil this 11th day of April, 2002.

My commission expires April 26, 2011.



Lindsay R. Brown
Notary Public

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ELIZABETH ANN BRAMMER,

Complainant,

v.

**Docket Number: ESREP -70-00
(ALJ Phyllis Carter)**

CITY OF BECKLEY,

Respondent.

CERTIFICATE OF SERVICE

I, Phyllis H. Carter, Administrative Law Judge for the West Virginia Human Rights Commission, do hereby certify that I have served the foregoing **ADMINISTRATIVE LAW JUDGE'S FINAL DECISION ON ATTORNEY FEES AND COSTS** by depositing a true copy thereof in the U.S. Mail, via certified mail return receipt requested, postage prepaid, this 17th day of July, 2002.

Elizabeth A. Brammer
PO Box 564
Daniels, WV 25832

William D. Turner, Esq.
Crandall, Pyles, Haviland & Turner, LLP
206 W. Randolph St.
Lewisburg, WV 24901

City of Beckley/
Beckley City Police Dept.
Drawer AJ – 340 Prince St.
Beckley, WV 25802

John R. Teare Esq.
Mark H. Dellinger, Esq.
Bowles, Rice, McDavid, Graff & Love
PO Box 1386
Charleston, WV 25325-1386



**PHYLLIS H. CARTER
ADMINISTRATIVE LAW JUDGE**



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

1321 Plaza East

Room 108A

Charleston, WV 25301-1400

TELEPHONE (304) 558-2616

FAX (304) 558-0085

TDD - (304) 558-2976

TOLL FREE: 1-888-676-5546

Bob Wise
Governor

Ivin B. Lee
Executive Director

**VIA CERTIFIED MAIL-
RETURN RECEIPT REQUESTED**

March 28, 2002

Elizabeth A. Brammer
PO Box 564
Daniels, WV 25832

City of Beckley/
Beckley City Police Dept.
Drawer AJ – 340 Prince St.
Beckley, WV 25802

William D. Turner, Esq.
Crandall, Pyles, Haviland & Turner, LLP
206 W. Randolph St.
Lewisburg, WV 24901

John R. Teare Esq.
Mark H. Dellinger, Esq.
Bowles, Rice, McDavid, Graff & Love
PO Box 1386
Charleston, WV 25325-1386

Re: Brammer v. City of Beckley/Beckley City Police Dept.
ESREP-70-00; EEOC Number: 17J990349

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 January 1, 1999, 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

March 28, 2002

Page 2

facts showing the appellant to be aggrieved, all matters alleged to have been erroneously decided by the administrative law 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 administrative law 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.a. In conformity with the Constitution and laws of the state and the United States;

10.8.b. Within the commission's statutory jurisdiction or authority;

10.8.c. Made in accordance with procedures required by law or established

March 28, 2002

Page 3

by appropriate rules or regulations of the commission;

10.8.d. Supported by substantial evidence on the whole record; or

10.8.e. 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 Ivin B. Lee, Executive Director of the commission at the above address.

Yours truly,



Phyllis H. Carter
Administrative Law Judge

PHC/mst

Enclosure

cc: Ivin B. Lee, Executive Director
Lew Tyree, Chairperson

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ELIZABETH ANN BRAMMER,

Complainant,

v.

**Docket Number: ESREP -70-00
(ALJ Phyllis Carter)**

CITY OF BECKLEY,

Respondents.

ADMINISTRATIVE LAW JUDGE'S

FINAL DECISION

A public hearing in the above captioned-matter was convened on April 23, 24 and 25, 2001 at the Council Chambers of City Hall in Beckley, West Virginia, in Fayette County, West Virginia. Post hearing briefs were received through August 9, 2001.

The complainant, Elizabeth Ann Brammer, appeared in person and her case was presented by William D. Turner, Esquire, Crandall, Pyles, Haviland & Turner, LLP. The respondent, City of Beckley, appeared by its representative, Billy Cole, Chief of the Beckley Police Department and was represented by its counsel, John R. Teare, Esquire and Mark H. Dellinger, Esquire, Bowles, Rice, McDavid, Graff & Love, PLLC.

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. Complainant voluntarily dismissed her reprisal discrimination claim and any evidence submitted in support of that claim will not be considered by the Commission.

2. The City of Beckley (“City”) is a municipal corporation in the State of West Virginia. At one point, the City’s Police Department had a work force of fifty-six (56) officers and twenty-three (23) civilian employees. (Hr. Tr. Vol. III, p. 216.) At present, there are forty-three (43) Officers. Id. Emmett S. Pugh, III, is the duly elected Mayor; Gary Sutphin is the Recorder-Treasurer; and Billy Cole is the Chief of Police. (Hr. Tr. Vols. I-III.)

3. Elizabeth Ann Brammer (“Complainant”) was employed as a Records Clerk in the City’s Police Department from August 18, 1994, through November 17, 1998,

when she tendered her official resignation. (Hr. Tr. Vol. I, pp. 32, 95-96; Joint Exhibit 3, Tabs 9, 11, 13 and 19; Joint Exhibit 5.) This was a civilian, as distinguished from a uniformed position.

4. Complainant's actual last day of work for the City was September 22, 1998, after which time she took an unpaid leave of absence until she resigned on November 17, 1998. Id.

5. Complainant was constructively discharged from her employment with the Beckley Police Department.

6. The Records Division kept all of the records necessary for the Beckley Police Department ("BPD") to function including arrests, tickets, warrants, bonds and the like. (Hr. T. Vol. I, p. 32.)

7. The Records Division has someone on duty twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year. (Hr. Tr. Vol. III, p. 123.) The Records Division has three (3) shifts: (1) 8:00 a.m. to 4:00 p.m.; (2) 4:00 p.m. to 12:00 a.m.; and (3) 12:00 a.m. to 8:00 a.m. (Hr. Tr. Vol. I, p. 33; Vol. III, p. 125.) Each employee in the Records Division works five (5) eight (8) hour shifts per week. (Hr. Tr. Vol. III, pp. 125-26.)

8. Complainant's immediate supervisor was Lt. William Kelly. (Hr. Tr., Vol. I, p. 33.) The BPD Chief was Billy Cole while complainant worked for the City. (Hr. Tr. Vol. I, 46.)

9. Keith Cooper, Paul Blume, James Meadows, Timothy Deems, Harry Perkowski, Eric Rogers, William Kelly, Matthew Jones and Robert Williams were, at all relevant times, sworn police officers employed in the City's Police Department. (Hr. Tr. Vols., II - III.)

10. Thomas Ballard is a West Virginia State Trooper and Randy Burgess is a Raleigh County Deputy Sheriff. (Hr. Tr. Vols. I and II.)

11. Valerie Anderson, Nancy Singleton, Thomas Golden and Christopher Graham were, at all relevant times, civilian employees of the City working in the Police Department. (Hr. Tr. Vols. II and III.)

12. At the time of the public hearing, Valerie Anderson worked for the Oak Hill Police Department, Harry Perkowski was retired, Matthew Jones was employed by the Federal Correctional Institution in Beckley, West Virginia, and Robert Williams was employed by the City of Weirton Police Department. (Hr. Tr. Vol. III, pp. 210-11.) Officer Williams' employment separation from the Beckley Police Department occurred on December 27, 1997. (Hr. Tr. Vol. I, p. 73.) Blake Percival did not testify and was reported to be in Alabama and beyond the subpoena power of the Commission. (Hr. Tr. Vol. II, p. 55.)

13. Valerie Anderson testified at the public hearing under subpoena. Id. Mrs. Anderson formerly worked as a Records Clerk for the Beckley Police Department from September, 1992, through February, 1998. (Hr. Tr. Vol. II, p. 118.) While working at the City with complainant, Mrs. Anderson and her husband attended several parties with complainant and went bowling with complainant and her husband. (Hr. Tr. Vol. II, pp. 118-19.)

14. The complainant typically worked the evening or midnight shift. (Hr. Tr. Vol. I, pp. 33-34.) The day shift had the most staffing. (Hr. Tr. Vol. I, pp. 33-34.) The evening shift was staffed by one records clerk part of the time and two part of the time. Id. Frequently, the midnight shift had only one records clerk on duty. (Hr. Tr. Vol. III, pp. 99-100.)

15. The BPD designated a Shift Commander on each shift. On the evening or midnight shift, the highest ranking, most senior officer would be the Shift Commander. (Hr. Tr. Vol. I, p. 35.)

