

COMMON PLEAS COURT
MARION CO. OHIO
IN THE COURT OF COMMON PLEAS OF MARION COUNTY, OHIO
GENERAL DIVISION

2016 JAN 22 PM 3:34

OHIO CIVIL RIGHTS COMMISSION :
and :
JENNIFER HAWKINS : CASE NO. 2015 CV 0375
Petitioners, :
v. : Judge William R. Finnegan
PICKENS & SONS LLC :
dba East of Chicago Pizza :
Respondent. :

JULIE M. KAGEL
CLERK OF COURTS

ORDER

Pursuant to a motion made by Petitioners for an Order enforcing the Final Order of the Ohio Civil Rights Commission pursuant to R.C. 4112.06(H), the Court GRANTS the Petition, and hereby ORDERS the following relief (based upon the Administrative Law Judge's Report and Recommendation, as well as the Commission's Final Order [both attached as Exhibit A]):

- (1) That Respondent Pickens & Sons LLC dba East of Chicago Pizza cease and desist from all discriminatory practices in violation of R.C. Chapter 4112;
- (2) That Respondent Pickens & Sons LLC dba East of Chicago Pizza, within 30 days of this Order, pay Jennifer Hawkins \$8,880.00 (which represents back pay based on the wages she would have been paid had she not been terminated from employment for twenty weeks), plus interest from the date of the Commission's Final Order (i.e., June 25, 2015) at the maximum rate allowable by law;
- (3) That Respondent Pickens & Sons LLC dba East of Chicago Pizza receive training on the anti-discrimination laws in Ohio within six (6) months of the date of this Order. As proof of participation in anti-discrimination training, Respondent Pickens & Sons LLC dba East of Chicago Pizza

shall submit certification from the trainer or provider of services that Respondent has successfully completed the training. The letter of certification shall be submitted to the Commission's Compliance Department within seven (7) months of the date of this Order; and

- (4) That Respondent Pickens & Sons LLC dba East of Chicago Pizza, within nine (9) months of the date of this Order, submit to the Commission's Compliance Department a draft for an Employee Handbook outlining Respondent's policies and procedures regarding Ohio's anti-discrimination laws, including but not limited to sections regarding:

- Prohibitions against discrimination based upon race, color, religion, sex, military status, national origin, disability, age, or ancestry
- Sexual harassment
- Racial harassment
- Pregnancy
- Disabilities
- Progressive discipline and disciplinary grid
- Reporting and investigation of complaints

All costs and fees in this matter to be paid by Respondent Pickens & Sons LLC.

IT IS SO ORDERED.


JUDGE WILLIAM R. FINNEGAN

Copies distributed to:

-Ohio Civil Rights Commission (c/o Patrick Dull, Esq.)

-Jennifer Hawkins

-East of Chicago Pizza
c/o Pickens and Sons LLC

-Pickens & Sons LLC
dba East of Chicago Pizza
c/o Willard E. Pickens, Statutory Agent

-Willie Pickens
c/o Pickens and Sons LLC



John Kasich, Governor

IN THE MATTER OF:)
)
JENNIFER HAWKINS)
)
Complainant,) COMPLAINT NO. 12-EMP-COL-39283
)
vs.)
)
PICKENS & SONS, LLC dba)
EAST OF CHICAGO PIZZA)
)
Respondent.)

FINAL ORDER

This matter came before the Commission at its March 12, 2015 meeting. The record in this case consists of Complaint and Notice of Hearing No. 12-EMP-COL-39283; the official record of the evidentiary hearings held on July 31, 2013, and all pleadings and exhibits thereto; the post-hearing brief filed by the Commission; and the Chief Administrative Law Judge's Report and Recommendations dated February 3, 2015.

The Complaint alleges that Respondent permitted a sexually hostile work environment, and subsequently terminated Complainant in retaliation for reporting the sexually hostile work environment, in violation of R.C. 4112.02(A) and (I). After the public hearing, the Chief Administrative Law Judge recommended that the Commission find that Respondent engaged in

EXHIBIT A

illegal sex discrimination and retaliation in violation of R.C. 4112.02(A) and 4112.02(I) because it permitted a sexually hostile work environment and because it terminated Complainant's employment for reporting the hostile work environment. The Judge ordered the following relief:

