Governor John Kasich

OHIO
CIVIL RIGHTS
COMMISSION

G. Michael Payton
Executive Director

Commissioners
Leonard Hubert, Chairman
Stephanie Mercado, Esq.
Lori Barreras
William W. Patmon, III
Tom Roberts

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

Eric Sheets

Complainant,

Complaint No. 11-EMP-AKR-35514

v.

Finney Automotive Company, Inc.

Respondent.

ADMINISTRATIVE LAW JUDGE'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS

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ALJ'S REPORT
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Ohio Civil Rights Commission

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August 27, 2014

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Re: Eric Sheets v. Finney Automotive Company, Inc.
Complaint No. 11-EMP-AKR-35514

Enclosed is a copy of the Administrative Law Judge's Findings of Fact, Conclusions of Law, and Recommendation(s) (ALJ's Report). You may submit a Statement of Objections to the ALJ's Report **within twenty three (23) days** from the mailing date of this report. A request to appear before the Commission must also be submitted by this date.

Pursuant to Ohio Admin. Code § 4112-1-02, your Statement of Objections must be **received** by the Commission no later than **September 19, 2014**. *No extension of time will be granted.*

Any objections received after this date will be untimely filed and cannot be considered by the Ohio Civil Rights Commission.

Please send the original Statement of Objections to: **Desmon Martin, Director of Enforcement and Compliance, Ohio Civil Rights Commission, State Office Tower, 5th Floor, 30 East Broad Street, Columbus, OH 43215-3414**. *All parties and the Administrative Law Judge should receive copies of your Statement of Objections.*

FOR THE COMMISSION:

Desmon Martin / rb

Desmon Martin
Director of Enforcement and Compliance

Enclosure

cc: Lori A. Anthony, Section Chief – Civil Rights Section/Sharon Tassie, Principal Assistant Attorney General
Michael Payton, Executive Director / Keith McNeil, Director of Operations and Regional Counsel
Stephanie Bostos-Demers, Chief Legal Counsel

Governor John Kasich

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INTRODUCTION AND PROCEDURAL HISTORY

Eric Sheets (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on December 20, 2010.

The Commission investigated the charge and found probable cause that Rick Finney d.b.a. Finney Automotive Company, Inc. (Respondent) engaged in unlawful employment practices in violation of Ohio Revised Code (R.C.) § 4112.02(A).

The Commission attempted, but failed to resolve this matter by informal methods of conciliation. The Commission subsequently issued a complaint on April 28, 2011.

The complainant alleged Respondent terminated Complainant's employment due to his disability.

A public hearing was held September 18, 19, 2012, January 31, February 1, and March 28, 2013 at the Harrison County Courthouse, Common Pleas Court located at 100 West Market Street, Cadiz, Ohio.

The record contains previously described pleadings, transcripts consisting of 1,318 pages, trial deposition transcripts, exhibits admitted into evidence at the hearing and a post-hearing brief filed by the Commission on June 25, 2013, Respondent's brief filed on August 27, 2013, and the Commission's reply brief filed on September 9, 2013.

FINDINGS OF FACT

The following Findings of Fact are based, in part, upon the Administrative Law Judge's (ALJ) assessment of the credibility of the witnesses who testified before her in this matter. The ALJ has applied the tests of worthiness of belief used in current Ohio practice. For example, she considered each witness's appearance and demeanor while testifying. She considered whether a witness was evasive and whether his or her testimony appeared to consist of subjective opinion rather than factual recitation. She further considered each witness's strength of memory, frankness or lack of frankness, and the bias, prejudice and interest of each witness. Finally, the ALJ considered the extent to which each witness's testimony was supported or contradicted by reliable documentary evidence.

1. Complainant filed a sworn charge affidavit with the Commission on December 20, 2010.

2. The Commission determined on April 28, 2011 that probable cause existed, and that Respondent engaged in unlawful discrimination in violation of R.C. § 4112.02(A).

3. The Commission attempted but failed to resolve this matter by informal methods of conciliation.

4. Respondent owns and operates an automobile collision repair shop that does business as Finney Automotive located in Cadiz, Ohio.

