



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

WV HUMAN RIGHTS COMMISSION
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Executive Director

22 September 1993

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True Energy, Inc.
Pride Coal Co., Inc.
Panther Energy, Inc.
P.O. Box 5066
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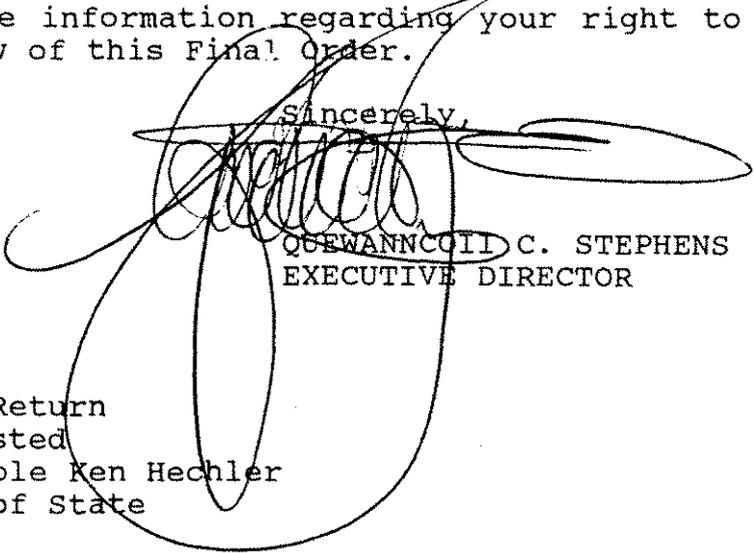
Debra Archer Kilgore, Esq.
1426 Main Street
P.O. Box 5706
Princeton, WV 24740

Re: (Sheldon) Goodson v. True Energy, Inc., Pride
Coal Company, Inc., and Panther Energy, Inc.
Docket Nos. ES-393-88A and EA-394-88A

Dear Parties and Counsel:

Enclosed please find the Final Order of the West Virginia Human Rights Commission in the above-styled case. Pursuant to W. Va. Code § 5-11-11, as amended and effective July 1, 1989, any party adversely affected by this Final Order may file a petition for review. Please refer to the attached "Notice of Right to Appeal" for more information regarding your right to petition a court for review of this Final Order.

Sincerely,


QUEWANNCOII C. STEPHENS
EXECUTIVE DIRECTOR

QCS
Enclosures
Certified Mail/Return
Receipt Requested
cc: The Honorable Ken Hechler
Secretary of State

NOTICE OF RIGHT TO APPEAL

If you are dissatisfied with this order, you have a right to appeal it to the West Virginia Supreme Court of Appeals. This must be done within 30 days from the day you receive this order. If your case has been presented by an assistant attorney general, he or she will not file the appeal for you; you must either do so yourself or have an attorney do so for you. In order to appeal, you must file a petition for appeal with the Clerk of the West Virginia Supreme Court naming the Human Rights Commission and the adverse party as respondents. The employer or the landlord, etc., against whom a complaint was filed is the adverse party if you are the complainant; and the complainant is the adverse party if you are the employer, landlord, etc., against whom a complaint was filed. If the appeal is granted to a nonresident of this state, the nonresident may be required to file a bond with the Clerk of the Supreme Court.

IN SOME CASES THE APPEAL MAY BE FILED IN THE CIRCUIT COURT OF KANAWHA COUNTY, but only in: (1) cases in which the Commission awards damages other than back pay exceeding \$5,000.00; (2) cases in which the Commission awards back pay exceeding \$30,000.00; and (3) cases in which the parties agree that the appeal should be prosecuted in circuit court. Appeals to Kanawha County Circuit Court must also be filed within 30 days from the date of receipt of this order.

For a more complete description of the appeal process see West Virginia Code § 5-11-11, and the West Virginia Rules of Appellate Procedure.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

WANDA L. (SHELDON) GOODSON,

Complainant,

v.

