

#107990-EM13 Elaine Stephens
vs. Chrysler Corporation

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 ELAINE STEPHENS,

Claimant,

v

Case No. 107990-EM13

CHRYSLER CORPORATION,

Respondent.

ORDER

At a meeting of the Michigan Civil Rights Commission
held in Port Huron, Michigan on June 26, 2000.

In accordance with the Rules of the Michigan Civil Rights Commission, Hearing Referee Donald F. Sugarman heard proofs and arguments and made proposed Findings of Fact and Recommendations regarding the issues involved in this case. Oral Arguments in support of or in objection to the Referee's recommendations were heard at the public meeting of the Commission held on June 29, 1998. Commissioner Torgow has issued an Opinion, adopted unanimously by the Commission, accepting in part and rejecting in part the Referee's recommendations. That Opinion shall be made a part of this Order. The Commission therefore makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Claimant, Elaine Stephens, is an African-American woman and high school graduate with some college-level course credits.
2. Respondent, Chrysler Corporation, is an automotive company with its headquarters in Auburn Hills, Michigan.
3. Claimant began her employment at Chrysler Corporation on May 10, 1968 as a janitor in the Maintenance Department. She held that position for eighteen years.
4. During those eighteen years, Claimant sought positions outside of the Maintenance Department, but without success.
5. Male employees hired into the Maintenance Department were promoted and/or transferred to other departments in a relatively short period of time.
6. In mid-November, 1985, Claimant informed her supervisor of her intent to file a complaint with the Michigan Department of Civil Rights.
7. On January 6, 1986, Claimant was promoted to a Clerk 1 position in the Machine and Plastics Shop.
8. On October 12, 1987, Claimant was transferred to the Metal Shop as a replacement for Patricia Smith, a Clerk 3.
9. Clerk 3 positions have more responsibility and a higher salary than Clerk 1 positions.
10. Despite her function and greater responsibilities as a Clerk 3 in the Metal Shop, Claimant was not promoted to the grade 3 level nor did she receive salary and benefits at the grade 3 level. Claimant remained a Clerk 1 and she received salary and benefits at the grade 1 level.
11. In 1988, a new UAW bargaining agreement upgraded all Clerk 1 and 2 positions to Clerk 3, retroactive to January 5, 1987. Claimant was upgraded to Clerk 3.
12. Historically, shop clerks were promoted to "589 Follow-up Coordinator" positions.
13. Prior to November 1989, all Coordinator positions, except one, were occupied by men.

14. Claimant applied for a Coordinator positions on several occasions, but she was never interviewed or selected.
15. Several other women applied for Coordinator positions but were never interviewed or selected.
16. In 1988 Claimant, Patricia Smith, and Margarita Castillo, applied for a Coordinator position. Neither of the women were interviewed. Thomas Horlacher, a male, was selected to fill the position.
17. The women complained to Executive Engineer Mr. Ziegenfelder and were informed that blueprint reading was a prerequisite to becoming a Coordinator.
18. This was the first time blueprint reading was identified or required as a prerequisite to becoming a Coordinator.
19. In 1988-89, the Coordinator position duties were becoming more clerical as platform teams came into existence with engineers assuming a lot of the decision making previously performed by Coordinators.
20. Another Coordinator position became available in January 1989.
21. Claimant, Ms. Castillo, and Ms. Smith applied for that position; however, neither one was interviewed.
22. David Markin, a male per diem employee assigned to the Trim Shop, was placed in the position.
23. Mr. Markin had been a Clerk in the Trim Shop for two years.
24. The shipping and receiving department usually transport parts, but a Coordinators' job duties may include lifting heavy parts, and equipment is available for that purpose.
25. Claimant, Ms. Castillo and Mr. Markin completed a blueprint reading course in April 1990.
26. Claimant and the other two women complained to Mr. Ziegenfelder about Mr. Markin's appointment.
27. Several days later Mr. Markin was removed from the Coordinator position and returned to his Clerk position in the Trim Shop.

28. The Coordinator position vacated by the removal of David Markin was awarded to David Gentner, a man.
29. On March 13, 1989, Claimant, Ms. Castillo and Ms. Smith filed sex discrimination complaints with the Michigan Department of Civil Rights, against Respondent.
30. In November 1989, Ms. Patricia Smith was offered and accepted a Coordinator position with retroactive back pay to March 13, 1989.
31. Ms. Smith had previously completed a community college course in mechanical drafting that included blueprint reading.
32. Blueprint reading has not been required in Ms. Smith's Coordinator position.
33. Ms. Smith withdrew her civil rights complaint after she was promoted to Coordinator with pay retroactive to the date her civil rights complaint was filed.
34. Margarita Castillo was promoted to Coordinator in May 1991. She has four years less seniority than Claimant and spends her entire time as a Union representative.
35. Ms. Castillo withdrew her civil rights complaint after her promotion to Coordinator with back pay to the date the civil rights complaint was filed.
36. Antoinette Ziarko, a woman was also promoted to Coordinator in 1990.
37. Ms. Ziarko had been a Chrysler employee since 1967, assigned to the blueprint room.
38. In 1972 Ms. Ziarko completed a highly regarded Burt Bosca 6-month detailing course program with instruction in blueprint reading.
39. Claimant was not promoted to a Coordinator position.
40. Claimants' skills were comparable to or exceeded those of several of the people awarded a Coordinator position.
41. The Coordinator position has been discontinued; incumbents remain in the position, but are not replaced when they leave that classification.
42. A Charge alleging race and sex discrimination was issued March 27, 1995.
43. Respondent's Answer and Affirmative Defenses were filed April 12, 1995.