5. Respondent has operated Finney Automotive since approximately 1991. (Tr. Vol. I, 38)

6. Respondent does not have a written policy regarding work rules and employee discipline. (Tr. Vol. IV, 44, 71)

7. Stephanie Manbeck (Manbeck) was first hired by Respondent to handle payroll, greet customers, fill out paperwork, and work with insurance companies.

8. Respondent started experiencing problems with his computer system. He also wanted to secure an analysis of employee productivity.

9. Manbeck told Respondent that she knew a person who could help Respondent and she recommended Complainant.

10. Manbeck knew Complainant because they had taken accounting courses together. (Tr. Vol. IV, 87, Vol. V, 31, 35)

11. Complainant has a background in accounting and computers. (Tr. Vol. I, 60-62)

12. Complainant's job experience includes teaching computer classes and providing training for people and companies on how to use computers. (Tr. Vol. I, 67-68)

13. Complainant began working for Respondent as a part-time independent contractor conducting employee productivity analysis and computer troubleshooting around the end of 1998. (Tr. Vol. I, 67-68)

14. Complainant and his wife have two minor children. (Tr. Vol. I, 52)

15. Complainant's wife is a waitress at a local restaurant in Cadiz. (Tr. Vol. I, 64-65)

16. Neither complainant nor his wife had health insurance coverage.

17. On or about April 20, 1999 Complainant started working for Respondent as an Office Manager full-time. (Tr. Vol. I, 70)

18. Respondent's willingness to provide health insurance coverage as an employee benefit was a significant factor in Complainant's decision to work full-time for Respondent. (Tr. Vol. I, 71)

19. Complainant's initial duties, which were also performed by Respondent, included answering phones, customer interaction, computer data entry, and time card notations as needed along with assisting in the pick-up and drop-off of clients' vehicles, completing the customer paperwork for pick-up and drop-off, ordering parts, and for checking them in. (Tr. Vol. I, 82-84)

20. Respondent began offering health insurance around May of 2000 after Complainant worked to secure an employee health insurance plan. (Complainant's Ex. 5.) (Tr. Vol. III, 145)

21. When Complainant started work Respondent was very hands-on in his involvement in the day-to-day operation of the business performing initial repair estimations and supplemental repair estimations. (Tr. Vol. IV, 89-90, 119)

22. In 2002 or 2003, Respondent gave Complainant signing authority on checks so Complainant could issue payroll checks and checks to vendors. (Tr. Vol. I, 85)

23. Complainant's duties increased over the years to include helping Respondent by preparing estimates for vehicle repairs and supplemental submissions to insurance companies for additional necessary repairs. (Tr. Vol. I, 103-105) (Tr. Vol. IV, 106-108) (Tr. Vol. IV, 9)

24. Often not all necessary repairs to a client's vehicle are visible upon initial inspection and are not detected until teardown and further examination of the vehicle. (Tr. Vol. I, 103-105)

25. As a result, supplemental estimates are prepared and submitted to the insurance companies in expectation of receiving payment. (Tr. Vol. I, 103-105)

26. Ryan Romshak (Romshak) was the only other full-time employee at the time that Complainant started working full-time for Respondent.

27. Romshak began his employment with Respondent in 1995.

28. Romshak is an essential employee to the operation of Finney Automotive because he has the rare combination of skills where he can perform both mechanical automotive parts repair and collision repair. (Tr. Vol. VI, 79-81)

29. When Respondent started offering health insurance coverage in 2000, Romshak signed up for coverage under the policy. (Tr. Vol. III, 144)

30. In 2008, Respondent hired Tim Gordon (Gordon).

31. Gordon did not use Respondent's health insurance coverage because he was covered under his spouse's health insurance. (Tr. Vol. II, 310)

32. Before working for Respondent Gordon owned and operated a gas station and service center. (Tr. Vol. II, 261)

33. Respondent led Gordon to believe that he would have a larger management role when Respondent expanded his business operations.[1]

34. The arrangement between Respondent and Gordon was that Gordon would have a separate business phone line and service his former customers from Respondent's business.

35. Gordon's responsibilities included routine vehicle maintenance such as oil and tire changes and mechanical work.

36. Gordon also assisted Romshak in vehicle teardowns and vehicle detail cleaning. (Tr. Vol. II, 276-277)

37. Although Gordon serviced his former customers from Respondent's place of business, he was paid as a salaried employee by Respondent. (Tr. Vol. II, 327-329)

38. Sometime in January of 2010, Romshak saw Gordon's W-2 tax form in the office and became aware that Gordon was being paid significantly more than he was being paid.

