



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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ARCH A MOORE, JR.
Governor

June 27, 1986

Sandra L. Griffith
3623 Plumb Street
Parkersburg, WV 26101

Sharon M. Mullins,
Civil Rights Division
1204 Kanawha Blvd., E.
Charleston, WV 25301

Larry N. Sullivan
Suite 6B
N. Towne Square
3501 Emerson Avenue
Parkersburg, WV 26101

RE: Sandra J. Griffith V. Parkersburg Health &
Racquetball Club/Docket No. ES-26-86

Dear Ms. Griffith, Ms. Mullins & Mr. Sullivan:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Sandra J. Griffith V Parkersburg Health & Rackquetball Club/ES-26-86.

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

Sincerely yours,

Howard D. Kenney

Howard D. Kenney
Executive Director

HDK/kpv
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

SANDRA J. GRIFFITH,

Complainant,

vs.

Docket No. ES-26-86

PARKERSBURG HEALTH &
RACQUETBALL CLUB,

Respondent.

O R D E R

On the 11th day of June, 1986, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner John M. Richardson. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

It is hereby ORDERED that the Hearing Examiner's Findings of Fact and Conclusions of Law be attached hereto and made a part of this Order.

By this Order, a copy of which shall be sent by Certified Mail to the parties, the parties are hereby notified that THEY HAVE TEN DAYS TO REQUEST A RECONSIDERATION OF THIS ORDER AND THAT THEY HAVE THE RIGHT TO JUDICIAL REVIEW.

Entered this 27 day of June, 1986.

Respectfully Submitted,



CHAIR/VICE-CHAIR
WEST VIRGINIA HUMAN
RIGHTS COMMISSION

THE WEST VIRGINIA HUMAN RIGHTS COMMISSION
OFFICE OF THE HEARING EXAMINER

SANDRA J. GRIFFITH,

Complainant,

v.

DOCKET NO. ES-26-86

PARKERSBURG HEALTH &
RACQUETBALL CLUB,

Respondent.

RECOMMENDED DECISION

I.

Preliminary Matters

This case comes before the Commission upon the verified complaint of Sandra J. Griffith. The complaint was filed on July 22, 1985, alleging unlawful discrimination under WV Code 5-11-9(a). Notice of the public hearing was issued on September 11, 1985, assigning the matter to John M. Richardson, Hearing Examiner, for public hearing. Thereafter, a public hearing was held on January 6, 1986, with John M. Richardson, Hearing Examiner and Russell Van Cleve, Hearing Commissioner, comprising the Hearing Panel. The Complainant was represented by Sharon H. Mullins, Assistant Attorney General, and the Respondent was represented by Larry N. Sullivan, Attorney at Law, Parkersburg, West Virginia. Whereupon, the Complainant presented her evidence and upon completion thereof rested her case. Thereafter, the Respondent presented its evidence and rested its case.

At the direction of the Hearing Examiner, the parties have submitted their proposed findings of fact and conclusions of law. For the purposes of this decision, the Hearing Examiner has considered all of the pleadings, testimony, exhibits and to the extent that the proposed findings, conclusions and arguments advanced by the parties are in accordance with the findings, conclusions and views stated herein, they have been accepted, and to the extent that they are inconsistent they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or is not necessary to a proper determination in the material issues as presented. To the extent that the various witnesses' testimony is not in accord with the findings herein, it is not credited, and to the extent that the findings are conclusionary they are so acknowledged.

II.

Issues

In her complaint, the Complainant alleged that the facts upon which the charge was based were as follows:

1. "On April 11, 1985, I was denied employment by the Parkersburg Health & Racquetball Club/Players Restaurant.
2. The first question I was asked during the interview was 'when are you due.'
3. I believe I have been discriminated against because of my sex, female, in that:
 - a. The interviewer commented that it would have been a different story had I already delivered, and was ready to return to work.

- b. I was advised I was well qualified for the job.
- c. I was medically approved by my physician to enter the job market."

