BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

PAMELA PRESTON,

Complainant,

v. Docket No.: ES-450-78

BLOSS & DILLARD, INC.,

Respondent.

FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

I. PROCEEDINGS

This case came on for hearing before Hearing Examiner Emily A. Speiler, and Hearing Commissioner Russell Van Cleve on November 8, 1982, in the Huntington City Council Chambers, Huntington, West Virginia. The Complainant appeared in person and was represented by her attorney, Herbert H. Henderson. Assistant Attorney General Mary Lou Newberger appeared on behalf of the West Virginia Human Rights Commission. The respondent was represented by its Vice-President William B. Johe, and by attorneys Andrew H. Miller and Maurice J. Flynn.

On May 17, 1978, the complainant filed a verified complaint alleging that the respondent, Bloss and Dillard, Inc., had discriminated against her in her employment as an individual on the basis of sex, and further alleging that respondent engaged in a pattern and practice of sex discrimination in employment. On that same date, she filed a second

complaint with the Commission, charging the respondent with reprisal under the West Virginia Human Rights Act for discharging her on April 25, 1978, from employment because of her assertion of her rights under the Human Rights Act.

The Human Rights Commission issued a letter of determination finding probable cause to believe that the Human Rights Act had been violated with regard to the general charge of discriminatory practices, both as to the complainant individually and in a pattern and practice against women generally. However, the Commission found that there was not porbable cause to believe that the complainant's discharge was the result of illegal reprisal.

On September 24, 2982, pursuant to §7.10 of the Administrative Regulations of the Human Rights Commission, a prehearing order was entered by Hearing Examiner Emily A. Spieler.

On November 3, 1982, the complainant and the Human Rights Commission moved to amend the initial complaint to include the subsequent discharge.

A prehearing conference was held on November 4, 1982, pursuant to §7.10 of the Administrative Regulations, at which the parties were all duly represented. The matters determined at the prehearing conference were summarized by the Hearing Examiner in a prehearing order which was read into the record at public hearing. Tr.6-22.

The complainant's motion to amend the complaint was denied as untimely and without good cause. The Hearing Examiner noted, and the Commission concurs, however, inter alia, that the initial complaint, as drafted and without amendment, would encompass any charge of continuing discrimination in employment, including discharge, if such discharge was the result of discrimination in terms and conditions of employment.

The Commission concludes as reverberated by the Hearing Examiner that any claim that the discharge reflected illegal reprisal activities on the part of the respondent was barred by the prior final adjudication of the complainant's reprisal complaint. Tr. 19-21.

On the day of the public hearing, the parties advised the Hearing Panel that the allegation that the respondent had engaged in a pattern and practice of sex discrimination was being settled to the satisfaction of all parties. The public hearing therefore proceeded on the charge of individual discrimination against the complainant. As noted in the prehearing order, background evidence regarding the respondent's treatiment of women generally was admitted into the record, over respondent's objection.

The complainant and respondent had full opportunity at public hearing to call witnesses and present evidence relevant to this complaint. Neither party alleged any need for additional time to present evidence, not did either party claim surprise in the presentation of evidence which might have necessitated a continuance. The complainant called as her witnesses the following: Elaine Combs, Glenn Seabloom, Pat Smith, and the complainant herself. The respondent called as its witnesses: Anna L. Wellman, Earle Dillard, and William B. Johe.

Subsequent to the public hearing, and after the post-hearing memoranda had been filed, respondent moved to reopen the hearing to introduce further evidence in order to clarify certain parts of the record. There was no allegation that new evidence had been discovered, nor that the respondent had not had full opportunity to address the issues at the public hearing. Said motion was considered by Jeffrey

McGeary, Chairman of the Human Rights Commission, and denied on April 6, 1983. The parties all agreed to a waiver of the time limits governing the filing of the Recommended Decision of the Hearing Examiner.

