



Governor John Kasich

OHIO CIVIL RIGHTS COMMISSION

IN THE MATTER OF:

Tamara S. Sackett
Complainant,

Complaint No. 13-EMP-DAY-23467

v.

Greenville Federal Financial Corp.
Respondent.

**OHIO
CIVIL RIGHTS
COMMISSION**

G. Michael Payton
Executive Director

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

Commissioners

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ALJ'S REPORT

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Ohio Civil Rights Commission

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March 22, 2016

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Re: Tamara S. Sackett v. Greenville Federal Financial Corporation dba Greenville Federal Complaint No. 13-EMP-DAY-23467

Attached 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 Administrative Code §4112-1-02, your Statement of Objections must be **received** by the Commission no later than Thursday, April 14, 2016. *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 /EKS
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Attachments

cc: Lori A. Anthony, Section Chief – Civil Rights Section / Kari Stilwell, Administrative Secretary / G. Michael Payton, Executive Director / Keith McNeil, Director of Operations and Regional Counsel / Stephanie Bostos-Demers, Chief Legal Counsel



INTRODUCTION AND PROCEDURAL HISTORY

Tamara Sackett (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on February 5, 2013. The Commission investigated the charges and found probable cause that Greenville Federal Financial Corporation (Respondent) engaged in unlawful employment practices in violation of Revised Code Section (R.C.) 4112.02(I). The Respondent was notified of the probable cause determinations by letter dated December 12, 2013.

The Commission attempted but failed to resolve this matter by informal methods of conciliation. The Commission subsequently issued Complaint No. 23467 on January 30, 2014. The complaint alleged that Complainant was terminated in retaliation for her prior complaints of discrimination.

Respondent filed an Answer to the Complaint on March 26, 2014. Respondent admitted certain procedural allegations, but denied that it engaged in any unlawful discriminatory practices. Respondent also pled affirmative defenses.

A public hearing was held on April 23-24 and July 14, 2015 at the Darke County Commissioners Administration Building, 520 S. Broadway, Greenville, Ohio 45331.

The record consists of the previously described pleadings, a transcript of the hearing consisting of 362 pages, exhibits admitted into evidence during the hearing, post-hearing briefs filed by the Commission on September 4, 2015, Respondent on November 2, 2015, and a reply filed by the Commission on November 4, 2015.

FINDINGS OF FACT

The following findings of fact are based, in part, upon the ALJ's 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 the opportunity each witness had to observe and know the things discussed, 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 February 5, 2013.
2. The Commission determined on December 12, 2013, that it was probable that Respondent engaged in unlawful retaliation in violation of R.C. 4112.02(I).
3. The Commission attempted to resolve this matter by informal methods of conciliation.

-
4. The Commission issued the complaint after conciliation failed.
 5. Respondent is a banking institution that operates a main branch and a branch office located in a Kroger store. (Tr. 14)
 6. Respondent employs approximately 36 employees. (Tr. 31)
 7. Complainant began her employment with Respondent in July 1988 working in accounts payable at the Respondent's main branch. (Tr. 35)
 8. In 2005, Complainant started working in customer service as a relationship banker. (Tr. 35- 36)
 9. In Complainant's position as a relationship banker she opened accounts, CDs, trusts, IRAs, checking, and savings. (Tr. 36)
 10. Relationship bankers earn additional monetary incentives in addition to their salary by selling new products. (Tr. 36-37)
 11. Jeff Kniese (Kniese) has been the president and CEO of Respondent since May of 2009. (Tr. 13)

12. Kniese implemented a series of changes in an effort to save Respondent money and cut down on errors. (Tr. 19)
13. Kniese used the Ohio Bankers League Compensation Survey as a guide and adjusted the salaries of many of Respondent's employees. (Tr. 199)
14. In addition to salary reductions several positions were eliminated. (Tr. 21)
15. Complainant was one of the employees whose salary was reduced. (Tr. 199)
16. Kniese also instituted a teller policy in 2009. (Tr. 19)
17. Prior to 2009, Respondent did not have a written teller policy. (Tr. 19, 328)
18. The teller policy instituted by Kniese addresses two categories of errors: cash outages and miscellaneous errors. (Resp. Exh. F)
19. A cash outage can refer to either cash or checks not balancing. (Tr. 175-176)