DOCKET NO. ES-393-88A
EA-394-88A

TRUE ENERGY, INC.,
PRIDE COAL COMPANY, INC.,
and PANTHER ENERGY, INC.,

Respondents.

FINAL ORDER

On June 12, 1991, this matter came on for public hearing before Administrative Law Judge Gail Ferguson. On July 1, 1993, after consideration of the testimony and other evidence, as well as the proposed findings and other written submissions of the parties, the Administrative Law Judge issued her Final Decision. The decision found in favor of the respondents and ordered that the case be dismissed with prejudice.

No appeal having been filed pursuant to W. Va. Code § 5-11-8(d)(3) and § 77-2-10 of the Rules of Practice and Procedure Before the West Virginia Human Rights Commission, the Final Decision of the Administrative Law Judge has been reviewed only as to whether it is in excess of the statutory authority and jurisdiction of the Commission, in accordance with § 77-2-10.9. of the Rules of Practice and Procedure Before the West Virginia Human Rights Commission. Other defects in said Final Decision, if there be any, have been waived. Finding no excess of statutory authority or jurisdiction, the Final Decision of the Administrative Law Judge

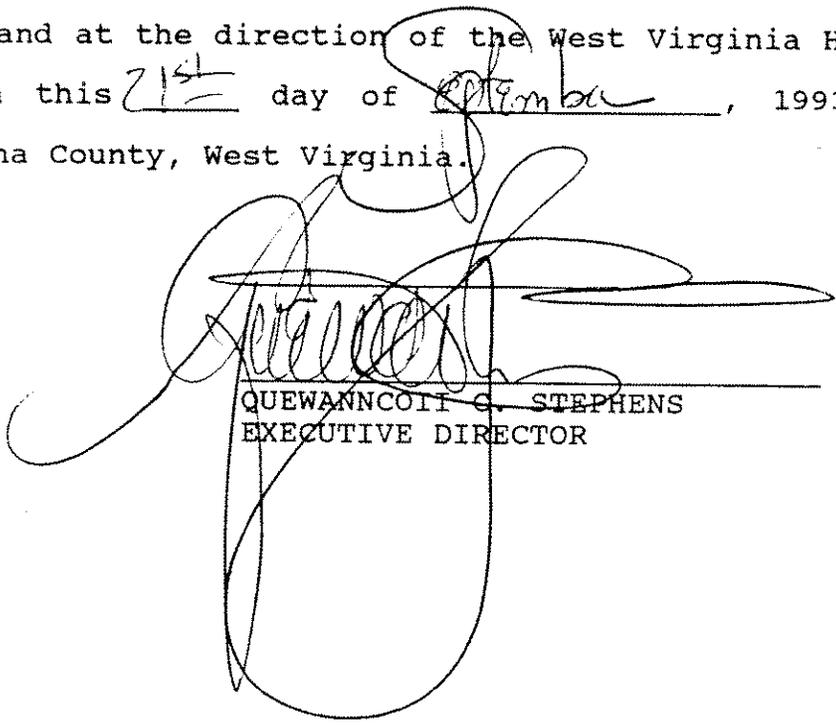
attached hereto is hereby issued as the Final Order of the West Virginia Human Rights Commission.

By this Final Order, a copy of which shall be sent by certified mail to the parties and their counsel, and by first class mail to the Secretary of State of West Virginia, the parties are hereby notified that they may seek judicial review as outlined in the "Notice of Right to Appeal" attached hereto.

It is so ORDERED.

WEST VIRGINIA HUMAN RIGHTS COMMISSION

Entered for and at the direction of the West Virginia Human Rights Commission this 21st day of September, 1993 in Charleston, Kanawha County, West Virginia.



