



**STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION**

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CHARLESTON, WEST VIRGINIA 25301

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October 15, 1986

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Governor

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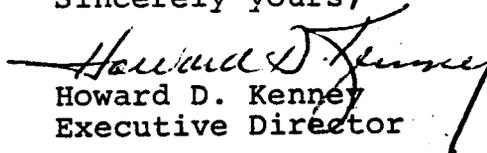
RE: Miller v. WV Institute of Technology  
ES-536-85

Ladies and Gentlemen:

Herewith please find the Order of the WV Human Rights Commission in the above-styled and numbered case.

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 thirty (30) days, the Order is deemed final.

Sincerely yours,

  
Howard D. Kenney  
Executive Director

HDK/mst  
Enclosure

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ELIZABETH ANN MILLER,

Complainant,

vs.

Docket No. ES-536-85

WEST VIRGINIA INSTITUTE  
OF TECHNOLOGY,

Respondent.

O R D E R

On the 10th day of September, 1986, the Commission reviewed the Findings of Fact and Conclusions of Law of Hearing Examiner John M. Richardson. 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 shall be sent by Certified Mail to the parties, 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.

Enter this 9th day of October, 1986.

Respectfully Submitted,

  
\_\_\_\_\_  
CHAIR/VICE-CHAIR  
WEST VIRGINIA HUMAN  
RIGHTS COMMISSION

THE WEST VIRGINIA HUMAN RIGHTS COMMISSION  
OFFICE OF THE HEARING EXAMINER

ELIZABETH ANN MILLER,  
Complainant,

v.

DOCKET NO. ES-536-85

WV INSTITUTE OF TECHNOLOGY,  
Respondent.

RECOMMENDED DECISION

I.

Preliminary Matters

On May 7, 1985, a formal complaint was filed by Elizabeth Ann Miller, alleging that she was denied a promotion to full professor by WV Insitute of Technology based upon lawful discrimination because of her sex. Notice of a public hearing was issued on October 8, 1985, and the public hearing was held on February 6, 1986, in the City Council Chambers, Montgomery City Hall, Montgomery, West Virginia. The Complainant, Elizabeth Ann Miller, appeared in person and was represented by Mary C. Buchmelter, Assistant Attorney General. The Respondent appeared through its representative, Dr. James S. Brill, who was represented by Senior Assistant Attorney General, Richard Hull and Assistant Attorney General, Jan L. Fox. Thereafter,

testimony of witnesses was taken and recorded to which the parties, by counsel, have filed proposed findings of fact and conclusions of law.

To the extent that the proposed findings, conclusions and arguments advanced by the parties, are in accordance with the findings, conclusions and views stated herein, they have been accepted, and to the extent they are inconsistent 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 as presented. To the extent that the various witnesses' testimony is not in accord with the findings herein, it is not credited.

## II.

### Issue

Was the Complainant, Elizabeth Ann Miller, denied promotion to full professor because of her sex, in violation of WV Code 5-11-9(a).

## III.

### Findings of Fact

1. The Complainant, Elizabeth Ann Miller, is a female and resident of Montgomery, West Virginia, who is employed as an Associate Professor in the Physical Education

Department, School of Human Resources, West Virginia Institute of Technology.

2. The Complainant has been a faculty member of West Virginia Institute of Technology since 1968. She began as an instructor and was promoted in 1972 to Assistant Professor and again promoted to Associate Professor in 1982.

3. In January 1985, the Complainant applied for promotion to full professor and was denied the promotion.

4. The Complainant does not have a doctorate degree.

5. Having a doctorate (terminal degree) in the applicable teaching field is a mandatory requirement for promotion to full professor which may be waived only by the president of the institution under certain exceptional circumstances.

6. In 1984, three men and one woman, without doctorate degrees, applied for promotion to full professor. All four were granted exception to the policy requiring a doctorate degree and were promoted.

7. Following the promotions in 1984 and prior to final approval of the promotions in 1985, Dr. Leonard Nelson, President of West Virginia Institute of Technology and Dr. James S. Brill, Vice President for Academic Affairs, agreed that, in order to improve the faculty quality and standards, no further exceptions would be made for faculty requesting promotion who did not have the terminal degree in their teaching field.

8. In 1985, three men and one woman, without doctorate degrees, applied for promotion to full professor. All four were denied promotions. No exceptions were granted.

9. Women and men with the proper credentials have been regularly promoted to full professor at West Virginia Institute of Technology.

10. Only one woman other than the Complainant, without a doctorate degree, has ever applied for a full professorship. This was Jean K. Jennings, who was promoted in 1984.

11. Promotions are considered primarily on an institutional basis rather than a departmental basis.

#### IV.

#### Discussion

The Complainant, Elizabeth Miller, has a Master's Degree in Physical Education and is an Associate Professor in the Physical Education Department of West Virginia Institute of Technology. She complains that while being the only female member of the Physical Education Department, she applied for the position of full professor and was denied this promotion while others in her department (males) had previously applied for full professor having the same or similar qualifications, and they were in turn promoted.

