

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

M.C.A.D & DAWN SAWYER,
Complainants

v.

DOCKET NO. 03-BEM-02384

WIMPY'S RESTAURANT,
Respondent

Appearances:

Simone Liebman, Esq., Commission Counsel for Complainants
Ionysy Liakos for the Respondent

I. PROCEDURAL HISTORY

On or about September 22, 2003, Complainant Dawn Sawyer filed a complaint with this Commission charging Respondent with discrimination on the basis of disability, in violation of G.L.c.151B §. 4(16). The complaint was amended on May 10, 2006 to include a claim of retaliatory termination in violation of G. L. c. 151B, § 4(4). The Investigating Commissioner issued a probable cause determination on May 31, 2006. Attempts to conciliate the matter failed and the case was certified for public hearing on February 14, 2007. A public hearing was held before me on March 24, 2008. A motion for sanctions against Respondent was granted for failure to respond to Complainant's discovery requests. As a result, Respondent was precluded from offering a defense at the public hearing. After considering the record before me and the post-hearing submission of Commission Counsel, I make the following findings of fact, conclusions of law and order.

II. FINDINGS OF FACT

1. Complainant Dawn Sawyer resides in Centerville, Massachusetts. Sawyer has been a waitress for 27 years.

2. Respondent Wimpy's Restaurant is located in Osterville, Massachusetts. Wimpy's is open seven days a week from 11:30 a.m. to 10:00 p.m., and serves lunch and dinner. Karen and Lawrence Siscoe, who are husband and wife, have owned Wimpy's restaurant since 1995. In 2003 their son, Jason Siscoe was a manager and their daughter-in-law, Danielle Siscoe was a hostess.

3. Complainant began working as a waitress for Wimpy's in 1991. She was hired by then owner Skip Hostedter, who subsequently sold the restaurant to a couple who operated it briefly. Wimpy's was purchased by the Siscoes in 1995. When the Siscoes took over the restaurant they began to provide medical and dental benefits to employees, as well as a retirement account. In order to remain eligible for the health insurance, employees were required to work a minimum of 30 hours per week.

4. Complainant's duties as a waitress included setting up her station, making sure silverware and condiments were ready, preparing for meals to be served, taking orders, serving food and cleaning up the stations and on occasion preparing to close the restaurant. At first, Complainant got along well with the Siscoes.

5. Jason Siscoe was responsible for making the waitresses' schedule, which was posted every Sunday or Monday night in the kitchen.

6. Wimpy's was busiest in the summer. Business dropped off during the winter and the restaurant closed for two or three weeks each February. January and February were the restaurant's quietest months with business picking up again in March.

7. Complainant testified that it was the practice of waitresses who wished to work more than their scheduled hours to post hand-written notes near the schedule stating that they were seeking extra shifts. Waitresses who needed their shifts covered would then contact the note writers and change shifts, with the approval of Jason Siscoe.

8. Complainant testified that she was generally scheduled for five dinner shifts, which were at least six hours in length. (Lunch shifts were five hours) Complainant testified that she always tried to work 30 to 40 hours per week or more and consistently posted notes near the schedule informing the other waitresses that she was seeking extra shifts. As a result, Complainant usually worked more shifts than scheduled by Jason Siscoe.

9. Complainant testified that in 2000 and 2001, she worked 50 to 60 hours per week, by working extra shifts. I credit her testimony.

10. While employed by the Siscoes, Complainant incurred two work-related injuries. The first injury occurred in 1998 when Complainant slipped and injured her groin and ankle, causing her to be out of work for one month. Complainant testified that after she filed a workers' compensation claim in connection with this injury, Larry Siscoe angrily confronted her on two occasions, making it clear that he considered it a nuisance to complete the paperwork involved in a worker's compensation claim. Complainant responded that if he had put up a "wet floor" sign she would not have fallen in the first place. I credit her testimony.

11. On June 1, 2003, Complainant incurred a second work-related injury. As she rounded a corner carrying salad plates, she slipped on the floor and landed on her left side

and palm. She immediately reported the injury to either Mrs. Siscoe or the manager on duty. I credit her testimony.

12. Complainant testified that the June 1 injury affected her ability to lift with her left hand and she was unable to run, could not put her full weight on her left side or fully turn her head. She sought treatment from chiropractor Mark McGregor the following day, June 2, 2003. Following the injury, Complainant was sore for about a month, but got progressively better each week. (Exh.C-1) I credit her testimony.

