



**STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION**  
215 PROFESSIONAL BUILDING  
1036 QUARRIER STREET  
CHARLESTON, WEST VIRGINIA 25301

TELEPHONE: 304-348-2616

ARCH A MOORE, JR.  
Governor

December 9, 1985

Greg Tomchin, Esquire  
309 21st Street  
Dunbar, WV 25064

Robert Kinney  
309 21st Street  
Dunbar, WV 25064

Thomas Stanley, Esq.  
P. O. Box 3032  
Charleston, WV 25331

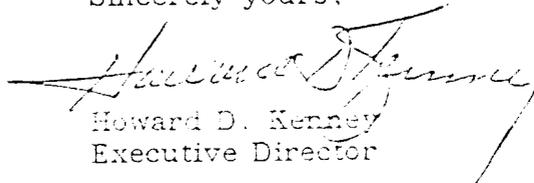
RE: Kinney V B. G. Danis Company  
ER-331-85

Dear Mr. Tomchin, Mr. Kinney and Mr. Stanley ,

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case of Robert Kinney V B. G. Danis Company.

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.

Sincerely yours,

  
Howard D. Kenney  
Executive Director

HDK/kpv

Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.



**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

September 5, 1985

Thomas Stanley, Esquire  
Law Library  
Kanawha County Court House  
Charleston, West Virginia 25301

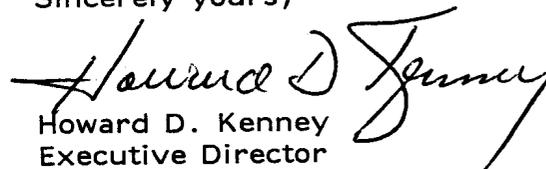
Mr. Robert Kinney  
309 21st Street  
Dunbar, WV 25064

Re: Kinney v. Danis Industries Corporation  
G. E. Ray Construction  
ER-331-85

Dear Mr. Stanley and Mr. Kinney:

Enclosed please find a copy of the Order of the WV Human Rights Commission in the above-styled and numbered case of Kinney v. Danis Industries Corporation G. E. Ray Construction, 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.

Sincerely yours,

  
Howard D. Kenney  
Executive Director

HDK/kpv

Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED.

CC: Roxanne Rogers, Attorney  
Charlie Brown, Attorney General  
Ted Dues, Jr., Hearing Examiner

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

Robert Kinney,  
Complainant,

v.

Docket No.: ER-331-85

B. G. Danis Company  
Respondent.

ORDER

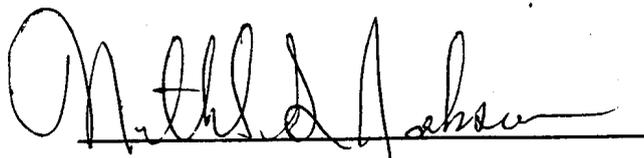
On the 13th day of August, 1985, the Commission reviewed Hearing Examiner Theodore R. Dues Jr.'s Findings of Fact and Conclusions of Law. After consideration of the aforementioned, the Commission does hereby adopt the Findings of Fact and Conclusions of Law as its own.

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.

By this Order, a copy of which to be sent by certified mail, the parties are hereby notified that THEY HAVE TEN DAYS TO REQUEST A RECONSIDERATION OF THIS ORDER AND THAT THEY HAVE THE RIGHT TO JUDICIAL REVIEW.

Entered this 14<sup>th</sup> day of August, 1985.

RESPECTFULLY SUBMITTED,



CHAIR/VICE CHAIRMAN  
WEST VIRGINIA HUMAN  
RIGHT COMMISSION

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W.V. HRS 14

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ROBERT KINNEY,  
Complainant,  
vs.  
B. G. DANIS COMPANY,  
Respondent.

RECEIVED  
ER-331-85

JUL 12 1985

W.V. HUMAN RIGHTS COMM.

**EXAMINER'S RECOMMENDED FINDINGS  
OF FACT AND CONCLUSION OF LAW**

This case matured for public hearing on May 20, 1985. The hearing was held at the Conference Room of the West Virginia Human Rights Commission, 1036 Quarrier Street, Charleston, WV. The panel consisted of Theodore R. Dues, Jr., Hearing Examiner. The parties waived the presence of a Hearing Commissioner. The Complainant appeared in person and by his counsel, Roxanne Rogers. The Respondent appeared by its counsel, Thomas L. Stanley.

**FINDINGS OF FACT**

1. The Complainant, Robert Kinney, is a black male.
2. The Complainant first began driving off-road trucks as a trainee in mid 1979.
3. As a trainee, the Complainant completed a one thousand forty hour (1,040) program of instruction in driving off-road vehicles.
4. The Complainant worked as an off-road driver for Geupel Construction Company for approximately four months.
5. The Complainant worked for the Respondent as an off-

road driver on the Interstate 77 project from approximate July, 1980, to June, 1984.

6. During the course of his employment with the Respondent, the Complainant's driving record was below average.

7. During his employment with the Respondent, the Complainant did not display those skills possessed by a skillful off-road driver.

8. The Complainant did not possess the requisite qualifications to be placed on the A List for Referral by Teamsters Local 175.

9. The certification for the A Referral List is based solely upon the uncorroborated representations of said truck driver.

10. The Complainant was untruthful in his representations as to his qualifications when his A certification was granted.

11. The Complainant was not hired by the Respondent due to the Complainant's lack of ability to satisfactorily perform the duties of an off-road truck driver.

#### **CONCLUSION OF LAW**

1. The West Virginia Human Rights Commission has jurisdiction over the subject matter and the parties in this matter.

2. As in all cases, the Complainant bears the burden of proving the allegations of his complaint that the Respondent discriminated against him in its decision not to hire him on or about October 17, 1984.

3. The Complainant established a prima facie case by

introducing evidence to establish that he was considered an A Referral by the Teamsters Local 175 and that he was denied employment to perform truck driving duties for the Respondent although the Respondent hired a White to perform the same.

4. The Respondent articulated a legitimate nondiscriminatory explanation for its actions by indicating that the Complainant's driving record was riddled with mishaps and negligent accidents.

5. Accordingly, the Complainant has failed to establish a violation of the West Virginia Human Rights Act.

**RELIEF**

Judgement for the Respondent.

DATED July 12, 1985

ENTER:

922.10  
THEODORE R. DUES, JR.  
Hearing Examiner