[1]Gordon began working for Respondent with the expectation that he would bring his customers with him and within 2 years Gordon would take on a managerial role at the new tire shop. Gordon left Respondent's employ after 2 years as he felt Respondent had not honored their deal. (Tr. Vol. II, 327-329)

39. Romshak was angry and threatened to quit Finney Automotive if he did not receive a raise.

40. Respondent gave Romshak a raise of approximately $10,000 per year. (Tr. Vol. IV, 156)

41. In addition to Romshak, Complainant, and Gordon, Respondent had also hired other employees during the tenure of the business.

42. One former employee was terminated for leaving work early to attend a festival and not finishing a client's vehicle after Respondent had assured the client their vehicle would be ready that day. (Tr. Vol. IV, 68)

43. Respondent terminated another former employee after the employee used Respondent's paint to paint his personal vehicle and lied about it to Respondent when asked about the missing paint. (Tr. Vol. IV, 76-77)

44. During 2006, Romshak suffered a significant life threatening health problem where his lungs spontaneously collapsed.

45. Romshak had several surgeries and multiple hospitalizations over the course of six or seven months before he was able to return to work without further problems. (Tr. Vol. III, 94-105, 225)

46. In 2007, the year following Romshak's medical issues, the Respondent's employee health insurance premiums increased 30% from the previous year.

47. Respondent directed Complainant to investigate the rise in the premium cost.

48. Complainant informed Respondent the increase was due to Romshak's claims as a result of his collapsed lungs. (Tr. Vol. II, 135-136)

49. During 2009, Respondent was pulled away from his day-to-day involvement in the business due to a divorce, a lawsuit against Progressive Insurance (Progressive), and the decision to open a retail tire business. (Tr. Vol. IV, 120)

50. In the lawsuit Respondent alleged that Progressive was blackballing Respondent because he refused to accept the industry standards for using aftermarket parts; especially on areas of the automobile where significant structural damage had occurred.

51. Respondent did not want to pay the cost of the attorney's fees for research and preparation of the lawsuit so he deferred the cost by doing the preparation himself. (Tr. Vol. V, 65)

52. Because Respondent's attention to the lawsuit took him away from being involved in the operation of the business he met with Complainant, Gordon, and Romshak about the continued operation of the business.

53. Respondent told them that they would have to run the business without him or he would have no choice other than to cease operations of Finney Automotive. (Tr. Vol. V, 65)

54. Complainant, Gordon, and Romshak opted to run the business without Respondent rather than lose their jobs. (Tr. Vol. IV, 126)

55. Complainant took over the job of performing all of the estimates and supplements that Respondent had formerly assisted with.

56. Sometime during the first quarter of 2010, Complainant discussed with Respondent the need to work overtime to keep up with his workload.

57. Complainant's increase in responsibilities without the assistance of Respondent resulted in Complainant accruing overtime to which Respondent was aware. (Tr. Vol. IV, 139-140)

58. Respondent told Complainant to keep his hours to 40 a week. (Tr. Vol. II, 37-38)

59. While teaching a computer class as a favor to a friend, Complainant suffered a heart attack on May 22, 2010 and was hospitalized for treatment.

60. The treatment included surgical placement of two stents in Complainant's heart to relieve obstruction. (Comm. Ex. 1.)

61. On May 26, 2010 Complainant contacted Respondent and informed him of his heart attack. (Tr. Vol. I, 155-156)

62. Complainant told Respondent that he had a follow-up medical appointment scheduled for June 30, 2010. (Tr. Vol. I, 155)

63. Without notifying Complainant, Respondent terminated Complainant's health insurance coverage on June 25, 2010. (Comm. Ex. 5.)

64. Complainant and his wife had been hearing rumors that Complainant no longer worked for Respondent. (Tr. Vol. I, 161-163) (Tr. Vol. II, 233)

65. On June 28, 2010 Complainant called Respondent to inquire about his job status.

66. Respondent told Complainant that he was "going in another direction" and terminated Complainant's employment. (Tr. Vol. I, 175) (Tr. Vol. V, 83)

67. On June 28, 2010 Respondent hired Dory Dunkle (Dunkle) to perform some of the office duties that had been previously performed by Complainant. (Complainant's Ex. 74.)

