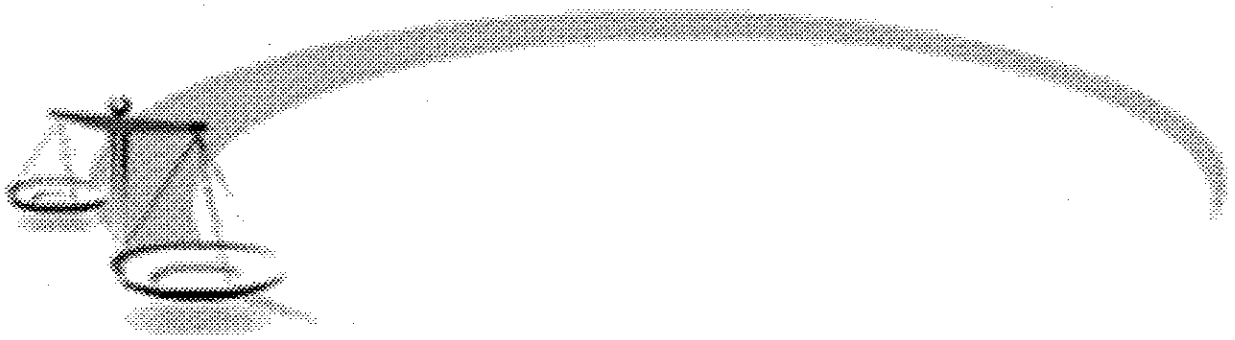

#151858-EM07 Robert Bell vs. Ranir DCP Corporation

Interim Order
Nanette L. Reynolds, Director

STATE OF MICHIGAN
CIVIL RIGHTS COMMISSION
State of Michigan Plaza Building
1200 Sixth Street
Detroit, Michigan 48226

MICHIGAN DEPARTMENT OF CIVIL RIGHTS
ex rel Robert Bell,

Claimant,

v **Case No. 151858-EM07**

Ranir DCP Corporation,

Respondent.
_____/

INTERIM ORDER

At a meeting of the Michigan Civil Rights Commission
held in Detroit, Michigan on the 13th of November 2000.

In accordance with the Rules of the Michigan Civil Rights Commission, a Referee heard proofs and arguments and made proposed Findings of Fact and Recommendations regarding the issues involved in this case. The parties had an opportunity to make presentations in support of or in objection to the Referees' recommendations at a public meeting of the Commission. Commissioner Simmons has issued an Opinion adopted by a majority of the Commission, adopting in part and modifying in part the recommendations. That Opinion shall be made part of this Order. The Commission therefore makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. At all times relevant to this matter, Claimant Robert Bell was a resident of the City of Grand Rapids, Kent County, Michigan.

2. At all times relevant to this matter, Respondent, Ranir DCP Corporation was a

corporation employing more than fifteen people with its office located in the City of Dutton, Kent County, Michigan.

3. In February 1993, Claimant began working full-time for Respondent as a material handler in the Receiving Department. He was terminated from that position on April 23, 1996.

4. Claimant worked the third shift from 11:00 p.m. to 7:30 a.m., Sunday night through Friday morning. For timekeeping purposes, his work day is identified by the date/day his shift begins.

5. Claimant received good performance reviews and was never disciplined during his three years of employment.

6. Claimants' team leader, Robert Goodenough, normally worked the first shift 7:00 a.m. to 3:30 p.m.

7. In late 1995 Ayesha Shaheed became the third shift supervisor and Claimant's immediate supervisor during the third shift.

8. In late February 1996, Ms. Shaheed approached Claimant and co-worker James Warren during their break and solicited Claimant for sex. Claimant refused Ms. Shaheed's solicitation.

9. Then Ms. Shaheed took James Warren aside and told him, "if your boy don't [sic] come off that, then he might as well start looking for another job." Mr. Warren subsequently conveyed this conversation to Claimant.

10. Ms. Shaheed frequently exhibited sexually aggressive behavior and language when conversing with male employees. She had one prior discipline for making inappropriate remarks of a sexual nature to a male employee.

11. On March 10, 1996, Ms. Shaheed used Respondent's public address system to page Claimant to her desk.

12. Ms. Shaheed directed Claimant to a deserted area of the building on the pretext of delivering materials where she again solicted Claimant for sex. Claimant rebuffed her advances.

13. In April 1996 Ms. Shaheed again solicited Claimant for sex. When he refused, she informed him this was his last chance and if he didn't cooperate he could kiss his job goodbye.

14. Thereafter Claimant's work performance came under intense scrutiny by his team leader Mr. Goodenough.

15. Allegations from Ms. Shaheed and others that Claimant was sleeping on the job and disappearing for hours at a time were never substantiated.

16. Claimant informed Mr. Goodenough that Ms. Shaheed was trying to get him fired because he would not have sex with her.

17. Mr. Goodenough laughed at Claimant's allegation. He did not report the matter to Human Resources for investigation as required by company policy, nor did he make a report.

18. Subsequently Mr. Goodenough humored Claimant's brother-in-law with Claimant's allegation regarding Ms. Shaheed.

19. Claimant was fearful of losing his job and believed that Ms. Shaheed would follow through on her treat to have him fired.