The Complainant's allegation set forth above together with the evidence presented at the public hearing gave rise to the following issues:

- 1. Was the Complainant refused employment because of her pregnancy.
- 2. Did the Respondent articulate a non-discriminatory reason for denying the Complainant employment, and, if so, did the Complainant prove that this reason was pretextual.

III.

Findings of Fact

- 1. Sandra J. Griffith, the Complainant, while being visibly pregnant applied for and was denied a bookkeeper position with the Respondent in April, 1985.
- 2. The Respondent, having its principle place of business in Parkersburg, West Virginia, advertised in April, 1985, in a Parkersburg newspaper for the position for bookkeeper.
- 3. The advertisement required knowledge of payroll, accounts payable, general ledger, and computer processing, (preferring NCR experience).
- 4. The Complainant had some college training and previous work experience which qualified her for the position as advertised.

5. The Complainant was approximately eight months pregnant when she was interviewed by the Respondent in April, 1985.

6. James R. Brundige was an owner (partner) of the Respondent's business and while acting in that capacity interviewed the Complainant for the advertised bookkeeping position.

7. The hiring process utilized by the Respondent was to interview all applicants, and thereafter, select four applicants for a second interview followed by the hiring of one of the second group.

8. The Complainant was not called nor did she receive a second interview.

9. The Respondent selected four interviewees for a second interview and kept two other applications in reserve, none of which included the Complainant.

10. The bookkeeper position the Respondent desired to fill was an essential position and was necessary to fill in order for the Respondent to properly conduct its business affairs.

11. The Complainant was excluded from the second round of interviews because she presented the real probability of needing maternity leave soon after her hiring.

12. The selected interviewees were as well qualified for the position of bookkeeper as was the Complainant.

13. The Complainant offered no credible evidence that the position of bookkeeper was not an essential function of the Respondent's business.

14. A vacancy in the bookkeeper's position created a harmful effect on the Respondent's business in that its payroll, accounts payable and ledgers could not otherwise be adequately maintained.

15. The Complainant offered no evidence that the Respondent could adequately overcome the harmful affects of a vacancy in the bookkeeper's position.

IV.

Discussion

In several decision, the West Virginia Supreme Court of Appeals has adopted and acknowledged the U.S. Supreme Court guidelines and test set forth in McDonnell Douglas v. Green, 411 U.S. 792, 5FEP cases 965 (1973). This is significant in this case because the issues in this case require the application of the McDonnell Douglas v. Green test, namely:

- (1) The Complainant must establish a prima facie case;
- (2) The Respondent must offer a legitimate, non-discriminatory reason for its actions; and
- (3) The Complainant must establish that this supposedly legitimate non-discriminatory reason was a pretext to mask an illegal motive.

In a hiring case, such as is the present case, the prima facie case would have to be established by the Complainant as required in subparagraph (1) above by the Complainant carrying the initial burden of proof and establishing that: (i) she was pregnant at the time of the interview; (ii) that she applied and was qualified for a job which the Respondent was seeking applicants; (iii) that despite her qualifications, she was rejected; and (iv) that, after her rejection, the position remained open and the Respondent continued to seek applicants from persons of the Complainant's qualifications.

There can be no question that the Complainant proved that she was pregnant, that she was qualified to fill the job as a bookkeeper for the

Respondent and further that she was not selected as a potential employee; and that, thereafter, the Respondent conducted further interviews and selected another applicant. Thus, the Complainant has established a prima facie case.

Since the Complainant proved successful in establishing her prima facie case, the burden of proof shifted to the Respondent to offer a legitimate non-discriminatory reason for its actions (subparagraph 2). The Respondent, in the present case, articulated that the bookkeeper position was an essential part of the Respondent's business and that its being vacant seriously impeded the Respondent's ability to conduct its affairs. Further, in accordance with its burden, the Respondent articulated that the bookkeeper position had been vacant for a week and that it was imperative for a qualified person to be hired to fill the vacancy as soon as possible. The duties of the bookkeeper required that that person prepare the payroll, handle the accounts payable and maintain the ledgers reflecting the Respondent's current business activities. It is clear that by articulating this non-discriminatory reason for selecting another applicant, who could immediately fill and maintain continuity in the position of bookkeeper, the Respondent fulfilled its obligation required under the McDonnell Douglas v. Green test.