CONCLUSIONS OF LAW AND DISCUSSION

All proposed findings, conclusions, and supporting arguments of the parties have been considered. To the extent that the proposed findings and conclusions submitted by the parties and the arguments made by them are in accordance with the findings, conclusions, and views stated herein, they have been accepted; to the extent they are inconsistent therewith, 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 presented. To the extent that the testimony of various witnesses is not in accord with the findings therein, it is not credited.[2]

1. The Commission alleged in the complaint that Respondent terminated Complainant's employment due to his disability.

2. This allegation, if proven, would constitute a violation of R.C. §4112.02, which provides in pertinent part, that:

[2]Any Finding of Fact may be deemed a Conclusion of Law, and any Conclusion of Law may be deemed a Finding of Fact.

(A) For any employer, because of the ... disability, ... of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

3. The Commission has the burden of proof in cases brought under R.C. Chapter 4112. The Commission must prove a violation of R.C. §4112.02(A) by a preponderance of reliable, probative, and substantial evidence. R.C. §4112.05(G) and §4112.06(E).

4. Federal case law generally applies to alleged violations of R.C. Chapter 4112. *Columbus Civ. Serv. Comm. v. McGlone*, 82 Ohio St.3d 569 (1998). Therefore, reliable, probative, and substantial evidence means sufficient to support a finding of unlawful discrimination under the *Americans with Disabilities Act* of 1990 (ADA) or the *Rehabilitation Act* of 1973.

5. The order of proof in a disability case requires the Commission to first establish a *prima facie* case. The Commission has the burden of proving:

(1) Complainant was disabled under R.C. §4112.01(A)(13);

(2) Complainant, though disabled, could safely and substantially perform the essential functions of the job in question, with or without reasonable accommodation; and

(3) Respondent took the alleged unlawful discriminatory action, at least in part, because of Complainant's disability. *McGlone,* 82 Ohio St. 3d at 571.

6. The Commission's burden of establishing a *prima facie* case is not an onerous one. *Texas Dept. of Community Affairs v. Burdine,* 450 U.S. 248, 253, 101 S.Ct. 1089 (1981).

7. The establishment of a *prima facie* case creates a rebuttable presumption of unlawful discrimination. *Id.*, 450 U.S. at 248.

8. Once the Commission establishes a *prima facie* case, the burden of production shifts to Respondent to "articulate some legitimate, nondiscriminatory reason" for its adverse employment action. *McDonnell Douglas v. Green,* 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973).

9. The presumption created by the establishment of a *prima facie* case "drops out of the picture" when the employer articulates a legitimate, nondiscriminatory reason for the adverse employment action. *St. Mary's Honor Center v. Hicks*, 509 U.S. *502,* 511, 113 S. Ct 2742, 125 L. Ed. 2d 407 (1993).

10. If the employer offers a legitimate, nondiscriminatory purpose for an adverse employment action "the burden shifts back to the [Complainant] to prove that the legitimate reasons offered by the employer were not its true reasons, but were a pretext for discrimination." *Burdine*, 450 U.S. at 253.

11. In this case, the Commission does not argue that Complainant had an actual disability. Instead, the Commission argues that Complainant is protected under the statute and its rules because Respondent regarded Complainant as being disabled.

12. Proof of disability can be established by introducing evidence that shows that the Complainant:

> (1) has an impairment that substantially limits one or more major life activities,[3]
>
> (2) a record of an impairment, or
>
> (3) being regarded as having impairment. R.C. §4112.02(A)(13).

13. Ohio law and the analogous provision of the ADA, 42 U.S.C. §12102(3)(A), protects individuals who are regarded as having an impairment that might become burdensome to the employer or substantially limit one or more of the major life activities in the future, even though the impairment is not currently debilitating. See *Scalia v. Aldi, Inc.*, 2011-Ohio-6596 (9th Dist., 2011), *Johnson v. MetroHealth Med. Ctr.*, 2004 Ohio 2864, 2004 Ohio App. LEXIS 2544 (8th Dist. 2004).

