



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

**215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301**

TELEPHONE: 304-348-2616

May 9, 1986

ARCH A. MOORE, JR.
Governor

Leonard McGhee
P. O. Box 176
Haivi, Hawaii

Robert A. Miller, Esq.
Labor Attorney
American Center
27777 Franklin Road
Southfield, MI 48034

L. McGhee
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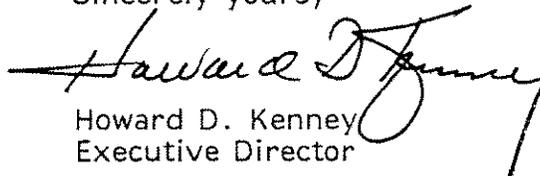
RE: Leonard McGhee V American Motors Corporation
ER-330-76, ER-373-76.

Dear Mr. McGhee and Mr. Miller:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Leonard McGhee V American Motors Corporation, ER-330-76; ER-373-76.

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

Sincerely yours,


Howard D. Kenney
Executive Director

HDK/kpv
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

LEONARD MCGHEE,

Complainant,

vs.

Docket No. ER-330-76; ER-373-76

AMERICAN MOTORS CORPORATION,

Respondent.

O R D E R

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

The Commission hereby deletes paragraph 17 of the Findings of Fact, page 5. In addition, the Commission hereby deletes the entire "Section V. Determination," and substitutes therefor the following Conclusions of Law:

"10. The complainant is entitled to recover from the respondent lost wages in the amount of \$2,396, plus pre-judgment interest at the rate of ten percent (10%) per annum from February, 1976, until October 7, 1985, the date of the hearing in this matter. The amount of lost wages is calculated as follows: The evidence showed that the complainant was constructively discharged on March 11, 1976. His rate of pay was

approximately \$800.00 per month. He moved out of state and began working sporadically in April of 1976. Lost wages of \$800.00 for those four weeks is thus reasonable. In his answers to interrogatories, which were made a part of the record in this case, the complainant stated that he earned approximately \$8,000.00 from April of 1976 to April of 1977. Thus, he was making approximately \$667.00 a month after leaving the respondent's employ. This represents a difference of \$133.00 a month during that time period. Multiplying that by twelve (12) months, the complainant suffered an additional loss of \$1,596.00 in wages because of his constructive discharge. This represents a total in loss wages of \$2,396.00.

"11. The complainant is entitled to recover from the respondent the sum of Ten Thousand Dollars (\$10,000.00) as incidental damages for humiliation, embarrassment, emotional and mental distress, and loss of personal dignity."

"12. The complainant failed to prove with specificity the expenses incurred in pursuit of these complaints and therefore no recovery for expenses should be awarded."

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, except as amended by this Order.

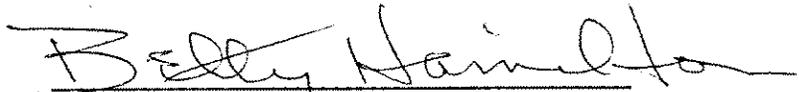
The respondent is hereby ORDERED to provide to the Commission proof of compliance with the Commission's Order within thirty-five (35) days of service of said Order by copies of

cancelled checks, affidavit or other means calculated to provide such proof.

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

RECEIVED

FEB 04 1985

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION
W.V. HUMAN RIGHTS COMM.

RECEIVED
DEC 16 '85
ATTY. GEN. OFFICE

LEONARD MCGHEE,)
)
 Complainant,)
)
 v.)
)
 AMERICAN MOTORS CORPORATION,)
)
 Respondent.)

Case Numbers:

ER 330-76; ER 373-76

RECOMMENDED DECISION

I. PRELIMINARY MATTERS:

A complaint was filed with the West Virginia Human Rights Commission by Leonard McGhee against American Motors Corporation (hereafter AMC), ER 339-76, on February 19, 1976, charging the corporation with race discrimination in employment. Another complaint was filed by Leonard McGhee against AMC, ER 373-76 on March 12, 1979, charging the corporation with reprisal in employment. The Respondent filed an answer to both complaints on April 9, 1985. Due to scheduling problems, the pre-hearing conference in this matter was conducted by mail, and was completed on or about July 1, 1985.

On July 2, 1985, the Respondent filed a Motion for Summary Judgment arguing that it was entitled to judgment as a matter of law under the doctrine of laches. The Respondent's motion was denied by order dated July 15, 1985. The Complainant filed a Pre-Hearing Memorandum on September 24, 1985, and the Respondent filed its Memorandum on September 26, 1985.