16. Shift work was a requirement to work as a Records Clerk with the City. (Hr. Tr. Vol. I, p. 127.) Complainant was told that shift work was a requirement to work as a Records Clerk at the time she was hired. (Hr. Tr. Vol. I, pp. 127-29.)

17. The City had an Employee Handbook, or Personnel Manual, in effect during the time period complainant worked as a Records Clerk in the Records Division of the Police Department. (Joint Exhibit 3, Tab 2.) Complainant was given a copy of the Employee Handbook when she first began working for the City. (Hr. Tr. Vol. I, p. 198.) She was familiar with the provisions of the Employee Handbook. Id. In making written complaints about her shift schedule, she cited specific sections from the Employee Handbook. (Joint Exhibit 3, Tab 5.)

18. The Employee Handbook contained a sexual harassment policy which provided that an employee should report any alleged sexual harassment immediately to her Supervisor, Department Head or Personnel Officer. (Joint Exhibit 3, Tab 2; Hr. Tr. Vol. I, p. 201.) Complainant admits that she never reported any sexual harassment to her Department Head, Captain Walker. (Hr. Tr. Vol. I, pp. 201-02.) Recorder - Treasurer Gary

Sutphin was the *de facto* Personnel Officer, and page three of the Employee Handbook directs employees to report potential discrimination problems to the Recorder - Treasurer's office. (Hr. Tr. Vol. III, p. 27.) Complainant never reported any alleged sexual harassment to Mr. Sutphin. (Hr. Tr. Vol. III, pp. 20-33; Joint Exhibit 3, Tabs 2 [p. 3], 7, 8 and 13.)

19. The City's Police Department has had a sexual harassment policy in effect since November 18, 1993. (Joint Exhibit 3, Tab 3.)

20. Lt. J. D. Meadows does not recall whether the City has a sexual harassment policy in its Employee Handbook. Nor does Meadows recall anyone in authority in the BPD speaking about a sexual harassment policy. (Hr. Tr. Vol. II, pp. 198-99.)

21. Sgt. Deems does not recall anyone in authority in the BPD speaking about a sexual harassment policy. (Hr. Tr. Vol. II, pp. 228-29.)

22. Retired Lt. Harry Perkowski does not recall the BPD sexual harassment policy having been posted on a bulletin board, nor passed out to the employees of the BPD. (Hr. Tr. Vol. III, p. 16.) Perkowski never did any training of subordinate BPD employees regarding sexual harassment, nor spoke to them about the issue.(Hr. Tr. Vol. III, pp.17-18.) Nor did Perkowski recall whether the City's Employee Handbook had a sexual harassment policy. Id.

23. Lt. Kelly's training with regard to sexual harassment was that it was a topic of discussion at a general seminar relating to employment law issues. (Hr. Tr. Vol. III, p. 170.) Kelley could not recall any in-house training done by the BPD about sexual harassment from 1981-1998. (Hr. Tr. Vol. III, p. 171.) He took no measures to publicize the City's or BPD's sexual harassment policies in Records Division staff meetings. (Hr. Tr. Vol.

III, 172-73.)

24. Corporal Eric Rogers was not aware of the BPD having its own sexual harassment policy, apart from the City's policy in its Employee Handbook prior to deposition in February, 2001. (T. Vol. III., pp. 72-73.)

25. Corporal Keith Cooper could not recall "one way or the other" whether any training had been done in the BPD from 1994-98 on the subject of sexual harassment generally, or the BPD and City policies in particular. (Hr. Tr. Vol. II, pp. 30-31.)

26. The City Attorney never conducted any sexual harassment training for the BPD from 1981 through 1998. (Hr. Tr. Vol. III., pp.171-72.)

27. Chief Cole who was responsible for enforcing the BPD sexual harassment policy does not recall it being posted at any time. (Hr. Tr. Vol. III., pp. 233-34.) Chief Cole could not find any sheets whereby officers acknowledged receipt of the BPD sexual harassment policy. (Hr. Tr. Vol. III, pp. 234-235.) Normally, the chief does get acknowledgment receipts from the BPD officers when they receive a new policy. (Hr. Tr. Vol. III, pp. 244-45.)

28. Chief Cole never spoke to the BPD officers about the City or BPD sexual harassment policies at any time prior to December, 1998. (Hr. Tr. Vol. III, p. 244.) Chief Cole's only efforts to enforce either policy consisted of his personal observations at Police Headquarters while he was there during the day. (Hr. Tr. Vol. III, p. 247.)

29. City Recorder-Treasurer Gary Sutphin oversees personnel matters for the City of Beckley. (Hr. Tr. Vol. III, p. 20.) The City of Beckley has no and in the past did

not have a specific employee with the title, "Personnel Officer." (Hr. Tr. Vol. II, p. 27.) Sutphin acknowledged at deposition that nothing has been done to publicize the City's sexual harassment policy in the Employee Handbook to employees besides putting it in the handbook. (Hr. Tr. Vol. III, p.24.)

30. Records Clerk Christopher Graham has no recollection of the Employee Handbook having been passed out or discussed in any way. (Hr. Tr. Vol. III, pp. 106-07.)

31. There is no documentation of the City having mentioned its sexual harassment policy to any department heads. (Hr. Tr. Vol. III, pp. 24-25.)

32. Mayor Pugh acknowledged at deposition that he had done nothing to prevent a City employee from being harassed from September 1992 through November, 1998. (Hr. Tr. Vol. III, p. 269.)

33. Complainant's claims of sexual harassment are directed at the uniformed officers of the BPD.

34. The City's sexual harassment policy (in the Employee Handbook) does not require that complaints be brought in writing. (Hr. Tr. Vol. III, p. 26.)

35. After considering the evidence of record, and the demeanor and motivations of the witnesses, complainant is found to be a credible witness.

36. Complainant was subjected to hostile environment harassment. Complainant's testimony regarding the hostile work environment is credible. Her claims of sexual harassment are directed at the uniformed officers of the BPD including the Chief of

Police.

37. Complainant credibly testified that Corporal Eric Rodgers gave her an a catalog of X-rated videos to order. (Hr. Tr. Vol. I, pp. 36-37.) She was off of work for a few days after receiving ths catalog and cried about what had happened. Complainant felt "intimidated" (Hr. Tr. Vol. I, p. 43) and "very confused." (Hr. Tr. Vol. I. p. 44.)

38. Complainant described how the X-rated video catalog was delivered to her:

[I] had come in for the midnight shift,[Corporal Rogers] was leaving, and he worked evenings, and he would always speak to me, you know, as he was leaving or coming in or whatever, we were good friends, and he told me, he said, Liz, he said, "I have a book that I'd like for you to look at." And I said, "well, give it to me," you know, and he said, "well, I don't have it with me," he said, you know, 'can I just put it in your car?" And I said, 'well, yeah, I guess,' you know. He said, 'well, that way, you know, it doesn't look like you're not busy,' whatever. I did not think anything about it. And he said' well, give me an envelope to put that book in, you know, and I'll put it in the car.' I still didn't think about it, I gave him an envelope, gave him my keys, and he brought my keys back. The next morning, I actually went to walk with my mom and you know, the envelope was setting right here on the other side of my seat and my mom was coming up and—you know, coming out and we were going to go to the rec and walk I looked over and that envelope was there and I thought, oh, that's what Eric gave me, and I opened it, you know. And as soon as I seen what it was, you know, of course, I didn't show her, I didn't want her to see anything like that. It was a dirty book, very dirty. (Hr. Tr. Vol. I, pp. 37-38.)

39. The video catalog featured "...videos of people having sex..." (Hr. Tr., Vol. I, pp. 39-40.)

40. Complainant returned the X-rated video catalog to Corporal Rogers and told him he had the "wrong impression" of her. (Hr. Tr. Vol. I, p. 41.)

41. Corporal Eric Rogers gave the Complainant the X-rated video catalog. He apologized to the complainant for having given her the catalog. (Hr. Tr. Vol III, p. 49.)

42. The catalog arrived in Corporal Rogers home mail in a double envelope, with the inside envelope marked "...adult material...must be 18 to order...." (Hr. Tr. Vol. III, pp. 39; 61-63.)

43. The Complainant was visibly upset when she returned the catalog to him. (Hr. Tr. Vol. III, p. 68.); she said "...something which [Corporal Rogers] could not make out...;" "...and just walked away from him" after returning it. (Hr. Tr. Vol. III, pp. 47-48.)

