

**STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION**

**WV HUMAN RIGHTS COMMISSION**

**1321 Plaza East**

**Room 104/106**

**Charleston, WV 25301-1400**

**TELEPHONE 304-348-2616**

**GASTON CAPERTON**  
GOVERNOR

**Quewanncoi C. Stephens**  
Executive Director

March 28, 1990

Anthony Rogliano  
312 Karen St.  
S. Charleston, WV 25303

Richard Wiley  
Northeastern Business College  
170 Euclid Ave.  
Paintsville, KY 41240

Terance Wehr  
18 10th St. E.  
Wheeling, WV 26003

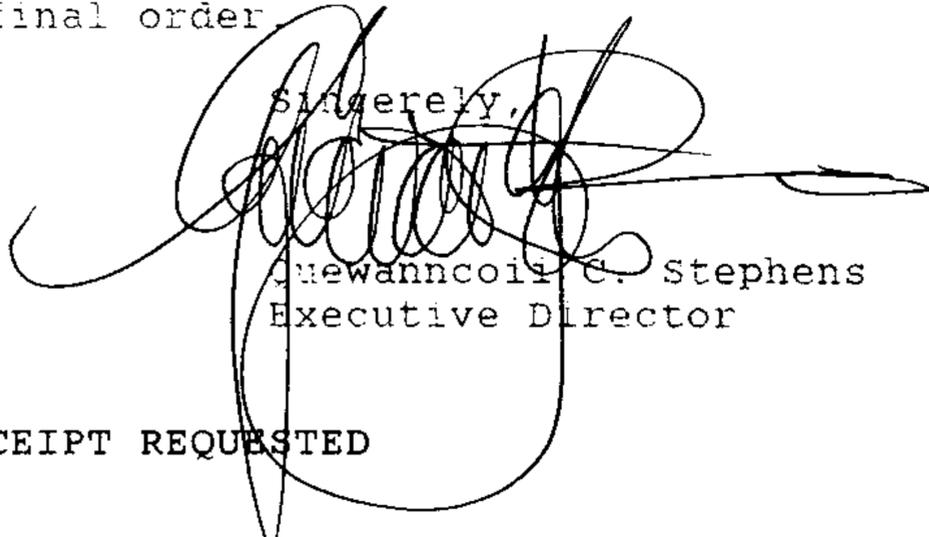
Mike Kelly  
Deputy Attorney General  
812 Quarrier St.  
L & S Bldg. - 5th Floor  
Charleston, WV 25301

Re: Rogliano v. Northeastern Business College  
EH-17-87

Dear Parties:

Herewith, please find the final order of the WV Human Rights Commission in the above-styled and numbered case. Pursuant to WV Code, Chapter 5, Article 11, Section 11, amended and effective July 1, 1989, any party adversely affected by this final order may file a petition for review with the WV Supreme Court of Appeals within 30 days of receipt of this final order.

Sincerely,



Quewanncoi C. Stephens  
Executive Director

Enclosures  
CERTIFIED MAIL-RETURN RECEIPT REQUESTED

## 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 non-resident of this state, the non-resident 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 Section 5-11-11, and the West Virginia Rules of Appellate Procedure.

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ANTHONY L. ROGLINO,

Complainant,

v.

DOCKET NO. EH-17-87

NORTHEASTERN BUSINESS COLLEGE,

Respondent.

FINAL ORDER

On 10 January 1990 the West Virginia Human Rights Commission reviewed the Recommended Findings of Fact and Conclusions of Law filed in the above-styled matter by the hearing examiner, Theodore R. Dues, Jr. After consideration of the aforementioned, the Commission was informed by its counsel that respondent had filed articles of dissolution in the Office of the Circuit Court of Kanawha County, West Virginia on 5 May 1989 and was no longer conducting any business within the State of West Virginia or elsewhere. Counsel further advised the Commission that no individual having been personally named as a respondent herein, that there was no respondent against whom complainant could recover an award, if the Commission was so inclined to make one.