The West Virginia Human Rights Commission upon due consideration of the entire record, testimony and evidence in the matter, the arguments of counsel, the recommendations of the Hearing Examiner and exceptions thereto, and upon review and consideration of Complainant's affidavit on attorney fees and costs, (Attachment A), and Respondent's objections thereto, (Attachment B), both documents considered by the Commission after deliberation on the issue of the liability of the Respondent herein, adopts in part the Hearing Examiner's recommended decision and makes the following Findings of Fact, Conclusion of Law and Order.

II. ISSUES

The issues to be resolved in this matter are as follows:

1. Did the respondent discriminate illegally on the basis of sex against the complainant in the terms and conditions of her employment while she was still employed?

2. Did the respondent terminate complainant because of her sex?

3. If the respondent did so discriminate, what is the appropriate remedy due the complainant?

4. If the respondent did so discriminate, what is the appropriate remedy due the complainant?

The question of whether the respondent engaged in a pattern and practice of discrimination against women is not now before us, having been settled to the satisfaction of all parties.

III. FINDINGS OF FACT

1. Respondent Bloss & Dillard, Inc., a closely-held corporation, is a wholesale underwriter and brokerage insurance business. The corporation has three stockholders: Earle Dillard, President and Treasurer of the corporation; William Johe, Vice-President and Secretary; and Frank Blow, Vice-President. All three officers are employed full-time by the company. Although they perform some underwriting functions, they primarily act in supervisory and managerial capacities, and are not considered "employees" for the purposes of this Decision.

2. All employees of the respondent who are responsible for handling lines of insurance are called underwriters. An underwriter acts as a "middleman" between insurance agents, who deal directly with consumers, and insurance companies, who actually assume the risks stated on the policies. Insurance agents in the field contact the underwriters to ascertain rates and insurability of particular risks for particular insurance companies. An underwriter is responsible for evaluating risks based upon information supplied, generally by the insurance agent; determining insurability; pricing the premium rate; and marketing and placing the risk with an insurer, or insurance company. The respondent operates on two bases as an underwriting firm: as a contract underwriter, whereby the firm has the authority, within guidelines established by the insurer, to accept risks or bind them on behalf of the insurer; and a general underwriter without this authority.

3. Bloss & Dillard has six departments: property, casualty, transportation, accounting, agents and claims, and personal lines. Underwriters were assigned to work in four of these departments: property, casualty, transportation, and personal lines. Employees' assignments to lines of insurance were made by Earl Dillard.

4. Complainant Pamela Preston, a woman, was hired by respondent on March 23, 1976, and terminated on April 11, 1978.

5. Prior to being hired by the respondent, the complainant had graduated from high school and worked in jobs of a clerical or secretarial nature. She applied for a job with the respondent as file clerk or any position available. She was hired to be an underwriter.

6. The complainant was trained for two weeks by the former underwriter to act as underwriter in personal lines, handling motorcycles, mobile homes, campers, travel trailers, and motor homes.

7. The complainant was called an underwriter by the respondent's managers at all times during her employment. This was the same title use for all employees responsible for collecting information and determining premium rates and insurability of risks, irrespective of the complexity of the risks for which they were responsible.

8. Elaine Combs, a female high school graduate, worked for respondent for twelve years, from 1964 to 1976. She came to the respondent with work experience with Inland Mutual Insurance Company. While employed by the respondent she performed the job of underwriter for seven years (1968-1974), and thereafter was promoted to assistant vice-president, a position she held for approximately two years.

While acting as assistant vice-president, she helped to train Glenn Seabloom, a man, who was hired as an underwriter in 1975.

9. At the time Combs left respondent's employ, Seabloom was the only male underwriter employed. All other males were officers and managers of the company. At the time of Combs' departure, Seabloom was paid more than Combs.

10. During 1976, respondent employed one male underwriter (Seabloom) and at least six female underwriters (Scarberry, Partlow, Preston, Gunn, Hedrick, and Smith).

11. During 1977 and 1978, respondent employed three male underwriters (Seabloom, Hilton, and Black), and at least five female underwriters (Scarberry, Preston, Gunn, Hedrick and Smith).