44. Corporal Rogers shredded the catalog in the BPD shredder immediately after complainant returned it to him. (Hr. Tr. Vol. III, p. 70.)

45. The X-rated catalog contained partial nudity that involved topless wrestling. (Hr. Tr. Vol. III., p. 41.)

46. Corporal Rogers would not bring the X-rated catalog into the police department because it had his name and address on it and he did not want any trouble. He was concerned that if he brought the catalog in the department he might be subjected to "some kind of disciplinary action if it was appropriate, because it did have some partial nudity in it and did not know if it would be against the regs or not." This is why he asked the complainant for her car keys so he could put the catalog directly in her car.(Hr. Tr. Vol. III.,

pp. 45-46.)

47. At the request of Corporal Rogers, the complainant gave him an envelope to place the X-rated video catalog in because in his own words "I know she had children at the house there, and I told her also, that, you know, she probably wouldn't want to leave it laying around. So that's why I had asked for the envelope to put it in because it was going to be in her car. I didn't know when she would actually have the time to look at it or anything like that." (Hr. Tr. Vol. III, pp. 67-68.) The complainant did not see the catalog prior to it being placed in the envelop and then in her car.

48. The incident surrounding the X-rated video catalog occurred as early as 1997. (Hr. Tr. Vol. III., pp. 49-50.)

49. After complainant gave her deposition on February 14, 2001, Chief Cole interviewed Corporal Rogers about the X-rated catalog for "about five minutes," and did not criticize his judgement or work performance, nor warn or reprimand him in any way. Chief Cole did not take any discipline of a serious nature such as a suspension or discharge against Corporal Rogers. (Hr. Tr. Vol. III, pp. 69-71; Vol. II, pp. 234-40.) Yet Chief Cole concluded that Corporal Rogers conduct towards the complainant was inappropriate. (Hr. Tr. Vol. II, p. 239) The Chief testified that his interview with Corporal Rogers "got to the point where I [the chief] thought that maybe he [Corporal Rogers] had even violated the law." (Hr. Tr. Vol. II, p. 241.)

50. Chief Cole did not interview any other BPD officers about the complainant's allegations against the uniformed officers. (Hr. Tr. Vol. II, p. 239.)

51. Complainant telephoned Trooper Tom Ballard who is employed at the

Bureau of Criminal Investigations of the State Police and told him that “a friend” of hers had given her “a really dirty book and she did not know what to do.” (Hr. Tr. Vol. I, pp. 42,84.)

52. Trooper Ballard advised the complainant to “just tell them that, you know, you are upset about it, and just let it go at that”. (Hr. Tr. Vol. I, p. 84.)

53. Corporal Keith Cooper shone his laser pointer at the complainant’s private parts, breast, neck, face and back in the presence of several uniformed officers all of whom laughed about the incident. (Hr. Tr. Vol. I, pp. 68-70; 182-84; Vol. II, p. 38.) Corporal Cooper admitted that “what made the pointer even funny was that you could shine it at somebody and they wasn’t aware of it.” Id. at 38. Regarding the laser pointer, Corporal Cooper stated that “I had shined it on a couple other officers and came to Records and actually was talking to the officers about it, whoever was there present, and shined it on her and I thought it was comical because she couldn’t see the dot on her. And once she seen it she said quit that and it was put up and never done again.” (Hr. Tr. Vol. II, p. 18.)

54. Complainant asked Corporal Keith Cooper to “quit” shining the laser pointer on her. (Hr. Tr. Vol. II, pp.18-19.)

55. Corporal Keith Cooper purchased the laser pointer with personal funds and carried it with him while on duty for amusement. (Tr. Hr. Vol. II, pp.39-40.)

56. Complainant testified that “on the last evening that [she] worked” for the City, Corporal Cooper said, “Liz . . . the only thing that we’re going to be able to say about you when you leave here is that you had a nice ass.” (Hr. Tr. Vol. I, p. 69.)

56. Tom Golden, a former State Magistrate, never heard Corporal Cooper

ever make any comment about complainant's anatomy. (Hr. Tr. Vol. II, pp. 166-67.)

57. Complainant's immediate supervisor was Lt. William Kelly. (Hr. Tr. Vol. I, p. 33.)

58. Complainant told Lt. Kelly about the inappropriate conduct by uniformed officers of the BPD, and he told her "...to take care of it, to talk to them...to [tell them to] leave me alone." (Hr. Tr. Vol. I, p. 47.)

59. Complainant also complained to her immediate supervisor Lt. Kelly and Chief Cole about statements and acts of a sexual nature by the uniformed officers of the PBD. (Hr. Tr. Vol. I, pp.102-105.)

60. Complainant tried to talk to Chief Cole about her schedule, the things that had been going on that were not appropriate and that she had tried to speak to Lieutenant Kelley. She tried to explain to Chief Cole that there were things being said and done to her and that she was sick of the scheduling. He laughed about it and said that he had the power to give her any shift she wanted if she would lighten up. (Hr. Tr. Vol. I, p. 47.)

61. Lieutenant Kelly intimidated the complainant. The following testimony supports this finding:

A. Lieutenant Kelly, "I was notified via one of the records personnel by a note in my box that Mrs. Brammer had called in sick for her shift. Later that day during the period of time when Mrs. Brammer would have been working that shift, Captain Walker and I were on our way to lunch and I noted Mrs. Brammer standing alongside of the street at this radio shop. I wondered if she was sick why was she at a radio shop.

So, Captain Walker was driving so we turned around to go

ever make any comment about complainant's anatomy. (Hr. Tr. Vol. II, pp. 166-67.)

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So, Captain Walker was driving so we turned around to go

back to investigate and find out what she was doing, and she was getting in her vehicle to pull out from the radio shop, so we went up the street and pulled off and was waiting for her to pass to see where she was going. We waited a few minutes and she never appeared as we drove around through the area to see where she was at. We located her at another radio shop talking to an individual outside and she went, I think, she went inside. Anyway, we waited a little bit and then she left.

We went by her residence a little later to see if she was at home, and she was at home at that time. The next day she called in sick as well, and when she finally came back to work—I don't remember which day it was because I don't remember if it was her day off after that or whatever. The day she did come back, then I talked to her about that, to find out if she had called in sick why she was at a radio shop...I thought it was my responsibility to investigate that.

Q. Were you satisfied with her explanation?

A. Well, you would have to define satisfied for me. The explanation she gave really didn't fit in the criteria of having a sick day for me, no." (Hr. Tr. Vol III, pp.121-123.)

The complainant describes the same incident as follows:

Q. Did you have any problems with Lieutenant Kelly of which you are complaining in this matter?...

A. One time I had been off work sick, I came back to work the next day. He told me he needed to talk to me, took me into an interrogation room, a pretty small room, and he had seen me out, I'd had an emergency and he had seen me out and he asked me that if I was so sick, you know, he was jumping on me for—he was jumping on me, if I was so sick, what was I doing out, what was I doing buying a radio, I think I was in the parking lot of a radio place, Mr. Radio, as a matter of fact, and...Well I told him what my emergency was that I had to go out for which was my brother had been arrested and he had a heart problem. He called me and I had to go and do this bond and then find his son to go get his medicine for him...(Hr. Tr. Vol I, pp. 59,60.)

Complainant's testimony is found to be credible in this instance.

62. When complainant returned to work from sick leave, Lieutenant Kelly took the complainant into an interrogation room and questioned her about her sick leave. This was intimidation to any reasonable person. Then, he told her the clothes she wore "weren't decent". (Hr. Tr. Vol. I, p. 60.) Lieutenant Kelly told her she "looked fine" and that she reminded him of Lady Di. Complainant found the comments to be confusing. Id. During this discussion, complainant cried. (Hr. Tr. Vol III, pp. 178-179.)

63. Sgt. Timothy Deems asked the complainant if she would like to go for a ride in his cruiser and drink some liquor. (Hr. Tr. Vol. I, p. 66.)

64. Sgt. Timothy Deems would touch himself in an inappropriate way on his private parts. He used his hands to "...like move himself around, his penis around." (Vol. I, p. 67.)

65. Lieutenant J. D. Meadows told complainant she had been "checked out" and the only thing they could find on her was that she wrote bad checks and paid service charges. Complainant felt intimidated by this comment because she felt like... "they were in my personal life." (Hr. Tr. Vol. I, pp.56-57.)

