

THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION AGAINST DISCRIMINATION

SCOTT FERRY,
Complainant

v.

DOCKET NO.89-NEM-0052

FALL RIVER POLICE
DEPARTMENT,
Respondent

DECISION OF THE HEARING OFFICER ON REMAND

On August 1, 1995, the undersigned hearing officer issued a decision and order dismissing the above-referenced case of handicap discrimination.

Complainant appealed to the Full Commission. On November 25, 2002 the Full Commission reversed the decision dismissing Ferry's claim of handicap discrimination, found that Respondent has violated M.G.L.c.151B§4p.16 and remanded the matter to me to make findings with respect to damages based on evidence in the record and to issue an order consistent with the decision of the full commission.

Upon reviewing the record in this matter, I make the following findings with regard to the issue of damages:

Complainant testified that he had an interest in law and that police work was one of several careers that interested him while he was in school. Complainant did not seek police work after 1989. In 1990 Complainant's name

again appeared on the civil service list, but he did not sign the list as required, and was thus not eligible for employment by the Fall River Police at that time. Furthermore, under the guidelines as revised in August 1990, insulin-dependent diabetics were no longer automatically disqualified. Nevertheless, Complainant did not pursue a police career.

In September of 1990, Complainant enrolled in the Dimon School of Practical Nursing, concurrently studying for an associate's degree in nursing at Bristol Community College. Complainant received his L.P.N. license in 1991 and his R.N. license in 1992. He received a B.S. in nursing from the University of Massachusetts at Dartmouth and at the time of the public hearing was enrolled there in the graduate nursing program.

Complainant worked in the hospital and nursing home fields since 1991 and at the time of the public hearing, worked for the Massachusetts Department of Corrections as a Case Manager, working with inmates with H.I.V.

I conclude that Complainant is entitled to damages for lost wages up until the time when he entered the Dimon School of Practical Nursing in the fall of 1990 while concurrently working on an Associates Degree from Bristol

Community College and was no longer seeking full-time employment. Nikolsky v. Summit Services Group, Inc., 20 MDLR 126, 130 (1998). Further, since 1990 Complainant has consistently worked in the health care field and at the time of the hearing was pursuing a master's degree in nursing.

According to the Collective Bargaining Agreement between the Fall River Police and the Town of Fall River, From 3/15/89 to 6/30/89, Complainant would have earned \$5,760.00 (\$423.39/week x 15 wks) and from July 1, 1989 through August 31, 1990 would have earned \$26,967.01 (\$444.56/week x 60 2/3 weeks) for a total of \$32,727.01 in lost wages.

With regard to damages for emotional distress, the Commission has recognized that emotional distress is a natural and probable consequence of discrimination and that emotional distress damages may be inferred from a finding of discrimination alone. O'Neil v. Karahalidis, 10 MDLR 1341(1988); Bournewood Hospital v. MCAD, 317 Mass 303, 317(1976). However, as Complainant offered no testimony whatsoever regarding the effect on him of Respondent's unlawful conduct, I am constrained to award only nominal damages of \$5,000.00 to compensate him for any emotional

distress that he suffered as the result of Respondent's unlawful acts.

ORDER

Based on the above findings, it is hereby ordered that:

1. Respondent pay to Complainant Scott Ferry the sum of \$32,727.01 in damages for lost wages.

2. Respondent pay to Complainant Scott Ferry the sum of \$5,000.00 in damages for emotional distress.

This constitutes the final Order of the Hearing Officer. Any party aggrieved by this order may file an appeal to the full commission within 10 days of receipt of this order and a petition for review to the full commission within 30 days of receipt of this order.

SO ORDERED, this 26th day of December, 2002.

JUDITH E. KAPLAN
Hearing Officer