12. During the year 1977, 19 employees punched the time clock. These included two men and 17 women. The two men were Kenneth Maynard, the messenger for the company, and Dan Dillard, a trainee.[1] No male underwriters or department heads punched the time clock during this, or any other years. Bonnie Gunn, Sharon Hedrick, Ann Scarberry, Pat Smith, and the complainant, constituting all of the female underwriters or department heads, were required to punch the time clock.

13. In 1978, 20 employees punched the time clock: two men and 18 women. Again, no male underwriters or department heads punched the clock. Again, all female underwriters, including the complainant, and all female department heads, were required to punch the time clock.

14. Male employees often took lunch hours longer than one hour. Female employees, including the complainant, were expected

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[1]. With regard to Dan Dillard's status, see paragraph 37.

to punch the time clock upon departing and returning from lunch, and could not take in excess of one hour.

15. All underwriters worked overtime, and took work home with them. Female underwriters were paid overtime and punched the time clock; males did not punch the clock and were not paid overtime.

16. Personal leave time was made available to male employees, to look for apartments, take family members to the doctor, and so on. Female employees including the complainant were discouraged from taking time off unless they were sick.

17. Generally, a file clerk sorted the mail. At no time was a male employee asked to sort the mail when the file clerk was unavailable. The complainant was asked to sort the mail on a daily basis for a period of six to eight weeks prior to her termination. A high volume of mail was received daily. The complainant estimated that the sorting of the mail took approximately two to three hours per day. This estimate was contested by respondent. Nevertheless, there is no question that the sorting of the mail was a necessary and time-consuming task which was assigned to the complainant in addition to her other job functions.

18. Training, both on-the-job and elsewhere, was made available on a more regular basis to male employees than female employees. In at least one instance, the complainant was initially told that she would be given training, but a man was sent in her place.

19. A department head was the employee responsible for one of the departments listed in paragraph 3, above. A department head was not necessarily responsible for supervising other employees, as some departments had only one person, the department head, assigned

to them. There were no female department heads until 1978.

20. During the period of complainant's employment, Seabloom was promoted to head of casualty. Black was hired to be head of transportation, and Hilton was hired to be head of property.

21. No woman was ever hired to act as a department head.

22. Despite the availability of women experienced in handling specific lines of insurance, the respondent hired men to fill the jobs of department head, or chose not to fill the position at all. [2]

23. Wages paid to male underwriters or department heads were substantially higher than wages paid to females with equivalent rank. Seabloom was paid more at the time he was hired to act as underwriter than Combs, Assistant Vice President, was paid, as well as more than any female underwriter or department head was ever paid subsequently.

24. In 1978, Glenn Seabloom (casualty), Fred Black (transportation), Dick Hilton (property), Pat Smith (agents and claims) and Sharon Hedrick (personal lines) were the department heads. In these positions, Smith and Hedrick (both female) continued to punch the time clock, and otherwise be viewed as non-supervisory or non-professional employees; Seabloom, Black, and Hilton (all

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2. For example, Ann Scarberry was passed over for promotion when her male supervisor retired. Hilton was hired as her department head. Similarly, Bonnie Gunn was not promoted. Rather, respondent chose to hire Black. In complainant's department, Sharon Hedrick and she handled the insurance. Johe supervised the department himself; Hedrick was not promoted to department head until after Preston was terminated. The record does not indicate whether this promotion followed or preceded the filing of the complaint in this matter.

males) did not punch the time clock. [3] Seabloom, Black, and Hilton were all paid substantially more than either Hedrick or Smith.

25. At the beginning of 1978, male underwriters and department heads were paid an average of $1,278 per month. Female underwriters and department heads were paid an average of $650 per month. On average, females were paid 50.9% of what males were paid. The highest paid female was paid $650 per month; the lowest paid male was paid $1,100 per month.

26. Seabloom was provided paid parking by respondent at a time when he was an underwriter and not the most senior employee without paid parking; those more senior to him without parking were all female. No female underwriter was ever given a parking place.