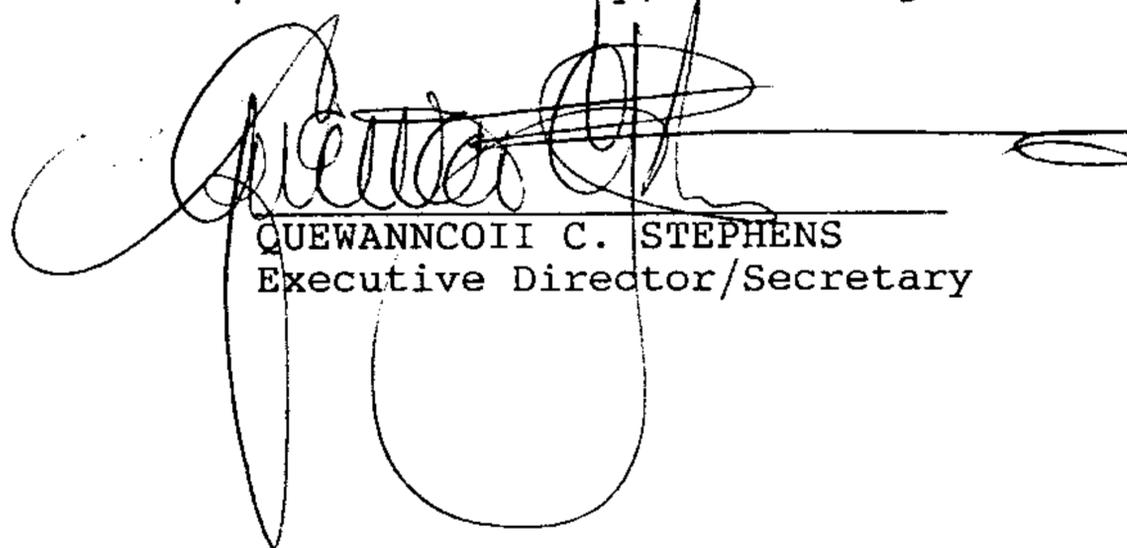
Whereupon, the Commission decided to, and does hereby, dismiss this complaint with prejudice for the reasons mentioned hereinabove.

By this Final Order, a copy of which shall be sent by certified mail to the parties and their counsel, and to the Secretary of State of the State of West Virginia, the parties are hereby notified that they have ten days to request a reconsideration of this Final Order and that they may seek judicial review.<sup>1</sup>

It is so ORDERED.

WEST VIRGINIA HUMAN RIGHTS COMMISSION

Entered for and at the direction of the West Virginia Human Rights Commission this 29<sup>th</sup> day of March, 1990, in Charleston, Kanawha County, West Virginia.



QUEWANNCOLL C. STEPHENS  
Executive Director/Secretary

---

<sup>1</sup>If this matter had been reviewed strictly on the merits, the Commission notes the extreme likelihood that the hearing examiner's Recommended Findings of Fact and Conclusions of Law would, as a matter of law, have been rejected by the Commission as contrary to Chico Dairy Store, Inc. v. West Virginia Human Rights Commission, 382 S.E.2d 75 (1989).

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

ANTHONY L. ROGLIANO,

Complainant,

v.

Docket No. EH-17-87

DEC 9 1988

NORTHEASTERN BUSINESS COLLEGE,

W.V. HUMAN RIGHTS COMM.

Respondent.

EXAMINER'S RECOMMENDED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

This matter matured for public hearing on the 6th day of September, 1988. The hearing was held in the fourth floor conference room of the Daniel Boone Building, 405 Capitol Street, Charleston, West Virginia. The Complainant appeared in person and by his counsel, Antionette Eates. The Respondent failed to appear either by representative or by counsel. The presence of a Hearing Commissioner was previously waived by the Complainant.

After a review of the record, any exhibits admitted in evidence, any stipulations entered into by the parties, any matters for which the Examiner took judicial notice during the proceedings, assessing the credibility of the witnesses and weighing the evidence in consideration of the same, the Examiner makes the following findings of fact and conclusions of law. To the extent that these findings and conclusions are generally consistent to any proposed findings of fact and conclusions of law submitted by the parties, the same are adopted by the Examiner, and conversely, to the extent the same are inconsistent to the findings and conclusions, the same are rejected.

## ISSUES

1. Did the Respondent discriminate against the Complainant on the basis of a legally recognized handicap in its decision to terminate his employment?
2. If so, to what relief is the Complainant entitled?

## FINDINGS OF FACT

1. The Complainant was employed by the Respondent as a teacher of english, accounting, math and cost accounting.
2. His period of employment was from February, 1985 to approximately June of 1986, at which time he was terminated.
3. At one point during the latter part of his tenure with the Respondent, the Respondent contended that the Complainant had advised certain students, under his direction, that he was taking Percodan.
4. At no time during his tenure with the Respondent did the Complainant take Percodan; either prescribed or unprescribed.
5. During his tenure with the Respondent, the Complainant performed his work in a satisfactory manner. Additionally, the Complainant received no complaints or disciplinary action against him during his tenure.
6. The Complainant sustained an injury to his right ankle in January, 1975. The effect of the injury was to leave the Complainant with a slight limp in his gait, as a result of, the tallus having to be removed from a part of his right foot. In addition, the Complainant was left with an extreme

sensistivity on the lower inside portion of his right foot due to extreme nerve damage from this accident.