20. Discipline ranging from verbal warning to termination may be given for cash outages. (Resp. Exh. F)
-
21. Each cash outage is added to the running cumulative total of the teller's previous cash outages for the prior 12 months to determine the level of corrective action. (Resp. Exh. F)
22. Miscellaneous errors are any other errors that cost Respondent time and money. (Resp. Exh. F)
23. Miscellaneous errors include: failing to follow proper hold procedures, failing to run an Office of Foreign Assets Control (OFAC) check, or depositing funds into the wrong account. (Resp. Exh. F)
24. Any check for \$2,000.00 or more must be initialed by a supervisor if a hold is not placed on it. (Comm. Exh. G)
25. Under the policy, a teller's performance is rated based on a rolling 12 month period containing the number of errors made by the employee: if the total number of teller errors exceeds 14 in a rolling 12 month period, the employee's performance is deemed "needing improvement," 7-13 is deemed "satisfactory," 0-6 is deemed "exceeds." (Comm. Exh. G)

26. Cumulative outages and other miscellaneous errors are added together to determine performance level. (Comm. Exh. G)

27. The corrective action levels for cash outages occurring over a twelve month period:

\$50.00	Verbal Warning
\$50.01 - \$75.00	1 st Written Warning
\$75.01 - \$100.00	2 nd Written Warning
\$100.01 - \$125.00	1 Day off Without Pay
\$125.01 - \$150.00	2 Days off Without Pay

\$150.01 or Greater: Additional days off without pay and/or termination, depending on teller's overall performance. (Resp. Exh. F)

28. In October 2011, Betty Hartzell (Hartzell) was Respondent's branch administrator and assistant vice-president. (Tr. 307)

29. Nicki Kramer (Kramer) and Jason Byers (Byers) are the main branch banking center managers and Stephanie Harshbarger (Harshbarger) is the Kroger branch manager. (Tr. 309)

30. Kramer was Complainant's supervisor at the main branch.

31. Hartwell, Harshbarger and Kramer met in October 2011 to discuss making changes to Respondent's branch offices because the branches had an imbalance between experienced and inexperienced employees. (Tr. 167)
-
32. Kramer recommended that Complainant be moved to the Kroger branch because of her many years of experience, she was capable, and had a big following with her customers. (Tr. 167-168)
33. Based on Kramer's recommendation, Complainant was reassigned to work in the Kroger branch in October 2011. (Tr. 167-168)
34. Complainant began working a split schedule working half of her time at the main branch and half at the Kroger branch office. (Tr. 46-47)
35. Complainant took over the split schedule from Tia Grilliot (Grilliot), a 22 year-old employee who went to work full time at the main branch. (Tr. 48)
36. Complainant spent most of her time at the Kroger branch office working at the drive thru window. (Comm. Exh. B and F)

37. The main branch has a much higher volume of general traffic and daily transactions in comparison to the Kroger branch office. (Comm. Exh. F)
-
38. The lower volume at the Kroger branch office of general traffic and daily transactions impacts the instances of opening or losing accounts. (Comm. Exh. F)
39. On December 19, 2011, Complainant filed her first charge of discrimination with the Commission based on her belief that Grilliot's transfer to the main branch and Complainant's transfer to the Kroger branch office were based on her age. (Tr. 57, Resp. Exh. D)¹
40. Complainant is the only employee of Respondent to have filed charges of discrimination with the Commission. (Tr. 318)
41. On January 1, 2012, Harshbarger documented two conversations that she overheard Complainant having with her co-workers. (Comm. Exh. J, p. 1-2)

¹ Complainant filed charges against Respondent with the National Labor Relations Board (NLRD) in February, May, and July of 2012.