66. In his capacity as an employee of the Women's Resource Center, Lieutenant J.D. Meadows interviewed a person named Teddy Richardson who told him he knew someone who worked at the Police Department, named Liz Brammer, and that he used to date her. After that interview, Lieutenant Meadows saw complainant at work and told her that he met Teddy Richardson and complainant said something to the effect that she knew him. (Hr. Tr. Vol. II, pp. 87-90.) Meadows told complainant that Teddy Richardson said she

was a good girl and then Meadows said "no"...he said she was a good fuck. Meadows and Lieutenant Perkowski laughed and complainant walked off and cried... (Hr. Tr. Vol. I, p. 54.)

67. Lieutenant J. D. Meadows asked the complainant to join him for a beer after the shift ended and a ride on his motorcycle to go get something to eat. (Hr. Tr. Vol. II, pp. 180-81.) Meadows cannot recall any other specific female civilian employee of the BPD he has asked to have a beer. (Hr. Tr. Vol. II, p. 203.)

68. When Lieutenant Meadows asked the complainant out, and she turned him down, he told her that nobody ever turns him down. (Hr. Tr. Vol. I, p. 57.)

69. Lieutenant J. D. Meadows offered Councilwoman Meredith Chambers a ride on his motorcycle, and gave another Records Clerk named Betty Pauley rides on his motorcycle. (Hr. Tr. Vol. II, pp. 183, 186.)

70. Complainant testified that from time to time she would walk up to Lieutenant Perkowski, touch him on the back and make comments to the effect of "how are you doing today." (Hr. Tr. Vol. I, pp. 147-48.) Complainant also put her hand on Lieutenant Perkowski's back and elbow, but he did not consider that to be sexual harassment. (Hr. Tr. Vol. III, p. 11.) Complainant often approached Lieutenant Perkowski to ask "how he was doing," and put her arm around him or gave him a hug or a pat, and Lieutenant Perkowski would reciprocate. (Hr. Tr. Vol. III, pp. 91-92.)

71. Lieutenant Perkowski had a friendly co-worker relationship with complainant. (Hr. Tr. Vol. III, p. 11.) But, Lieutenant Harry Perkowski (erroneously identified in the hearing transcript as Perkowsky) would come up next to complainant and

would go to touch her breast or her butt, and she would walk away. He made several comments to the effect... "that I [complainant] had a nice, you know, butt, nice tits, nice legs, stuff like that." (Hr. Tr. Vol. I, p. 58.) A friendly co-worker relationship does not mean that the complainant acquiesced in sexually charged conduct on the job.

72. Complainant never said anything to Lieutenant Perkowski because she was afraid and felt intimidated. (Hr. Tr. Vol. I, p. 146.)

73. One morning complainant went to her car after working her shift to find a semen type substance on her windshield. She clean it off and went home. It made her sick. She threw up and cried. (Hr. Tr. Vol. I, pp. 75-76.) When she came back to work that night, Officer Blake Percival was waiting on her and asked if she had been able to get her windshield cleaned off. Officer Paul Blume (erroneously referred to in the transcript as Bloom) was present. Officers Percival and Blume thought the windshield incident was funny. (Hr. Tr. Vol. I, p. 77.)

74. Patrolman Matt Jones told the complainant that he would like to have sex with her, and that would be the only thing, that he "...wouldn't want any kind of relationship or anything but he would like to have sex with the complainant." (Hr. Tr. Vol. I, p. 77.)

75. Patrolman Matt Jones told the complainant that she should have expected "that sort of thing working for the Police Department...and that he bet she would be a real good screamer in bed." (Hr. Tr. Vol. I, p. 78.)

76. Corporal Rob Williams approached the complainant from behind as she was bending over to get the door stop and touched her buttocks with an erection. (Hr. Tr.

Vol I, p.167.) Complainant pushed him away. Williams responded by telling the complainant he... "didn't care who she said anything to, that he already had another job..." do what you want...you're no fun." (Hr. Tr. Vol. I., p.74.)

77. On one occasion, Corporal Rob Williams told complainant that his wife was getting ready to have a baby, he was horny, and he couldn't get anything from his wife. Complainant told Corporal Williams to go on. (Hr. Tr. Vol. I, pp. 73,74.)

78. Corporal Paul Blume showed the complainant a picture of a nude, abnormally thin blonde lady who did not have any breasts. He leaned over to touch the complainant's breasts and ask her if her breasts were real. (Hr. Tr. Vol. I, pp. 70-71.) At the time, complainant had lost a lot of weight. (Hr. Tr. Vol. I, p. 71.)

79. While working at the City, complainant called Corporal Blume's house on three separate occasions in the early morning hours. (Hr. Tr. Vol. II, pp. 45-49.)

80. Complainant called Corporal Blume at around 1:00 a.m. in the morning after she had been drinking one evening during the time period she worked at the City. (Hr. Tr. Vol. I, p. 179.) She then apologized for calling him, and he indicated that he had to be in Court the next day. Id. Complainant slow danced with Corporal Blume at a party, and on one occasion, kissed him.. (Hr. Tr. Vol. I, pp. 180-82.)

81. Complainant approached Corporal Blume at a police-related social function and asked him to dance with her. (Hr. Tr. Vol. II, p. 50.)

82. Complainant asked Corporal Blume to walk her to someone's vehicle at a police-related function and engaged in a kiss with him. (Hr. Tr. Vol. I, pp. 180-82; Vol.

83. While working at the City, complainant told jokes of a sexual nature. (Hr. Tr. Vol. I, p. 197.) The only jokes of a sexual nature she heard while working with the City were told to her by a co-worker named Nancy Singleton and a Municipal Court Judge. (Hr. Tr. Vol. I, p. 197.) She laughed at those jokes. Id. Complainant never heard any jokes of a sexual nature told by any Police Officers. Id.

84. While working at the City, complainant socialized with members of the City's Police Department. She went to several police-related social functions where she drank beer, danced (even asking Officers to dance with her) and otherwise interacted well with the Police Officers. (Hr. Tr. Vol. I, pp. 195-96.)

85. Complainant believes that Police Chief Billy Cole:

- a. offered to trade his pay check with complainant for sexual favors;
- b. offered to resolve complainant's scheduling complaint if she would "lighten up"; and
- c. suggested a sexual liaison by asking complainant to answer his telephone while his secretary was gone on one occasion.

86. Chief Cole engaged in comments and actions that would lead a reasonable person in the complainant's position to believe that she was being sexually harassed by him. Whenever the complainant attempted to raise her concerns with the Chief about the inappropriate conduct of some of his officers, nothing was done to promptly investigate her allegations nor was any corrective action taken against the perpetrators. In one instance complainant was referred back to Lieutenant Kelly who already had told her

"...to take care of it, to talk to them...to [tell them to] leave me alone." (Hr. Tr. Vol. I, p. 47.)

Even when the complainant tried to tell the chief about things that had been going on that were not appropriate, that she had tried to speak to Lieutenant Kelley, that there were things being said and done to her and that she was sick of the scheduling, the Chief laughed about it and said that he had the power to give her any shift she wanted if she would lighten up. (Hr. Tr. Vol. I, p. 47.)

87. Complainant came to Chief Cole's office to discuss her schedule. (Hr. Tr. Vol. III, pp. 217-18.)

88. Chief Cole's routine practice is to keep his office door open so that his secretary can be a witness. (Tr. Vol. III, pp. 218-19.)

89. Prior to taking an unpaid leave of absence, and before resigning her employment on November 17, 1998, complainant had at least one meeting with Mayor Pugh, Recorder - Treasurer Sutphin and Police Chief Cole at which time she did not discuss any sexual harassment allegations. (Hr. Tr. Vol. I, p. 211.) Although there is dispute between the parties as to whether an earlier meeting took place between complainant and the Mayor, Complainant testified that she did not discuss any sexual harassment allegations at that prior meeting. Id.

90. In August, 1995, former Records Division Clerk, Nancy Singleton was sexually harassed by two BPD officers, Thomas Bowers and James Mitchell. (Hr. Tr. Vol. II, pp.138-40; pp. 150-51.) One officer knelt down in front of the other, simulated an act of oral sex, and they suggested that was how Ms. Singleton had gotten a new job with Respondent. Id. Ms. Singleton has remained in respondent's employ since being promoted out of the Records Division. (Hr. Tr. Vol. II, pp. 130-131.)