27. The males hired by respondent were better educated and had more prior experience in the insurance industry than the complainant. They were hired or recruited because respondent's officers found them intelligent and/or knowledgeable. No woman was similarly recruited. Irrespective of experience, no women were found by respondent to have similar intelligence or knowledge. See paragraph 22 and not 2, supra.

28. Glenn Seabloom, hired in 1975 as an underwriter, had a liberal arts college degree not specifically relevant to performance in his job with the respondent. Prior to his employment by respondent, he worked for one and one-half years in the home office of Kemper

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3. Until flex time was instituted in 1979. Thereafter, all employees punched the clock.

Insurance Company handling personal lines insurance.[4] He did not handle casualty insurance at Kemper. While at Kemper, he participated in a four-week orientation course and three twelve-hour courses on issues in the insurance industry.

29. Seabloom was assigned by respondent to handle casualty insurance. His experience at Kemper was not specifically relevant to the work he performed for respondent. He learned to handle casualty insurance through on-the-job training while in respondent's employ, and was capable of handling these risks within four months of being hired.

30. As noted by Johe, a reasonably intelligent individual can learn to handle both personal lines and casualty insurance with proper training. Such training was provided to Seabloom.

31. Seabloom's job entailed evaluation of risks through collection of necessary information from the insurance agent, classification of the risk, and preliminary rating based upon manuals available for this purpose. According to Seabloom, the most difficult part of his job was proper classification of the risk. Once the risk was properly classified, the manual generally supplied the rates. Seabloom would then contact an insurance company known to write insurance for the particular kind of risk, and relay to that company's underwriter all the underwriting information and proposed pricing structure. According to Seabloom, the company's underwriter would

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4. Notably, the same type of insurance handled by complainant when employed by respondent.

then make the final determination regarding insurability of the risk, premium rating, and other terms of the insurance.

32. Seabloom wrote 20 to 30 policies a week, each with an average premium of approximately $2,500 and an average risk of $500,000. The total premiums generated by his work were between $50,000 and $75,000 per week; the total risk was between $10,000,000 and $15,000,000.

33. Pamela Preston handled primarily mobile home and motorcycle insurance as an underwriter. Her duties required her to collect the necessary information by examining the written application for which the information was supplied by an insurance agent, to determine whether the risk was insurable, and, if so, the applicable rate of insurance and the appropriate company to insure the risk. The rates were printed on the application form itself. She did not have to classify the risk or examine written manuals in order to determine rates. She did, however, have to deal with risks outside the usual policies upon occasion, in which case she would consult her supervisor, or would contact the insurance company's underwriter directly. Generally, she had to determine whether the risk fit the company guidelines. Once this determination was made, she had authority to bind the risk.

34. Preston processed an average of 300 to 400 applications for insurance per week. On mobile homes, the average risk was $25,000 and the average premium was between $200 to $300. On motorcycles, the average premium was $300 and the average liability limit was $5,000. Mobile homes and motorcycles constituted about 90% of her work. She generated, on a weekly basis, between approximately $60,000

to $160,000 in premiums, and between $150,000 and $10,000,000 in risks.

35. Pamela Preston was never offered the opportunity to learn how to handle casualty insurance, nor was she offered training in order to do so.

36. The difference between the job performed by Seabloom and the job performed by Preston was a matter of degree, not of kind. The lines of insurance for which Seabloom was responsible were somewhat more complex, requiring specific analysis of information, and consultation with manuals. Both involved the same basic process: collection of information, evaluation of that information for insurability, rate and appropriate insurance company, and contact with the insurance company to finalize the contract. The complainant's job was generally equivalent to that of Seabloom with regard to the requisite skill, effort, responsibility, and working conditions, as well as with regard to benefit derived by the respondent.

