



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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

TELEPHONE: 304-348-2616

January 9, 1986

ARCH A. MOORE, JR.
Governor

Fred F. Holroyd, Esquire
209 West Washington Street
Charleston, WV 25303

Bruce R. Walker
Assistant Attorney General
West Virginia Board of Regents
P.O. 3368
Charleston, WV 25333

RE: Taylor v Shoney's Inc. EA-292-84

Dear Mr. Holroyd and Mr. Walker:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Ray Taylor v Shoney's, Inc., EA-292-84.

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,

A handwritten signature in cursive script that reads "Howard D. Kenney".

Howard D. Kenney
Executive Director

HDK/kpv
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

RAY TAYLOR
COMPLAINANT,

V.

EA-292-84

SHONEY'S, INC.
RESPONDENT.

ORDER

On the 14th day of November, 1985, the Commission had before it Complainant's Motion for Reconsideration filed by Bruce Ray Walker on behalf of the Complainant. After consideration of the Motion and in light of the Commission's Final Order and the Record thereof, it is hereby ordered that the Motion for Reconsideration be denied.

Entered this 11th day of December, 1985.



CHAIR/VICE-CHAIR
WEST VIRGINIA HUMAN RIGHTS
COMMISSION

ORDER BIC



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION
215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

ARCH A. MOORE, JR.
Governor

TELEPHONE: 304-348-2616

October 16, 1985

Ray F. Taylor
107 3rd Avenue, N.
St. Albans, WV 25177

Bruce Walker, Esq.
Assistant Attorney General
1204 Kanawha Boulevard, E.
Charleston, WV 25301

Executive Officer
Shoney's Restaurant
Tyler Mountain Road
Cross Lanes, WV 25313

Fred F. Holroyd, Esquire
209 W. Washington Street
Charleston, WV 25303

RE: Ray Taylor V Shoney's, Inc.
Docket No.: EA-292-84

Dear Mr. Taylor, Mr. Walker, Executive Officer, and Mr. Holroyd:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Ray Taylor V Shoney's Inc./ Docket No: EA-292-84.

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,

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Howard D. Kenney
Executive Director

HDK/kpv
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CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

RAY TAYLOR

COMPLAINANT,

V

DOCKET NO: EA-292-84

SHONEY'S INC.

RESPONDENT.

ORDER

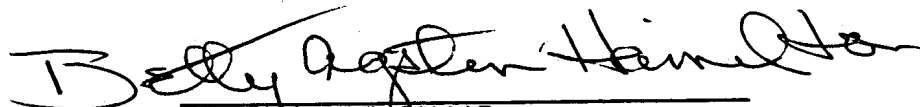
On the 19th day of September 1985, the Commission reviewed Hearing Examiner Marjorie Martorella's Findings of Fact and Conclusions of Law. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

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 to be sent by certified mail, the parties are hereby notified that THEY HAVE TEN DAYS TO REQUEST A CONSIDERATION OF THIS ORDER AND THAT THEY HAVE THE RIGHT TO JUDICIAL REVIEW.

Entered this 10th day of October 1985

RESPECTFULLY SUBMITTED,



CHAIR/VICE-CHAIR
WV HUMAN RIGHTS COMMISSION

*Approved
Aug 2, 1985
SRN*

RECEIVED
JUL 31 1985

ADMINISTRATIVE OFFICE OF
SUPREME COURT OF APPEALS

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

RAY F. TAYLOR,
Complainant

v.

DOCKET NO.

RECEIVED
AUG 8 1985
WV 84
HUMAN RIGHTS COMM.
[Signature]

SHONEY'S INC,
Respondent.

FINAL DECISION

This matter was heard on May 31, 1985 pursuant to a notice dated March 8, 1985. The complainant, Ray F. Taylor appeared in person and by his counsel, Bruce Walker, Assistant Attorney General, and the respondent, Shoney's Inc., by its agent and employee, Don Hamilton, and by counsel, Fred F. Holroyd. The complainant testified on behalf of himself and Margaret Schott, investigator, was called as a witness in his behalf. The following persons appeared and testified on behalf of the respondent: Joseph Boston, Gary Cook, and Don Hamilton.