91. Nancy Singleton acknowledged that the supervisors of the Records Division treated employees as follows: “[they] would not discuss problems with us, work related problems. We were made to feel inferior. We were yelled at a lot.” (Hr. Tr. Vol. II, p. 159.) Nancy Singleton stated that she felt the complainant needed to go outside the chain of command in the BPD to be heard. Id. at 161.

92. Jennifer Clonch, a former female employee of the Records Division, left her employment with the respondent complaining of sexual harassment. (Hr. Tr. Vol. II, 152-53.)

93. Complainant had two meetings with Mayor Pugh about her work related problems. (Hr. Tr. Vol. I, p. 78.)

94. At the first meeting with Mayor Pugh, the Complainant told the Mayor that... “there was [sic] some really embarrassing things that were done to her” and that “it was going to be hard for me to tell him about...that there was just some bad things that had happened there to me... that weren’t nice.” Mayor Pugh responded that “...it should have been handled in the department.” The Mayor further stated that he would hold a meeting concerning Complainant’s job related problems. (Hr. Tr. Vol. II, pp. 73-74; pp. 107-08).

95. A second meeting was held with the complainant. Included in the meeting were Mayor Pugh, Gary Sutphin, and Chief Cole. Although complainant’s work schedule was discussed; there was no discussion about any other complaints she may have had. (Hr. Tr. Vol. II, p. 77; p. 102; Vol III, p. 260.)

96. Complainant told her friend, Martha Atkins about the X-rated video catalog; the semen-liked substance smeared on her car windshield; being touched from

behind by an officer Williams with an erect penis; Chief Cole's unwanted and improper remarks; corporal Keith Cooper's harassment of her with a laser pointer; harassment by officer Matt Jones; that Lieutenant Kelly would not listen to her complaints; and, that her employment was affecting her health.

97. Complainant resigned from her employment on November 17, 1998 because the City would not change her work schedule and because of hostile environment in which she worked.

98. After quitting her employment with the City, complainant never registered or sought assistance from any job training programs or agencies. (Hr. Tr. Vol. I, p. 216.)

99. After complainant left her employment with the City, she sought employment with Beaver Family Care, State Farm office in Beaver, Elliot's Feed Store in Danville, Concepts One and Dr. Conseco's office. (Hr. Tr. Vol. I, pp. 99-100.)

100. Complainant did not stay active with the Unemployment Compensation office in attempting to locate employment. (Hr. Tr. Vol. I, p. 216.) She only participated with the Unemployment Office for approximately six weeks in a job search effort. Id.

101. Complainant failed to show-up for a scheduled interview she had with Winterplace in 1999. (Hr. Tr. Vol. I, p. 219.)

102. Complainant worked for Jon Walker's Nationwide Insurance Agency for one week in 1999, and earned Thirty Dollars (\$30.00). (Hr. Tr. Vol. II, p. 10.) She did not have any other employment until May, 2000, when she began working approximately 25-

30 hours per week at the Sleep Inn making Five Dollars and Thirty-Five Cents (\$5.35) an hour. (Hr. Tr. Vol. II, pp. 10-11.) She worked there until she suffered a work-related back injury on January 4, 2001. (Hr. Tr. Vol. I, p. 101.)

103. Complainant's lost pay, benefits and interim earnings were stipulated to by the parties at the hearing. Complainant's damages calculation reflects that she will have lost \$41,323.46 in net back pay, and \$13,400.48 interest for through March 31, 2001.

104. Prior to working for the City, complainant was diagnosed with depression, considered for administration of a Beck Depression Inventory Test and prescribed anti-anxiety medication for certain stresses in her life. (Hr. Tr. Vol. I, p. 268; Joint Exhibit 2 [Dr. Golden's medical record of March, 1994].) Dr. Golden, who had treated the complainant for twelve years, referred her to Dr. Faheem. (Hr. Tr. Vol. I, p.260.)

105. After her employment with the City of Beckley, complainant has been in treatment with Dr. Faheem, a psychiatrist at Appalachian Psychiatric Services, and Nancy Sotak, a therapist in Dr. Faheem's practice. (Hr. Tr. Vol. I, p. 249.)

106. Dr. Faheem's initial diagnosis of complainant was Major Affective Disorder, commonly referred to as Major Depression. (Hr. Tr. Vol. I, pp. 250-51.) Later, Nancy Sotak, the therapist, added Anxiety Disorder because the complainant had a lot of anxiety and nervousness. Id.

107. When the complainant first went to Dr. Faheem... "she was so upset and depressed that she had a hard time functioning on a daily basis. She couldn't tend to household duties, she had a hard time interacting with other people, and so, our emphasis for quite a few months has just been getting up and tending to the house and maintaining a daily

routine. (Hr. Tr. Vol. I, p.253.)

108. Complainant's trust level of and relationships with other people were adversely affected by her on the job experiences at the Beckley Police Department. (Hr. Tr. Vol. I, pp. 254-55; p.272.)

109. Nancy Sotak, the treating therapist, stated that the emotional impact of the stresses that the complainant experienced on her job with the City of Beckley as follows.

Well, I think that, as I said before, it definitely affected her daily living. I think in broader terms it affected relationships with other people. She has been very mistrustful of other people, you know, her trust level is pretty low right now. Just sending her to Vocational Rehabilitation, for example, you know, suggesting that she go and talk with them and when she came back it was real clear what a heavy burden that had been for Liz, to go and talk with Mr. Cook and she said he was nice to me, and it was like a surprise to her that she was treated respectfully and it wasn't what she expected. So, I think that her relationship with other people has been greatly affected. I would also say that some of that has do with her relationship with men. I know that the job that she had cleaning rooms, that one of the positive things for her that she stated was that it was a better job for her right now because she didn't have to interact with males too much and so that left her feeling a little more secure. (Hr. Tr. Vol. I pp.255-256.)

110. In addition, there are a number of stressors that complainant has in her life which are unrelated to anything she alleges about her employment with the City, including the following: single parent stresses involving her children; her son being placed in juvenile facilities, including Chestnut Ridge and Priestly Ridge; testifying against her son in legal proceedings; checking her son back into rehabilitation at different times; her daughter being treated by Dr. Faheem for psychiatric conditions; and that complainant's two divorces would have an impact upon her loss of self-esteem and potential loss of

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relationships. (Hr. Tr. Vol. I, pp. 226, 269-72.) The sexually charged work environment added to the stressors in Complainant's life.

111. Complainant suffered substantial emotional distress and mental anguish as a result of the hostile work environment at the Beckley Police Department.

112. The evidentiary record supports a finding by a preponderance of the evidence that complainant was subjected to a sexually harassing work environment. Although the complainant did not always exercise the best judgement in her relationships with some members of the BPD, her actions taken in "toto" are not sufficient to overcome a finding that she has proven a *prima facie* case for a sexually harassing work environment.

113. Complainant's post-resignation letter to Mayor Pugh states as follows.

Due to the following reasons I was unable to give a two weeks notice to the city of Beckley:

- My illness due to erratic [sic] shift changes
- Confrontations with my supervisors
- The added stress of trying to work out a solution

Taking all of these factors into consideration, I was left with no other choice than to be forced into making this sudden decision. Unfortunately, I began having panic attacks upon time for me to return to work.

Even though I was told that I would be accommodated upon my return to work, there was no way that I could feel secure that the already [sic] submitted occurrences [sic] would not continue. I apologize if my telephone conversation with Gary Sutphin was not clear of my reasons for leaving my most needed employment. See, Joint Exhibit 3, tab12.

B.

DISCUSSION

The West Virginia Human Rights Act prohibits employers from discriminating against an individual with respect to the terms and conditions of employment because of sex. The Act and Title VII, imposes a duty on employers to ensure, as best they can, that their workplaces are free of sexual harassment that create a hostile or offensive working environment. Hanlon v. Chambers, 195 W. Va. 99, 464 S. E. 2d 741 (1995); Patterson v. McLean Credit, 491 U. S. 164, 180,109 S.Ct. 2363, 2374, 105 L. Ed.2d 132,153 (1989); Meritor Sav. Bank. FSB v. Vinson, 477 U. S. 57, 65, 106 S.Ct.2399,2404, 91 L.Ed2d 49, 58 (1986).

Employment discrimination on the basis of sex is specifically barred by the West Virginia Human Rights Act. W. Va. Code § 5-11-9(a)(1). See also, Hanlon, 195 W. Va. At 106-08, 464 S. E. 2d at 748-50; Westmoreland Coal Co. v. West Virginia Human Rights Comm'n, 181 W.Va. 368, 382 S.E. 2d 562 (1989). The term “discriminate” or “discrimination” as defined in W. Va. 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. W. Va. Code § 5-11-9.