42. The first note documented Complainant having a discussion about her 401(K) and insurance plans with coworker Heather Manalo (Manalo). (Comm. Exh. J, p. 1)
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43. In the note Harshbarger wrote that Complainant made several derogatory comments out loud regarding the insurance. (Comm. Exh. J, p. 1)
44. The second note documented Complainant discussing with coworkers what the Respondent was planning to do with old chairs that were replaced at the main branch. (Comm. Exh. J, p. 2)
45. On March 14, 2012, Harshbarger documented a meeting that she and Byers had with Complainant giving Complainant a written warning about a teller error that Complainant made on February 15, 2012 that was discovered on February 16, 2012. (Resp. Exh. A and Comm. Exh. J, p. 3)
46. Complainant refused to sign the warning. (Resp. Exh. A and Comm. Exh. J, p. 3)
47. On March 26, 2012, Complainant filed a charge of retaliation with the Commission alleging that Respondent had delayed disciplining Complainant for a teller error that occurred on

February 15, 2012 that was discovered on February 16, 2012.

(Resp. Exh. D)

48. Harshbarger also documented an error by Complainant that occurred on May 16, 2012, and discovered by customers on May 17, 2012. (Comm. Exh. J, p. 4)
49. Harshbarger sent an e-mail to Complainant on May 17th regarding the error. (Comm. Exh. J, p. 4)
50. On May 17, 2012, Complainant expressed her frustration to Mandy Rismiller (Rismiller) whose husband had discovered the error on May 17, 2012. (Comm. Exh. J, p. 5)
51. On May 19, 2012, Rismiller informed Harshbarger of the conversation that she had with Complainant on May 17, 2012. (Comm. Exh. J, p. 5)
52. Harshbarger, Hartzell, and Byers decided to document the conversation if they needed it for Complainant's file. (Comm. Exh. J, p. 5)
53. On May 25, 2012, Complainant was given a written warning and a one day off without pay under the Teller Policy for a \$10.68 variance. (Comm. Exh. J, p. 6)

54. Complainant was supposed to work on Friday December 21, 2012, but she called in to report to work due to illness.
-
55. Complainant had 2 pre-approved vacation days for December: December 24th and 26th.
56. Complainant returned from vacation on December 27th. (Comm. Exh. Q)
57. Byers met Complainant when she entered the main branch and told Complainant not to take her coat off and that she needed to come upstairs with him. (Tr. 72)
58. Byers informed Complainant, witnessed by Hartzell, that she was being terminated from employment with Respondent (Tr. 73)
59. Complainant asked Byers and Hartzell what was the reason for the termination. (Tr. 73)
60. Neither Byers nor Hartzell gave Complainant a reason. (Tr. 73)

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 its complaint that the Respondent terminated Complainant's employment in retaliation for engaging in a protected activity.
2. This allegation, if proven, would constitute a violation of R.C. § 4112.02, which provides in pertinent part, that:
 - (l) For any person to discriminate in any manner against any other person because that person has opposed any unlawful discriminatory practice defined in this section or because that person has made a charge, testified, assisted, or participated in

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

any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code.

3. An employee's activity is protected if the employee has opposed any unlawful discriminatory practice or made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code. *Gembus v. MetroHealth Sys.*, 290 F. App'x 842, 846 (6th Cir. 2008).
4. 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 by a preponderance of reliable, probative, and substantial evidence.
5. Federal case law generally applies to alleged violations of R.C. Chapter 4112. *Little Forest Med. Ctr. v. Ohio Civil Rights Com.*, 61 Ohio St. 3d 607, 609-10, 575 N.E.2d 1164, 1167 (1991).
6. Thus, reliable, probative, and substantial evidence means evidence sufficient to support a finding of unlawful discrimination under Title VII of the Civil Rights Act of 1964.
7. Under Title VII case law, the evidentiary framework normally requires the Commission to prove a *prima facie* case of

unlawful retaliation by a preponderance of the evidence.

McDonnell Douglas Co. v. Greene, 411 U.S. 792 (1973).

8. To establish a *prima facie* case of unlawful retaliation under Title VII, the Commission must demonstrate by a preponderance of the evidence that:

- 1) Complainant engaged in activity that Title VII protects;
- 2) Respondent knew that Complainant engaged in this protected activity;
- 3) Respondent subsequently took an employment action adverse to the Complainant; and
- 4) A casual connection between the protected activity and the adverse employment action exists.

Greer-Burger v. Temesi, 116 Ohio St.3d 324 at ¶13 citing *Canitia v. Yellow Freight Sys., Inc.*, 903 F.2d 1064, 1066 (C.A. 6, 1990).