37. Dan Dillard, Earle Dillard's son, was a high school graduate who worked from June 23, 1977, to February 28, 1978, for the respondent. He was never actually given responsibility for any particular line of insurance. He was trained in all department areas, including motorcycles and mobile homes. Other underwriters did not receive training in all departments. Unlike other employees, his payroll records reveal that his work hours were erratic. Based upon the testimony and record in this matter, we find that he worked as a trainee, and was not equivalent as an employee to the complainant.

38. At the time of complainant's termination on April 11, 1978, she was behind in her work. The following factors contributed

to her falling behind: the policy typist was unavailable to do typing for the six weeks prior to the termination; and the complainant was sorting the mail daily.

39. Respondent indicated that the reasons for complainant's termination were that she was behind in her work; that she used the telephone for personal calls; and that complaints regarding delays were received from insurance agents. Respondent's witnesses indicated that all problems developed during her final two months of employment. This was concurrent with unavailability of both the typist and mail sorter.

40. Complainant received no written or verbal warnings regarding her job performance prior to this final period of employment. She may have received one verbal warning during the final period. Testimony of the witnesses was inconsistent with regard to when, and by whom, this warning was delivered. Preston denied receiving the warning.

41. Seabloom was often behind in his work and used the telephone for personal calls. He was given warnings by management for these activities. He was not ever suspended or terminated as a result. In fact, it was common for employees to get behind in their work.

42. No evidence was introduced to show that any other female underwriter or supervisor was terminated during the time relevant to this complaint.

44. Pamela Preston was paid $434 per month in 1976; $500 per month in 1977; and $550 per month in 1978 until she was discharged on April 11, 1978.

45. Glen Seabloom was paid $900 per month in 1976; $500 per month in 1977; and $550 per month in 1978 until she was discharged on April 11, 1978.

46. Preston earned a total of $15,444 in the period after her termination and prior to the commencement of the public hearing. She made reasonable efforts to mitigate her damages at all times subsequent to her discharge.

47. The complainant suffered significant mental and emotional trauma as the result of the disparate treatment accorded to her by respondent because she is female.

IV. CONCLUSIONS OF LAW

1. At all times referred to herein the respondent, Bloss and Dillard, Inc., is and has been an employer within the meaning of Section 3(e), Article 11, Chapter 5 of the Code of West Virginia.

2. At all times referred to herein, the complainant, Pamela Preston, is and has been a citizen and resident of the State of West Virginia, and is a person within the meaning of Section 3(a), Article 11, Chapter 5 of the Code of West Virginia.

3. On or about May 17, 1978, Pamela Preston, a woman, filed two verified complaints properly alleging that respondent had engaged in one or more unlawful discriminatory practices within the meaning of Section 9, Article 11, Chapter 5 of the Code of West Virginia.

4. Said complaints were timely filed within 90 days of an alleged act of discrimination.

5. The West Virginia Human Rights Commission has jurisdiction over the parties and subject matter of this action pursuant to

Sections 8, 9, and 10, Article 11, Chapter 5 of the Code of West Virginia.

6. The West Virginia Human Rights Commission found that there was probable cause to believe that the respondent had discriminated against the complainant on the basis of sex in the terms and conditions of her employment.

7. The West Virginia Human Rights Commission found that there was not probable cause to believe that the respondent had discharged the complainant in retaliation for her assertion of rights under the Human Rights Act.

8. A finding of no probable cause which is not appealed is a final determination on a complaint and bars reconsideration of the complainant's termination was due to illegal reprisal was fully and finally adjudicated by the letter of determination finding no probable cause to believe that the Act had been violated.

9. A complaint alleging discriminatory employment practices encompasses a charge of continuing discrimination, including discharge, if the discharge was the result of discrimination in terms and conditions of employment, and not the result of illegal retaliation.

10. To prevail in her claim that she was discriminated against on the basis of sex, the complainant must prove by a preponderance of the evidence that her sex was a factor in employment decisions affecting her. For the complainant to prevail sex need not be the sole factor, but must be a contributing factor, in respondent's decisions regarding any terms and conditions of employment including wages and discharge. Evidence of an overall pattern of discrimination

is relevant to an individual claim of discriminatroy disparate treatment and may be considered in assessing whether a complainant has met her ultimate burden of proof.