QUEWANNCOFF G. STEPHENS
EXECUTIVE DIRECTOR



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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Executive Director

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

July 1, 1993

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Re: Sheldon v. True Energy, Inc., Pride Coal Co., Inc.
and Panther Energy, Inc. ES-393-88A & EA-394-88A

Dear Parties:

Enclosed, please find the final decision of the undersigned administrative law judge in the above-captioned matter. Rule 77-2-10, of the recently promulgated Rules of Practice and Procedure Before the West Virginia Human Rights Commission, effective July 1, 1990, sets forth the appeal procedure governing a final decision as follows:

"§77-2-10. Appeal to the commission.

10.1. Within thirty (30) days of receipt of the administrative law judge's final decision, any party aggrieved shall file with the executive director of the commission, and serve upon all parties or their counsel, a notice of appeal, and in its discretion, a petition setting forth such facts showing the appellant to be aggrieved, all matters alleged to have been erroneously decided by the judge, the relief to which the appellant believes she/he is entitled, and any argument in support of the appeal.

10.2. The filing of an appeal to the commission from the administrative law judge shall not operate as a stay of the decision of the administrative law judge unless a stay is specifically requested by the appellant in a separate application for the same and approved by the commission or its executive director.

10.3. The notice and petition of appeal shall be confined to the record.

10.4. The appellant shall submit the original and nine (9) copies of the notice of appeal and the accompanying petition, if any.

10.5. Within twenty (20) days after receipt of appellant's petition, all other parties to the matter may file such response as is warranted, including pointing out any alleged omissions or inaccuracies of the appellant's statement of the case or errors of law in the appellant's argument. The original and nine (9) copies of the response shall be served upon the executive director.

10.6. Within sixty (60) days after the date on which the notice of appeal was filed, the commission shall render a final order affirming the decision of the administrative law judge, or an order remanding the matter for further proceedings before a administrative law judge, or a final order modifying or setting aside the decision. Absent unusual circumstances duly noted by the commission, neither the parties nor their counsel may appear before the commission in support of their position regarding the appeal.

10.7. When remanding a matter for further proceedings before a administrative law judge, the commission shall specify the reason(s) for the remand and the specific issue(s) to be developed and decided by the judge on remand.

10.8. In considering a notice of appeal, the commission shall limit its review to whether the administrative law judge's decision is:

10.8.1. In conformity with the Constitution and laws of the state and the United States;

10.8.2. Within the commission's statutory jurisdiction or authority;

10.8.3. Made in accordance with procedures required by law or established by appropriate rules or regulations of the commission;

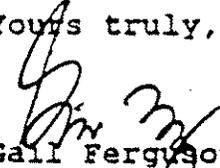
10.8.4. Supported by substantial evidence on the whole record; or

10.8.5. Not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

10.9. In the event that a notice of appeal from an administrative law judge's final decision is not filed within thirty (30) days of receipt of the same, the commission shall issue a final order affirming the judge's final decision; provided, that the commission, on its own, may modify or set aside the decision insofar as it clearly exceeds the statutory authority or jurisdiction of the commission. The final order of the commission shall be served in accordance with Rule 9.5."

If you have any questions, you are advised to contact the executive director of the commission at the above address.

Yours truly,


Gail Ferguson
Administrative Law Judge

GF/mst

Enclosure

cc: Glenda S. Gooden, Legal Unit Manager

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

WANDA L. (SHELDON) GOODSON,

Complainant,

v.

DOCKET NUMBER(S): ES-³⁹³~~383~~-88A
EA-394-88A

TRUE ENERGY, INC.,
PRIDE COAL COMPANY, INC.,
AND PANTHER ENERGY, INC.,

Respondents.

ADMINISTRATIVE LAW JUDGE'S FINAL DECISION

A public hearing, in the above-captioned matter, was convened on June 12, 1991, in Mercer County, West Virginia, before Gail Ferguson, Hearing Examiner.