9. The temporal relationship between a Complainant's participation in protected activities and a Respondent's alleged retaliatory conduct is an important factor in establishing a causal connection. *Gonzales v. State of Ohio, Dept. of Taxation*, 78 FEP Cases 1561, 1564 (S.D. Ohio 1998).

10. However, the temporal relationship is not the only relevant evidence that courts consider depending on other circumstances that occur between the protected activity and the adverse action. *Devera v. Adams*, 874 F.Supp. 17 (D.C. Cir. 1995).

11. The Commission bears the burden of proof to show that adverse action would not have occurred “but for” Respondent having engaged in unlawful retaliation. *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 133 S. Ct. 2517, 12-484 (2013).

“[T]o prevail on a retaliation claim, a plaintiff must show that retaliation is a determinative factor—not just a motivating factor—in the employer’s decision to take adverse employment action. Thus, the causation standard imposed in retaliation cases (but-for causation) is a higher standard than that applied in USERRA or Title VII discrimination claims (‘motivating factor’).” *Id.*

12. There is no dispute over the fact that Complainant opposed what she believed to be discriminatory conduct.

13. The Commission introduced credible evidence that Respondent knew that the Complainant filed charges against Respondent prior to her termination.

14. Hartzell gathered several employees together and informed them that Complainant had filed charges against Respondent.
(Tr. 214)
15. There is also no dispute that Complainant was terminated from employment.
16. The Commission introduced credible evidence that prior to Complainant filing her charge of discrimination in December 2011 she had only received 11 documented errors or notes of concern in her personnel file. (Resp. Exh. B)
17. Complainant's personnel record had 22 documented errors or notes of concern between the time that Complainant filed a charge of discrimination and her termination in December 2012. (Resp. Exh. B)
18. Commission introduced credible evidence to establish a causal connection between the Complainant's filing a charge of discrimination and her termination.
19. The Commission has therefore established a *prima facie* case of retaliation.
20. Once the Commission establishes a *prima facie* case, the burden shifts to Respondent to articulate some legitimate,

nondiscriminatory reason for its adverse employment action against Complainant. *McDonnell Douglas*, 411 U.S. 802.

21. The presumption of unlawful retaliation created by the establishment of a *prima facie* case “drops out of the picture” when the Respondent articulates a legitimate, nondiscriminatory reason for its employment action. *St. Mary’s Honor Ctr. v. Hicks*, 509 U.S. 502, 113 S. Ct. 2742 (1993).
22. Respondent met its burden of production with the introduction of evidence that: (1) Complainant violated the Teller Policy by exceeding the number of errors permitted within a rolling twelve month period, and (2) Complainant’s attitude toward her job and the Respondent deteriorated rapidly because she was displeased with management changes since Kinese’s arrival.
23. The Commission must show by a preponderance of the evidence that Respondent’s articulated reasons for Complainant’s discharge were not its true reasons but were a “pretext for ... [unlawful retaliation].” *Id.* at 515 quoting *Burdine*, 450 U.S. at 253.

[A] Reason cannot be proved to be a “pretext for ... [unlawful retaliation]” unless it is shown *both* that the reason was false, *and* that ... [unlawful

retaliation] was the real reason. *Hicks*, 509 U.S. at 515.

24. In order to show pretext, the Commission may directly or indirectly challenge the credibility of Respondent's articulated reason for Complainant's termination.
25. The Commission may directly challenge the credibility of Respondent's articulated reason by showing that the reason had no basis *in fact* or it was *insufficient* to motivate the employment decision. *Manzer v. Diamond Shamrock Chemicals Co.*, 29 F.3d 1078, 1084 (6th Cir. 1994).
26. Such direct attacks, if successful, permit the fact finder to infer intentional retaliation from the rejection of the reason without additional evidence of unlawful retaliation.

The fact finder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may together with the elements of the *prima facie* case, suffice to show [unlawful retaliation] . . . [n]o additional proof is required.³ *Hicks, supra* at 511, 62 FEP Cases at 100 (emphasis added).

³ Even though rejection of a respondent's articulated reason is "enough at law to *sustain* finding of discrimination, *there must be a finding of discrimination.*" *Hicks, supra* at 511, 62 FEP Cases at 100, n.4.