13. The day after the injury, Complainant told Mrs. Siscoe that she could not afford to have no income while waiting for a workers' compensation claim to be processed and proposed that the Siscoes pay her salary for the period she was unable to work, in lieu of her filing a workers' compensation claim. Mrs. Siscoe told Complainant she would have to discuss the matter with her husband. The following day she told Complainant that Respondent did not compensate people in that manner and that Complainant would have to file a workers' compensation claim. I credit her testimony.

14. On June 5, Complainant provided a note from Dr. McGregor to Jason Siscoe which stated that she could not work until June 9, at which time she could work a single shift. (Exh.C-1) Complainant testified that after discussing the matter with Jason Siscoe, she began working "light duty," which consisted of working lunch shifts, which were shorter. While Complainant could also carry lighter trays and smaller plates on the lunch shift, she did require some assistance carrying trays. I credit her testimony.

15. On June 10, 2003, during a "pre-meal" meeting in the kitchen attended by the wait staff and kitchen staff, Complainant entered the kitchen and observed Mrs. Siscoe reading from a form entitled "application for treatment" that Dr. McGregor had prepared

for Complainant. Mrs. Siscoe was reading aloud in a sarcastic manner from the paper which contained Complainant's medical information, as a means of instructing the employees that Complainant might need help with some aspects of her job. Complainant was shocked, angry, and in disbelief that Mrs. Siscoe was disclosing her medical information to the staff without permission. I credit her testimony.

16. On June 13, 2003, Complainant Dr. McGregor wrote another note for Complainant, which she gave to Jason Siscoe, stating that she could return to her regular duties on June 16, 2003. (Exh.C-1) Complainant testified that as of June 16, she was able to perform her job in the same manner as prior to her injury. She stated that, notwithstanding the note from Dr. McGregor clearing her to work, either Jason or Danielle Siscoe, who served as hostess, began assigning her to smaller parties and smaller stations. She was also assigned only four shifts that week. I credit her testimony.

17. Complainant testified that at first she thought that the Siscoes did not understand that she was able to return to full duty and assume the number of pre-injury shifts, so she asked McGregor to prepare a note clarifying that she was capable of working extra shifts. (Exh.C-1) She brought the note to Jason Siscoe at the end of June. Despite this, her hours did not increase. I credit her testimony.

18. Complainant testified that she again visited McGregor on July 8, 2003 and obtained another note stating that she required no further treatment for her injury and could resume her job without restrictions. (Exh. C-1) She presented this note to Jason Siscoe on July 8, 2003. I credit her testimony.

19. In June, 2003, despite posting five notes near the schedules volunteering for extra shifts, Complainant had no offers from co-workers to work extra shifts. She testified that on one occasion she observed Jason Siscoe take down one of her notes. Between June 16, 2003 and September 20, 2003, Complainant covered no co-workers' shifts, despite some of them asking her why she wasn't working for them. In June and July of 2003, numerous servers asked Complainant to fill in for them, but she was never given permission to do so. I credit her testimony.

20. In late August, 2003, Complainant confronted Jason Siscoe about not being assigned extra shifts. He responded that it was not his decision and to talk to his parents. I credit her testimony.

21. Complainant's check stubs from the previous summer of 2002 (Exh.C-2) indicate that from June 24, 2002 through September 15, 2002, Complainant worked an average of 47.21 hours per week. From September 30, 2002 through December 22, 2002, Complainant worked an average of 44.40 hours per week.

22. From June 30, 2003 through August 10, 2003, Complainant worked an average of only 31.87 hours per week, a significant decrease in hours. Her pay stub from August 10, 2003 indicates that Complainant worked only 19.2 hours, which was below the 30 hours required to maintain her insurance. (Exh. C-2)

23. After learning from a co-worker that she might qualify for partial or low-wages unemployment benefits due to her hours of work being diminished, on September 16, 2003, Complainant filed a claim for unemployment benefits. Complainant believed that she qualified for partial unemployment benefits because she was not being scheduled for available hours. I credit her testimony.