The complainant, Wanda L. (Sheldon) Goodson, appeared in person and by counsel, Shirin Morad Paul, Assistant Attorney General. The respondents, True Energy, Inc. and Pride Coal Company, Inc., appeared by counsel, Debra Archer Kilgore, Esq. The respondent, Panther Energy, Inc., appeared by its representative Mr. St. John and by counsel, David Burton, Esq.

All proposed findings submitted by the parties have been considered and reviewed in relation to the adjudicatory record developed in this matter. All proposed conclusions of law and argument of counsel have been considered and reviewed in relation to the aforementioned record, proposed findings of fact as well as to applicable law. To the extent that the proposed findings, conclusions and argument advanced by the parties are in accordance

with the findings, conclusions and legal analysis of the hearing examiner and are supported by substantial evidence, they have been adopted in their entirety. To the extent that the proposed findings, conclusions and argument are inconsistent therewith, they have been rejected. Certain proposed findings and conclusions have been omitted as not relevant or not necessary to a proper decision. To the extent that the testimony of various witnesses is not in accord with the findings as stated herein, it is not credited.

DISCUSSION

The threshold issue which must be addressed in this matter is one of jurisdiction.

Complainant, Wanda L. (Sheldon) Goodson, on February 23, 1988, originally filed two complaints with the West Virginia Human Rights Commission against respondent, True Energy, Inc. hereinafter ("True"), alleging discrimination in employment on the basis of sex and age. She claimed she was denied employment by respondent True on December 23, 1987. Complainant thereafter amended her complaint, on or about February 24, 1988, to add Pride Coal Company, Inc., hereinafter ("Pride") and Panther Energy, Inc., hereinafter ("Panther") as respondents.

Respondents True and Panther filed separate motions for dismissal of the actions against them on the basis that neither is an appropriate party.

The complainant objected to said motions maintaining that the three separately incorporated coal companies, Pride, Panther and True

are really one and that the three employers should be aggregated as a single employer for the purpose of liability based on corporate jurisprudence.

The respondent similarly relies on fundamental tenets of corporate law to argue that the complainant seeks to "pierce the corporate veil" and that each named respondent must be treated as separate corporate entity. Moreover, that the complainant has chosen to ignore the separate corporate identities, status and liabilities of each named respondent. The respondent argues that the separate existence of Panther, Price and True should not be disregarded.

The focus of both the complainant and the respondent is misdirected based on standards set forth under prevailing civil rights law.

Instructive in this regard is a 6th Circuit case Armbruster v. Quinn, 711 F.2d 1332 (6th Cir. 1983) in which the Court explained:

"When exploring the limits of Title VII jurisdiction, corporate law doctrines may be helpful in our assessment of whether we should treat the defendants as separate corporate entities. However, the most important requirement is that there be sufficient indicia of an interrelationship between the corporation to justify the belief on the part of an aggrieved employee that the affiliated corporation is jointly responsible for the acts of the immediate employer. When such a degree of interrelatedness is present, we consider the departure from the 'normal' separate existence between entities an adequate reason to view the subsidiary's conduct as that of both. Id., at 1337."

Continuing, Armbruster outlines the four prong test which has also been cited with approval by the Fourth Circuit Court of Appeals.

"....For guidance in testing the degree interrelationship, we look to the four-part test formulated by the NLRB and approved by the

Supreme Court in Radio Union v. Broadcast Service, 380 U.S. 255, (1965) (per curiam). Accord Mas Marques v. Digital Equipment Corp., 637 F.2d 24, 27 (1st Cir. 1980); Williams v. Evangelical Retirement Homes of St. Louis, 594 F.2d 701, 703 (8th Cir. 1979); Baker v. Stuart Broadcasting Co., 560 F.2d 389, 392 (8th Cir. 1977); EEOC v. American National Bank, 652 F.2d 1176 (4th Cir. 1981); Dumas v. Town of Mt. Vernon, 612 F.2d 974, 980 n.9 (5th Cir. 1980).⁵ This Circuit has also adopted this test which assesses the degree of (1) interrelated operations, (2) common management, (3) centralized control of labor relations, and (4) common ownership. See, e.g. NLRB v. Borg Warner Corp., 663 F.2d 666 (6th Cir.) (1981). While each factor is indicative of interrelation and while control over the elements of labor relations is a central concern, see Sheeran v. American Commercial Lines, 683 F.2d 970, 978 (6th Cir. 1982), the presence of any single factor in the Title VII context is not conclusive."