27. The Commission may indirectly challenge the credibility of Respondent's reason by showing that the sheer weight of the circumstantial evidence makes it "more likely than not" that the reason is a pretext for unlawful [retaliation]. *Manzer, supra* at 1084.

28. This type of showing, which tends to prove that the reason did not *actually* motivate the employment decision, requires the Commission produce additional evidence of unlawful [retaliation] besides evidence that is part of the *prima facie* case. *Id.*

29. Thus, even if the Commission proves that Respondent's articulated reasons are false, the Commission will not automatically prevail in establishing its burden of persuasion:

That the employer's proffered reason is unpersuasive, or even obviously contrived, does not necessarily establish that the [Commission's] proffered reason of [retaliation] is correct. That remains a question for the fact finder to answer...
Hicks, supra, at 524.

30. The Commission asserts that the monitoring and documentation of Complainant's behavior and conversations with her co-workers after the Complainant filed a charge of discrimination is evidence that the Respondent was creating a

negative record upon which to justify Complainant's termination.

31. I find that the Commission's assertion is supported by credible evidence in the record.
32. In October 2011, Harshbarger, Hartzell, and Kramer, Complainant's supervisor at the main branch, recommended that Complainant be moved from Respondent's main branch to the Kroger branch office. (Tr. 167-168)
33. Complainant had been moved from an 8 to 5 work schedule at Respondent's main branch to the Kroger branch working the following schedule: every other Monday, 12:30-7:00 PM, Tuesdays, Wednesdays, and Thursdays at the main branch from 10:45 AM-3:00 PM, and from 4:00 PM-7:00 PM at the Kroger branch, Friday at the Kroger branch from 9:30 AM-7:00 PM, and at the Kroger branch every other Saturday. (Tr. 46-47)
34. When Complainant questioned Hartzell as to why she had just been given a "hectic" work schedule, Hartzell responded that this is what management was going to do and that she was not allowed to talk about it with her. (Tr. 49)

35. Hartzell also warned Complainant not to talk about the move with anyone or she would be fired. (Tr. 49)

36. On December 28, 2011, Complainant filed her first charge of discrimination with the Commission based on her belief that Grilliot's transfer to the main branch and Complainant's transfer to the Kroger branch office was a demotion based on her age. (Tr. 57-58, Resp. Exh. D)⁴

37. The decision to move Complainant based on Kramer's recommendation does not lend credibility to the Respondent's assertion that Complainant's attitude toward her job and the Respondent deteriorated rapidly because she was displeased with management changes since Kinese's arrival.

38. One of Complainant's coworkers, Fenstermaker, testified that she was part of a "huddle"⁵ where she, other tellers, and her immediate supervisors were told by Hartzell that Complainant had filed charges against Respondent and that they were not supposed to talk to Complainant. (Tr. 214)

39. I found Fenstermaker's testimony credible because it supports the inference that the numerous notes in Complainant's file

⁴ Complainant filed charges against Respondent with the National Labor Relations Board (NLRD) in February, May, and July of 2012.

⁵ A "huddle" is where several people meet together to discuss a situation. (Tr. 214)

initiated by co-workers resulted from Hartzell's dissemination of information to Complainant's co-workers about Complainant having filed a charge of discrimination against Respondent.

40. This inference is also supported by the testimony of Harshbarger that after Complainant filed the charge of discrimination, Hartzell directed Harshbarger to document "things that were going on" with Complainant:

Q (Hudson): Let's switch binders again. If you can look in that other binder, and if you can look under tab J. If you could look through those documents that are there.

So these are the notes that you were directed to take to document things that were going on with Tammy, correct?

A (Harshbarger): Correct

Q (Hudson): And you've never had to keep this level of documentation with any other employees, correct?

A (Harshbarger): We didn't have any other people that were filing these charges that I was aware of to where we had to do that. (Tr. 170-171)

41. Additionally, Commission asserts that similarly-situated employees who had not filed charges of discrimination against the Respondent were treated more favorably. *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 583 (6th Cir. 1992).