24. On September 19, 2003, Complainant drove to work for her scheduled shift. As she got out of her car, Mrs. Siscoe stopped her in the parking lot and showed her a form that she had received from the Department of Employment and Training (DET). The form, entitled "Unemployment Insurance Request for Information" stated that Complainant "has filed a claim for Unemployment Insurance benefits, naming [Respondent] as a former employer." Mrs. Siscoe told Complainant that she did not know Complainant had quit her job, but after receiving the form she had filled Complainant's shift for the week with someone else. Complainant responded that Mrs. Siscoe was mistaken, that she had not quit, and that she would call DET to straighten the matter out. I credit her testimony. On the same form, Respondent reported that Complainant was "still employed or on call." In the comments section, Respondent manager Richard Laviolette wrote, "scheduled for 4 days this week. We didn't know she quit." (Exh. C-5)

25. After the exchange in the parking lot, Complainant accompanied Mrs. Siscoe to the office where she copied the DET form. Mr. Siscoe, who was present in the office, stated to Complainant, "Dawn, we're very disappointed in you." Complainant responded, "Likewise." Complainant told the Siscoes that when she got home she would call Barbara Murray, her contact at DET, in order to resolve the matter. I credit her testimony.

26. Immediately after leaving the office, Complainant called Jason Siscoe from her car and asked him whether she should come in to work. Jason Siscoe responded that Complainant was not to report for work for the next two weeks. I credit her testimony.

27. Complainant testified that she felt angry and very upset and cried as she drove back home because she had no other source of support. When she arrived home Complainant called Barbara Murray at DET and Murray told her she would call Respondent and straighten the matter out. After she spoke to Murray, she contacted Danielle Siscoe at Respondent, told her she had contacted DET and asked if she should come in to work. Danielle Siscoe told her not to come into work. I credit her testimony.

28. Complainant filed her complaint with this Commission on or about September 22, 2003.

29. Karen Siscoe wrote Complainant a letter dated October 3, 2003, stating that by telling DET that Respondent was her “former employer” she had created problems for Respondent. Siscoe also wrote that after talking with Complainant on September 19, she believed Complainant would resolve the issue with DET, but she instead filed a complaint with MCAD. Siscoe wrote: “Since you have commenced proceedings with the Commission Against Discrimination, our lawyer advises [sic] us to wait to make a decision on rescheduling you. We waited until September 30, hoping this would be resolved, before we removed you from dental and health insurance for the month of October.” (Exh.C-3)

30. Complainant testified that after working for the Siscoes for almost eight years, she considered herself a model employee and the letter from Karen Siscoe made her feel “disgusted.” I credit her testimony.

31. Complainant testified that she began looking for work after talking with Mrs. Siscoe on September 19. On Monday, September 23, 2003, she was hired at Amari, a restaurant located in Sandwich, Massachusetts, where she continues to work.

Complainant earns \$2.63 per hour, the same rate as she received at Respondent, however, her tips are not as good, she has no health and dental insurance and she receives no retirement benefits. I credit her testimony.

32. Complainant testified that the financial consequences of losing her job at Respondent were devastating as she had previously been through bankruptcy and was trying to work as many hours as possible to get back on track financially. I credit her testimony

33. In 2002, Complainant's earnings were \$28,219.00. In 2003, her earnings were \$21,377.00, including earnings from Amari. In 2004, Complainant's earnings were \$24,592.00. Assuming that Complainant's earnings for the years 2003 and 2004 would have remained relatively the same, had she continued to work at Respondent, her lost wages for 2003 are \$6,842.00($\$28,219.00 - 21,377.00 = \$6,842.00$) and her lost wages for 2004 are \$3,627.00 ($\$28,210.00 - 24,592.00 = \$3,627.00$) Thus Complainant's lost wages for 2003 and 2004 total \$10,469.00 ($\$6,842 + \$3,627.00 = \$10,469.00$) I credit her testimony.

34. Complainant testified that in the summer and fall of 2003 she needed a lot of dental work, including treatment of an abscess, root canals, a cap and crowns. Complainant testified that the dental benefits Respondent provided covered routine care and 50% of the cost of expensive dental work. She stated that the dental coverage was more important to her than the medical coverage because at the time of her termination she needed approximately \$15,000.00 worth of dental work. Complainant testified that she had out-of-pocket dental expenses of \$6,000.00 to \$8,000.00 and that as of

September 2006 she owed her dentist \$2,839.00. She stated that she has not had dental work since 2005.

35. Complainant testified that Respondent contributed to a retirement account by a formula based on her pay. Complainant's retirement statement dated December 31, 2003 shows an employer contribution of \$181.00 in 2002, and an employer contribution of \$1374.00 contribution in 2003. The account is valued at \$28,948.00. Complainant has maintained the retirement account, but she does not know its current value.