Applying this standard to the facts in the case at bar, the evidence reveals that Pride and Panther are each separate and distinct corporations with their own separate boards of directors and officers and each are operated independently from the other. No one corporation has control over the affairs of the other. Although True, Pride and Panther have a common shareholder, Jack Bowling, all the other shareholders are different and the officers of these corporations are different. As for True, it is no longer in existence. Its Articles of Dissolution were filed with the Secretary of State of West Virginia on June 19, 1989 and its Statement of Intent to Dissolve was filed on August 17, 1988. Although True had not formally dissolved as of December 23, 1987, True was not operating any mines nor producing any coal and had no persons in its employ, and Pride had acquired True's assets: its employees, equipment and mine. Thus, Pride became the successor corporation to

True. Therefore, as of December 23, 1987, Pride and Panther were the only operating corporations. They owned different mines, at different locations, and each mine had an office located at the site from which office that mine was operated and managed.

Even the persons who managed the different mines were different. Jack Bowling only had authority for operating the mine owned by Pride, while Richard McCormick or Russell Morris were the only persons responsible for operating the mine owned by Panther.

Finally, Jack Bowling testified without dispute that each of the separate corporations maintained separate bank accounts; that no funds were co-mingled; that he never borrowed any funds from any corporation; that employees were never transferred from one corporation to the other; and that equipment was not routinely shared between the corporations.

Given these undisputed facts, it is plain that none of the corporation were mere adjuncts or instrumentalities of the other and Jack Bowling was not the mere alter ego of any of these corporations.

There is insubstantial evidence to show interrelationship between Panther, Pride and True. There is an absence of common management and finally there is no centralized control and common ownership among Panther, Pride and True. This matter is dismissed as to Panther Energy, Inc., and as to True Energy, Inc. for want of jurisdiction.

FINDINGS OF FACT

1. The complainant, Wanda L. (Sheldon) Goodson, a female was 41 years of age at the time her cause of action arose on December 23, 1987.

2. Complainant has alleged that she has been discriminated against in employment by respondents, True Energy, Inc., Pride Coal Company, Inc., and Panther Energy, Inc., because of True Energy's failure to hire her on December 23, 1987.

3. True Energy, Inc., Pride Coal Company, Inc. and Panther Energy, Inc., are each separate and distinct corporations; each have their own separate board of directors and each are operated independently from the other.

4. As of December 23, 1987, True Energy, Inc., was not operating any mines, was not producing coal and had no persons in its employ.

5. True Energy, Inc., filed its Articles of Dissolution with the Secretary of State of West Virginia on Jun 19, 1989 and its statement of intent to dissolve on August 17, 1988.

6. Prior to December 23, 1987, True Energy, Inc. operated a coal mine located at Big Four; however, prior to December 23, 1987, Pride Coal Company, Inc., acquired the equipment, employees and the mining operation of True Energy, Inc., located at Big Four.

7. On December 23, 1987, Pride Coal Company, Inc., was operating the mine site located at Big Four which had previously been owned and operated by True Energy.

8. D. L. (Jack) Bowling is a shareholder and member of the Boards of Directors of Pride Coal Company, Inc. and Panther Energy, Inc. He also was a shareholder and member of the Board of Directors of True Energy, Inc., before its dissolution.

9. Pride Coal Company, Inc., and Panther Energy, Inc. each own a mine at different locations and each mine is operated on a day-to-day basis by a different manager.