Pursuant to notice dated August 30, 1985, a public hearing on both complaints was held on October 7, 1985. Present were the Complainant, in person and by his counsel, Bruce R. Walker, and the Respondent, by its counsel, Robert A. Miller. The hearing was presided over by Cathryn A. Nogay, Hearing Examiner. The parties waived the presence of a member of the West Virginia Human Rights Commission.

The Complainant filed a Proposed Findings of Fact and Conclusions of Law on December 10, 1985, and the Respondent filed a Proposed Findings of Fact and Conclusions of Law on December 9, 1985. Both of these were considered by the Hearing Examiner in arriving at her decision.

II. ISSUES:

1. Whether the Complainant was the subject of unlawful racial discrimination in employment by the Respondent.
2. Whether the Complainant was unlawfully retaliated against by the Respondent for filing a complaint with the West Virginia Human Rights Commission.
3. Whether the Complainant was constructively discharged from the Respondent's employ because of continuing racial harassment, retaliation and reprisal.

III. FINDINGS OF FACT:

1. The Complainant, Leonard McGhee, is a black male who was employed at the American Motors Corporation South Charleston plant from December, 1974, to March, 1976.

2. The Respondent, American Motors Corporation, operated a metal stamping plant in South Charleston, West Virginia, from May, 1974, to January, 1978.

3. In January, 1976, the Complainants position with the Respondent was Maintenance Laborer. In that position he assisted skilled trades people and did various other tasks, including clean up.

4. On January 28, 1976, the Complainant was given a written warning by his supervisor, Chuck Bannister, for failing to remain at his work station. Prior to this the Complainant was singled out and harrassed unjustly by Mr. Bannister. Mr. Bannister was white.

5. Chuck Bannister made racially derogatory comments and assigned non-white workers to less desirable jobs. In addition, he disciplined non-white workers more severely than white workers.

6. In January, 1976, the Respondent's total work force was 308 with 24 non-white employees, thus non-whites constituted only 7% of the total force. However, during the time the Complainant was employed by the Respondent, 7 out of the 16 people disciplined, or 43%, were non-white.

7. On February 19, 1976, the Complainant filed a complaint, ER 339-76, with the West Virginia Human Rights Commission against the Respondent alleging that he was being harrassed by Chuck Bannister on the basis of his race in violation of the West Virginia Human Rights Act (W.V. Code 5-11-1 et seq.).

8. On February 26, 1976, the complaint, ER 339-76, was

9. On the day the Respondent was served, Chuck Bannister, told the Complainant that he knew he had filed a complaint with the Human Rights Commission, but it would not save him because he was going to "fire his ass".

10. On the same day, February 26, 1976, the Complainant and Ray E. Reeves, another black man, and two white men went to lunch together. When the four men returned, Chuck Bannister accused them of overstaying their lunch break. The Complainant and Ray E. Reeves were singled out and subjected to disciplinary action. The Complainant was suspended for several days as a result.

11. When the Complainant returned from the suspension, Bannister assigned him to work in the "pit" area of the plant. The Complainant had previously suffered from skin irritations and headaches from working in the pit and believed that it contained hazardous chemicals. The Complainant refused to go into the pit and was suspended for five days for insubordination by Bannister.

12. At that point, the Complainant felt beaten and was tired of being harrassed by Bannister. The Complainant terminated his employment with the Respondent on March 11, 1976. The Complainant was earning approximately Five Dollars (\$5.00) per hour at the time of his termination.

13. The Complainant filed another complaint, ER 373-76, with the West Virginia Human Rights Commission March 12, 1976, alleging that he was being retaliated against by the Respondent because he had filed a complaint with the Human Rights Commission.

14. Subsequent to the Complainant's departure from the Respondent's employ, the Complainant was unemployed for an undetermined amount of time.

15. The Complainant suffered mental anguish, humiliation, embarrassment, and loss of personal dignity as a result of the Respondent's actions.

16. The Complainant suffered lost wages as a result of the Respondent's actions.

17. The Complainant incurred expenses in the amount of One Thousand Dollars (\$1,000.00) in pursuit of these complaints.

IV. CONCLUSIONS OF LAW:

1. The Complainant, Leonard McGhee, is a covered person under the terms of the West Virginia Human Rights Act (W.V. Code 5-11-1 et seq.).