36. Complainant paid \$40.00 per week (\$172.00/mth) in health insurance premiums while employed by Respondent. After her termination, her health insurance premiums increased to \$320.91 per month under COBRA for 18 months. This represents a difference of \$148.91 per month for 18 months ($\$320.91 - 172.00 = \148.91) for a total cost of \$3,096.00 ($\148.91×18). I credit her testimony. After her COBRA benefits expired, she continued to pay for the health insurance provided by Respondent until some time in 2005, when Respondent changed to another insurance plan. Complainant did not testify as to the cost of her insurance after the COBRA benefits expired.

37. Complainant testified that after her hours were reduced she felt terribly distraught, angry, and upset physically as well as emotionally. She cried on a daily basis during the summer and fall 2003. She testified that her "mind was racing" and she worried about changing jobs and dealing with a new boss. She was so nervous that she would frequently wake up in a state of high anxiety, and suffered from anxiety attacks and an irregular heart beat. Sometimes she felt as though she were having a heart attack or dying. Complainant testified that she discussed her work situation and her feelings with her friends and that her anger and emotional upset have continued until the present

time. She stated she became upset again while preparing her case for the hearing. I credit her testimony.

38. On August 21, 2003, Complainant visited her primary care physician William Fenney. Dr. Fenney prescribed Lexapro, an anti-depressant, which Complainant continues to take. Dr. Fenney's notes from this visit indicate that Complainant was depressed because of financial problems, including bankruptcy. (Exh.C-4)

39. Complainant testified that at around the same time, she experienced a flare-up of a previously diagnosed eye inflammation called Thygeson's disease for which she was treated by Dr. Kriegstein, who wrote that the condition's cause is unknown but might be aggravated by stress. (Exh. C-4)

40. Margo Rome worked as a waitress at Wimpy's from 1993 to 1995. She is currently an HR director at a human services agency on Cape Cod. Rome testified that she is friendly with Complainant and that in 2003 they talked at least once a month. Rome testified that Complainant told her she was very upset and remains upset about Respondent cutting her hours and about losing her losing her retirement benefits and especially her dental benefits because she was undergoing a significant amount of dental work at the time of her termination. According to Rome, Complainant was very emotional, cried at times and felt she was treated unfairly and disrespectfully by Respondent. I credit her testimony.

III. CONCLUSIONS OF LAW

A. Disparate Treatment on Account of Handicap

M.G.L. c.151B, sec. 4(16) makes it unlawful to discriminate in employment on the basis of handicap. To make out a prima facie case of disparate treatment in disability, Complainant must establish that she is an otherwise qualified handicapped person who suffered an adverse employment action for reasons that encompass unjustified consideration of the handicap. Dartt v. Browning-Ferris Industries, 447 Mass. 1(1998). A handicapped person is one who has an impairment which substantially limits one or more major life activities; has a record of having such an impairment; or is regarded as having such an impairment. M.G.L. c. 151B, sec. 1(17) A qualified handicapped person is a handicapped person who is capable of performing the essential functions of a particular job, or who would be capable of performing the essential functions of a particular job with reasonable accommodation to her handicap. M.G.L. c. 151B sec. 4(16)

Complainant's injury might not ordinarily be a qualifying handicap within the meaning of M.G.L. c. 151B, because of its temporary nature, see, Hallgren v. Integrated Financial Corporation et al, 42 Mass. App. Ct. 686 (1997) (A knee injury that was temporary was not found to constitute a disability within the meaning of the statute .) However, because Complainant's injury was ultimately determined to be compensable by workers' compensation, Complainant is deemed a qualified handicapped person within the meaning of c. 151B, by virtue of the workers compensation statute, provided she is able to perform the essential functions of the job with or without a reasonable accommodation. See, M.G.L.c.152, §75B.

The essential functions of the job are "... those functions which must necessarily be performed by an employee in order to accomplish the principal objectives of the job." In determining whether a job function is essential, the Commission will ask whether removing a given function from the job would fundamentally change the nature of the job in question..." See, Commonwealth of Massachusetts, Commission Against Discrimination Guidelines: EMPLOYMENT DISCRIMINATION ON THE BASIS OF HANDICAP-CHAPTER 151B, III, D. (March 31, 1998). In this case, Complainant suffered from a work-related injury that temporarily restricted her from working dinner shifts and extra shifts, but that after a brief leave, she was cleared to return to work with no restrictions as of June 16, 2003. I conclude that Complainant is a qualified handicapped person within the meaning of the worker's compensation statute because she could perform the essential function of her job after having been accommodated by a brief leave of absence.