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[3]On January 1, 2009 the ADAAA went into effect; *see* ADA Amendments Act of 2008, Pub. L. 110-325, § 4(a), 8, 122 Stat. 3555. Congress broadened ADA coverage by instructing that "the definition of 'disability' . . . shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA." *Mendoza v. City of Palacios, 962 F. Supp. 2d 868, 871 (S. D. Tex. 2013).* Accordingly, in "regarded as" cases, a plaintiff now need only show that his employer perceived him as having an impairment; he is not required to show that he is substantially limited in a major life activity, as is still required to meet the other two definitions of "disability." *Mendoza v. City of Palacios,* 962 F. Supp. 2d 868 (S. D. Tex. 2013), *ref.* 42 U.S.C. § 12102(3)(A); (citing *Darcy v. City of New York,* No. 06-CV-2246 (RJD), 2011 U.S. Dist. LEXIS 23092, 2011 WL 841375 (E.D.N.Y. Mar. 8, 2011)).

14. Respondent was aware that Complainant had a heart attack. (Vol. I, 152-156, Vol. II, 152-153, 231-233)

15. The Commission established that Respondent regarded Complainant as being disabled.

16. Complainant had the experience and education to perform the job of Office Manager and performed the job for many years for Respondent prior to his termination.

17. The Commission established Complainant was qualified to perform the job of Office Manager.

18. Respondent believed he could not afford another huge increase in his health insurance premiums due to claims made by employees.

19. The Respondent terminated Complainant one month after he became aware of Complainant's heart attack.

20. While temporal proximity is usually the causation element in retaliation claims, causation has been considered in disparate treatment cases where there is a health condition that arises during the employee's employment.

> While "temporal proximity is insufficient in and of itself to establish that the employer's nondiscriminatory reason for discharging an employee was in fact pretextual ... suspicious timing is a strong indicator of pretext when accompanied by some other, independent evidence." *DeBoer v. Musashi Auto Parts, Inc.*, 124 F. App'x 387, 391 (6th Cir. 2005). (plaintiff was demoted after informing her supervisor of her pregnancy).

21. The Commission established that Respondent terminated Complainant, in part because Respondent regarded Complainant as being disabled.

22. Respondent's articulated legitimate nondiscriminatory reason for terminating Complainant was that during Complainant's hospitalization Respondent found supplements that had not been submitted for payment.

23. Respondent also stated that Complainant was a person who wasted time at work instead of focusing on getting his job done and was careless in letting confidential paperwork be exposed.

24. The Commission may show that Respondent's proffered legitimate reasons are pretextual by showing that by a preponderance of the evidence "(1) that the proffered reasons had no basis in fact, (2) that the proffered reasons did not actually motivate the action, or (3) that they were insufficient to motivate the action." *Manzer v. Diamond Shamrock Chems. Co.*, 29 F.3d 1078, 1084 (6th Cir. 1994).

25. The "ultimate burden of persuading the trier of fact that the [Respondent] intentionally discriminated against the [Complainant] remains at all times with the [Commission]." *Burdine,* 450 U.S. at 253.

26. This is a case where "the devil is in the details" and the details do not support the Respondent's reasons for terminating Complainant.

27. Respondent testified that he went "ballistic" over Romshak seeing the W-2 forms which was the catalyst for Romshak demanding a $10,000 raise.

28. Even prior to the incident regarding the W-2, Respondent testified regarding at least four serious errors to support his reason for terminating Complainant. (Tr. Vol. IV, 153-155, 290-292) (Tr. Vol. V, 104-105)

29. When Respondent was asked why he didn't terminate Complainant for the problems that Complainant created that caused Respondent to lose money he didn't have a specific reason other than that he was "too nice". (Tr. Vol. IV, 158)

30. However being "too nice" didn't prevent Respondent from terminating two former employees whose conduct amounted to an economic loss for the Respondent or suing Progressive for allegedly blackballing Respondent and causing an economic loss. (Tr. Vol. IV, 58,68, 76-77)

31. A reasonable inference can be drawn that if Complainant's performance caused Respondent to lose money, he would have viewed that as a basis for terminating Complainant, which he did not.