11. Complainant has shown, by a preponderance of the evidence, that she was discriminated against on the basis of sex in the terms and conditions of her employment. She was not given equivalent opportunities to those provided to male employees while performing work of an equivalent nature, and she was treated in a manner not comparable to the males with regard to wages and benefits. We base these conclusions upon the following considerations. Both the testimony of Elaine Combs and an analysis of workforce data fully corroborate the complainant's position that male and female underwriters were treated as different classes of employees by respondent.[5] Men were considered trusted, salaried employees; women

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[5]. The Hearing Examiner found the testimony of Elaine Combs extremely credible, and highly corroborative of the testimony of the complainant herself regarding the attitude toward, and treatment of, women by the respondent. While it is true that Elaine Combs did not work for the respondent at the same time as the complainant, it is nevertheless true that her testimony indicated that the respondent's organization allowed a latitude to men, and gave allowances to men, that were not offered to women, including those women who had demonstrated an ability to perform equally to the men. THis pervasive atmosphere of discrimination was in fact also corroborated by teh demeanor of Glenn Seabloom bnd by Johe and Dillard, who failed to give appropriate credit to the work performed by female employees.

were considered hourly clerical employees, even when their responsibilities were unquestionable comparable to those of the men. When men replaced women to perform the same job functions, they were called department heads, paid substantially more, given parking

places, and ot required to punch the time clock. No evidence of prior education or job experience can justify this disparity of treatment based upon sex. Men were regarded as trained, and trainable. As a result, the men were given more opportunities to be trained, both off and on teh job, than women. Seabloom, after one and one-half years of experience as an underwriter in personal liens, was seen as vastly more experienced than any of the respondent's female employees, including the complainant, with equivalent experience. Women employees sorted mail; males did not. Men were allowed latitude in their work hours; women were not. The complainant performed the underwriter's function on certain specific lines of insurance. On a weekly basis, she generated approximately $60,000 to $160,000 in premiums, insuring risks totalling $1,500,000 to $10,0000,000. Glenn Seabloom performed similar functions on somewhat more complex lines of insurance; he generated approximately $50,000 to $75,000 in premiums for total risks of $10,000,000 to $15,000,000. According to Seabloom's own testimony, although he was required to perform somewhat more complex tasks that the complainant, he learned to do these tasks within four months of being hired. Seabloom was trained by respondent to handle the lines of insurance he was assigned; he did not bring to his employment a significant amount of training relevant to his specific job functions. We have found that Pamela Preston performed substantially equal work to that performed by Glenn Seabloom with regard to requisite skill, effort and responsibility but was not paid substantially equal wages. [6] Given the totality of the evidence, we conclude that the complainant has met her burden of proof to show that sex was a factor in the terms and conditions of employment, including wages, offered to her by respondent.

12. Complainant Pamela Preston has failed to show that her discharge was the result of illegal discrimination based upon sex. A complainant may prove a prima facie case of discriminatory discharge inferentially or through the presentation of direct evidence of discrimination or through a combination of evidence. The complainant presented no direct evidence that she was terminated because she was a woman.

As noted in McDonnell-Douglas v. Green, 411 U.S. 273 (1976), the Supreme Court has held specifically that its prima facie formulation will not neatly apply to every case of alleged employment discrimination, but must be adopted to the facts at issue, n. 13.

The principal modification of McDonnell Douglas, in the discharge context, pertains to the prima facie case. In order to establish a prima facie case, the complainant must meet the initial burden of proving that she is a member of a protected class, that she was discharged, and produce evidence of disparate treatment from which the

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6. Respondent's attorney cites two cases as authority that the complainant's case should fail. Orr v. Frank R. MacNeil & Son, Inc., 511 F.2d 166 (1975); Cupples v. Transport Insurance Co., 371 F. Supp. 146 (1974). Both cases are distinguishable on their facts from this matter. Most particularly, in both the employers had treated women equivalently to men in the past, and in both the employers made a showing that salary and other differentiation was not based upon sex-related factors.

trier of fact may infer a causal connection between the basis and the discharge. Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248 (1973); Green v. Armstrong Rubber Co., 612 F.2d 967 (5th Cir. 1980. EEOC v. Murphy Motor Freight Lines, Inc., 488 F. Supp. 381 (D. Minn. 1980).