I also conclude that Respondent subjected Complainant to adverse action by assigning her to less lucrative work stations and by not permitting her to work extra shifts, when she returned to work. This resulted in diminished hours and income for Complainant. Since Respondent was precluded from defending this matter at the hearing, I conclude that Complainant has established an un rebutted, prima facie case of discrimination on the basis of handicap. Therefore I conclude that Respondent engaged in unlawful handicap discrimination by preventing Complainant from working to her full capacity after returning from a work-related injury and assigning her to less lucrative jobs.

B. Retaliation

In order to establish a prima facie case of retaliation, Complainant must show that she engaged in a protected activity, that Respondent was aware of the protected activity, that Respondent subjected her to an adverse action, and that a causal connection existed between the protected activity and the adverse action. Mole v. University of Massachusetts, 58 Mass.App.Ct. 29, 41(2003). Under M. G. L. c. 151B, § 4 (4), a plaintiff has engaged in protected activity if "he has opposed any practices forbidden under this chapter or . . . has filed a complaint, testified or assisted in any proceeding under [G. L. c. 151B, s. 5]." In cases involving unlawful employment discrimination, the Complainant has the burden of proving discriminatory motive by either direct or indirect evidence. Abramian v. President & Fellows of Harvard College, 432 Mass 107,116 (2000); Wynn & Wynn v. MCAD, 431 Mass 655, 665-666 (2000). In the instant case, there is direct evidence of retaliatory discharge. Complainant has shown by direct evidence a correlation between her discharge and the filing of a complaint against her employer. On September 22, 2003, she filed a discrimination complaint against Respondent. On October 3, 2003, Respondent wrote to Complainant, "Since you have commenced proceedings with the Commission Against Discrimination, our lawyer advices [sic] us to wait to make a decision on rescheduling you. We waited until September 30, hoping this would be resolved, before we removed you from dental and health insurance for the month of October." (Exh.C-3) The credible evidence establishes an un rebutted prima facie case of retaliatory termination. Therefore, I conclude that Respondent is liable for retaliation in violation of M.G.L.c.151B § 4(4).

IV. REMEDY

Pursuant to M.G.L.c.151B § 5, the Commission is authorized to grant remedies to make the Complainant whole. This includes an award of damages to Complainant for lost wages and emotional distress suffered as a direct and probable consequence of her reduction in hours and termination by Respondent. Bowen v. Colonnade Hotel, 4 MDLR 1007 (1982), citing Bournewood Hospital v. MCAD, 371 Mass. 303, 316-317 (1976); see Labonte v. Hutchins & Wheeler, 424 Mass. 813, 824 (1997).

A. Emotional Distress

An award of emotional distress “must rest on substantial evidence and its factual basis must be made clear on the record. Some factors that should be considered include: (1) the nature and character of the alleged harm; (2) the severity of the harm; (3) the length of time the complainant has suffered and reasonably expects to suffer; and (4) whether the complainant has attempted to mitigate the harm (e.g., by counseling or by taking medication).” Stonehill College vs. Massachusetts Commission Against Discrimination, at al, 441 Mass. 549, 576 (2004). In addition, complainant must show a sufficient causal connection between the respondent's unlawful act and the complainant's emotional distress. “Emotional distress existing from circumstances other than the actions of the respondent, or from a condition existing prior to the unlawful act, is not compensable.” Id. at 576.

Based on Complainant’s credible testimony, I am persuaded that she suffered emotional distress as a result of Respondent’s unlawful conduct. Complainant testified credibly that she was upset about her reduction in hours and termination. She testified that she was anxious, depressed and suffered from panic attacks. Complainant testified

that she felt angry and very upset because she had no other source of support. She cried frequently and felt devastated. She saw her primary care physician during the time of turmoil in the workplace and he prescribed an anti-depressant to alleviate her stress, caused by the financial repercussions of having her hours cut back after her leave. I conclude that Respondent's actions including reducing Complainant's hours after her leave and its termination of her employment after she complained of discrimination caused Complainant to suffer emotional distress that continued for some time. I conclude that that Complainant is entitled to an award of \$30,000.00 for the emotional distress she suffered as a result of Respondents' unlawful conduct.