- (1) That Respondent cease and desist from all discriminatory practices in violation of R.C. Chapter 4112;
- (2) That Respondent, within 10 days of the Commission's Final Order, pay Complainant \$8,880.00, which represents back pay based on the wages she would have been paid had she not been terminated from employment for twenty weeks;
- (3) That Respondent receive training on the anti-discrimination laws in Ohio within six (6) months of the date of the Commission's Final Order. As proof of participation in anti-discrimination training, Respondent shall submit certification from the trainer or provider of services that Respondent has successfully completed the training. The letter of certification shall be submitted to the Commission's Compliance Department within seven (7) months of the date of the Commission's Final Order; and
- (4) That Respondent, within nine (9) months of the date of the Commission's Final Order, submit to the Commission's Compliance Department a draft for an Employee Handbook outlining Respondent's policies and procedures regarding Ohio's anti-discrimination laws, including but not limited to sections regarding:
 - Prohibitions against discrimination based upon race, color, religion, sex, military status, national origin, disability, age, or ancestry
 - Sexual harassment
 - Racial harassment
 - Pregnancy
 - Disabilities
 - Progressive discipline and disciplinary grid
 - Reporting and investigation of complaints

After careful consideration of the entire record, the Commission adopted the Chief Administrative Law Judge's report at its public meeting on March 12, 2015.

With all matters now before it and carefully considered, the Commission hereby adopts and incorporates, as if fully rewritten herein, the findings of fact, conclusions of law, and

recommendations contained in the Chief Administrative Law Judge's Report and Recommendation dated February 3, 2015.

This ORDER issued by the Ohio Civil Rights Commission on this 25th day of June, 2015.



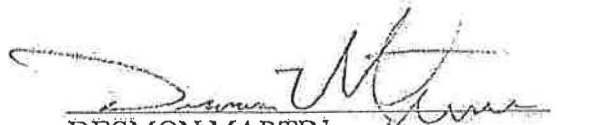
Commissioner, Ohio Civil Rights Commission

NOTICE OF RIGHT TO JUDICIAL REVIEW

Notice is hereby given to all parties herein that Revised Code Section 4112.06 sets forth the right to obtain judicial review of this Order and the mode and procedure thereof.

CERTIFICATE

I, Desmon Martin, Director of Enforcement and Compliance of the Ohio Civil Rights Commission, do hereby certify that the foregoing is a true and accurate copy of the Order issued in the above-captioned matter and filed with the Commission at its Central Office in Columbus, Ohio.



DESMON MARTIN
Director of Enforcement and Compliance
Ohio Civil Rights Commission

DATE: 6/25/2015



Governor John Kasich

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

Jennifer Hawkins
Complainant,

v.

Pickens & Sons, LLC dba
East of Chicago Pizza
Respondent

Complaint No. 12-EMP-COL-39283

**OHIO
CIVIL RIGHTS
COMMISSION**

G. Michael Payton
Executive Director

Commissioners
Leonard Hubert, Chairman
Lori Barreras
William W. Patmon, III
Tom Roberts

**ADMINISTRATIVE LAW JUDGE'S
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
RECOMMENDATIONS**

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ALJ'S REPORT
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30 East Broad Street
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Chief Administrative Law Judge

OHIO ATTORNEY
GENERAL'S OFFICE
FEB 3 2015
CIVIL RIGHTS
SECTION



INTRODUCTION AND PROCEDURAL HISTORY

Jennifer Hawkins (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on March 23, 2012.

The Commission investigated the charge and found probable cause that Pickens & Sons, LLC d.b.a. East of Chicago Pizza (Respondent) engaged in unlawful employment practices in violation of Ohio Revised Code (R.C.) §4112.02(A) and §4112.02(I).

The Commission attempted, but failed, to resolve this matter by informal methods of conciliation. The Commission subsequently issued a complaint on December 13, 2012.

The Commission alleged that Respondent engaged in discriminatory conduct by permitting a sexually hostile work environment and terminated Complainant's employment in retaliation for engaging in a protected activity.

The Respondent did not file an answer.¹

A public hearing was held on, July 31, 2013, at the Marion County Municipal Court located at 233 West Center Street, Marion, Ohio, 43301.

The record contains previously described pleadings, a hearing transcript consisting of 30 pages, and a post-hearing brief filed by the Commission on September 16, 2013. Respondent did not file a post-hearing brief.

¹ The Commission moved to have the hearing proceed as a default. The Commission's motion was granted.

FINDINGS OF FACT

The following Findings of Fact are based, in part, upon the ALJ's assessment of the credibility of the witnesses who testified before her in this matter. The ALJ has applied the tests of worthiness of belief used in current Ohio practice. For example, she considered each witness's appearance and demeanor while testifying. She considered whether a witness was evasive and whether his or her testimony appeared to consist of subjective opinion rather than factual recitation. She further considered each witness's strength of memory, frankness or lack of frankness, and the bias, prejudice, and interest of each witness. Finally, the ALJ considered the extent to which each witness's testimony was supported or contradicted by reliable documentary evidence.