The issue presented by the complaint is whether the age of the charging party was the basis for respondent's refusal to hire him.

The parties stipulated to the following facts:

1. Shoney's is an employer within the meaning of the Human Rights Act.
2. That Respondent is between the ages of 40 and 65.
3. That Mr. Taylor applied for employment at Shoney's

and that he was ultimately not hired.

4. That the Human Rights Commission has jurisdiction over the subject matter in this case.

5. The parties further stipulated with respect to the authenticity and admissibility of certain documents which stipulations are contained on pages 11 through 13 of the transcript in this case.

FINDINGS OF FACT

Upon full consideration of all the evidence, the Hearing Examiner finds as follows:

1. That complainant, Ray F. Taylor, belongs to a protected class and that he is between the ages of 40 and 65;

2. That Ray F. Taylor applied for employment with Shoney's Inc., had two interviews, the first on or about October 11, 1983 and the second on or about October 14, 1983, and that Ray F. Taylor was qualified for the job for which Shoney's Inc was seeking applicants;

3. That on or about October 14, 1983, Ray F. Taylor was refused for employment despite his qualifications;

4. That after this refusal, the position remained open and the employer continued to seek persons of Ray F. Taylor's qualifications;

5. The Hearing Examiner finds that Respondent appeared for his interview approximately one and one half hours after

the appointed time and presented an untidy and unkempt appearance. Inasmuch as only one witness testified that Mr. Taylor smelled of alcohol and the complainant testified to the contrary, the Hearing Examiner finds the evidence to be inconclusive and is disregarded in making this final decision. The personal appearance of the complainant at hearing calls into question the credibility of complainant's testimony that he was neat and well groomed at the time of the interview and questions;

6. That, in order to be employed as a bus boy at Shoney's Restaurant, the complainant would have been on view to customers in the dining room.

CONCLUSIONS OF LAW

1. By virtue of the findings of fact contained in paragraphs 1 through 4 above, the Hearing Examiner finds that Ray F. Taylor has established a prima facie case of discrimination;

2. The Hearing Examiner further finds, pursuant to the employer's evidence, that Shoney's Inc. has met its burden in establishing an legitimate, nondiscriminatory reason for the refusal to hire and that refusal to hire was not motivated by the complainant's age;

3. That Shoney's Inc. has a legitimate interest in hiring persons who are fastidious in their personal

appearance, thereby indicating to potential customers that similar high standards might be maintained with the respect to the food served;

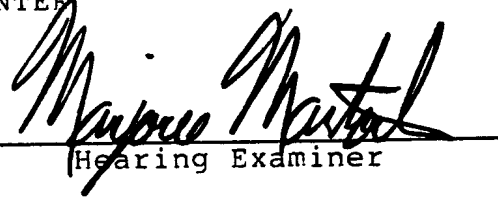
4. The Hearing Examiner further finds nothing in the record which would serve to rebut the employer's testimony as to a nondiscriminatory reason for its refusal to hire. The complainant introduces evidence that relatively few Shoney's employees are over 40; however, no evidence is introduced to indicate that applicants for these positions are not similarly youthful; nor does the evidence establish any past or present policy of treating employees of Mr. Taylor's class differently than other classes. Therefore, the Hearing Examiner finds that complainant was not refused employment because of his age in violation of statute, but rather was refused employment for legitimate, nondiscriminatory reasons established by a clear preponderance of evidence by the employer.

Therefore, the Hearing Examiner recommends to the Human Rights Commission that it find in favor of the respondent, that this case be closed, and that each party shall pay its own costs and attorneys' fees.

Date:

7-30-85

ENTER


Hearing Examiner