Thus, it became the responsibility and burden for the Complainant to show that the Respondent's reason was a pretext masking an illegal motive. This the Complainant did not do. While the Complainant showed that during the interview the matter of her pregnancy became the subject of some inquiry, the Respondent denied that this was the reason the Complainant was not further considered.

While the Complainant attempted to show, by direct evidence, that Respondent's motive was unlawfully discriminatory the entire factual situation was clear that if the Respondent was to responsibly hire a qualified individual to fill the vacancy then it must consider other candidates who were as well qualified.

In the case of Marafino v. St. Louis City, Circuit Court, 31 FEP cases 1536 (1983) the U.S. Court of Appeals for the 8th Circuit decided a similar case. In the Marafino case the St. Louis City Circuit Court's Juvenile Division interviewed candidates for the position of staff attorney for the Legal Department. The head of the Department, Corine Richardson, informed Ms. Marafino, who was soon to deliver a child, that she was the best qualified candidate for the position. Thereafter, Corine Richardson informed Judge Edwards of the Juvenile Court of her recommendation and he forwarded her name to the Court en banc for consideration. The Juvenile Court while sitting en banc expressed its reservations about hiring an employee who would require a leave absence so soon after beginning work. Thereafter, Judge Edwards withdrew his recommendation and the court later hired Roger Keene to fill the position.

The Federal District Court, after hearing the case, entered judgment in favor of the Juvenile Court. The matter was then appealed to the Circuit Court of Appeals who while indicating that it was a "close case" held that Federal District Court correctly applied the McDonnell Douglas Corp. v. Green test and that, even though, Ms. Marafino had proven a prima facie case she failed to prove that the Respondent's business reason for not hiring her was pretextual.

It should be noted here that the Complainant was never considered for employment beyond the initial interview stage, and that while she was

able to prove a prima facie case, the facts do not warrant that this case be considered as close as the Marafino case, above-cited. There can be little doubt, that this case should and the Hearing Examiner will recommend that it be dismissed.

V.

Conclusions of Law

1. The Commission has jurisdiction of the subject matter of this complaint in that, the complaint was filed within 90 days of the alleged incident by a person in a protected class against an employer all as defined and required by the Act.

2. The McDonnell Douglas v. Green test requiring that the Complainant prove a prima facie case followed by the Respondent articulating a legitimate non-discriminatory reason for its action thereby requiring the Complainant to prove that reason was pretextual, is applicable, and was applied to this case.

3. The Complainant proved a prima facie case as discussed in Part IV herein.

4. The Respondent articulated a legitimate, non-discriminatory reason for its action.

5. The Complainant failed to prove that the Respondent's legitimate, non-discriminatory reason was a pretext masking an unlawful intent.

6. Because the Complainant failed to prove that the Respondent's reasons were pretextual, the complaint should be dismissed.

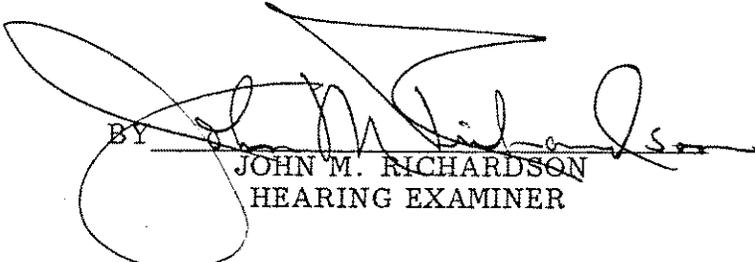
VI.

Recommended Order

For its final order, the Hearing Examiner herein recommends that the Commission adopt the following:

1. The recommended decision of the Hearing Examiner together with all of its contents.
2. That the complaint be dismissed with prejudice.
3. That each party bear their own costs of this matter.

RESPECTFULLY SUBMITTED

BY 
JOHN M. RICHARDSON
HEARING EXAMINER