1. Complainant filed a sworn charge affidavit with the Commission on March 23, 2012.

2. The Commission determined on February 21, 2013 that probable cause existed that Respondent engaged in unlawful discriminatory practices in violation of R.C. §§ 4112.02(A) and 4112.02(I).

3. The Commission attempted, but failed, to resolve this matter by informal methods of conciliation.

4. Respondent is a pizzeria in Marion, Ohio. (Tr. 24-25)

5. Willie Pickens (Pickens) is Respondent's owner and manager. (Admission 1)

6. Complainant was hired as a part-time pizza delivery driver for Respondent on December 24, 2011. (Tr. 24-25) (Admission 2)

7. Complainant's duties included delivering pizzas, helping make boxes, and making pizza orders in the kitchen. (Tr. 25)

8. Complainant was scheduled to work approximately twenty hours a week between Friday, Saturday, and Sunday. (Tr. 25)

9. John Yeager (Yeager), a shift manager for Respondent, stated in early January of 2012 that Complainant was "down to suck" while at Respondent's facility. (Admission 3)²

10. James Cross (Cross), a shift manager for Respondent, stated in mid-January of 2012 that Complainant had "small breasts". (Admission 4)

11. Yeager asked Complainant to see her breasts while they were both in a walk-in food cooler. (Admission 5)

² The Commission's First Request for Admissions was served on Respondent on March 19, 2013. The Commission's Motion to Deem Admissions Admitted was filed on July 2, 2013 and subsequently granted. (Tr. 20-21)

12. Complaint reported the harassment to management in an attempt to stop her co-workers from making sexual comments to her. (Admission 8)

13. After Complainant reported the harassment by her co-workers, her scheduled work hours were reduced from twenty hours per week to twelve hours per week. (Admission 9)

14. On February 18, 2012, Complainant and a co-worker, Marvin Wesley (Wesley), had lunch together. (Admission 11)

15. After Complainant and Wesley returned from lunch, Pickens questioned Complainant as to why Wesley had lunch with her saying to Complainant, "Why would Marvin do that? You don't have any breasts or butt." (Admission 11)

16. Pickens then proceeded to ask Wesley if he "got a piece" and asked if it was "any good". (Admission 12, 13)

17. Complainant then asked Pickens not to talk to her like that. (Admission 14)

18. On March 9, 2012, Yeager told Cross that if Cross wanted "sucked off," Complainant would do it. (Admission 15)

19. Complainant complained regarding the harassment on March 9, 2012 and was subsequently sent home by Cross. (Admission 16, 17)

20. Complainant also complained to Pickens regarding the March 9, 2012 incident with Yeager and Cross. (Admission 18)

21. When Complainant reported for work on March 16, 2012 she was sent home. (Admission 20)

22. Complainant was not scheduled to work any more hours after March 16, 2012. (Admission 21)

23. Complainant's employment was terminated on March 19, 2012 by Respondent. (Tr. 26)

24. Complainant was compensated by Respondent at a rate of \$7.40 per hour. (Tr. 26)

25. Complainant attempted to find other employment, but was not able to until May of 2013. (Tr. 27)³

³ Complainant was out of work for approximately twenty weeks. (Commission's Compl. 5.)

CONCLUSIONS OF LAW AND DISCUSSION

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or as not necessary to a proper determination of the material issues presented. To the extent that the testimony of various witnesses is not in accord with the findings therein, it is not credited.⁴

1. The Commission alleged in their Complaint the Respondent engaged in discriminatory conduct by: (1) permitting a sexually hostile work environment to exist, and (2) Complainant's employment was terminated in retaliation for engaging in a protected activity.

⁴ Any Finding of Fact may be deemed a Conclusion of Law, and any Conclusion of Law may be deemed a Finding of Fact.

2. These allegations, if proven, would constitute a violation of R.C. § 4112.02, which provides in pertinent part, that:

(A) For any employer, because of the ..., sex ..., of any person, to discharge without just cause...,

(I) For any person to discriminate in any manner against any other person because that person has opposed any unlawful discriminatory practice defined in this section or because that person has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code.

3. The Commission has the burden of proof in cases brought under R.C. Chapter 4112. The Commission must prove a violation of R.C. 4112.02 by a preponderance of reliable, probative, and substantial evidence.

