

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

BETTY RICHMOND,

Complainant,

v.

Docket No. ER-330-76/Amended

WEST VIRGINIA WORKMEN'S COMPENSATION FUND,

Respondent.

ORDER, FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case came on for hearing initially on February 2, 1983, and was continued to March 22, 1983, then continued and completed on February 23, 1984. The hearing was held at the offices of the West Virginia Human Rights Commission, 1036 Quarrier Street, Charleston, West Virginia. The Commissioner was the Honorable Russell Van Cleve and the Hearing Examiner was Theodore R. Dues, Jr. The Commission was represented by Gail Ferguson. The Complainant was represented by Herbert H. Henderson and Cheryl Henderson of the Firm of HENDERSON & HENDERSON, and the Respondent was represented initially by Donald Hall and Janet Frye Steele of the Legal Division, Workmen's Compensation Fund and the Attorney General's Office, respectively. On the last day of hearing, John Skaggs appeared on behalf of the Attorney General's Office.

The Complainant filed a verified complaint with the West Virginia Human Rights Commission on February 13, 1976. That complaint was amended on December 16, 1982. This hearing was held upon the amended

complaint. In her amended complaint, the Complainant alleged that she had received disparate treatment in her employment with the Respondent as a result of her race.

The West Virginia Human Rights Commission issued a letter of determination on the original complaint.

The West Virginia Human Rights Commission, by Howard D. Kenney, Executive Director, served written notice of public hearing upon the parties pursuant to West Virginia Code Section 5-11-10. Prehearings were conducted in this matter on August 16, 1982 and December 13, 1982. As a result of those prehearings, a prehearing order was entered by this Examiner pursuant to Section 7.10 of the Administrative Regulations of the West Virginia Human Rights Commission.

The Complainant and Respondent were afforded every reasonable opportunity to present evidence and to call witnesses relevant to this complaint.

After consideration of the Recommended Order and the Exceptions filed by the Respondent, the Commission makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Complainant, BETTY RICHMOND, is a black female.
2. Complainant was hired on July 1, 1971, until October 4, 1971.
3. On October 4, 1971, Complainant was hired full time as a permanent Civil Service employee.
4. Complainant's initial job position was Clerk II.
5. Complainant's work performance as a Clerk II was satisfactory.
6. Complainant was not promoted to Clerk III until April 1976;

approximately 4 1/2 years after her hire.

7. Whites in Complainant's work group were promoted to Clerk III on an average of approximately 12 to 13 months after attaining Clerk II status.

8. In the latter part of 1972, Complainant began to supervise persons within her department although she did not receive supervisor pay or classification.

9. Complainant was assigned undesirable work assignments more frequently than her white counterparts.

10. Complainant was deprived of the opportunity to work overtime hours at times for reasons due to her race and not for legitimate job considerations.

11. Respondent's refusal to promote Complainant effected her ability to attain qualification for supervisory status.

12. During the years of 1974 through 1982, complainant was denied merit increases provided to her white counterparts.

13. Complainant's absences were not excessive.

14. Complainant was never reprimanded for excess absenteeism.

15. Respondent's treatment of Complainant from 1972 through 1982, created a racially motivated hostile work environment oriented to suppressing and inhibiting her overall job effectiveness and career advancement.

16. Complainant was entitled to Clerk V status as of November 4, 1975.

17. Complainant meets the criteria to hold a Chief I position and would be holding said position but for Respondent's treatment of her.

CONCLUSIONS OF LAW

1. At all times referred herein, the Respondent, WEST VIRGINIA WORKMEN'S COMPENSATION FUND, is and has been an employer within the meaning of Section 3(d), Article 11, Chapter 5 of the official Code of West Virginia.

2. At all times referred to herein the Complainant, BETTY RICHMOND, was a citizen and resident of the State of West Virginia and is a person within the meaning of Section 3(a), Article 11, Chapter 5 of the official Code of West Virginia.

3. On December 16, 1982, the Complainant filed an amended verified complaint.

4. The complaint in this matter was timely filed within ninety (90) days of the alleged act of discrimination.

5. The West Virginia Human Rights Commission has jurisdiction over the parties and subject matter of this action pursuant to Sections 8, 9 and 10, Article 11, Chapter 5 of the official Code of West Virginia.

6. To prevail, the Complainant must prove that race was a factor in the decision of the Respondent to fail to promote, provide merit pay increases and treat her differently than other white workers with regard to job assignments.

7. Complainant made an initial prima facie case by demonstrating she received more "boneyard" assignments than her white counterparts; that she was denied overtime opportunities afforded to her white counterparts; and, that she was denied pay increases although similarly situated whites received the same.

