

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ROSE M. BRADSHER,

COMPLAINANT,

v.

Docket No. ER 41-77

LOGAN-MINGO AREA MENTAL HEALTH AGENCY, INC.,

RESPONDENT.

FINDINGS OF FACT &
CONCLUSIONS OF LAW &
ORDER

I.
PROCEEDINGS

This cause came on for hearing the 15th day of December, 1977, at the Logan County Court House in Logan, WV, and was concluded on May 15, 1978. The Complainant, Rose Marie Bradsher, appeared in person and by her Counsels, Carter Zerbe and Susan A. Settle, Assistant Attorneys General for the State of West Virginia, and the Respondents, Logan Mingo Area Mental Health Agency, Inc., and Nancy K. Wilson, appeared by Counsel, John R. Glenn, an Attorney practicing in Logan, WV. This hearing was presided over by the Honorable George C. Rutherford, Commissioner of the WV Human Rights Commission and the Honorable Charlotte R. Lane, Hearing Examiner for the WV Human Rights Commission.

After full consideration of the entire testimony, evidence, motions, briefs, and arguments of counsel, and the hearing examiner's recommendations, the Commission makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Complainant, Rose Marie Bradsher, is a black female, residing in Logan County, West Virginia.
2. On September 12, 1974, Complainant filed a race discrimination charge against her employer, Logan County Day Care Center, Respondent herein, with the WV Human Rights Commission, docketed as ER 57-75. On January 27, 1975, a copy of the complaint was served on Respondent and thereafter an investigation ensued.
3. On August 12, 1976, the Complainant filed an additional complaint against Respondent, the subject of this order, alleging as follows:

I am a black female.

On September 12, 1974, I filed a race discrimination complaint with the WV Human Rights Commission on the basis of a series of incidents culminating in a forced resignation. Since August 19, 1974, the date of the forced resignation, I applied for numerous jobs in the Logan area and to date I have not been hired despite several vacancies being filed since my applications for employment. I have reason to believe that the Logan Mingo Area Mental Health Agency, Inc., is issuing derogatory employment references which are preventing me from obtaining gainful employment.

I believe that the Logan Mingo Area Mental Health Agency, Inc. is issuing derogatory employment references because I filed a racial discrimination complaint with the Commission.

I therefore charge the Logan Mingo Area Mental Health Agency, Inc. and Nancy Wilson with engaging in acts of reprisals which is in violation of the WV Human Rights Act.

4. Following investigation, a ruling of Probable Cause to credit the allegations of the Complainant as true was made by the WV Human Rights Commission.
5. The parties attempts to conciliate the case proved futile. Thereafter, a public hearing was held, following which the style of the action was changed to reflect the proper name of the Respondent as Logan Mingo Area Mental Health Agency, Inc.

6. Since August 19, 1974, the date of Complainant's discharge by Respondent, despite weekly visits to area employers, the Complainant was unable to secure employment until September 20, 1976, when she was hired by Logan General Hospital.
7. On July 20, 1976, Guyan Valley Hospital, one of the employers at which Complainant applied for employment sought an employment reference regarding Complainant, from the Respondent.
8. Written documentation verified that Respondent gave Complainant a reference, rating her as "fair" in attendance, cooperativeness and quality of work, while giving her a "poor" rating in reliability and ability to get along with other employees.
9. The evidence and Complainant's work history adduced at the public hearing in consolidated case ER 57-75 served to rebut such an evaluation as a misrepresentation and as motivated by racial animus.
10. Guyan Valley Hospital did not hire the Complainant.

DISCUSSION

§5-11-9(i)(3) of the WV Code States that it is unlawful for any person or employer to:

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;

It is essential to the analysis of 5-11-9(i)(3) to recognize its two different clauses: discrimination by a person or employer is forbidden against a specified type of individual

(1) "because s[he] has opposed any practices or acts forbidden under this Act" (the opposition clause); or

(2) "because s[he] has filed a complaint, testified or assisted in any proceeding under this Act" (the particular clause).