10. Each mine operated by Pride and Panther has its own separate office located at each different mine site.

11. Employees are never transferred from one corporation and/or one mine operation to the other.

12. On December 23, 1987, Jack Bowling was the person operating the mine owned by Pride Coal Company, Inc., located at Big Four, and he was the person responsible for the hiring and firing of employees of Pride Coal Company, Inc., for the mine located at Big Four.

13. Jack Bowling had no responsibility or authority to hire or fire employees for the mine operated by Panther Energy, Inc. He also had no authority for signing checks or paying employees at Panther.

14. Richard McCormick or Russell Morris were the persons responsible for and who had the authority to hire and fire persons for the mine operated by Panther Energy, Inc.

15. Complainant admits that she does not know Richard McCormick or Russell Morris.

16. Neither Richard McCormick nor Russell Morris ever met or interviewed complainant for employment by Panther Energy, Inc.

17. The first time complainant applied for employment was in 1986 when she applied to Jack Bowling at the mine site located at Big Four and then known as True Energy.

18. The second time complainant saw Jack Bowling was at the Big Four mine site.

19. The third time complainant saw Jack Bowling, on December 23, 1987, was at the Big Four mine site, now operated by Pride Coal Company, and Mr. Bowling talked to complainant when he was leaving the mountain.

20. Complainant admits that the Pride Coal Company, Inc., operates the same mine once operated by True Energy, and that this mine is located at Big Four.

21. The first time complainant saw Jack Bowling she showed him her EMT papers, section foreman certification and shot firer work certification. However, complainant had no actual work experience as a shot firer or foreman at the time she made application to Pride Coal Company, Inc. for employment.

22. Complainant admits that Jack Bowling never told her that he owned any mines other than the mine located at Big Four.

23. Each time complainant approached Jack Bowling for employment, Mr. Bowling informed complainant that he wasn't hiring because coal production was down.

24. Howard Junior Workman, a nineteen year old male with no experience, was hired at the mine operated by Panther Energy, Inc., by Richard McCormick on December 28, 1987.

25. Howard Junior Workman never applied to Jack Bowling, and Jack Bowling never hired Howard Junior Workman for work at Pride Coal Company, Inc.

26. Mr. Workman testified that he never even met Jack Bowling until the Sunday prior to the public hearing held in this matter on June 12, 1991.

27. Mr. Workman has never worked at the mine operated by Pride Coal Company, Inc., nor has he worked at any other mine except the one owned by Panther Energy, Inc.

28. Mr. Workman knows of no other employees of Panther Energy, Inc., who have worked at the Pride Coal Company mine.

29. Complainant's witness, Dwight Sizemore, is an employee of Panther Energy, Inc., who testified he had been working for this corporation since 1986 and he confirmed that he was hired at that mine by Russell Morris and worked for Richard McCormick, the superintendent.

30. Complainant's testimony is generally incredible in light of the following instances of inconsistent or rebutted testimony: (a) complainant testified at the public hearing that she had been to the mine operated by Panther Energy, Inc., prior to December 1987; however, at her November 15, 1990 deposition she testified that she had no idea where that mine is located and that she had never been there; (b) complainant testified at the public hearing that she was under a lot of medication and taking "muscle relaxers" on the day of her deposition; however, at her deposition she denied taking any "muscle relaxers" on the day of her deposition; (c) complainant testified at the public hearing and at her deposition that Howard

Junior Workman (Junior) told her that Jack Bowling hired him and put him to work at the mine operated by Panther Energy, Inc.; however, Mr. Workman testified at the public hearing that he had never met nor talked to Jack Bowling before the Sunday prior to the public hearing and that he was hired at the Panther Mine by Richard McCormick; (d) complainant testified at her deposition that Howard Workman told her he had been working at Pride Coal Company, which was True Energy and then he was moved to the Panther mine; however, at the public hearing, complainant then testified she saw Howard Workman working at the Panther mine and Howard Workman also testified at the public hearing that he began working at the Panther mine and that he never worked at the Pride or True mine; (e) complainant testified at the public hearing that Jack Bowling had been on a camping trip with Virgil Pendergrass at which time Jack Bowling and Mr. Pendergrass discussed complainant; however, Jack Bowling denied even knowing a Virgil Pendergrass and further denied even having been on a camping trip in the last twenty years.