20. There was a rumor among the employees that a male employee was fired for absenteeism after he informed Human Resources of Ms. Shaheed's sexual advances.

21. On April 22, 1996, Mr. Goodenough gave Claimant a written counseling for absenteeism.

22. Claimant disagreed with the recorded unexcused absence for March 11 and believed he had called in his absence on that date to Ms. Shaheed.

23. The next day a heated discussion erupted between Claimant and Mr. Goodenough resulting in Claimant's three-day suspension for insubordination.

24. When confronted with the three-day suspension, Claimant reacted emotionally and shouted in anger, "if you suspend me, I'm not coming back - - I quit!"

25. During the three-day suspension Claimant repeatedly called Mr. Goodenough informing him that he would report to work on April 28.

26. Mr. Goodenough repeatedly informed Claimant that he had voluntarily quit his employment.

27. A subsequent investigation by Human Resources concluded Claimant had resigned his employment in response to being suspended.

CONCLUSIONS OF LAW

1. Claimant Robert Bell is a member of a protected group. He is a male employee who has been the object of unwelcomed sexual conduct and communication.

2. Respondent's agent Ayesha Shaheed, who was Claimant's supervisor on the third shift, subjected Claimant to unwelcome verbal and physical conduct and communication of a sexual nature.

3. Ms. Shaheed's conduct and communication had the purpose or effect of substantially interfering with Claimant's employment and created an intimidating, hostile and offensive employment environment.

4. Respondent, Ranir DCP Corporation, through its agents, created a sex-based hostile work environment, and discriminated against Claimant in violation of the Elliott-Larsen Civil Rights Act.

5. Respondent knew or should have known of Ms. Shaheed's conduct toward Claimant.

6. Respondent is vicariously liable for Ms. Shaheed's sexual harassment of Mr. Bell, because their remedial action was neither prompt nor timely.

7. Claimants' termination was not the result of quid pro quo sexual harassment, nor a constructive discharge.

8. Claimant is entitled to emotional distress damages, attorney fees and costs, from Respondent as a result of the unlawful acts of its agent, Ayesha Shaheed.

WHEREFORE, IT IS HEREBY ORDERED That:

A. Respondent cease and desist from the unlawful discrimination of any employee through a hostile work environment.

B. This case is remanded to the Hearing Referee for apportionment of the $100,000 damage award for emotional distress damages and specific findings and an award of attorney fees and cost.

Dated: November 14 2011

MICHIGAN CIVIL RIGHTS COMMISSION

Nanette Lee Reynolds, Ed.D, Director

#151858-EM07 Robert Bell
vs. Ranir DCP Corporation

Opinion
Valerie P. Simmons, Commissioner

STATE OF MICHIGAN
CIVIL RIGHTS COMMISSION
State of Michigan Plaza Building
1200 Sixth Street
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MICHIGAN DEPARTMENT OF CIVIL RIGHTS
ex rel Robert Bell,

Claimant,

v. Case No. 151858-EM07

Ranir DCP Corporation,

Respondent.
_____/

OPINION

Valerie P. Simmons, Commissioner

Claimant, Robert Bell worked as a material handler in the Receiving Department of Respondent Ranir DCP Corporation from February 3, 1993 until his resignation/termination on April 23, 1996. Shortly thereafter, Claimant filed a timely complaint with the Michigan Department of Civil Rights (MDCR) alleging sexual harassment and constructive discharge. The complaint was investigated and a Charge was issued. The Charge alleged, inter alia, that during the course of employment Claimant was sexually harassed by Respondent's agent and employee Ayesha Shaheed: specifically, (a) submission to Ms. Shaheed's sexual requests was explicitly and/or implicitly a term or condition of Claimant's continued employment with Respondent; (b) Claimant's rejection of Ms. Shaheed's sexual requests was the basis for employment decisions affecting him; and (c) Ms. Shaheed's conduct had the effect of substantially interfering with Claimant's work performance and created an offensive and hostile working environment. Respondent answered denying the allegations in the Charge and pleaded an affirmative defense that Claimant voluntarily quit his

employment after an incident of insubordination and suspension which were unrelated to any alleged sexual harassment. Respondent also asserts that Claimant failed to follow the appropriate grievance procedures and/or place the Respondent on notice of any incidents of sexual harassment. A Rule 12 Hearing was held before a Hearing Referee, who issued a Report and Recommendations to the Commission. Respondent filed Exceptions to the Report and both parties presented oral arguments before the Michigan Civil Rights Commission (hereafter MCRC or Commission).

In this Opinion, the Commission will decide two issues: 1) whether Claimant was subjected to sexual harassment, within the meaning of the Elliott-Larsen Civil Rights Act and relevant case law; if yes, 2) what is Respondent's liability. After reviewing the record, the Commission adopts the credibility findings of the Referee that the testimony of Ayesha Shaheed was incredible. The Commission also affirms the Referee's recommendation of hostile work environment sexual harassment. Our reasons appear below.