Given this statutory framework, to recover against an employer on the basis of a violation of West Virginia Human Rights 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.

The complainant's claim is that of hostile environment harassment. To establish a claim for sexual harassment under the West Virginia Human Rights Act based upon a hostile or abusive work environment, a claimant must prove that:

1. The subject conduct was unwelcome;
2. It was based on the sex of the complainant;
3. It was sufficiently severe or pervasive to alter the terms of employment and create an abusive work environment; and,
4. It was imputable on some factual basis to the employer.

Willis v. Wal-Mart Stores, Inc., 202 W.Va. 413, 504 S. E. 2d 648 (1998). Syll. Pt.2; Conrad v. Szabo, 198 W. Va. 362; 480 S. E. 2d 801 (1996); and, Syll. Pt. 5, Hanlon v. Chambers, 195 W. Va. 99, 464 S. E. 2d 741 (1995).

Clearly, the harassment complainant experienced was not welcome and she made it clear to respondent's officers at the Beckley Police Department that the remarks and actions were not welcome. There are several examples. They are as follows.

After Corporal Rogers placed the X-rated video catalog in complainant's automobile and she saw it; and after complainant sought the advice of State Trooper Ballard, she returned the X-rated video catalog to Corporal Rogers and told him that he had the wrong impression of her. Corporal Rogers acknowledged that complainant was visibly shaken when she returned the X-rated catalog. Corporal Rogers testified that the complainant "said something which [he] could not make out...and just walked away from him" after returning the catalog. Corporal Rogers then shredded the catalog.

When Lieutenants Meadows and Perkowski made remarks to the complainant about a former boyfriend, Teddy Richardson; complainant walked away crying while Meadows and Perkowski laughed. Complainant did not accept Lieutenant Meadows' invitation to go out

with him for a beer. Meadows response was that "nobody ever turns him down." When Lieutenant Perkowski approached complainant as if to touch her breast or buttocks, she walked away.

When Corporal Keith Cooper pointed a laser pointer at complainant's breast, private parts, neck, face and back, she told him not to do it. He stopped immediately. He admits that complainant told him to stop shining the laser pointer at her.

When Corporal Williams told complainant that he was "horny" because his wife was nine months pregnant and he "couldn't get anything from her," complainant told him to "go on, that he should wait on his wife. Afterwards, complainant went onside to take a smoke break and Corporal Williams approached her from behind with an erection. Complainant pushed him away. Corporal Williams said he didn't care who she said anything to because he had already taken another job.

One morning after her shift ended, complainant went to her car to find a "semen type substance on her car windshield. She cleaned it off and went home. It made her sick. She threw up and cried. When she came back to work that night, Officer Blake Percival was waiting on her and asked if she had been able to get her windshield cleaned off. Officer Paul Blume was present. Officers Percival and Blume thought the windshield incident was funny.

All of the persons harassing the complainant were male and their inappropriate behaviors directed at the complainant were very offensive and sexually charged. Certainly, no reasonable person could be expected to work in such an environment. The complainant has satisfied the second element of the Hanlon standard.

The third element of the Hanlon standard, is whether the sexual harassment was

sufficiently severe or pervasive as to alter the terms of employment and create an abusive work environment. The harassing conduct experienced by the complainant at the hands of the officers at the Beckley Police Department was unquestionably severe and pervasive. In determining whether the alleged sexual harassment in a particular case is sufficiently severe or pervasive, the Commission will consider:

1. Whether it involved unwelcome physical touching
2. Whether it involved verbal abuse of an offensive or threatening nature
3. Whether it involved unwelcome and consistent sexual innuendo or physical contact; and,
4. The frequency of the unwelcome offensive encounters.

W. Va. CSR § 77-4-2-4.1-4 (1992); See also, Clark County School District v. Breeden, 121 S.Ct. 1508, 1509-10 (2001) (per curiam); Harris v. Forklift Systems, Inc., 510 U.S. 17, 23 (1993); Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 67 (1968); Ross v. Double Diamond, Inc., 672 F. Supp. 261 (N.D. Tex. 1987)

In addition to the aforementioned four considerations, "the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The legality of a particular action will be made from the facts, on a case by case basis, but in all cases the harassment complained of must be sufficiently severe or pervasive." W. Va. C.S.A. § 77-4-2-3. (1992)

An employee may state a claim for hostile environment sexual harassment if unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment." Id., at Syll. pt. 7. Hanlon v. Chambers, 464 S.E.2d 741 (1995).

Reports of sexual harassment experienced by other female employees during the same time frame complainant worked at the Beckley Police Department Records Division are probative, relevant evidence of respondent's intent and the existence of a hostile environment. See e.g. W. Va. C.S.A. 77-4-2.4.5 (1992); State ex rel. Tinsman v. Hott, 188 W. Va. 349, 353, 424 S. E. 2d 584, 588 (1992); Hurley v. Atlantic City Police Department, 174. F. 3d 95, 111(3rd Cir.1999), cert denied, 528 U.S. 1074 (2000).

Granted there were occasions when the complainant did not exercise good judgement with regards to her relationships with officers of the Beckley Police Department. For example, complainant did socialize with members of the Beckley Police Department. She drank a beer on one occasion with Lieutenant Meadows at the Country Roads Bar; walked up to Lieutenant Perkowski and touched him on the back and making comments to the effect of "how are you doing today"; slow danced with Corporal Blume at a party, kissing him, calling him at home; asking Sergeant Deems to dance with her at a police related function; discussing her problems with her son with Corporal Rogers. Respondent, however, contends that the complainant welcomed and encouraged the comments and behavior she experienced on the job. In other words, she asked for it. I disagree. Respondent's officers stepped over the line on more than one occasion.

When one considers all the sexually charged comments, intimidation and outrageous behavior of the officers identified in this case, it is reasonable to conclude that the complainant was subjected to frequent unwelcome physical touching, verbal abuse of an offensive and threatening nature, unwelcome and consistent sexual innuendo and physical contact and that these acts when taken as a whole and within the context they were committed altered the terms of employment. No reasonable person and certainly no woman should have to work in such an environment.

Complainant has proven that there is a factual basis that imputes the subject conduct to the respondent. She told Lieutenant Kelly, her supervisor, about the inappropriate conduct by uniformed officers of the BPD, and he told her "...to take care of it, to talk to them...to [tell them to] leave me alone." (Hr. Tr. Vol. I, p. 47.) At this point, Lieutenant Kelly had actual knowledge of complainant's allegations about the sexual harassment she was experiencing. He did nothing about it. He took no steps to investigate or tell the chief. His knowledge of these allegations and his failure to act on them are imputed to Chief Cole. Furthermore, when the complainant tried to talk to the Chief Cole about the harassment that she was experiencing, he brushed her off and told her to talk to Lieutenant Kelley. The evidentiary record supports a finding that complainant was subjected to a sexually harassing work environment.

Furthermore, the Commission's Legislative Rules hold "an employer...responsible for its acts and those of its officers, agents and supervisory employees with respect to sexual harassment." W. Va. C.S.R. §77-4-3.1(1992).

The West Virginia Supreme Court of Appeals , in addressing the issue of employer liability for discriminatory acts of supervisors, has held that " if a discriminatory act has been committed by an officer or a supervisory employee, an employer may be held liable without showing that the employer knew or reasonably should have known of the misconduct, except where the supervisory employee was acting outside of the scope of his employment. Paxton v. Crabtree. Syll. Pt.7, 184 W. Va. 237, 400 S. E. 2d 245 (1990). There are no facts to support a finding that Lieutenant Kelley's actions were outside the scope of his employment.

Also, Justice Cleckley observed in Hanlon, "[w]here an agent or supervisor of an employer has caused, contributed to, or acquiesced in the harassment, then such conduct is attributed to the employer and it can be fairly said that the employer is strictly liable for the

damages that resulted.” 195 W Va.108, 464 S.E.2d at 750.

Some of Lieutenant Kelley’s conduct may not have been overtly sexual in nature but it was unlawful and it was directed toward the complainant who is a woman. Harassing conduct need not be motivated by sexual desire to support an inference of discrimination on the basis of sex. Kopp v. Samaritan health System, Inc., 13 F.3d 264, 269 (8th Cir. 1993); Andrews v. City of Philadelphia, 895 F.2d.1469, 1485 (3d Cir. 1990); Bell v. Crackin Good Bakers, Inc., 777 F. 2d 1497, 1503 (11th Cir. 1985). Lieutenant Kelly’s interrogation of complainant in a small room normally used for criminal suspects constitutes this type of harassment.