32. During his testimony Respondent stated that Romshak was not working overtime and Complainant should have had adequate time to accomplish all of his duties including the backlog of supplements. (Tr. Vol. IV, 140-141)

33. Respondent's testimony is disingenuous.

34. When Respondent left the business to focus on the lawsuit, Romshak did not have additional responsibilities assigned to him by Respondent.

35. Gordon was performing duties that actually assisted Romshak in performing his job. (Tr. Vol. IV, 130)

36. Complainant told Respondent that without the ability to work overtime, some things would have to wait; specifically mentioning supplements because they're done at the end of the repair process.

37. At that time Respondent did not object to Complainant waiting to do the supplements. (Tr. Vol. II, 38)

38. Although Respondent testified that there were forty files awaiting him when he returned to the office following Complainant's heart attack, Respondent was only able to produce eight of the files to the Commission after extensive discovery. (Tr. Vol. IV, 262-263; Vol. V, 97-98, 138-140)

39. Respondent asserts that the Complainant was responsible for the loss of the files.

40. I found that Respondent's testimony lacked credibility.

41. The credible evidence shows that Respondent was aware that Complainant was behind on the supplements prior to his heart attack.

42. Respondent did not terminate Romshak when he had medical problems because Respondent viewed Romshak as essential to the operation of his business and not easily replaceable. (Tr. Vol. IV, 79-81)[4]

43. However, when Complainant told Respondent what caused the 30% rise in the health insurance premiums, Respondent told Complainant that he could not afford another 30% increase in premiums if someone else had a major health problem. (Tr. Vol. I, 145-147) (Tr. Vol. IV, 147-149) (Tr. Vol. V, 41) (Tr. Vol. V, 43)

44. A reasonable inference can be drawn that because Complainant had a health condition that Respondent believed would cause another 30% rise in Respondent's health insurance premiums, Complainant was an expendable employee who could be easily replaced.

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[4]At the time of the hearing Respondent no longer offered health insurance to any of his employees. (Tr. Vol. IV, 147-148) Romshak was covered under his spouse's health insurance plan after his hospitalizations during his employment with Respondent. (Tr. Vol. III, 144)

45. The credible evidence does not support Respondent's testimony that he is a person who is "too nice" not to terminate Complainant when allegedly Complainant caused Respondent to lose money even before the supplements were an issue.

46. What is a reasonable inference to be drawn from the credible evidence is that Respondent is a shrewd businessman who knows how to maximize his profits and minimize his losses.

47. Respondent's motivation for terminating Complainant was not because Complainant was a poor employee, but because Complainant's need for medical care due to his heart attack was perceived by Respondent as a future burden.

48. Complainant was not essential to the business like Romshak, and Respondent replaced Complainant with Dunkle on the same day that he terminated Complainant's employment.

49. The Respondent's conduct is a violation of R.C. §4112.02 and the Complainant is therefore entitled to relief as a matter of law.

RECOMMENDATION

For all of the foregoing reasons, it is recommended in Complaint No. 11-EMP-AKR-35514 that:

1. The Commission orders Respondent to cease and desist from all discriminatory practice in violation of R.C. Chapter 4112; and

2. The Commission orders Respondent to make an offer of employment to Complainant within 10 days of the Commission's Final Order for the position of Office Manager. If Complainant accepts Respondent's offer of employment, Complainant shall be paid the same wage he would have been paid had he been employed a Office Manager from June 28, 2010 and continued to be so employed up to the date of Respondent's offer of employment;[5] and

[5]Complainant worked five days a week for 40 hours a week. He was paid at the rate of $11.00 per hour, $16.50 per hour overtime pay. After Respondent terminated Complainant's health insurance Complainant received a bill from Radiology Associates for $588.00.

3. Whether Complainant accepts Respondent's offer of employment, Respondent shall submit to the Commission within 10 days of the offer of employment a certified check payable to Complainant for the amount that Complainant would have earned had he been employed as a Office Manager and continued to be so employed up to the date of Respondent's offer of employment, including any raises and benefits he would have received, less his interim earnings, plus interest at the maximum rate allowed by law.[6]

Denise M. Johnson

DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed: 8/27/2014

[6]Any ambiguity in the amount that Complainant would have earned during this period or benefits that he would have received should be resolved against Respondent. Likewise, any ambiguity in calculating Complainant's interim earnings should be resolved against Respondent.