8. Respondent failed to rebut Complainant's prima facie case in as much as it failed to demonstrate legitimate nondiscriminatory reasons for its actions that were not pretextual.

9. The Respondent unlawfully discriminated against the Complainant on the basis of race in violation of the West Virginia Human Rights Act, Section 9, Article 11, Chapter 5 of the Code of West Virginia.

10. The Complainant is entitled to monetary relief in the form of back pay, mental anguish and humiliation damages.

W. Va. Code, Section 5-11-10; State Human Rights Commission v. Pearlman Realty Agency, 211 S.E. 2d 349 (W.Va. 1975). The available evidence and documentation indicates Complainant to be entitled to back pay. However, the amount of such back pay must be mitigated by the increases actually received by the Complainant for the period relevant to this charge.

ORDER

The West Virginia Human Rights Commission hereby orders:

1. The West Virginia Workmen's Compensation Fund to pay the Complainant, Betty Richmond back pay in the amount of One Thousand Dollars (\$1,000.00) with statutory interest to accumulate from December 16, 1982.
2. The West Virginia Workmen's Compensation Fund promote Betty Richmond to the position of Section Chief, I effective January 1, 1985.
3. The West Virginia Workmen's Compensation Fund pay to Herbert and Cheryl Henderson their reasonable attorney's fees of Ten Thousand Five Hundred Five Dollars (\$10,505.00).
4. The parties have thirty (30) days to comply with this Order.

WEST VIRGINIA HUMAN RIGHTS COMMISSION

DATE: Feb 21 1985

Russell Van Cleve

Russell Van Cleve
Chairman
West Virginia Human Rights Commission



COPY

STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

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TELEPHONE 304-348-2616

ARCH A. MOORE, JR.
Governor

June 25, 1985

Donald L. Hall, Esquire
West Virginia Workers' Compensation Fund
601 Morris Street
Charleston, West Virginia 25311

Herbert H. Henderson, Esquire
Henderson & Henderson
711 1/2 Fifth Avenue
Huntington, West Virginia 25701

Betty Richmond
1418 Red Oak Street
Charleston, West Virginia 25302

RE: Betty Richmond v. WV Workers' Compensation Fund
ER-330-76, Amended

Dear Mr. Hall, Mr. Henderson and Ms. Richmond:

Herewith please find the final ORDER of the West Virginia Human Rights Commission which encompasses all post-hearing motions in Betty Richmond vs. Workers' Compensation Fund.

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,

Roxanne Rogers
Compliance Attorney
WV Human Rights Commission

RR/kpv
Enclosure

CERTIFIED MAIL/REGISTERED RECEIPT REQUESTED

COPY

BEFORE THE WEST VIRGINIA HUMAN RIGHTS COMMISSION

Betty Richmond
Complainant,

v.

Docket No.: ER-330-76A

Workers' Compensation
Fund
Respondent.

ORDER

On the 12th day of June, 1985, the West Virginia Human Rights Commission considered the instant case on Respondent's Motion for Reconsideration. At its January 1985 meeting, the Commission considered the "Recommended Findings of Fact and Conclusions of Law" and Exceptions Thereto and the Respondent's "Motion Requesting that the Hearing Examiner's Proposed Order and Decision of December 4, 1984 Not Be Considered in This Case." Further consideration was given to the Recommended Order and the Commission adopted its Order dated February 21, 1985, following its February meeting.

At its May, 1985 meeting, the Commission considered the Respondent's "Motion for Reconsideration of the Human Rights Commission's Order, Findings of Fact and Conclusion of Law, Dated February 21, 1985." The Commission denied Respondent's Motion by Order dated May 15, 1985. The Commission also corrected an omission in its Order of February 21, 1985 and issued an Amended Order, dated May 9, 1985.

The Commission considered Respondent's "Motion for Reconsideration of the Human Rights Commission's Amended Order, Dated May 9, 1985" and reviewed Respondent's prior motions.

The Respondent's "Motion Requesting that the Hearing Examiner's Proposed Order and Decision of December 4, 1984, Not Be Considered in This Case" is specifically denied.

The Respondent's "Amendment of and Addition to the Respondent's Motion for Reconsideration Heretofore Served by Mail on May 31, 1985." is denied.

After consideration the West Virginia Human Rights Commission denies the Respondent's "Motion for Reconsideration of its Amended Order" hereby affirms and incorporates in this Order its Order of February 21, 1985, and its Amended Order of May 9, 1985.

Entered this 12 day of June, 1985.



Russell Van Cleve
Russell Van Cleve
Chairman
West Virginia Human Rights
Commission