I

Claimant worked the third shift from 11:00 p.m. to 7:30 a.m., Sunday night through Friday morning. He worked on the second floor of the warehouse, sending materials down a conveyor belt to the first floor production departments. During his three years of employment Claimant received good performance reviews and was never disciplined. That all changed late in 1995 after Ayesha Shaheed became the third shift supervisor and Claimant's immediate supervisor during that shift[1]. Beginning in February 1996 Claimant became the recipient of Ms. Shaheed's sexual communication, conduct and threats of loss of employment.

The first encounter occurred in late February 1996 when Ms. Shaheed approached Claimant and co-worker James Warren in the break room during their break. After an

[1]Claimant's team leader was Robert Goodenough, who normally worked the first shift 7:00 am to 3:30 p.m. In his absence Ms. Shaheed was the primary person supervising Claimant's work. (Transcript Volume 1, p 278-9).

initial greeting, Ms. Shaheed directed her remarks to Mr. Bell, soliciting him for sex[2]. When Mr. Bell expressed his disinterest, Ms. Shaheed then took Mr. Warren aside telling him, "if your boy don't [sic] come off that, then he might as well start looking for another job." Mr. Warren concluded she was talking about sex because Ms. Shaheed frequently exhibited sexually aggressive behavior and language when conversing with male employees.[3]

A second encounter occurred on March 10, 1996. This time Ms. Shaheed used Respondent's public address system to page Claimant to her desk. When he arrived, she asked him to carry two (2) boxes to the front office, an area of the building that is always closed and locked during the third shift. Claimant had never delivered material there before, but he complied with what he believed to be a legitimate work-related request. Once they were alone, Ms. Shaheed again solicited Claimant for sex.[4] Claimant eluded her efforts and left the office.

The third incident occurred a month later, in April 1996. Ms. Shaheed again used the public address system to page Claimant to her office. Remembering his last encounter, Claimant called Ms. Shaheed's extension to ensure that she was paging him for work-related reasons. As in the prior instance, Ms. Shaheed instructed him to carry boxes to the front office. Once again, once they were alone, Ms. Shaheed demanded sex. This time she also informed Claimant this was his last chance and if he didn't cooperate, he could kiss his job goodbye. Like before, Claimant left the office without a verbal response.

Following this third incident, Claimant's work performance came under intense scrutiny. His team leader, Robert Goodenough, began coming to work early, meeting with Ms. Shaheed at the end of her shift and checking up on Claimant due to complaints from Ms. Shaheed and others that Claimant was sleeping on the job and disappearing for hours

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[2]Transcript, Volume 1, p 28.

[3]Transcript, Volume 1, p 144-145.

[4]Transcript, Volume 1, p 37-39.

at a time. None of the complaints, however, were substantiated.

Next, Mr. Goodenough verbally counseled Claimant for failing to perform an unspecified job-related request given by Ms. Shaheed. It was during this conversation that Claimant informed Mr. Goodenough that Ms. Shaheed was trying to get him fired because he would not have sex with her. Mr. Goodenough laughed at Claimant but did not otherwise address the accusation. Neither did Mr. Goodenough report the matter to Human Resources for investigation, as required by company policy, nor instruct Claimant to make a report. Later he humored Claimant's brother-in-law by sharing Claimant's accusation regarding Ms. Shaheed.

Mr. Goodenough: I hear Robert is having problems fulfilling his girlfriend's needs.
Mr. Moore: What needs about his girlfriend?
Mr. Goodenough: His needs with Ayesha.[5]

Claimant felt helpless. He was fearful that Ms. Shaheed would follow through on her threats to have him fired. His fears were fueled by rumors among the employees that a male employee was fired for absenteeism after he informed Human Resources of Ms. Shaheed's sexual advances.

On April 22, 1996, Mr. Goodenough gave Claimant a written counseling for absenteeism. Claimant disagreed with the information reflected on his attendance report, particularly an unexcused absence on March 11, recorded as no call/no show. Claimant believed he had called in his absence on the date and spoke with Ms. Shaheed.

The next day Claimant was still upset about the absentee issue. It is not clear who initiated the discussion, but Claimant and Mr. Goodenough had a heated discussion regarding the attendance issue of the previous day. Mr. Goodenough testified Claimant initiated the discussion. Claimant testified Mr. Goodenough called him to his office and became upset when Claimant refused to discuss the matter in his cubicle and wanted to move the discussion to Human Resources. Regardless of which version is correct, by the end of the discussion Claimant had received a three-day suspension for insubordination:

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[5]Transcript, Volume 1, p 176-177.

repeatedly and loudly calling Mr. Goodenough a racist and failing to immediately return to his work area when directed by Mr. Goodenough and Ms. Shaheed. Claimant reacted emotionally and shouted in anger, "if you suspend me, I'm not coming back - - I quit!"

The three-day suspension gave Claimant time to reconsider his outburst. During his days off, Claimant called Mr. Goodenough several times stating he was coming back to work on April 28, at the end of the suspension. Mr. Goodenough repeatedly informed Claimant he had voluntarily quit his employment. A subsequent investigation of the incident by Human Resources concluded Claimant had resigned in response to being suspended.