4. Federal case law generally applies to alleged violations of R.C. Chapter 4112. *Little Forest Med. Ctr. V. Ohio Civil Rights Com.*, 61 Ohio St. 3d 607, 609-10, 575 N.E.2d 1164, 1167 (1991).

5. Thus, reliable, probative, and substantial evidence means evidence sufficient to support a finding of unlawful discrimination under Title VII of the Civil Rights Act of 1964 (Title VII).

6. Under the framework established in *McDonnell Douglas v. Greene*, the Commission has the initial burden of establishing a *prima facie* case of discrimination, the burden then shifts to Respondent to articulate a legitimate non-discriminatory reason for its adverse employment action. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-03 (1973).

7. The *prima facie* case "raises an inference of discrimination only because we presume these acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors." *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 254 (1981), citing *Furnco Construction Corp. v. Waters*, 438 U.S. 567, 577 (1978), and *Teamsters v. United States*, 432 U.S. 324, 358, and n. 44 (1977).

8. To establish a *prima facie* case of sexual harassment based on a hostile work environment, the Commission must establish evidence demonstrating that:

- (1) Complainant is a member of a protected class;
- (2) Complainant was subjected to harassment, either through words or actions, based on sex;
- (3) The harassment had the effect of unreasonably interfering with her work performance and creating an objectively intimidating, hostile, or offensive work environment; and
- (4) There exists some basis for liability on the part of the employer.

Gallagher v. C.H. Robinson Worldwide, Inc., 567 F.3d 263, 270 (6th Cir. 2009).

9. The conduct complained of must be severe or pervasive enough to create an objectively hostile or abusive work environment.

10. This standard requires the fact finder to determine whether a reasonable person would find the environment objectively hostile and whether the [Complainant] subjectively found the conduct severe or pervasive. *Id.* at 273.

11. Complainant, a female, was subjected to sexually explicit comments by her co-workers and Respondent's management.

12. Pickens, Cross, and Yeager, each made multiple comments regarding Complainant's physical appearance and sexual acts.

13. Complainant repeatedly asked her co-workers to cease making such comments about her and complained to management, however her complaints were repeatedly disregarded.

14. The comments directed at Complainant were frequent when taking into account Complainant only worked for Respondent less than three months.

"Even where individual instances of sexual harassment do not on their own create a hostile environment, the accumulated effect of such incidents may result in a Title VII violation." *Id.*

15. A reasonable person would find Complainant's treatment to be objectively severe and pervasive based on the frequency of Respondent's conduct and the fact that Respondent's management were Complainant's harassers.

16. Once the Commission has demonstrated that the harassment was because of Complainant's sex and was sufficiently severe or pervasive, the Commission must show that her employer bears responsibility for the harassment.

If the harassing party was the plaintiff's supervisor, the employer will be strictly liable where the harassment culminated in a tangible employment action against the plaintiff. *Mast v. Imco Recycling of Ohio*, 58 F. App'x 116, 119 (6th Cir. 2003).

17. The Commission offered evidence that Respondent's management staff, Yeager and Cross, and Respondent's owner, Pickens, were active participants in the discriminatory conduct toward the Complainant during her employment with Respondent.

18. Therefore, the Commission has established a prima facie case of a sexually hostile work environment.

19. The Commission also alleged in their complaint that Complainant's employment was terminated in retaliation for opposing an unlawful discriminatory practice.

20. To establish a prima facie case of unlawful retaliation under Title VII, the Commission must demonstrate by a preponderance of the evidence that:

- 1) Complainant engaged in activity that Title VII protects;
- 2) Respondent knew that Complainant engaged in this protected activity;
- 3) Respondent subsequently took an employment action adverse to the Complainant; and
- 4) A causal connection between the protected activity and the adverse employment action exists.

Greer-Burger v. Temesi, 116 Ohio St.3d 324 at para. 13 citing *Canitia v. Yellow Freight Sys., Inc.* (C.A. 6, 1990), 903 F.2d 1064, 1066.

21. An employee's activity is protected if the employee has opposed any unlawful discriminatory practice or made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code. *Gembus v. MetroHealth Sys.*, 290 F. App'x 842, 846 (6th Cir. 2008).

22. The temporal relationship between a Complainant's participation in protected activities and a Respondent's alleged retaliatory conduct is an important factor in establishing a causal connection. *Nguyen v. City of Cleveland*, 229 F. 3d 559, 563 (6th Cir. 2000).

23. The Commission must prove that the adverse action would not have occurred "but for" Respondent having engaged in unlawful retaliation. *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 133 S. Ct. 2517, 2533, 186 L. Ed. 2d 503 (2013).