Complainant suffered harassment by Lieutenant Kelley, her supervisor and various Lieutenants and Sergeants who at some point in time acted as shift commander. Further, complainant experienced a series of incidents of harassment by lower-ranked officers of the Beckley Police Department, all of whom were agents of the City. Because of this, the harassing conduct is imputed to the Respondent. It is clear that the respondent was on notice of the hostile environment.

Now, let us look at the allegations of constructive discharge. The complainant must establish that “working conditions created by or known to the employer were so intolerable that a reasonable person would be compelled to quit. It is not necessary, however, that the complainant prove that the employer’s actions were taken with a specific intent to cause the complainant to quit.” Slack v. Kanawha County Housing and Redevelopment Authority, 188W. Va. 144, 423 S. E. 2d 547 at 558 (1992).

Clearly, the evidence is overwhelming that the complainant was subjected to an intolerable work environment that compelled her to quit. For example, she had been given

an X-rated video catalog by Corporal Rogers; Corporal Cooper aimed a laser pointer at her breasts and private areas; she had been touched on her buttocks with an erection by Corporal Williams; a semen like substance was smeared on the windshield of her car; she had been an unwilling witness to Sergeant Deems touching his penis inappropriately; she was unsuccessful in her attempts to voice her concerns to the Chief and Lieutenant Kelly.

Respondent argues that the reasons complainant quit her job was because of the work schedule and her medical problems. I disagree. While the complainant did have health and personal problems, these problems were exacerbated by the intolerable hostile work environment she found herself in. Her efforts to get help from respondent and its employees fell on deaf ears.

The respondent asks the Commission to assume arguendo that if it finds that any of the incidents that complainant alleges occurred, that the incidents were not severe enough to create a hostile work environment and therefore caused the complainant to quit her job with the City. The respondent argues that in nearly all instances, the complainant testified that the conduct occurred once and that the officers desisted when asked. Why should she have to ask them to desist in behavior that was by its very nature degrading and humiliating to her as a woman? This argument is unacceptable. Generally, the public holds persons in law enforcement in high regard and to a higher standard. Certainly their behavior and conduct in the instant case is unacceptable.

The respondent takes the position that the overwhelming evidence indicates that the complainant had a pleasant working environment and relationship with the City's police officers. I disagree.

After reviewing the respective arguments of counsel regarding the issue of whether

the doctrines of collateral estoppel/res judicata can be applied to the Bureau of Employment Programs decision and therefore bar complainant's claims under the West Virginia Human Rights Act, I find that collateral estoppel/res judicata do not.

Regarding collateral estoppel and res judicata, the West Virginia Supreme Court of Appeals have held that for preclusion to attach to quasi-judicial determinations of administrative agencies, where there are no statutory authority directing otherwise, the decisions must be rendered pursuant to the agency's adjudicatory authority and the procedures employed by the agency must be substantially similar to those used in a court. Liller v. West Virginia Human Rights Commission, 180 W. Va. 433, 400; 376 S.E. 2d 639, 646 (1988); Vest v. Board of Education of the County of Nicholas, 195 W. Va. 447; 466 S.E. 2d 447(1995). The identicity of issues ligated is a key component to the application of administrative res judicata or collateral estoppel. Id. First, there are no identical issues. The unemployment laws of the state do not impose a requirement for proving discrimination was caused by an illicit motive or was the result of a discriminatory policy having a disparate impact as would be the required under the West Virginia Human Rights Act. Secondly, the procedure used by the Bureau of Employment Programs is not substantially similar to those use by the West Virginia Human Rights Act. The Bureau of Employment Programs does not provide for the same rights that the Human Rights Act does. For example, there is no right to have one's claim independently investigated; be represented by counsel at the expense of the state; skip the administrative process and go straight to circuit court for a de novo hearing where jury trials and the full array of legal and equitable remedies are obtainable.

The Legislature designed the appeal procedures under the state's unemployment laws to be simple and expeditious. Issues of unlawful motive and disparate impact in a human rights case are often very difficult and complex, requiring a lot of discovery. The Supreme Court of Appeals will not apply the bar of claim preclusion on subsequent litigation under

the West Virginia Human Rights Act.

In addressing issue preclusion, Justice McGraw made some observations about the grievance procedure at issue in that case that are also relevant in this case:

[T]he Legislature designed the [unemployment] process to be simple and expeditious. Consequently, the process is streamlined and lacks many of the accouterments found in judicial and [Human Rights] Commission proceedings. In the vast majority of [cases], for example, the [claimant] is represented by a lawyer. Moreover and more importantly, the [unemployment] process does not provide for any of the discovery mechanisms available under the Rules of Civil Procedure and the Commission's Procedural Rules. Finally in stark contrast to the Human Rights Act, the [unemployment] statute does not provide for the right to an investigation of [each claim] filed, does not make available at public expense representation by a lawyer for cases that proceed to a hearing before an administrative law judge and does not give any employees the option of skipping the administrative process and pursuing their claims de novo in circuit court where jury trials and the full array of legal and equitable remedies are obtainable. The issue in a human rights case – especially unlawful motive and disparate impact are extremely difficult and often complex. Invariably, they require substantial degrees of fact gathering and familiarity with the concepts of discrimination law. A [claimant] without a lawyer could not possibly be expected to grasp the significance of that law, put together a case of discrimination, and comprehend the full impact of claim and issue preclusion doctrines. A claimant with a lawyer would have an unfairly difficult task trying to prove illicit motive or disparate treatment without access to the full panoply of discovery opportunities. The problem especially is apparent by the fact that in matters of motive and disparate impact the employer ordinarily possesses the crucial evidence. Thus, the plaintiff in this case was not 'afforded a full and fair opportunity to litigate the matters in dispute[.] Wheeling-Pittsburgh Steel Corporation v. Kyu Chong Rowing and the West Virginia Human Rights Commission, 205 W. Va. 286 at 297, 517 S. E. 2d 763 at 774 (1999).

Respondent relies on Mellon v. Stuart v. Hall, 178 W. Va. 291; 359 S. E. 2d 124 (1987). Respondent argues that the rules and procedures before the Bureau provide the complainant with ample opportunity to present her sex and constructive discharge claims as the reasons for her leaving her employment with the City. The Supreme Court of Appeals noted in Wheeling-Pittsburgh Steel Corporation, supra that the reason it accorded preclusive effect to the decisions of the Court of Claims is because this court maintains procedural and discovery rules that are similar to those that govern circuit courts.

On the other hand, the complainant argued that the West Virginia Supreme Court of Appeals recognizes that the legal standards in question are substantially different as between unemployment compensation claims and other types of wrongful termination and/or constructive discharge cases. The complainant relies on Slack v. Kanawha County Housing and Redevelopment Authority, 188 W. Va. 144, 155; 423 S. E. 2d 547, 558, n. 13 (1992). In Slack, Former Justice Miller stated that "...the statutory standard applicable in unemployment compensation cases is more liberal in accordance the beneficial purposes underlying employment security law and is not applicable in a constructive discharge case."

Complainant's relevancy objection to Respondent's Family and Medical Leave Act (FMLA) is granted because it has no relevancy to the issues of sexual harassment and constructive discharge.

Respondent objects to Mrs. Atkins testimony regarding Complainant's character for truthfulness. Respondent alleges that Complainant failed to establish a proper foundation because on direct examination, Ms. Atkins testified that based on conversations she had with a few people that Complainant's reputation for truthfulness was "very good"; yet, on cross examination, Ms. Atkins testified that she had not spoken to anyone in the community about the Complainant's truthfulness or reputation for truthfulness in the past five years.

Therefore, Respondent ‘s position is that Ms. Atkins has no basis to testify about Complainant’s reputation for truthfulness in the community.

Rule 608(a) of the West Virginia Rules of Evidence limits the relevance of a witness’s character to only one trait: truthfulness. Prior West Virginia practice referred to this trait as “truth and veracity.” Under 608(a) and 405(a) a witness can testify about the principal witness’s reputation based on what they have heard in the community and his/her personal opinion. Each requires counsel to lay a foundation. The witness who is called to testify about the principal witness’s reputation for truthfulness based on what they’ve heard in the community must be a member of the same community. Community means the community that knows the principal witness best. Usually this person has resided with the principal witness and knows her personally or knows her reputation in that setting. The witness who is called to give his opinion need only know just enough to express an opinion and not necessarily enough for that opinion to be of significant value. On the other hand, the witness giving opinion testimony can be well enough acquainted with the principal witness as to form a reliable opinion of his/her character for truth and veracity. Opinion evidence does not require the witness to reside in the same community as the principal witness.