The burden of proof considerations set down in McDonnell Douglas Corporation v. Green apply to a case of retaliation. In the instant action the Complainant must show that first, she participated in a protected activity; second, that the employer was aware of Complainant's participation; third, that Complainant received adverse treatment from the employer, contemporaneous with or subsequent to the participation; and finally, that there is evidence of a casual connection between the participation and the issue, namely that a retaliating motive played a part in the adverse treatment. There is no argument that Complainant filed a racial discrimination complaint against Respondent and that the Respondent was aware of the Complainant's charge, imputed or actual, no later than January 27, 1975.

However, the Commission finds that the Complainant has not sustained her burden of proof with regard to the third factor for establishing a prima facie case. Although the Commission determines that Respondent issued a distorted reference on Complainant to one employer, Guyan Valley Hospital, this adverse evaluation was not issued until 19 months after Respondent was notified of Complainant's initial charge. Judicial precedent has established, that absent other evidence tending to show retaliating motive as to Respondent's conduct, Complainant must show that the adverse action followed her protected activity, in this case Complainant's statutorily protected created right to invoke the WV Human Rights Act, within such a period of time that a court can infer retaliating motive. Sutton v. National Distillers Products Company, 445 F. Supp. 1319, (S.D. Ohio 1978)

Although the Complainant testified at the hearing to her several attempts to secure employment in the Logan County area with 13 separate employers, this testimony standing alone does not corroborate a charge of retaliation. Put another way, Complainant failed to show the casual connection between the filing of her initial charge and Respondent's alleged retaliating action. The issue in this case relates to the question of causation and proof, and specifically as it relates to Respondent's employment reference of Complainant to Guyan Valley Hospital, whether or not the distorted reference as based on retaliation against Complainant for her utilization of the WV Human Rights Act.

The Commission concludes that the evidence introduced at the hearing was not sufficient to support a charge of retaliation. The Commission, however, further concludes that the distorted reference was motivated by Respondent's racial animus which represents a continuing pattern of discrimination against Complainant, initiated months before her discharge from Respondent's employ and which discrimination has been addressed in the final Order of the Commission in Docket No. ER 57-75.

IV. CONCLUSIONS OF LAW

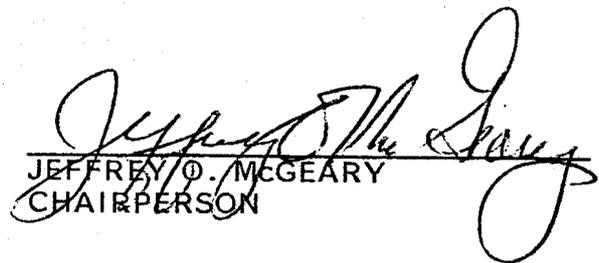
In accordance with the foregoing Findings of Fact, and the Discussion herein, the following Conclusions of Law are established:

1. The complaint ER 41-77 was properly and timely filed by Rose Marie Bradsher in accordance with the procedure required by the WV Human Rights Act. (WV Code 5-11-10)
2. At all times pertinent hereto, the Complainant, Rose Marie Bradsher, was a citizen and resident of the State of West Virginia within the meaning of WV Code, Chapter 5, Article 11, Section 2.

3. At all times pertinent hereto, the Respondent, Logan Mingo Area Mental Health Agency, Inc., was an employer within the meaning of WV Code, Chapter 5, Article 11, Section 2. The Respondent, Nancy K. Wilson, is not an employer, but merely an agent of the Logan Mingo Area Mental Health Agency, Inc. and should be dismissed as a Respondent herein.
4. The WV Human Rights Commission has jurisdiction over the parties that are the subject matter of this action.
5. The Complainant has failed to make a prima facie case of racial discrimination herein.
6. The evidence introduced at the hearing was not sufficient to support a charge of retaliation as set forth in WV Code §5-11-9(i)(3).
7. That said complaint should be dismissed.

ORDER

In accordance with the foregoing Findings of Fact and Conclusions of Law, the West Virginia Human Rights Commission issue an order dismissing said complaint.


JEFFREY O. MCGEARY
CHAIRPERSON

DATE: October 27, 1981