II

Under the Michigan Elliott-Larsen Civil Rights Act, an employer violates the law by discriminating "against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of . . . sex . . ." MCL §37.2202(1)(a), MSA 3.548. The Act broadly defines sex discrimination to include sexual harassment, and means:

> unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature when:
>
> > *(i)* Submission to such conduct or communication is made a term or condition either explicitly or implicitly to obtain employment.
> >
> > *(ii)* Submission to or rejection of such conduct or communication by an individual is used as a factor in decision affecting such individual's employment.
> >
> > *(iii)* Such conduct or communication has the purpose or effect of substantially interfering with an individual's employment or creating an intimidating, hostile, or offensive employment environment.

MCLA 37.2103(i), MSA 3.548(103)(i) (references to non-employment discrimination omitted).

Michigan law recognizes two types of sexual harassment: (1) quid pro quo harassment, where an "employer" demands sexual favors as a condition for job benefits, and (2) harassment that creates an offensive or hostile environment. This case involves

allegations of both. Claimant contends quid pro quo sexual harassment because his supervisor Ms. Shaheed, made compliance with her requests or demands for sexual favors a term or condition of employment which culminated in his termination when he refused to comply. In the alternative, Claimant argued that Ms. Shaheed's acts of unsolicited and unwanted conduct and communication based on sex, created a hostile work environment.

A
Quid Pro Quo

Quid pro quo harassment occurs when an employer or one of its agents makes compliance with requests or demands for sexual favors a term or condition of employment, and the harassment culminates in a tangible employment action. *Burlington Indus v Ellerth,* 524 US 742, 141 LEd2d 633 (1998). A tangible employment action means a "significant change" in employment status, such as firing.

To establish a prima facie case of quid pro quo sexual harassment under the ELCRA, a claimant must prove all of the following five criteria[6]:

(1) he is a member of a protected class;

Claimant meets this first element because he is a member of a protected group. All employees are inherently members of a protected class because all persons may be discriminated against on the basis of sex. *Radtke, supra.*

(2) the employee was subjected to unwelcomed sexual harassment in the form of sexual advances or requests for sexual favors;

Claimant also meets this second requirement. The gravamen of an ELCRA sexual harassment claim is that the alleged sexual conduct was unwelcomed. *Meritor Sav Bank, FSB v Vinson,* 477 US 57, 68 (1986). The threshold for determining whether conduct is

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[6]*Radtke v Everett,* 442 Mich 368, 501 NW2d 155 (1993); see also *Chambers v Trettco Inc* 463 Mich 297, 614 NW2d 910 (July 31, 2000).

unwelcome is "that the *employee* did not solicit or incite it, and that the *employee* regarded the conduct as undesirable or offensive." *Radtke at 384.* The record provides three instances of sexual communication or conduct by Ms. Shaheed toward Claimant. In each instance, Claimant showed through communication and conduct that her actions were unwelcome. Another employee, Mr. Warren, not only witnessed one such incident, but was personally privy to Ms. Shaheed's threat that Claimant would lose his job if he did not fulfill her request. Similarly, there is no evidence that Claimant solicited or encouraged the conduct. In fact, several employees testified of personal experiences of a similar nature involving Ms. Shaheed.

(3) the harassment complained of was based on sex;

Claimant also meets this third requirement. Under this element, Claimant need only show that "but for the fact of his sex, he would not have been the object of harassment." *Henson v Dundee,* 682 F2d 897, 904 (CA11, 1982). The record shows that Ms. Shaheed's offensive and harassing behavior was only directed toward male employees. There is no evidence that female employees were similarly treated. Clearly, Claimant's gender was a factor motivating Ms. Shaheed's conduct.

(4) the employee's submission to the unwelcomed advances was an express or implied condition for receiving job benefits or that the employee's refusal to submit to a supervisor's sexual demands resulted in a tangible job detriment;

Claimant contends that his termination was directly related to his refusal to submit to Ms. Shaheed's sexual demands. However, the record provides no evidence of an adverse employment action that was shown to be causally related to Claimant's submission to or rejection of Ms. Shaheed's harassment. The record does show that Claimant voluntarily quit his employment in response to the suspension for insubordination. Therefore, Claimant does not satisfy this element. Thus, a prima facie case of quid pro quo sexual harassment is not established.

Claimant proffers in his defense that he was constructively discharged. Under Michigan law, a constructive discharge occurs when an employer deliberately makes an employee's working conditions so intolerable that the employee is forced into an

involuntary resignation. *Hammond v United of Oakland, Inc.* 193 Mich App 146, 483 NW2d652 (1992). Put another way, a constructive discharge occurs when working conditions are so difficult or unpleasant that a reasonable person in the employee's position would feel compelled to resign. *Mourad v Automobile Club Ins Ass'n* 186 Mich App 715, 465. For example, in *Champion v Nationwide Sec* 450 Mich 702, 545 NW2d 596 (1996) the Michigan Supreme Court agreed that plaintiff's rape by her supervisor was conduct so severe that a reasonable person in the employee's place would be compelled to resign. In contrast, the sixth circuit reasoned that an employee cannot predicate a constructive discharge claim on a resignation based on a refusal to violate the law. Because the employee's refusal occurred at the same time as the resignation, the employee did not give the employer an opportunity to act appropriately or inappropriately in reaction to the refusal. *Vagts v Perry Drug Stores* 204 Mich App 481, 486, 516 NW2d 102 (1994).