In the discharge case, the evidence necessary to establish an inference of a causal connection between the protected status and the discharge will vary depending on the circumstances of the discharge. Schlei & Grossman , Employment Discrimination 2nd Ed. 1983. In the instant action, inferential proof of discriminatory discharge would require that the complainant show that she was a member of a protected class; that she was qualified to perform her job, and did perform the job adequately; that she was terminated, and that the job was held open to others who had similar qualifications. Assuming that the complainant met her initial burden regarding her qualifications and job performance (a matter hotly contested by the respondent), complainant has nevertheless introduced no evidence that the position in question was held open after her termination. Nor has she introduced any evidence to show that respondent tended to discriminate by terminating women. The complainant has therefore failed to sustain her initial or ultimate burden of proof regarding her discharge.[7]

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[7] As noted above, the complainant filed a complaint alleging that her discharge was the result of illegal reprisal due to her assertion of her rights under the West Virginia Human Rights Act. The Commission dismissed this complaint, finding no probable cause to believe that the Act had been violated. Apparently, no administrative appeal was taken from this decision. In fact, looking at the evidence as a whole, the complainant might have been able to sustain this charge, while she could not sustain a general charge of discriminatory discharge. The Executive Director might in the future consider including reprisal charges as part of general complaints of discrimination where the disciplinary action is taken within the same period of time as the other acts alleged. Failure to follow this procedure results in the separate adjudication of related claims, to the possible detriment of the parties.

15. In addition thereto, the Complainant is entitled to a sum in the amount of $2,000.00, representing payment for the pain, suffering,

humiliation, and embarrassment that she has suffered as a result of the discriminatory conduct of the Respondent.

16. The Complainant is further entitled to recover attorney's fees and costs. The Respondent shall pay unto Complainant's attorneys, Henderson & Henderson, attorney's fees and costs. Administrative Rules and Regulations of the West Virginia Human Rights Commission, 9.02 (b) (1), Curey v. New York Gas Light Club, Inc. 447 U.S. 54 (1980). Total amount of said fees is $6,085.00 and attendant costs are $250.00 incurred by Complainant's counsel. These calculations are derived from counsel for Complainant's affidavid (Attachment A) commencing with the date of his employment in this matter, not withstanding Respondent's objections thereto (Attachment B). The factors the Commission considered on these issues were as follows: 1) this was a unique case which established a rule of law beneficial to future litigants; 2) Complainant's fees are consistent with fees earned by other attorneys in this community; Complainant's attorneys had sufficient experience and expertise to warrant the fee awarded; and the costs incurred by Complainant's attorney were reasonably based. Farley v. Zapata Coal Corporation, 281 S.E. 2d 238 (1981); Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir. 1974).

V. ORDER

Therefore, pursuant to the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED as follows:

1. The Respondent is hereby permanently ordered to Cease and Desist from engaging in employment practices that discriminate against persons on account of their sex.

2. The Respondent is hereby ordered to pay to the complainant, Pamela Preston, the sum of $13,500, plus interest at the rate of six per cent per annum.

3. The Respondent is hereby ordered to pay to the Complainant, Pamela Preston, the sum of $2,000 as compensation for the pain, suffering and humiliation that she has received as a result of the discriminatory conduct of the respondent.

4. The Respondent shall pay unto Complainant's attorney, Henderson & Henderson, attorney fees and attendant cost totalling $6,335.00.

5. The Respondent shall comply with the Commission's Order within 32 days from date of entry.

Enter this 17 day of January, 1985.

Russell Van Cleve

Russell Van Cleve
Chairperson
West Virginia Human Rights Commission

RVC/kpv