



STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

215 PROFESSIONAL BUILDING
1036 QUARRIER STREET
CHARLESTON, WEST VIRGINIA 25301

ARCH A. MOORE, JR.
Governor

TELEPHONE: 304-348-2616

May 2, 1986

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160 Chancery Row
Morgantown, WV 26505

RE: Hooper v. Beckley Appalachian Regional Hospitals ES-163-77,
ES-216-77

Dear Above parties,

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Hooper v. Beckley Appalachian Regional Hospitals ES-163-77, ES-216-77

Pursuant to Article 5, Section 4 of the WV Administrative Procedures Act [WV Code, Chapter 29A, Article 5, Section 4] any party adversely affected by this final Order may file a petition for judicial review in either the Circuit Court of Kanawha County, WV, or the Circuit Court of the County wherein the petitioner resides or does business, or with the judge of either in vacation, within thirty (30) days of receipt of this Order. If no appeal is filed by any party within (30) days, the Order is deemed final.

The Respondent is required to provide to the Commission proof of compliance with the attached Order by affidavit, cancelled check or other means calculated to provide such proof within 35 days of service of the enclosed Order.

Sincerely yours,

A handwritten signature in cursive script that reads "Howard D. Kenney".

Howard D. Kenney
Executive Director

HDK/kpv/dlw
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ANNE D. HOOPER,
Complainant,

vs.

Docket No. ES-163-77, ES-216-77

BECKLEY APPALACHIAN
REGIONAL HOSPITALS,
Respondent.

O R D E R

On the 8th day of April, 1986, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner Theodore R. Dues, Jr. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

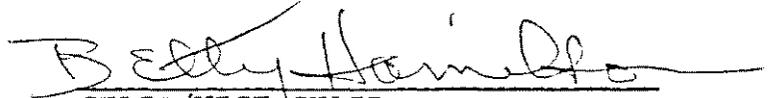
It is hereby ORDERED that the Hearing Examiner's Findings of Fact and Conclusions of Law be attached hereto and made a part of this Order. It is further ORDERED that this case be remanded to the Hearing Examiner for such further proceedings as are necessary to determine the amount of damages, fees and costs to be awarded to complainant.

By this Order, a copy of which shall be sent by Certified Mail to the parties, the parties are hereby notified that THEY HAVE TEN DAY TO REQUEST A RECONSIDERATION OF THIS ORDER AND THAT

THEY HAVE THE RIGHT TO JUDICIAL REVIEW.

Entered this 21 day of April, 1986.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Betty Hamilton", written over a horizontal line.

CHAIR/VICE-CHAIR
WEST VIRGINIA HUMAN
RIGHTS COMMISSION

WEST VIRGINIA HUMAN RIGHTS COMMISSION

RECEIVED
FEB 21 1986
W.V. HUMAN RIGHTS COMM.

ANNE D. HOOPER,

Complainant,

vs.

Docket Nos. ES-163-77
ES-216-77

BECKLEY APPALACHIAN REGIONAL
HOSPITALS,

Respondent.

EXAMINER'S RECOMMENDED FINDINGS
OF FACT AND CONCLUSIONS OF LAW

This case came on for public hearing before Hearing Examiner Theodore R. Dues, Jr., Esquire. The hearing was held on November 11, 1985 at the Beckley Appalachian Regional Hospital, Raleigh County, Beckley, West Virginia. The Complainant, Anne D. Hooper, M.D., appeared in person and was represented by Regina L. Charon. Respondent, Beckley Appalachian Regional Hospital, was represented by Michael T. Chaney of Kay, Casto & Chaney. Mr. Joseph Giompalo appeared as the Respondent's representative. The parties agreed by stipulation to waive the presence of a Hearing Commissioner. Proposed findings were received from the parties on February 3, 1986.

ISSUES PRESENTED

1. Whether the Respondent discriminated against the Complainant due to her sex in its employment considerations pertaining to her.

2. Whether the Respondent retaliated against the

Complainant in the terms and conditions of her employment after receipt of her complaint with the West Virginia Human Rights Commission.