In this case, although Claimant denies voluntarily quitting his employment, his own testimony indicates otherwise. Claimant admits calling Mr. Goodenough several times stating he was coming back to work on April 28, at the end of the suspension. Claimant's repeated calls to Mr. Goodenough for that purpose makes sense only in the context that Claimant had made some prior verbal references to quitting and in hindsight was attempting to retract that action. Based on our review of the facts of this case, a reasonable person in Claimant's position would not have felt compelled to quit their employment in response to the circumstances surrounding the three-day suspension for insubordination. Thus we conclude that Claimant was not constructively discharged.

(5) respondeat superior liability.

Under Michigan law, vicarious liability exists in the case of quid pro quo harassment because the quid pro quo harasser, by definition, uses the power of the employer to alter the terms and conditions of employment. *Champion, supra.* Although Claimant satisfies this last requirement, his prima facie case for quid pro quo harassment fails because all five elements are not met.

B

Hostile Work Environment

If the supervisor makes sexual demands, but the harassment does not culminate in a tangible employment action, the employee may have a hostile environment claim but not a quid pro quo claim. *Burlington Indus* at 648. Although the line between a quid pro quo case and a hostile environment/tangible harm case is sometimes blurry, the elements of a prima facie case and the principles of employer liability are different. In a hostile environment sexual harassment case, as distinguished from a quid pro quo/tangible harm case, an employer is not automatically liable for the illegal actions of its employees, even if the employees are supervisors.

The criterion under which an employee may claim hostile environment harassment is found in MCLA 37.2103(i) and provides in relevant part:

> (i) Discrimination because of sex includes sexual harassment which means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communication of a sexual nature when:
>
> . . .
>
> (*iii*) Such conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment.

In *Radtke supra*[7], the Supreme Court of Michigan provides five elements for establishing a prima facie case of hostile work environment:

(1) the employee belonged to a protected group;

Claimant meets this first requirement on the same basis as discussed under quid pro quo.

(2) the employee was subjected to communication or conduct on the basis of sex;

Claimant meets this element on the same basis as discussed under element three (3) for quid pro quo.

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[7]See also *Chambers, supra.*

(3) the employee was subjected to unwelcome sexual conduct or communication;

Claimant meets this element on the same basis as discussed under element two (2) for quid pro quo.

(4) the unwelcome sexual conduct or communication was intended to or in fact did substantially interfere with the employee's employment or created an intimidating, hostile, or offensive work environment;

The standard for determining whether a hostile work environment exists, is whether under the totality of the circumstances, the employer's conduct was "severe or pervasive" enough to create an objectively hostile or abusive work environment - - an environment that a reasonable person would find hostile or abusive." *Harris v Forklift Sys., Inc.,* 510 US 17, 21 (1993); *Radtke*, 442 Mich at 378. Whether an environment is hostile or abusive can be determined by reviewing all of the relevant circumstances. "These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris v Forklift Sys* 510 US 17 (1993).

Claimant refers to three specific incidents of harassment. Although only three are cited, these incidents cannot be viewed in isolation; the entire work environment must be considered. First, Claimant was the laughing stock of the work place. Ms. Shaheed's motivations toward Claimant were well known in the work place and were consistent with the type of behavior she had exhibited to other employees at various times both within and outside of the work. Each time she paged Claimant over the central paging system, Claimant was subjected to ridicule and jokes from co-workers throughout the building. These jokes and ridicule did not stop at the end of the day, but provided fodder for the daily work place humor. Moreover, Claimant never knew when the next incident might occur and what might be the consequence.

There is evidence that Ms. Shaheed's harassment was not limited only to Claimant; any male employee was a viable target. On another occasion while subjecting Claimant to her verbal solicitation and not getting the desired response, Ms. Shaheed engaged

Claimant's co-worker, thereby causing that co-worker to also become a victim of her illegal conduct. The record also shows that other male employees were fearful of reporting Ms. Shaheed's harassment to human resources. They reasonably believed human resources was non-responsive and feared reprisal from Ms. Shaheed leading to loss of employment.

Based on our review of the record, a preponderance of the evidence supports the conclusion that Ms. Shaheed's conduct interfered with Claimant's work performance and created an intimidating and offensive work environment.

(5) respondeat superior.

The ELCRA expressly addresses an employer's vicarious liability for sexual harassment committed by its employees by defining "employer" to include both the employer and the employer's agents in defining discrimination under the Act. MCL 37.2201(a); MSA 3.548(210)(a). Ms. Shaheed was Claimant's supervisor on the third shift and an agent of Respondent Ranir DCP Corporation. Therefore, this element is satisfied.

A preponderance of the evidence supports a prima facie case of hostile environment workplace harassment.

III

Liability

Under Michigan law, an employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee. When no tangible employment action is taken, a defending employer may raise an affirmative defense to liability, subject to proof by a preponderance of the evidence. In our earlier discussion under "quid pro quo sexual harassment" we determined Claimant suffered no tangible employment action as a result of his failure to submit to Ms. Shaheed's sexual communication and conduct. Therefore, the affirmative defense is available to Respondent.