To be deemed “similarly situated”, the individuals with whom ... the [Complainant] seeks to compare ... [her] treatment must have dealt with the same supervisor, have been subject to the same standards and have engaged in the same conduct without such differentiating or mitigating circumstances that would distinguish their conduct or the employer’s treatment of them for it. *Id.* at 583.

42. In 2012, Complainant did not miss any OFAC checks and had only 6 cumulative errors in the rolling 12 months prior to her termination which placed Complainant in the “performance is deemed exceeds [expectations]” category of Respondent’s Teller Policy. (Comm. Exh. O, Resp. Exh. A, B, C, and F)
43. Ryan Woodruff (Woodruff), an employee with 7 policy violations, was not dismissed. (Comm. Exh. I)
44. When Woodruff came to work smelling strongly of alcohol, although he had 7 policy violations, Respondent gave Woodruff the opportunity to resign. (Tr. 329)
45. Heather Shafer failed to run 8 OFAC checks in 2012 and was not terminated. (Comm. Exh. O)
46. Amanda Swisher committed a policy violation only three months after she was placed on “final warning” and Respondent did not terminate her. (Tr. 312)

47. No other employee of Respondent had been documented in the manner that Complainant was documented and the reason given by Hartzell was that no other employee had filed a charge of discrimination against the Respondent before. (Tr. 171)

48. In the 23 years that Complainant had worked for the Respondent before she filed charges with the Commission, there were 11 documented errors or notes of concern in her employee file. (Tr. 171)

49. The rapid deterioration in performance asserted by Respondent lacks credibility when the documented monitoring began in earnest after December 2011.

50. A reasonable inference can be drawn from that credible evidence in the record that Respondent manufactured a record on which to justify Complainant's termination.

51. The Commission therefore met its burden of proof to show by the preponderance of the credible evidence in the record that the Respondent would not have terminated Complainant but for her opposition to what she believed was a discriminatory practice.

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

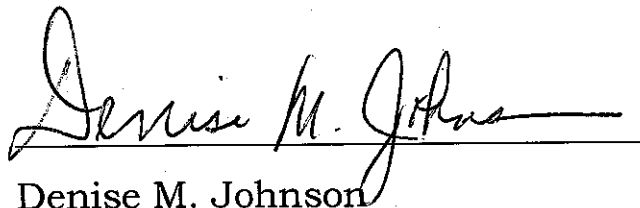
RECOMMENDATION

For all of the foregoing reasons, it is recommended in Complaint No. 12-EMP-DAY-22671 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 within 10 days of the Commission's Final Order to pay Complainant back pay, including raises, benefits, and overtime pay based on the wages Complainant would have received had she not been terminated from employment up until the date of the hearing; and
3. The Commission orders Respondent to offer to reinstate Complainant at the hourly wage and benefits prior to her termination.
4. At the time of Complainant's termination she was earning \$15.40 per hour and averaging 73 hours every two weeks. (Comm. Exh. A)

5. Commission has calculated that Complainant would have earned \$68,000.00 from the date of her termination up until the date of the hearing.
6. Complainant earned approximately \$17,190.00 in interim earnings from December 27, 2012 until the date of the hearing; therefore:
7. It is the recommendation of the ALJ that that the Commission award Complainant a back pay amount of \$50,810.00.
8. The Commission further orders Respondent to receive training on the anti-discrimination laws in Ohio within six (6) months of the date of the Commission's Final Order. As proof of participation in anti-discrimination training, Respondent shall submit certification from the trainer or provider of services that Respondent has successfully completed the training. The letter of certification shall be submitted to the Commission's Compliance Department within seven (7) months of the date of the Commission's Final Order; and the Commission orders Respondent within nine (9) months of the date of the Commission's Final Order to submit to the Compliance Department a draft for an Employee Handbook outlining Respondent's policies and procedures regarding Ohio's anti-discrimination laws, *including but not limited to* sections regarding:

- 1) Zero tolerance for any form of discrimination based upon race, color, religion, sex, military status, national origin, disability, age, or ancestry.
- 2) Sexual harassment
- 3) Racial harassment
- 4) Pregnancy
- 5) Disabilities
- 6) Progressive discipline and disciplinary grid
- 7) Reporting and investigation of complaints



Denise M. Johnson

Chief Administrative Law Judge

Date Mailed: 3/22/16