



IN THE MATTER OF:

Benjamin Taran
Complainant,

Complaint No. 16-EMP-AKR-38079

v.

Pipeline Energy Group, Inc. dba Carl Smith Pipeline
Respondent.

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

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Pipeline Energy Group, Inc.
dba Carl Smith Pipeline
339 Rockland Road, Suite D
Hendersonville, Tennessee 37075
Respondent

Benjamin Taran
305 4th Street
Glendale, West Virginia 26830
Complainant

ALJ'S REPORT
Denise M. Johnson
Ohio Civil Rights Commission
Hearing Division
30 East Broad Street, 5th Floor
Columbus, OH 43215
(614) 466-6684
Chief Administrative Law Judge



OHIO CIVIL RIGHTS COMMISSION

Governor John R. Kasich

Commissioners: Leonard J. Hubert, Chair | Lori Barreras | Juan Cespedes | William Patmon, III | Madhu Singh
Executive Director G. Michael Payton

September 26, 2017

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**Re: Benjamin Taran v. Pipeline Energy Group, Inc., dba Carl Smith Pipeline
Complaint No. 16-EMP-AKR-38079**

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 October 19, 2017. *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, 30 East Broad Street, 5th Floor, 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

Desmon Martin
Director of Enforcement and Compliance

Attachments

cc: Lori A. Anthony, Section Chief – Civil Rights Section / Kari Jackson, 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

Benjamin Taran (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on September 24, 2015.

The Commission investigated the charge and found probable cause that Pipeline Energy Group, Inc., doing business as Carl Smith Pipeline (Respondent) engaged in discriminatory practices in violation of 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 June 30, 2016.¹

The Complaint alleged that Respondent violated R.C. 4112.02(A) by terminating an employee due to age.

Respondent did not file an Answer. On November 11, 2016, the Commission filed a Motion for Default Judgment on the grounds that Respondent failed to answer or otherwise defend the

¹ Counsel for the Commission filed a Motion to Amend Complaint To Set Forth Monroe County As The Proper County For Hearing on August 29, 2016. The ALJ granted this motion on September 13, 2016.

Commission's Complaint. The Administrative Law Judge (ALJ) granted the motion on November 30, 2016.

A public hearing was held on March 29, 2017 at the Monroe County Courthouse located at 101 North Main Street, Woodsfield, Ohio.

The record consists of the previously described pleadings; a transcript of the hearing consisting of 28 pages, exhibits admitted into evidence during the hearing, and a post-hearing brief filed by the Commission on June 9, 2017.

FINDINGS OF FACT

The following Findings of Fact are based, in part, upon the ALJ's credibility assessment 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. Benjamin Taran (Complainant) filed a sworn charge affidavit with the Ohio Civil Rights Commission (Commission) on September 24, 2015.
2. In a letter dated June 9, 2016, Respondent was notified of the Commission's probable cause finding that Respondent had engaged in unlawful discriminatory practices in violation of R.C. 4112.02(A).

3. The Commission attempted to resolve this matter by informal methods of conciliation. The Commission issued the Complaint after conciliation failed.
4. Complainant was born August 23, 1944. (Tr. 7)
5. Complainant began working in the pipeline industry in 2004. (Tr. 7)
6. To obtain work, Complainant would bid on jobs. (Tr. 10-11)
7. This involved calling a dispatch line every night and pushing the number that corresponded to the job that the caller wanted. (Tr. 10-11)
8. The caller would find out the next day if the bid was successful. (Tr. 11)
9. The jobs could last between one month and two years. (Tr. 11)
10. Once the job was completed, employment ended and the bidding process began again. (Tr. 12)
11. Complainant began working for Respondent on July 13, 2015. (Tr. 16, Comm. Exh. 2)
12. The job was scheduled to last five months. (Tr. 17)

13. Complainant made \$31.46 an hour and \$47.41 an hour in overtime pay. (Tr. 18)
14. Complainant also received per diem for \$255 a week. (Tr. 18)
15. Complainant's work schedule was 6 (six) days a week, with 8 (eight) hours of regular time and 2 (two) hours of overtime daily. (Tr. 18)
16. Complainant was terminated eight days into his employment with Respondent, on July 22, 2015. (Tr. 21)

CONCLUSIONS OF LAW

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.

1. The Commission alleged in the Complaint that Respondent violated R.C. 4112.02(A) when Respondent terminated Complainant due to age.
2. This allegation, if proven, would constitute a violation of R.C. 4112.02, which provides, in pertinent part, that it shall be an unlawful discriminatory practice:
 - (A) For any employer, because of the . . . age . . . of any person . . . to discharge without just cause . . . 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 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 interpreting Title VII of the Civil Rights Act of 1964 is generally applicable to cases involving alleged violations of R.C. Chapter 4112. *Coryell v. Bank One Trust Co. N.A.*, 101 Ohio St.3d 175, 179 (2004).
5. The Commission can establish a prima facie case of age discrimination by establishing the following:
 - (1) Complainant is a member of a protected class;
 - (2) Complainant was discharged;
 - (3) Complainant was qualified for the position; and
 - (4) Complainant was treated differently than employees not in the protected class.

Mitchell v. Toledo Hospital, 964 F. 2d 577, 581 (1992).

6. In the case at bar, Respondent failed to answer or participate in the defense of the Commission's Complaint.
7. Accordingly, the Commission was granted a default judgment pursuant to O.A.C. 4112-3-06(F):

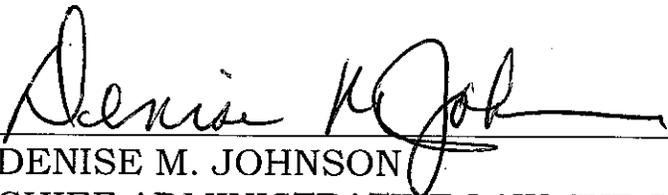
A respondent who has not filed an answer as provided in paragraphs (A) to (E) of this rule shall be deemed in default and the allegations of the complaint shall be deemed admitted.

8. Complainant was born in 1944 and was 70 years old at the time that he began working for Respondent on July 13, 2015. (Tr. 7, Amended Allegations 3A and 3B)
9. Complainant was terminated by Respondent and told that they no longer had room for him on July 22, 2015. (Tr. 21, Comm. Exh. 2, Amended Allegations 3C and 3D)
10. Complainant had the necessary qualifications to work for Respondent. (Tr. 7, 22)
11. Other employees working for Respondent in Monroe County, Ohio, who were substantially younger than Complainant were not terminated. (Tr. 21, Amended Allegation 3E)
12. Respondent terminated Complainant based on illegal age discrimination and is therefore entitled to judgment as a matter of law.

RECOMMENDATION

For all of the foregoing reasons, it is recommended in Complaint No. 16-EMP-AKR-38079 that:

1. The Commission order Respondent to cease and desist from all discriminatory practice in violation of R.C. Chapter 4112; and
2. The Commission order Respondent within 10 (ten) 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 he not been terminated from employment from July 22, 2015 through December 2015, for a total damages award of \$48,667.50.²


DENISE M. JOHNSON
CHIEF ADMINISTRATIVE LAW JUDGE

Date mailed: September 26, 2017

² The total takes into account a mitigation amount of \$346.50.