According to the Michigan Supreme Court, vicarious liability attaches to the employer when the employer has notice of the alleged harassment. However, the

employer can avoid liability by adequately investigating and taking prompt and appropriate remedial action upon notice of the alleged hostile environment. *Radtke* at 395.

Respondent asserts that it did not have proper notice of any claim of sexual harassment until Claimant's statements in a letter written after he resigned. We disagree. The Human Resources manager testified that verbal complaints were acceptable. More important, the record established that Respondent, through its agent Mr. Goodenough, had notice of the harassment, but failed to exercise reasonable care to prevent and correct promptly the sexually harassing behavior. Claimant informed his team leader and supervisor Mr. Goodenough of Ms. Shaheed's sexual harassment. However, Mr. Goodenough failed to report the matter to Human Resources as required by company policy. As a consequence, Claimant's allegations were not investigated and neither prompt nor remedial action taken. Neither is the Commission persuaded by Respondent's defense that Claimant did not avail himself of *all* of the resources for reporting sexual harassment. We are satisfied that Claimant's statement to Mr. Goodenough was sufficient to satisfy the notice requirement for purposes of imposing liability.

Finally, we reject Respondents' assertions that it took appropriate remedial action. Respondent investigated the complaint and conducted sensitivity training after Claimant left his employment. Although an employer's remedial action is a meritorious defense in some circumstances, we do not accept this defense as applicable in the present case because Respondent's "remedial action" was neither prompt nor timely.

IV

Remedy

Claimant seeks an award of compensatory damages, emotional distress damages, attorney fees and costs. We find that a preponderance of the evidence shows that Claimant quit his employment. Therefore, he is not entitled to compensatory damages for lost wages. However, Claimant is entitled to emotional distress damages, attorney fees and costs.

The Elliott-Larsen Civil Rights Act authorizes an award for damages for mental

distress. *Department of Civil Rights ex rel Johnson v Silver Dollar Café,* 198 Mich App 547, 459; 499 NW2d 409 (1992). Victims of discrimination may also recover for humiliation, embarrassment, outrage, disappointment, and other forms of mental anguish that result from discrimination. *Silver Dollar Café; Howard v Canteen Corp,* 192 Mich App 427, 481 NW2d 718 (1991); *Jenkins v Southeastern Michigan Chapter, Am Red Cross,* 141 Mich App 785, 799, 369 NW2d 223 (1985). These types of injuries are the kind that the Elliott-Larsen Civil Rights Act was designed to protect against and to hold otherwise would undercut the legislative scheme to remedy discriminatory wrongs. *Slayton v Michigan Host, Inc,* 122 Mich App 411, 417, 332 NW2d 498 (1983).

Additionally, under Michigan law, it is not necessary that a Claimant suffer economic harm or tangible discrimination so long as the harasser creates an intimidating, hostile or offensive work environment. *Chambers, supra,* citing *Harris v Forklift Systems*, Inc., 510 US 17, 21; 114 S Ct 367; 126 L Ed 2d 295 (1993). In a Michigan hostile work environment sexual harassment case, Claimant was awarded $80,555 in emotional distress damages, even though no economic damages were awarded. *Grow v WA Thomas Co,* 236 Mich App 696, 601 NW2d 426 (1999).

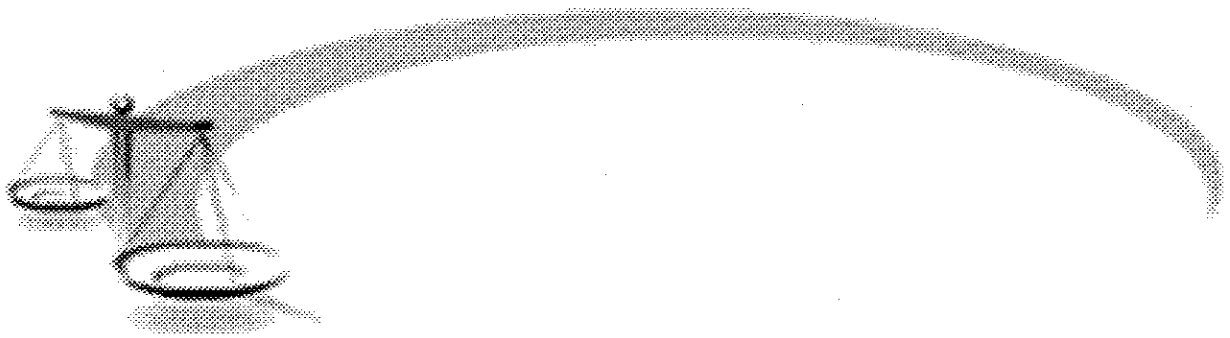
Michigan law also allows recovery for mental distress based on Claimant's own testimony, provided there is "specified and definite evidence of her mental anguish, anxiety or distress." *Wiskotoni v Michigan National Bank-West,* 716 F2d 378, 389 (6th Cir 1983). Medical testimony supporting such claims is not required. *Howard, supra.* In *Wilson v General Motors Corp,* 183 Mich App 21, 454 NW2d 405 (1990), the Court of Appeals upheld the lower Court's remitted award of $375,000.00 in non-economic damages based only upon Plaintiff's testimony regarding her own subjective feelings. In *Moore v KUKA Welding Sys,* 171 F3d 1073, 1082 (6th Cir 1999), the employer argued that the jury's award of $50,000 for emotional distress was excessive because there was insufficient proof that the plaintiff suffered an injury. The court held that plaintiff's testimony that he was "angry" and "upset" about the racial jokes and slurs in his workplace, that he "just couldn't take it anymore," and that he complained to his supervisors and started looking for a new job was sufficient evidence to support the award.