2. The Respondent, AMC, was an employer under the terms of the West Virginia Human Rights Act.

3. The two complaints filed by the Complainant, ER 330-76 and ER 373-76 were each timely filed within ninety (90) day of the alleged act of discrimination.

4. W.V. Code 5-11-9, Unlawful discriminatory practices, states in part:

"It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the State of West Virginia or its agencies or political subdivisions:

(a) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, condition or privileges of employment if the individual is able and competent to perform the services required even if such individual is blind or handicapped.

(1) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman or financial institution to:

(3) Engage in any form of reprisal or otherwise discriminate against any person because he has opposed any practices or acts forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article . . . "

5. The Complainant was discriminated against on the basis of his race by the Respondent and its agent, Chuck Bannister, with respect to the terms, conditions, and privileges of his employment in violation of W.V. Code 5-11-9(a).

6. The Complainant was illegally retaliated against by the Respondent and its agent, Chuck Bannister, because he filed a complaint, ER 339-76, with the West Virginia Human Rights Commission, in violation of W.V. Code 5-11-9(i)(3).

7. The Complainant was constructively discharged by the Respondent as a result of the Respondent making working conditions so difficult that a reasonable person would have felt forced to resign. Borque v. Powell Electrical Manufacturing Co., 617 F.2d 61 (5th Cir. 1980). Although the Complainant did not specifically plead constructive discharge, appropriate relief, as dictated by the evidence, may be awarded even though it may not have been sought in the pleadings. Fitzgerald v. Sirloin Stockade, Inc., 624 F.2d 945 (1980). The Complainant is entitled to back pay as a result of the said constructive discharge.

8. The Complainant is entitled to incidental damages as compensation for humiliation, embarrassment, emotional and mental distress, and loss of personal dignity. Pearlman v. West Virginia Human Rights Commission, 161 W.V. 1, 239 S.E.2d 145 (1977).

9. The Complainant is entitled to recover expenses incurred by him in pursuit of these complaints.

V. DETERMINATION:

The Respondent, AMC, discriminated against the Complainant, Leonard McGhee, in employment on the basis of his race, and it retaliated against him for filing a complaint with the West Virginia Human Rights Commission.

As a result of the Respondent's actions, the Complainant was constructively discharged and suffered lost wages. The Complainant was to have produced income tax records to show the amount of lost wages, but has not been able to do so. The Complainant was earning approximately Five Dollars (\$5.00) per hour at the time of his discharge and was out of work for at least one month. Therefore, a reasonable award for lost wages would be Eight Hundred Dollars (\$800.00) calculated at Five Dollars (\$5.00) per hour times Forty (40) hours per week for four (4) weeks.

The Complainant should also be compensated for his incidental damages in the amount of One Thousand Dollars (\$1,000.00), and for his expenses incurred in prosecuting this claim in the amount of One Thousand Dollars (\$1,000.00). The

Respondent should be ordered to cease and desist from any further discriminatory practices.

Submitted by:

Cathryn A. Wogay
Hearing Examiner

Date:

December 13, 1985



COPY

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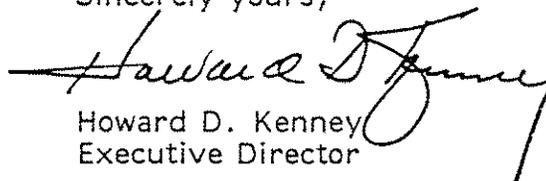
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HDK/kpv
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The respondent is hereby ORDERED to provide to the Commission proof of compliance with the Commission's Order within thirty-five (35) days of service of said Order by copies of

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2. The Respondent, American Motors Corporation, operated a metal stamping plant in South Charleston, West Virginia, from May, 1974, to January, 1978.

3. In January, 1976, the Complainants position with the Respondent was Maintenance Laborer. In that position he assisted skilled trades people and did various other tasks, including clean up.

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(1) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman or financial institution to:

(3) Engage in any form of reprisal or otherwise discriminate against any person because he has opposed any practices or acts forbidden under this article or because he has filed a complaint, testified or assisted in any proceeding under this article . . . "

5. The Complainant was discriminated against on the basis of his race by the Respondent and its agent, Chuck Bannister, with respect to the terms, conditions, and privileges of his employment in violation of W.V. Code 5-11-9(a).

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Submitted by:

Cathryn A. Nogay
Hearing Examiner

Date:

December 13, 1985