7. The Complainant is unable to engage in sports or running due to his impairment.

8. At the time of his employment, the Respondent was aware of the Complainant's impairment. However, notwithstanding the same, the management forbade the Complainant to wear a shoe which he found to be more accomodating to his impairment.

9. The Complainant attempted to address the Respondent's concerns about the type of shoe he wore while at work by spending Two Hundred Fifty Dollars (\$250.00) for several different types of shoe; none of which ultimately accomodated his needs.

10. As a direct response to the Complainant's failure to disregard wearing the shoes he preferred, the Respondent altered the location of the Complainant's classes to require him to walk extended distances in very short periods of time, between his classes, to perform his duties. Ordinarily, a teacher with the tenure held by the Complainant, taught all of their classes in the same building, during a work day.

11. During his employment with the Respondent, the Complainant's salary was Nine Dollars (\$9.00) per hour.

12. The Complainant lost no income as a result of his termination from employment with the Respondent, inasmuch as, he was immediately hired with the Fayette County Board of Education, as a teacher at the Valley High School.

13. The Complainant suffered mental pain, humiliation,

and embarrassment as a result of the actions of the Respondent.

#### DISCUSSION

The Complainant is a handicapped individual within the means of the West Virginia Human Rights Act and the interpretive regulations, inasmuch as he has sustained an injury with a residual impairment which substantially limits a major life activity. Specifically, the Complainant is unable to engage in sports or run due to his disabled ankle. In addition, the Complainant established that the terms and conditions of his employment were adversely affected, as a result of his handicapped condition; all in violation of West Virginia Code 5-11-9.

The Respondent failed to appear at the hearing, although the record reflects due notice was properly provided, for both the charges herein, as well as, the hearing.

Accordingly, the Examiner does hereby find that the Complainant has proven by a preponderance of evidence that he was discriminated against by the Respondent on the basis of his handicap.

#### CONCLUSIONS OF LAW

1. The West Virginia Human Rights Commission has jurisdiction over the subject matter and the parties herein.
2. The Complainant established a prima facie case of handicap discrimination by establishing that he is a legally recognized handicap and that the employer motivated by the his

handicapped condition, adversely altered the terms and conditions of his employment, which ultimately resulted in his being terminated. Said conduct is in violation of the West Virginia Human Rights Act. West Virginia Code 5-11-9.

3. The Respondent failed to appear in the case and the record is otherwise absent of any legitimate nondiscriminatory reason for the Respondent's conduct.

4. The Complainant is not entitled to backpay due to the fact that he suffered no wage loss as a result of the termination. Reinstatement is not a proper remedy inasmuch as the Complainant is not seeking the same.

5. The Complainant is entitled to incidental damages for humiliation, embarrassment and inconvenience in the amount of Ten Thousand Dollars (\$10,000.00). 6. That the Complainant is entitled to reimbursement for the Two Hundred Fifty Dollars (\$250.00) extended by him for shoes, while making an effort to accomodate the desires of the Respondent, during his tenure.

#### PROPOSED ORDER

Accordingly, the Examiner does hereby recommend to the Commission that judgement be awarded for the Complainant and that the following relief be granted:

1. That the Complainant recover compensatory damages in the amount of Two Hundred Fifty Dollars (\$250.00);

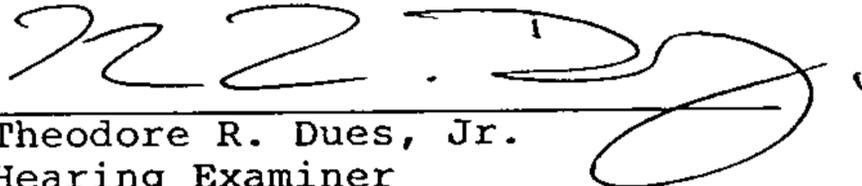
2. That the Complainant recover incidental damages in the amount of Ten Thousand Dollars (\$10,000.00) for mental pain,

humiliation and embarrassment; and

3. To issue a cease and desist Order prohibiting the Respondent from further engaging in unlawful handicap discrimination.

DATED: October 27, 1988

ENTER:

  
Theodore R. Dues, Jr.  
Hearing Examiner