In the instant case, the record established Claimant sustained emotional distress for several months prior to his voluntary termination. The Hearing Referee recommended monetary compensation in the nature of exemplary damages with interest of $100,000 for the humiliation, extreme embarrassment, emotional distress and mental anguish sustained by Claimant. According to the Referee, the purpose of the award is to make Claimant whole and to punish Respondent. Michigan law, however, does not permit awards for punitive damages. *Wilson v General Motors Corp,* 183 Mich App 21, 454 NW2d 405 (1990). After reviewing the record, we are unable to ascertain what portion of the $100,000 is properly attributed to emotional distress and what portion was punitive. Therefore, we remand this matter to the Referee for clarification of this issue. If an additional hearing is necessary, it shall be completed and the report to the commission within 60 days.

Claimant is also entitled to costs and attorney fees. *McCalla v Ellis*, 180 Mich App 372; 446 NW2d 904 (1989) *lv den*, 434 Mich 893. Claimant requests reasonable attorney fees and costs, but provides no basis upon which an award can be made. Therefore, we also remand this matter to the Referee for evidence in support of a specific award of attorney fees and costs. If an additional hearing is necessary, it shall be completed and the report to the commission within 60 days.

Dated: 11-14-00

Valerie P. Simmons



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Order After Remand
Nanette L. Reynolds, Director

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MICHIGAN DEPARTMENT OF CIVIL RIGHTS
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RANIR DCP CORPORATION,

Respondent.
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ORDER AFTER REMAND

At a meeting of the
Michigan Civil Rights Commission
held in Detroit, Michigan on the 3rd of December, 2001

By Order dated November 14, 2000, this matter was remanded to the Hearing Referee by the Michigan Civil Rights Commission for apportionment of the $100,000 damage award for emotional distress damages and specific findings and an award of attorney fees and costs. Neither party requested the opportunity to make presentations in support of or in objection to the Referee's recommendations at a public meeting of the Commission. Commissioner Simmons has issued an Opinion adopted by a majority of the Commission adopting in part and rejecting in part these recommendations. That Opinion shall be made part of this Order. Also, incorporated by reference is the majority Opinion dated November 14, 2000 finding liability. The Commission therefore makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1-27. Incorporated by reference from the November 14, 2000 Order in this matter.

CONCLUSIONS OF LAW

1-8. Incorporated by reference from the November 5, 1999 Order in this matter.

WHEREFORE, IT IS HEREBY ORDERED That:

1. Respondent pay attorney fees in an amount of $13,170 apportioned as follows: $9,990 to attorneys Myra Jabaay and Deborah Autman jointly; $1,980 to attorney Myra Jabaay individually and $1200 to attorney Deborah Autman individually.

2. Claimant is awarded $50,000 in damages for emotional distress and mental anguish, plus interest at the statutory rate calculated from the date the complaint was filed until the date the judgement is satisfied in full.

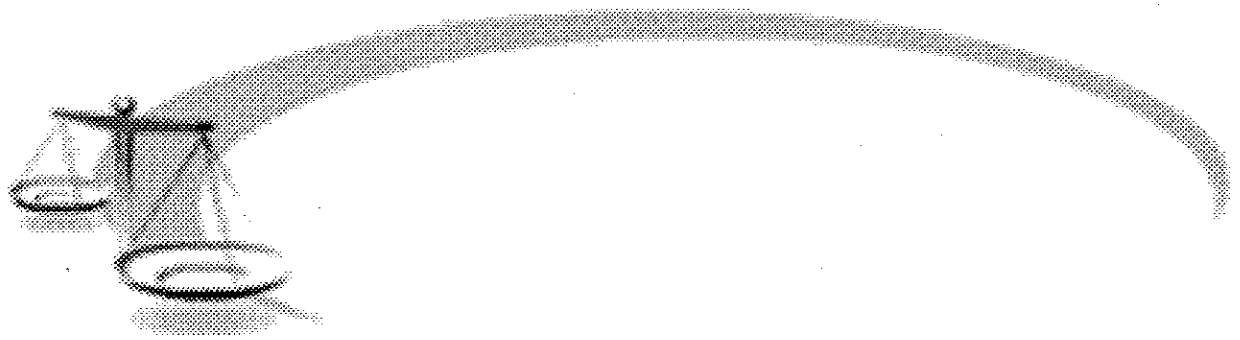
MICHIGAN CIVIL RIGHTS COMMISSION

Dated: 12.30.1

Nanette Lee Reynolds, Ed.D., Director

NOTICE OF RIGHT TO APPEAL

You are hereby notified of your right to appeal within thirty (30) days to the Circuit Court of the State of Michigan having jurisdiction provided by law. MCLA 37.2606