The Complainant has the burden of proving the allegations of her complaint. The West Virginia Supreme Court of Appeals has in the cases of: State v. Logan-Mingo Area of Mental Health Agency, Inc., \_\_\_WV\_\_\_, 329 SE2d 77 (1985); Shepherdstown Volunteer Fire Dept. v. WV Human Rights Commission, \_\_\_WV\_\_\_, 309 SE2d 342 (1983); adopted the fundamental principles of proof established by the United States Supreme Court in McDonnell Douglas Corp. v. Green, 411 US 792, (1973); and Texas Dept. of Community Affairs v. Burdine, 450 US 248 (1981).

The afore-mentioned cases require that Complainant prove the following: (1) That she is a member of a protected class; (2) That she applied for a position and was qualified for the position; (3) That despite her qualifications she was denied promotion; and (4) That other applicants similarly qualified were approved for promotion. Thereafter, the Respondent must articulate a legitimate, non-discriminatory reason for its action which then places the burden on the Complainant to prove that those reasons offered were pretextual.

There can be no disagreement that the Complainant is female and therefore is a member of the protected class. Where the Complainant's proof fails is at the point that she was required to prove she was qualified for the position. It is clear from the evidence that all persons seeking promotion to full professor must have had a doctorate degree

in the field they were teaching. While the Complainant did show other full professors did not have their doctorate degree the Respondent in turn showed that prior to 1985 certain exceptions set forth in its policies permitted the president of the institution to promote to the rank of full professor those persons who were otherwise uniquely qualified. Following a visit by representatives of the North Central Accrediting Association and prior to the 1985 promotion, Dr. Leonard Nelson, President of West Virginia Institute of Technology and Dr. James S. Brill, Vice President of Academic Affairs agreed that the exceptions theretofore utilized would no longer be used in order to improve the standards and quality of the faculty.

While the Complainant's allegations that, she was the only female in the Physical Education Department and the only female without a doctorate degree that was denied a promotion in 1985, are true, such facts only obscure the issue presented to the Commission for resolution, namely, "was the Complainant denied promotion to full professor because of her sex."

In a similar situation the previous year (1984), three males and one female were promoted to full professor without having a doctorate degree. This clearly shows the Respondent applied the exceptions, when used, equally to members of both sexes.

In 1985, after deciding not to use the exceptions in promotions for that year, the Respondent again applied its

policy of promotion equally to both sexes, in that three males and one female were denied promotion to full professor because they did not have a doctorate degree. Thus, all of the applicants who were similarly qualified as compared to the Complainant, in 1985, were denied promotion whether they were male or female.

The Complainant's argument that she was the only female in the Physical Education Department and that at least two males were promoted in the previous year not having a doctorate degree also has no serious merit, because, there was no evidence to indicate that females having the proper qualifications were not regularly promoted along with their male counterparts. Further, there was no proof that promotions to full professor were in any way departmentalized, i.e. Math, English, Physical Education, History Departments, etc., while there was ample proof that her Department Head, Mr. Neal Baisi, and, the Dean of the School of Human Studies, Dr. Ottis Rice, both approved the Complainant's promotion, subject to the approval of the president and vice president.

It is, therefore, clear that the Complainant failed to prove a prima facie case by failing to prove she was qualified for the position sought and that the Respondent showed it applied its policy regarding promotions equally to both sexes. It will, therefore, be this Hearing Examiner's recommendation to the Commission that the Complainant's Complaint be dismissed with prejudice and that each of the parties bear their own costs attendant hereto.

V.

Conclusions of Law

1. The Commission has jurisdiction of the parties and subject matter as set forth in the complaint.

2. The Complainant bears the burden of proof in proving a prima facie case.

3. When the Complainant fails to prove a prima facie case, the complaint should be dismissed with prejudice.

4. The Complainant failed to prove she was qualified for the position for which she had applied, and, therefore, did not meet her burden of proof as required by the decisions handed down by the West Virginia Supreme Court of Appeals and the United States Supreme Court.

5. The Respondent's have not violated WV Code 5-11-9(a) as alleged in the complaint.

VI.

Recommended Order

The Hearing Examiner does hereby recommend to the Commission that it adopt the following:

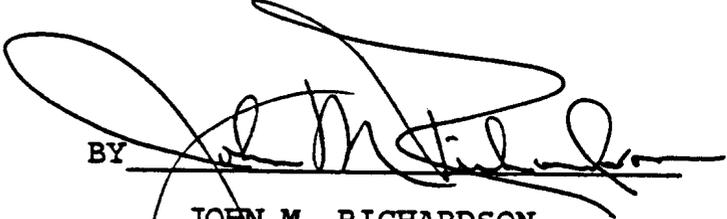
1. That the Commission adopt the Hearing Examiner's Recommended Decision and all of the contents thereof.

2. That the complaint be dismissed with prejudice.

3. That the Respondent did not commit any unlawful act as set forth in WV Code 5-11-9(a) as alleged in the complaint.

4. That each of the parties bear their own costs of this hearing.

RESPECTFULLY SUBMITTED

BY 

JOHN M. RICHARDSON

HEARING EXAMINER