

Order book
COPY



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

October 7, 1985

Sandra Westfall
2756 E. DuPont Avenue
Quincy, WV 25016

Ann V. Gordon, Esq.
Assistant Attorney General
West Virginia Board of Regents
P. O. Box 3368
Charleston, WV 25333

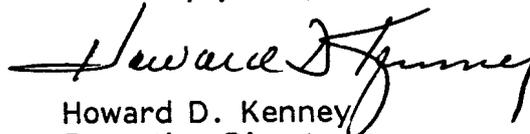
Roger A. Wolfe, Esquire
Jackson, Kelly, Holt & O'Farrell
P. O. Box 553
Charleston, WV 25322

RE: Sandra Westfall v. Carbon Fuel Company
Docket No.: ES-179-79

Dear Ms. Westfall, Ms. Gordon, and Mr. Wofe:

Herewith please find a copy of the Order of the WV Human Rights Commission in the above-styled and numbered case of Sandra Westfall v. Carbon Fuel Company/Docket No.: ES-179-79, 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.

CC: Roxanne Rogers, Attorney
David G. Hanlon, Hearing Examiner

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

Sandra Westfall
Complainant,

v.

Docket No.: ES-179-79

Carbon Fuel Company
Respondent.

ORDER

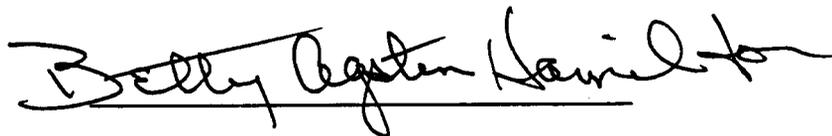
On the 19th day of September 1985, the Commission reviewed Hearing Examiner, David G. Hanlon's, Findings of Fact and Conclusions of Law. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

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 RECONSIDERATION OF THIS ORDER AND THAT THEY HAVE THE RIGHT TO JUDICIAL REVIEW.

Entered this 7th day of October, 1985.

RESPECTFULLY SUBMITTED,



CHAIR /VICE CHAIR
WEST VIRGINIA HUMAN RIGHTS
COMMISSION

Approved July 20, 1985
D.B.H.

BEFORE THE WEST VIRGINIA SUPREME COURT OF APPEALS
and THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

SANDRA WESTFALL,

Complainant,

v.

RECEIVED

CASE NO. ES-179-79

CARBON FUEL COMPANY,

JUL 26 1985

Respondent

W.V. HUMAN RIGHTS COMM.



RECEIVED

JUL 15 1985

DECISION OF HEARING EXAMINER

ADMINISTRATIVE DIRECTOR
SUPREME COURT OF APPEALS

Pursuant to notice duly-issued to the respondent, this matter came on for hearing on the 15th day of May, 1985, beginning at 9:00 a.m., in Room E314 of the State Capitol, in Charleston, West Virginia. David G. Hanlon, Hearing Examiner, presiding, both parties having waived the presence of a member of the Human Rights Commission.

The complainant, SANDRA WESTFALL, appearing in person and by her counsel, Ann V. Gordon, Assistant Attorney General, and the respondent appearing in person by Frank J. Boskovich, and by its counsel, Louise Q. Symons.

It appearing that notice as required by law, setting forth the time and place of the hearing and the matters to be heard, had been duly-served upon the respondent and respondent appearing by its representatives, the hearing was convened at the aforesaid time and place, the same being completed on the 15th day of May, 1985.

Upon due consideration of the evidence, and of the briefs of counsel, the Hearing Examiner hereby makes the following Findings of Fact and Conclusions of Law:

ISSUE

The issue presented in this cause was whether or not the respondent discriminated against the complainant in failing to employ her as a coal miner.

FINDINGS OF FACT

(1) The complainant, SANDRA WESTFALL, a female, applied for employment with Carbon Fuel Company, respondent herein, on the 21st day of June, 1978.

(2) At the time of her application, Carbon Fuel Company was engaged in coal mining activities in Kanawha County, West Virginia.

(3) Complainant was interviewed for employment by Thomas Cloer, Jr., Personnel Supervisor for the respondent, on the 21st day of June, 1978.

(4) Complainant's only prior public work experience was as a waitress and that had occurred three years prior to her application for employment at Carbon Fuel Company.

(5) Complainant had obtained an apprentice miner card by attending classes.

(6) Respondent considered an apprentice card only as an indication that the applicant was serious or committed to working in the mining industry, since it required all applicants offered employment to re-take the same classes and get new cards.

(7) During the interview process, Thomas Cloer explained to both men and women that their chances of being hired were better at non-union, out-of-the-way mines, and that acquiring actual underground experience, would increase their chances of being hired by the respondent.

(8) Due to the location of the respondent, as many as three hundred (300) persons per month applied to the respondent for work during the year 1978.

(9) After the complainant applied for employment, the respondent hired other inexperienced miners who had experience as

mechanics, carpenters, bricklayers or had been in the work force continually.

(10) Mechanical skills are readily transferable to underground work in a coal mine and coal companies usually look for skilled mechanics.

(11) Carpentry and bricklaying skills are used in building brattice or making stoppings in underground mines.

CONCLUSIONS OF LAW

The complainant is an individual within the meaning of Chapter 5, Article 11, Section 3(a) of the West Virginia Code.

The respondent is an employer within the meaning of Chapter 5, Article 11, Section 3(d) of the West Virginia Code.

Although the respondent alleges that the charge of ~~discrimination~~ was not timely filed, I find that on the 2nd day of October, 1978, the complainant filed a verified Complaint against the respondent, alleging that the respondent had engaged in unlawful discriminatory practices, prohibited under Chapter 5, Article 11, Section 9(a) of the West Virginia Code. The said Complaint was timely filed within ninety (90) days of the alleged act of discrimination.

The evidence established that

(a) the complainant is a member of a protected group under the West Virginia Human Rights Act;

(b) the complainant applied for a job with the respondent as a coal miner, for which she was qualified and for which the respondent was seeking applicants; and

(c) the complainant was not hired or given a follow-up interview and the position remained open and respondent continued to seek applicants for such position.

However, there is no evidence that after failing to hire complainant, the respondent hired a person for such job who was (1) less qualified than the complainant, and (2) not a member of the protected class.

In fact, the evidence is to the contrary in that the males hired after the complainant possessed skills and work records that made such applicants more qualified.

Accordingly, I find that the complainant has failed to establish a prima facie case of discrimination as required by McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973), and Texas Department of Community Affairs v. Berdine, 450 U.S. 248 (1981).

It is accordingly recommended that the discrimination charge be dismissed.

ACTION

Dismissal of this action is recommended.

GIVEN under my hand this 11th day of July, 1985.



DAVID G. HANLON
HEARING EXAMINER