B. Back Pay

The Complainant has the responsibility to mitigate damages by making a good faith search for employment. The evidence demonstrates that Complainant mitigated her damages by immediately obtaining another waitress position. However, at Complainant's subsequent job she did not work as many hours as she did for Respondent and she earned fewer tips. Her current employer does not provide health and dental insurance or retirement benefits, as did Respondent.

In 2002, Complainant's earnings were \$28,219.00. In 2003, her earnings were \$21,377.00, including earnings from her job at Amari. In 2004, Complainant's earnings were \$24,592.00. Assuming Complainant's earnings for the years 2003 and 2004 would have remained approximately the same had she continued to work at Respondent, her lost wages for 2003 are \$6,842.00 and her lost wages for 2004 are \$3,627.00. Complainant is entitled to an award of damages for lost wages for those two years in the amount of \$10,469.00.

C. Lost Benefits

I conclude that Complainant is also entitled to damages for out of pocket expenses she incurred that would otherwise have been paid by Respondent's health and dental insurance. Complainant paid \$40.00 per week in health insurance premiums while employed by Respondent. After her termination, her health insurance premiums increased to \$320.91 per month, under COBRA, for 18 months. This represents a difference of \$148.91 per month for 18 months ($\$320.00 - 172.00 = \148.91) for a total cost of \$3,096.00 ($\148.91×18). After her COBRA benefits expired, she continued to pay for the health insurance provided by Respondent until some time in 2005, when Respondent changed to another insurance plan in which she chose not to participate due to its poor coverage. Complainant did not testify about the cost of her insurance after the COBRA benefits expired. Therefore, an award of damages for any premiums paid after the 18 month period would be speculative and I decline to award any damages for premiums paid after that time. Therefore, I conclude that Complainant is entitled to an award of damages in the amount of \$3,096.00 for the increased cost of her health insurance benefits for a period of 18 months after her termination.

Complainant testified that her dental benefits at Respondent covered routine care and 50% of the cost of expensive dental work. Complainant testified that the dental coverage was more important to her than the medical coverage because at the time of her termination she needed approximately \$15,000.00 worth of dental work. Complainant testified that she had out-of-pocket dental expenses of \$6,000.00 to \$8,000.00 and that as of September 2006 she owed her dentist \$2,839.00. She stated that she has not had dental work since 2005. Complainant's testimony regarding her dental benefits and dental work

was vague, and absent any documentary evidence of Complainant's dental expenses other than a statement from her dentist that she owes \$2,839.00, or evidence of the terms of the dental plan, I am unable to conclude how much of this her prior dental insurance plan would have covered. Therefore, I decline to make an award for to Complainant regarding these expenses.

Complainant testified that every year she contributed to a retirement account at Respondent to which Respondent contributed a percentage of her hourly wages. Her retirement account statement indicates that in 2002, Respondent contributed \$181.00 to the account and in 2003, it contributed \$1,374.00. The statement does not comport with Complainant's testimony regarding the amount of Respondent's contributions, as Complainant earned more in 2002 than in 2003, yet Respondent contributed less in 2002 than in 2003. Therefore, I am unable to determine with any certainty the extent of any losses to Complainant's retirement account and I decline to award damages for lost contributions to her retirement account.

VI. ORDER

Based upon the above foregoing findings of fact and conclusions of law, and pursuant to the authority granted to the Commission under M. G. L. c. 151B, § 5, it is hereby ordered that:

- 1) Respondent immediately cease and desist from discriminating on the basis of disability and retaliation.
- 2) Respondent pay to Complainant the amount of \$30,000.00 in damages for emotional distress with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made or

until this order is reduced to a court judgment and post-judgment interest begins to accrue. Payment shall be made within 60 days of receipt of this order.

- 3) Respondent pay to Complainant the amount of \$10,469.00 in lost wages with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made or until this order is reduced to a court judgment and post-judgment interest begins to accrue.
- 4) Respondent pay to Complainant the amount of \$3,096.00 in damages for the cost of increased medical insurance premiums, with interest thereon at the statutory rate of 12% per annum from the date the complaint was filed until such time as payment is made or until this order is reduced to a court judgment and post-judgment interest begins to accrue.

This constitutes the final order of the hearing officer. Any party aggrieved by this order may file a Notice of Appeal to the Full Commission within ten days of receipt of this order and a Petition for Review to the Full Commission within thirty days of receipt of this order.

SO ORDERED, this the 16th day of January, 2009.

JUDITH E. KAPLAN,
Hearing Officer