Mrs. Atkins is a member of Complainant’s community and has known her since she was a child. They are, in fact good childhood friends. Complainant confided in her about the problems she had working at the Beckley Police Department. Ms. Atkins accompanied the Complainant to several meetings at the Mayor’s office. Complainant moved into Mrs. Atkins home to live when she lost her own apartment after she was constructively discharged from her employment with the City of Beckley. Because of the personal relationship that exists between the Complainant and Ms. Atkins and the fact that they have maintained a friendship since childhood, Respondent’s objection is overruled. Rule 608(a) of the West Virginia Rules of Evidence does not require Ms. Atkins to go around in the community

inquiring about the Complainant's truthfulness or reputation for truthfulness. Knowledge of one's character or reputation can come from other sources. Could she not have heard about the Complainant's reputation for truthfulness in the community without speaking to anyone? Respondent's objection is overruled.

In cases involving allegations of sexual harassment, the statute of limitations begins to run on the date of the offensive contact, or threat of offensive contact which precipitated the termination of employment. Syl. pt. 3 Harmon v. Higgins, 188 W. Va. 709, 426 S. E. 2d 344 (1992); W. Va. C.S.R. § 77-2-3.8-9 (1999). The date of the last offensive contact is September 22, 1998 which is the last day that the Complainant worked. On that date, Corporal Cooper told the Complainant "...Liz, the only thing that we're going to be able to say about you when you leave is that you had a nice ass...". (Hr. Tr. Vol. I. I, p.69.) The Complainant was filed with the Commission on or about September 3, 1999 and served on the Respondent on September 9, 1999.

Complainant's allegations against the uniformed police officers of the Beckley Police Department constitute a continuing discriminatory practice. Therefore, the incidents involving Officers Williams and Cooper are part of a continuing violation of the West Virginia Human Rights Act. West Virginia Institute of Technology v. WVHRC., 181 W. Va. 525; 383S. E. 2d 490 (1989).

Once a Complainant establishes by a preponderance of the evidence that unlawful discriminatory employment action has occurred, she is entitled to an award of back pay. Frank's Shoe Store v. WV Human Rights Commission, 365 S. E. 2d 251 (1986).

The purpose of back pay awards is to make the victim of discrimination whole. Albemarle Paper Co. v. Moody, 422 U. S. 405 (1975); Hensley v. WV Dept. of Health

& Human Resources, 456, 508 S. E. 2d 616 (1975); Griben v. Kirk, 466 S. E. 2d 147 (1995). To obtain an award of back pay in a case before the Commission, the Complainant has the burden of proving the extent and the amount of the economic loss she suffered as a result of the employer's unlawful conduct. Frank's Shoe Store, supra. The measure of a back pay award is the difference between the Complainant's actual earnings for the period in question and those which the employee would have earned absent the discrimination. Gotthardt v. Nat'l R.R. Passenger Corp., 191 F. 3d 1148 (9th Cir. 1999).

An award of back wages is considered special damages and subject to prejudgement interest as a matter of right. Gribben, supra. An award of prejudgement interest is calculated as simple interest at the rate of 10% per annum in accordance with WV Code § 56-6-31. Hensley, supra. Prejudgement interest on award of back pay is calculated from the date the employee was discharged. Rodriquez v. Consolidation Coal Co., 524 S. E. 2d 672 (W. Va. 1999).

Incidental damages are awarded in Human Rights cases. Pearlman Realty Agency v. West Virginia Human Rights Commission, 239 S. E. 2d 145 (1977).

C.

CONCLUSIONS OF LAW

1. On September 3, 1999, complainant filed her verified complaint with the State of West Virginia Human Rights Commission ("Commission"). (Joint Exhibit No. 3, Tab 1.) In her complaint, she alleged sex and reprisal discrimination in violation of the West Virginia Human Rights Act ("WVHRA"), W. Va. Code § 5-11-9. Id. Complainant has voluntarily dismissed her reprisal discrimination claim, and therefore, that claim is dismissed

and only her sexual harassment claim will be considered by the Commission.

2. The complainant, Elizabeth Brammer, is an individual aggrieved by an unlawful discriminatory practice, and is a proper complainant under the West Virginia Human Rights Act. W. Va. Code § 5-11-10.

3. The respondent, City of Beckley, is an employer as defined by W. Va. Code § 5-11-1 et seq., and is subject to the provisions of the West Virginia Human Rights Act.

4. The complaint in this matter was properly and timely filed in accordance with W. Va. Code § 5-11-10. Pursuant to the Commission's Rules of Practice and Procedure, “[a] complaint shall be filed within three hundred and sixty-five (365) days after the occurrence of the alleged unlawful discriminatory practice or act.” W. Va. C.S.R. § 77-2-3.9.d.1.

5. The West Virginia Human Rights Commission has proper jurisdiction over the parties and the subject matter of this action pursuant to W. Va. Code § 5-11-9 at seq.

6. The complainant has established a prima facie case of sex discrimination and constructive discharge. She is entitled to back pay.

7. Complainant is found to have been subjected to sexual harassment, severe enough to suffer substantial emotional distress and mental anguish so as to warrant a recovery of incidental damages.

8. Complainant has proven that a reasonable person would have quit.

D.

RELIEF AND ORDER

Pursuant to the above findings of fact and conclusions of law, this administrative law judge orders the following relief:

1. The above-named respondent shall cease and desist from engaging in unlawful discriminatory practices.
2. Respondent, City of Beckley, is ORDERED to pay the Complainant \$41,323.46 in net back pay, and \$14,117.65 interest through March 31, 2002 within 31 days of the receipt of this Final Decision plus any additional statutory interest at 10 percent simple interest per annum that might be assessed against the net back pay should the respondent fail to pay the aforementioned back pay and interest within 31 days of the receipt of this final decision.
3. Respondent shall reinstate complainant in the next available clerk's position in the Records Division of the Beckley Police Department. Complainant shall be entitled to front pay until such time she is reinstated to a comparable position like the one she was unlawfully and constructively discharged from.
4. Within 31 days of receipt of the undersigned order, the respondent shall pay the 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 respondents' unlawful discrimination, plus statutory interest at 10 percent simple interest per annum that might be assessed against the incidental damages should the respondent fail to pay within 31 days of the receipt of this final decision. .

fail to pay within 31 days of the receipt of this final decision. .

5. Respondent is ORDERED, within thirty-one (31) days from receipt of this final decision to conduct appropriate awareness training for all employees, uniformed and non-uniformed, of the Beckley Police Department. This training shall consist of at least eight hours of education about sexual harassment to include instruction on the sexual harassment policies of the City and Police department. Documentation to the effect that every uniformed and non-uniformed employee of the Beckley Police Department has completed the required eight (8) hours shall be provided to the Commission and the complainant within six (6) months of the date of this final order.

6. Complainant, as a prevailing party, is entitled to recover her costs, expenses, and reasonable attorney fees. Complainant's counsel has thirty (30) days from the effective date of this ORDER to submit an affidavit containing an itemized statement of costs, expenses and reasonable attorneys' fees. Respondent shall have fifteen (15) days from the date of receipt of complainant's affidavit to file exceptions to said affidavit.

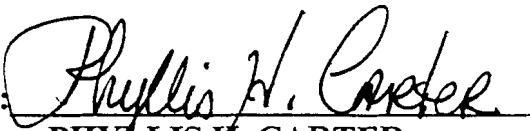
7. In the event of failure of the respondent to perform any of the obligations hereinbefore set forth, complainant is directed to immediately so advise the West Virginia Human Rights Commission, Ivin B. Lee, 1321 Plaza East, Room 108-A, Charleston, West Virginia 25301-1400, Phone: (304) 558-2616.

It is so ORDERED.

Entered this 28th day of March 2002.

WV HUMAN RIGHTS COMMISSION

BY:



PHYLLIS H. CARTER

ADMINISTRATIVE LAW JUDGE

ROOM 108A, 1321 PLAZA EAST

CHARLESTON, WV 25301-1400

PH: 304/558-2616 ext 231.