



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING  
1036 QUARRIER STREET  
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE: 304-348-2616

ARCH A. MOORE, JR.  
Governor

May 2, 1986

Paul L. Whalen, Esq.  
40 East Tenth Street  
Newport, KY 41071

George J. Stunyo  
American Cyanamid Company  
State Road 2  
Willow Island, WV 26190

RE: Homer Gill Hickman v. American Cyanamid Company, EA-218-82A

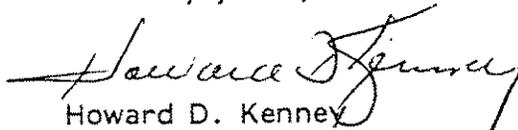
Dear Above Parties:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Hickman v. American Cyanamid, EA-218-82A.

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.

The Respondent is required to provide to the Commission proof of compliance with the attached Order by affidavit, cancelled check or other means calculated to provide such proof within 35 days of service of the enclosed Order.

Sincerely yours,

  
Howard D. Kenney  
Executive Director

HDK/kpv/dlw  
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

HOMER GILL HICKMAN,

Complainant,

vs.

Docket No. EA-218-82A

AMERICAN CYANIMID  
COMPANY-ACCOUNTING,

Respondent.

O R D E R

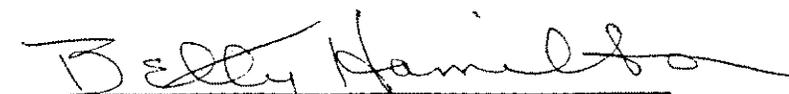
On the 8th day of April, 1986, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner Gary A. Sacco. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

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 21 day of April, 1986.

Respectfully Submitted,



CHAIR/VICE-CHAIR  
WEST VIRGINIA HUMAN  
RIGHTS COMMISSION

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

HOMER GILL HICKMAN,  
Complainant,

vs.

AMERICAN CYANAMID  
COMPANY-ACCOUNTING,

Respondent.

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*Approved  
AES 12/29/85*

CASE NO EA-218-82A

**RECEIVED**  
DEC 23 1985

RECOMMENDED DECISION

ADMINISTRATIVE DIRECTOR  
SUPREME COURT OF APPEALS

PRELIMINARY MATTERS

1. Subsequent to the matter being assigned to this Hearing Examiner by the West Virginia Supreme Court of Appeals for the West Virginia Human Rights Commission, and pursuant to Notice directed to the parties on June 28, 1985, several telephonic conferences were had with both Counsel for the Complainant and Counsel for the Respondent wherein all Preliminary Matters were addressed.

A Public Hearing was held on this matter, on October 10, 1985, at 9:30 o'clock, a.m., at the County Commission Courtroom, Pleasants County Courthouse, St. Marys, Pleasants County, West Virginia, pursuant to Notice issued by the West Virginia Supreme Court of Appeals for the West Virginia Human Rights Commission, dated June 28, 1985.

The Complainant appeared in person, as well as by his Counsel, Paul L. Whalen, Esquire. The Respondent appeared through its Representative, as well as by its Counsel, George J. Stunyo, Esquire, and Steven C. Barkley, Esquire. The

Complainant testified on his own behalf during his Case in Chief. The Complainant, and also Mr. Wilbur Short, were called and testified as rebuttal witnesses on behalf of the Complainant. Roy Kenneth Britton, William Mercer, Charles Prell, Evelyn Cox, William Griffiths, Carol Hoy, James Ruble, and Ruth Helman testified on behalf of the Respondent.

"Request for Admissions" and "First Interrogatories to Respondent" were timely filed by the Complainant and timely answered by the Respondent. A "Pre-Hearing Memorandum on Behalf of the Complainant" was filed with this Hearing Examiner and a copy of the same directed to the Respondent on October 1, 1985. Both parties have timely filed with this Hearing Examiner "Proposed Findings of Fact", "Conclusions of Law", along with supporting Memoranda.

2. This Hearing Examiner has reviewed and considered all the above set-out documentation supplied by the parties in reaching a decision in this matter.

#### ISSUES AND CONTENTIONS OF THE PARTIES

The Issue and Contention presented is whether Homer Gill Hickman, the Complainant, was unlawfully discriminated against in that he was denied a promotion by his employer, the Respondent, because of his age - 60 years. The Respondent denies this contention.