24. All of Respondent's conduct occurred within January, February, and March of 2012, shortly after Complainant's hiring in late December of 2011.

25. Throughout January and February of 2012, Complainant complained to her supervisors, Cross and Yeager, and Pickens regarding her treatment.

26. Respondent then reduced Complainant's work hours.

27. In March of 2012, Complainant continued to be subjected to harassment by Pickens, Cross, and Yeager.

28. After Complainant complained about Yeager's comment that Complainant would "suck off" Cross, Cross sent Complainant home.

29. Complaint reported to work a week later on March 16, 2012 and was subsequently sent home and not scheduled to work anymore hours.

30. Her employment was then terminated by Respondent three days later on March 19, 2012.

31. A causal connection exists between Complainant's opposition of her treatment and her reduction in work hours, being sent home, and ultimately the termination of her employment.

32. The Commission has therefore established a prima facie case of retaliation.

33. It is reasonable to infer that but for Complainant's opposition to sexual harassment she would not have been terminated by Respondent.

34. The Respondent failed to refute the allegations in the Commission's complaint by failing to file an answer to the complaint; therefore the Commission is entitled to a default judgment. O.A.C. 4112-3-06(F)⁵.

Granting a default judgment, analogous to granting a dismissal, is a harsh remedy that should be imposed when the actions of the defaulting party create a presumption of willfulness or bad faith." *Accu-Check Instrument Serv. V. Sunbelt Bus. Advisors of Cent. Ohio*, 2009 Ohio App. LEXIS 5743 citing *Haddad v. English* (2001), 145 Ohio App.3d 598, 603, 763 N.E. 2d 1199.

35. Respondent's failure to file an answer or participate and defend itself against the Commission's complaint shows a willful disregard for the Commission's authority under R.C. 4112 to resolve complaints of discrimination.⁶

36. Respondent's conduct has engaged in illegal sex discrimination and retaliation in a violation of R.C. 4112.02(A) and 4112.02(I).

37. Therefore Complainant is entitled relief as a matter of law.

⁵ (F) Failure to file answer. A respondent who has not filed an answer as provided in paragraphs (A) to (E) of this rule shall be deemed in default and the allegations of the complaint shall be deemed admitted. Upon application duly made to the commission or the administrative law judge, such default may be set aside for the following reasons:

(1) Mistake (2) Surprise, or (3) Excusable neglect.

⁶ Pickens appeared at the hearing without an attorney to represent the Respondent.

DAMAGES

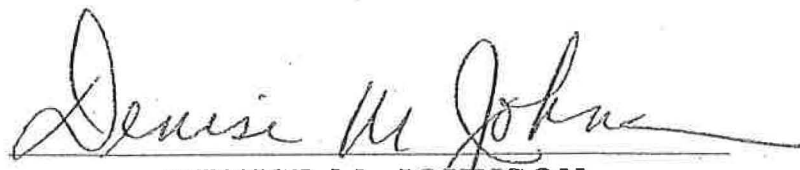
For all of the foregoing reasons, it is recommended in Complaint No. 12-EMP-COL-39283 that:

1. The Commission orders Respondent to cease and desist from all discriminatory practices in violation of R.C. Chapter 4112;
2. The Commission orders Respondent within 10 days of the Commission's Final Order to pay Complainant back pay, including raises, benefits and overtime pay based on the wages Complainant would have been paid had she not been terminated from employment for twenty weeks.⁷
3. The Commission orders Respondent to receive training on the anti-discrimination laws in Ohio within six (6) months of the date of the Commission's Final Order. As proof of participation in anti-discrimination training, Respondent shall submit certification from the trainer or provider of services that Respondent has successfully completed the training. The letter of certification shall be submitted to the Commission's Compliance Department within seven (7) months of the date of the Commission's Final Order; and

⁷ Complainant was out of work 20 weeks before finding comparable employment. While working for Respondent she was scheduled for 20 hours a week at \$7.40 an hour and would have earned \$8,880.00 over the course of those 20 weeks.

4. The Commission orders Respondent within nine (9) months of the date of the Commission's Final Order to submit to the Compliance Department a draft for an Employee Handbook outlining Respondent's policies and procedures regarding Ohio's anti-discrimination laws, *including but not limited to* sections regarding:

- Zero tolerance for any form of discrimination based upon race, color, religion, sex, military status, national origin, disability, age, or ancestry
- Sexual harassment
- Racial harassment
- Pregnancy
- Disabilities
- Progressive discipline and disciplinary grid
- Reporting and investigation of complaints


DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed: February 3, 2015