FINDINGS OF FACT

1. Complainant, Anne D. Hooper, M.D., is a female.
2. Complainant began employment with Respondent as a Staff Pathologist on February 1, 1974.
3. Complainant was appointed Chief of Pathology on January 1, 1976.
4. On September 28, 1976, Complainant was demoted to the position of Staff Pathologist. This demotion was the result of action taken by the Executive Committee of the medical staff of Respondent, on September 27, 1976, when the Executive Committee voted to recommend to the hospital administrator, David Elliott, that he recruit a new Chief of Pathology and demote Complainant to the position of Staff Pathologist.
5. When the Executive Committee considered taking action adverse to a male hospital-employed physician, Manfred S. Prenzlau, M.D., Dr. Prenzlau attended the Executive Committee meeting. He was given notice of the complaints against him and an opportunity to offer an explanation on his own behalf.
6. When the Executive Committee met to consider taking action adverse to the Complainant, she was not advised that the Executive Committee was planning to discuss her status nor was she present at the Executive Committee meeting.
7. David Elliott, the Hospital Administrator, participated in the Executive Committee meetings concerning Dr.

arrangements for taking vacation on the day after Thanksgiving.

c. Under the terms of the verbal contract the Complainant had with Respondent, she understood that she could participate in appropriate professional activities, connected with the practice of medicine as part of her employment, so long as she provided sufficient pathology coverage; she thought that participation on an Advisory Board of the Red Cross Blood Bank was appropriate as part of her practice of medicine and that it was inappropriate for David Elliott to restrict such participation. After her first complaint was received, Complainant advised Mr. Elliott she was planning to attend an Advisory Board meeting, he directed her not to attend, so that she would be available to meet with him and Respondent's attorney to discuss her contract. When she attended the meeting, he discharged her.

9. David Elliott, the hospital administrator for Respondent, treated Complainant differently than Dr. Prenzlau, a male hospital employed physician, in his discharge considerations and process.

10. There was sufficient coverage for the pathology department at the time that Complainant attended the Advisory Board meeting (from which she ultimately was fired).

11. Respondent offered no evidence as to the reason(s) that Complainant was demoted from Chief of Pathology to Staff Pathologist; Respondent suggested that Dr. Hooper was demoted because she did not have sufficient academic credentials.

12. Complainant had been affiliated with a medical

2. Complainant, Anne D. Hooper, M.D., established a prima facie case of sex discrimination with respect to her first complaint by introducing evidence which proved that:

a. She is a member of a group protected by the West Virginia Human Rights Act;

b. She was demoted or discharged from her position as Chief of Pathology and Director of the Laboratory at Beckley Appalachian Regional Hospital;

c. Respondent demoted her without giving her the same notice and opportunity to be heard before the Executive Committee as was accorded to a similarly situated male physician.

State ex rel. West Virginia Human Rights Commission v. Logan Mingo Mental Health Agency, Inc., 329 S.E.2d 77, 85 (W.Va. 1985).

3. Respondent did not articulate any legitimate and nondiscriminatory reason for the difference between the procedure followed by the Executive Committee for a female physician.

4. The only reason articulated by the Respondent for Complainant's demotion is pretextual. Respondent implied that Complainant did not have sufficient academic background to be Chief of Pathology. However, after she was discharged as Chief of Pathology, Respondent hired a Chief of Pathology with less academic background than Complainant.

5. Complainant has established a prima facie case of retaliation with respect to her second complaint by introducing evidence to prove that:

a. She filed a complaint against Respondent and

8. The Respondent attempted to explain the difference between its treatment of the Complainant and its treatment of the male physician by contending that the male physician was guilty of clinical misconduct whereas the Complainant was guilty of administrative misconduct. However, the evidence establishes that this contention is pretextual. Although the male physician may have had problems of clinical misconduct in addition to his administrative misconduct, he was not disciplined for administrative disobedience in the same manner as Complainant.

9. Complainant is entitled to such damages as may later be determined by the Examiner.

10. Complainant's counsel is entitled to reasonable attorney's fees and costs.

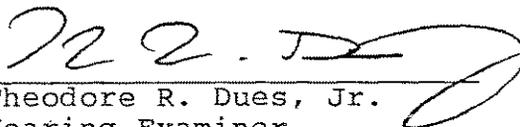
DISCUSSION

Complainant, Anne D. Hooper, M.D., was employed by the Beckley Appalachian Regional Hospital. After she was demoted from her position as Chief of Pathology and Director of the Laboratory, without the notice and opportunity to be heard that had been provided to a male physician at BARH, she filed a complaint of sex discrimination. She has established a prima facie case of sex discrimination. She has established a prima facie case of sex discrimination in her demotion. Respondent has not advanced a legitimate and nondiscriminatory reason for denying the Complainant the same due process that was accorded to a male employee. For this reason, the Hearing Examiner finds that BARH has discriminated against the Complainant, as alleged in her first complaint, in violation of the West Virginia Human

- a. Judgement for the Complainant; and
- b. Such damages and costs as the Examiner may certify at a later date and time.

DATED FEBRUARY 19, 1986

ENTER:


Theodore R. Dues, Jr.
Hearing Examiner