#### FINDINGS OF FACT

1. The Complainant, Homer Gill Hickman, was an employee

of American Cyanamid Company, Willow Island, West Virginia, on July 16, 1981.

2. Respondent American Cyanamid Company employed the Complainant from on or about the 4th day of December, 1946, until the middle of 1982.

3. On July 16, 1981, Complainant had been employed by the Respondent for over thirty-four (34) years.

4. On July 16, 1981, the Complainant was sixty (60) years old.

5. That the Complainant, along with four (4) other candidates was duly considered for the job opening of General Accounting Supervisor which was eventually awarded to Mr. Michael Guess on July 16, 1981.

6. That the candidates for the position were Robert Spangler, Homer Gill Hickman, William Griffiths, Jack Smith, and Michael Guess.

7. That of the four candidates for this position, three (3) were sixty (60) years of age and over, one was fifty-seven (57) years of age, and one was thirty-three (33) years of age.

8. That both Robert Spangler and William Griffiths advised the Respondent that they were not interested in the position.

9. Mr. Smith was not considered further because of his health. (Tr.pp.45,65)

10. That the Complainant, Homer Gill Hickman, and Mr. Michael Guess, were the remaining candidates for the position. (Tr.p.46)

11. That the following objective criteria were used by the Respondent to determine who should fill the position, said objective criteria being the following: Leadership, interpersonal skills, performance, experience and education.

12. That pursuant to the application of the criteria previously set out, Mr. Guess was awarded the promotion.

13. That the record reflects that, although the Complainant, Homer Gill Hickman, had more years with the Respondent company, Mr. Guess had a better educational background and a broader based experience. (Tr.pp.21,50 as to education; pp.49,56,[L.20-25], 57,[L.1-3] as to experience and background).

14. That the Complainant did not possess the required supervisory and/or interpersonal skills for the position. (Tr.p.47 [L.11-24]; p.56[L.12-17]; p.60[L.21-25]; p.61[L.21-24]; p.74[L.8-9])

15. That four other witnesses called by the Respondent work with the Complainant on a day to day basis. Said witnesses being Charles Prell, Evelyn Cox, William Griffiths, and James Ruble.

16. That, while the Complainant was an able accountant, his tasks were primarily confined to the plant, the property and equipment (PP&E Dept.) as a "individual contributor, having no direct subordinates".

17. That the possession of supervisory skills was a major consideration and the determination to fill the opening, the same being for General Accounting Supervisor.

18. That the Respondent's evaluation of the Complainant, Homer Gill Hickman, and Mr. Guess, revealed that Mr. Guess was a superior candidate to the Complainant in most, if not all, of the areas of comparison.

19. That the Complainant had been promoted in the past by the Respondent and was subsequently offered a promotion by the Respondent, other than the one in issue.

20. That the Respondent refused, as was his right, the offer of promotion and requested, and was granted, voluntary retirement with the award of a "retirement package".

#### CONCLUSIONS OF LAW

1. That the Complainant, Homer Gill Hickman, filed a verified Complaint against the Respondent, American Cyanamid Company, alleging that the Respondent engaged in unlawful discriminatory practices prohibited under Article 11, Chapter 5, Section 9, Subsection (a) of the West Virginia Code.

2. That the Respondent did file an Answer with the Human Rights Commission, denying the allegation.

3. That, at all times relevant herein, the parties have submitted themselves to the jurisdiction of the West Virginia Human Rights Commission, and the Commission has exercised the same over the parties, as well as the subject matter of the Complaint.

4. That the Complaint states sufficient facts upon which the charge of violation of West Virginia Code, Article 11, Chapter 5, Section 9, Subsection (a) is based.

5. That the Complainant, through only his testimony, did establish a prima facie case based upon an adaptation of the formulation used in McDonnell Douglas Corp. v. Green, 411 US792 (1973). He belonged to a protected class (in West Virginia pursuant to W. Va. Code §5-11-3(q)), a person between forty (40) years of age and sixty-five (65) years of age; the Complainant alleged that he was qualified for the position through education and training; that he was rejected despite his "qualifications"; that the position was not left open, but, in fact, was given to a younger man.