31. After December 23, 1987, complainant last worked for Clinchfield Coal Company where she was injured in 1989. She became and is presently disabled and retired from coal mining.

CONCLUSIONS OF LAW

1. Complainant is a member of a class protected by the West Virginia Human Rights Act by reason of her sex, female, and her age, 41, at the time her alleged cause of action arose in December 23, 1987.

2. Respondent, True Energy, Inc., is not an employer within the meaning of the West Virginia Human Rights Act, WV Code §5-11-3(d), in that it was not operating any mine nor had any persons within its employ as of December 23, 1987; therefore, respondent, True Energy, Inc., should be dismissed, with prejudice, from this action.

3. Respondent, Panther Energy, Inc., is a corporation which is separate and distinct from Pride Coal Company, Inc., and each corporation is run independently of the other, Panther Energy, Inc. and Pride Coal Company, Inc., each operate different mines with offices and mines at separate and distinct locations.

4. Complainant never made application for employment to respondent, Panther Energy, Inc.

5. Complainant has submitted no evidence whatsoever that Jack Bowling, Inc., was an agent or ever held himself out to be an agent responsible for hiring at Panther Energy, Inc.

6. Complainant, having failed to make application for employment to Panther Energy, Inc., has failed to establish that Panther Energy, Inc., made any decision, much less an adverse decision, concerning her employment; thus, complainant has failed to establish a prima facie case of discrimination in her employment on the basis of sex or age against respondent, Panther Energy, Inc.

7. Complainant applied to Pride Coal Company, Inc., for employment on December 23, 1987 and was denied employment on this date because there were no positions available.

8. Complainant has submitted no evidence to establish any positions available for her at Pride Coal Company, Inc., on December

23, 1987, nor has she shown by a preponderance of the evidence that but for her protected status a position would have been available for her on December 23, 1987 at Pride Coal Company, Inc.

9. Complainant has failed to establish a prima facie case of employment discrimination on the basis of sex or age against respondent, Pride Coal Company, Inc.

10. Respondent, Pride Coal Company, Inc. has articulated a legitimate, nondiscriminatory reason for refusing to hire complainant on December 23, 1987 in that there were no positions available for her at that time.

11. Complainant has failed to meet her burden of proof by rebutting by a preponderance of the evidence that respondent, Pride Coal Company, Inc.'s, legitimate nondiscriminatory reason for not hiring complainant on December 23, 1987 was a pretext for discrimination.

12. Complainant has been disabled since 1989 and is presently disabled and retired from coal mining, and, therefore, was not able to work for Pride Coal Company, Inc., even if a position were to have become available after January, 1989.

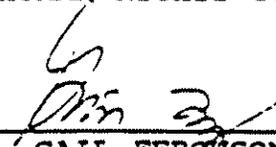
RELIEF AND ORDER

Pursuant to the above findings of fact and conclusions of law, it is hereby ORDERED that this case be dismissed with prejudice and be closed.

Entered this 25 day of June, 1993.

WV HUMAN RIGHTS COMMISSION

BY



GAIL FERGUSON
ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

I, Gail Ferguson, Administrative Law Judge for the West Virginia Human Rights Commission, do hereby certify that I have served the foregoing Administrative Law Judge's Final Decision by depositing a true copy thereof in the U.S. Mail, postage prepaid, this 1st day of July, 1993, to the following:

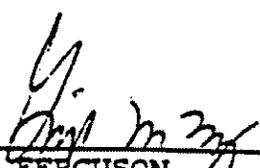
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GAIL FERGUSON
ADMINISTRATIVE LAW JUDGE