#151858-EM07 Robert Bell
vs. Ranir DCP Corporation

Opinion
Valerie P. Simmons, Commissioner

STATE OF MICHIGAN
CIVIL RIGHTS COMMISSION
State of Michigan Plaza Building
1200 Sixth Street
Detroit, Michigan 48226

MICHIGAN DEPARTMENT OF CIVIL RIGHTS
ex rel ROBERT BELL,

Claimant,

v

Case No. 151858-EM07

RANIR DCP CORPORATION,

Respondent.
_____/

OPINION

Valerie P. Simmons, Commissioner

In an Opinion and Interim Order dated November 14, 2000[1], the Michigan Civil Rights Commission concluded that Respondent was liable for discrimination based on hostile work environment sexual harassment, and remanded this matter to the Hearing Referee for apportionment of the $100,000 damage award for emotional distress damages and specific findings and an award of attorney fees and costs.[2] In accord with the remand,

[1]The Opinion and Interim Order adopted by a majority vote of the Commission, are herein incorporated by reference.

[2]The Commission acknowledges receipt on October 16, 2001, of Respondent's Exceptions to the November 14, 2000 Interim Order citing *Vicki S. Sheridan v Forest Hills Public Schools*, __ Mich App __, September 25, 2001. The Commission declines to rule on Respondent's exception request. Procedurally, the Remand of the Interim Order is before the Commission on the narrow issue of apportionment of the $100,000 damage award. Further, it is our opinion that the instant facts are distinguishable from *Forest Hills*. In the instant case Claimant notified his Team Leader that he was being sexually harassed. The Team Leader was an appropriate member of management to notify of sexual harassment pursuant to Respondent's own Handbook. This is unlike *Forest Hills*, where no member of management specifically designated by the employer was given notice of sexual harassment by the plaintiff.

the Hearing Referee conducted supplemental proceedings and submitted a Report with Recommendations to the Commission regarding the issue of damages. Neither party requested oral argument before the Commission.

This subsequent Opinion, adopted by a majority vote of the Commission, affirms in part and rejects in part the Hearing Referee's recommendations.

ATTORNEY FEES

The Elliott-Larsen Civil Rights Act permits an award of attorney fees and costs. The Hearing Referee recommended an award of $13,170 with the following allocation:

$9990 = 54 hours @ $185 per hour for attorneys Myra Nell Jabaay and Deborah T. Autman jointly

$1980 = 18 hours @ $110 per hour for Myra Nell Jabaay individually

$1200 = 16 hours @ $75 per hour for Deborah T. Autman individually.

Neither party took exception to this recommendation. After reviewing the record, the Commission finds sufficient basis to adopt the recommended award.

EMOTIONAL DISTRESS

The Elliott-Larsen Civil Rights Act authorizes an award for damages for mental distress. *Department of Civil Rights ex rel Johnson v Silver Dollar Café,* 198 Mich App 547, 459; 499 NW2d 409 (1992). Victims of discrimination may also recover for humiliation, embarrassment, outrage, disappointment, and other forms of mental anguish that result from discrimination. *Silver Dollar Café; Howard v Canteen Corp,* 192 Mich App 427, 481 NW2d 718 (1991); *Jenkins v Southeastern Michigan chapter, Am Red Cross,* 141 Mich App 785, 799, 369 NW2d 223 (1985). These types of injuries are the kind that the Elliott-Larsen Civil Rights Act was designed to protect against and to hold otherwise would undercut the legislative scheme to remedy discriminatory wrongs. *Slayton v Michigan Host, Inc.,* 122 Mich App 411, 417, 332 NW2d 498 (1983).

Michigan law also allows recovery for mental distress based on Claimant's own testimony, provided there is "specified and definite evidence of her mental anguish, anxiety

or distress." See *Wiskotoni v Michigan National Bank-West, 716 F2d 378, 389 (6th Cir 1983).* Medical testimony supporting such claims is not required. *Howard, supra.* In *Wilson v General Motors Corp,* 183 Mich App 21, 454 NW2d 405 (1990), the Court of Appeals upheld the lower Court's remitted award of $375,000 in non-economic damages based only upon Plaintiff's testimony regarding her own subjective feelings. In *Moore v KUKA Welding Sys,* 171 F3d 1073, 1082 (6th Cir 1999), the employer argued that the jury's award of $50,000 for emotional distress was excessive because there was insufficient proof that the plaintiff suffered an injury. The court held that plaintiff's testimony that he was "angry" and "upset" about the racial jokes and slurs in his workplace, that he "just couldn't take it anymore," and that he complained to his supervisors and started looking for a new job was sufficient evidence to support the award.

In the instant case, the record indicates that Claimant endured mental and emotional distress for several months prior to his voluntary termination. Our review of claimant's testimony provides repeated examples, expressions or feelings of humiliation (Vol. I p. 47), intimidation (Vol. I, p 39-40), discomfort/powerless (Vol. I, p. 49-50), anxiety threats/fear of losing his job (Vol. I, p.31), embarrassment, and betrayal (Vol. I, p 48). Accordingly, we award $50,000 in emotional distress damages.

Dated: 12/3/01

Valerie P. Simmons, Commissioner