6. That the Respondent articulated legitimate non-discriminatory reasons for its action, through the testimony of its witnesses, who articulated the objective standards used to determine who would receive the promotion.

7. The Complainant was unable to show that the articulated reason was pretextual; he could not introduce any credible evidence of a direct, comparable, or statistical nature to rebut the legitimate non-discriminatory reasons cited by the Respondent.

8. There was very little indirect evidence of a discriminatory act, said indirect evidence being the opinion of the Complainant that he was discriminated against because of his age. (Tr.p.20[L.6-18])

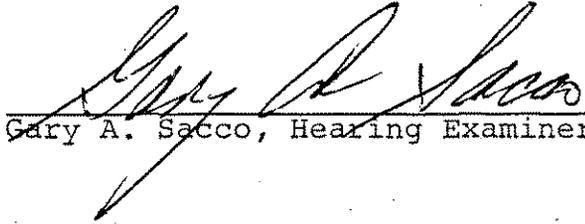
9. The rebuttal testimony of the Complainant and his witnesses is totally inadequate and insufficient to cause even the slightest inference that the actions of the Respondent were discriminatory or the cited reasons for its actions pretextual.

10. There is no testimony that a past or present policy exists to treat the members of the Complainant's class differently than other classes, and, in fact, statistical evidence introduced leads one to conclude otherwise. (Respondent's Exhibit No. 1)

11. That the Complainant did not prove that he was the subject of a discriminatory practice; namely, age discrimination, in violation of the Act.

Pursuant to a review of all the evidence presented by the Parties, this Hearing Examiner finds that the Respondent did not engage in an act of age discrimination nor treat the Complainant any less favorably than others because of his age. This Hearing Examiner recommends that the Human Rights Commission find in favor of the Respondent on the issue of liability and that this matter be dismissed.

Dated this 23rd day of December, 1985.

  
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Gary A. Sacco, Hearing Examiner

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

HOMER GILL HICKMAN, :  
 :  
 Complainant, :  
 :  
 vs. : CASE NO EA-218-82A  
 :  
 AMERICAN CYANAMID :  
 COMPANY-ACCOUNTING, :  
 :  
 Respondent. :

ORDER

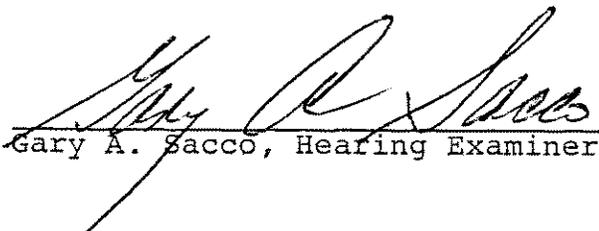
Gary A. Sacco, Hearing Examiner in the above styled matter, pursuant to public hearing held upon the same and the filing, by the Hearing Examiner, of Findings of Fact and Conclusions of Law, as well as his Determination, based upon said Findings of Fact, and Conclusions of Law, does hereby recommend that as it is the opinion of the Hearing Examiner that American Cyanamid Company, Accounting Department, has not committed any acts relating to the Complainant, Homer Gill Hickman, which violate the West Virginia Human Rights Act, that this matter, be and is hereby, Dismissed.

It is so ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 198\_\_\_\_\_.

\_\_\_\_\_  
Chairperson, West Virginia Human  
Rights Commission

CERTIFICATE OF SERVICE

Gary A. Sacco, Hearing Examiner for the West Virginia Human Rights Commission, does hereby certify that the attached Recommended Decision and Order, with reference to Case No. EA-218-82A, Homer Gill Hickman, Complainant, vs. American Cyanamid Company-Accounting, Respondent, has been duly served by mailing true copies thereof, by U.S. Mail, first class, postage prepaid, as follows: Paul L. Whalen, Esquire, Attorney for Complainant, 40 East Tenth Street, Newport, Kentucky, 41071, and George J. Stunyo, Esquire, Attorney for Respondent, American Cyanamid Company, State Route 2, Willow Island, West Virginia 26190, this 23rd day of December, 1985.

  
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Gary A. Sacco, Hearing Examiner