44. An Amended Charge was filed September 26, 1996.
45. Respondent's Answer and Affirmative Defenses to the Amended Charge were filed October 14, 1996.

CONCLUSIONS OF LAW

1. The Michigan Civil Rights Commission has jurisdiction over this matter.
2. Claimant, Elaine Stephens, a woman, is protected from discrimination in employment based on sex, by Section 202(1)(a) of the Michigan Elliott-Larsen Civil Rights Act.
3. Respondent, Chrysler Corporation, is an employer subject to the provisions of the Michigan Elliott-Larsen Civil Rights Act.
4. Claimant has shown by a preponderance of the evidence that she was discriminated against based on unlawful considerations of sex (gender).
5. A preponderance of the evidence established that Respondent's articulated legitimate non-discriminatory reasons for not promoting Claimant to a Coordinator position were pretextual.
6. Respondent, Chrysler Corporation, through and by its employees, violated Section 202(1)(a) of the Michigan Elliott-Larsen Civil Rights Act by unlawfully discriminating against Claimant in her terms and conditions of employment, based on sex (gender).
7. Claimant has suffered a loss of wages and benefits as a result of this discrimination and is entitled to compensation.
8. Claimant is entitled to monetary compensation for the emotional distress, humiliation and embarrassment suffered as a result of this discrimination.

WHEREFORE, IT IS HEREBY ORDERED That:

1. Respondent cease and desist from discriminating against Claimant and other employees similarly situated, based on sex (gender) in their terms and conditions of employment.
2. Claimant is awarded emotional distress damages in the amount of \$2,500.00

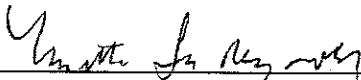
per year for 1989 through 2000 or a total of \$27,5000 plus statutory interest on that amount calculated from the date her civil rights complaint was filed until the date the judgment is fully satisfied.

3. Claimant is awarded compensatory damages of the difference between what she earned (and will earn) as a Clerk and what she would have earned had she been awarded a Coordinator position in February 1989 when David Markin was offered the job, plus statutory interest on that amount calculated from the date the civil rights complaint was filed until the date the judgment is fully satisfied. Benefits based upon earnings are to be similarly calculated.

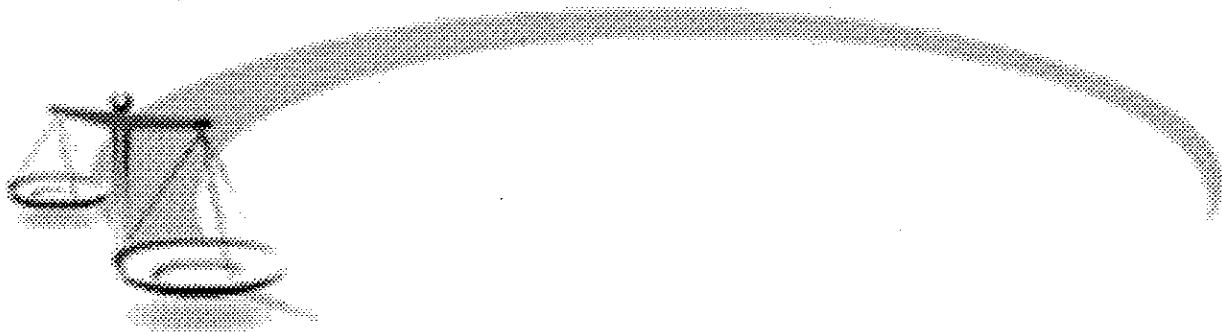
MICHIGAN CIVIL RIGHTS COMMISSION

Dated:

June 30, 2000



Nanette Lee Reynolds, Ed.D., Director



**#107990-EM13 Elaine Stephens
vs. Chrysler Corporation**

**Opinion
Gary Torgow, 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 Elaine Stephens,

Claimant,

v

MDCR Case No. 107990-EM13

Chrysler Corporation,

Respondent.

OPINION

GARY TORGOW, Commissioner

This case involves a complaint of race and gender discrimination by Claimant, Elaine Stephens, against her employer, Respondent, Chrysler Corporation. Claimant has worked for Respondent for more than twenty-one years, eighteen years as a janitor in the Maintenance Department. During these years Claimant observed male employees hired into the Maintenance Department and transferred or presumably promoted into other departments after a short period of time. Ms. Stephens believed she was as qualified as these male employees, and was frustrated with her inability to progress beyond the Maintenance Department. She eventually expressed to her supervisor her intent to file a complaint with the Michigan Department of Civil Rights, and shortly thereafter, in January 1986, Ms. Stephens was promoted to Clerk 1 in the Machine and Plastics Shops.

Claimant continued to seek advancement, but again observed that she was being overlooked by management in favor of males with comparable or less experience.

¹"We know from [United States] Supreme and Circuit Court decisions, that the term "sex," at least as used in Title VII, connotes "gender," . . . , *Price Waterhouse v Hopkins*, 490 US 228, 109 Sct 1775, 104 LEd2d 268 (1989); *Harris v Forklift Sys.*, 510 US 17, 114 Sct 367, 126 LEd2d 295 (1993);

In February 1989 Claimant and two other female employees filed complaints with the Michigan Department of Civil Rights alleging sex/gender¹ discrimination. However, the two other female employees later withdrew their complaints after Respondent promoted them to Coordinator positions with retroactive compensation.

The Michigan Department of Civil Rights investigated Ms. Stephens' complaint and found probable cause to believe discrimination had occurred. Subsequent conciliation efforts were unsuccessful and a Charge was issued. The Charge was later amended to add discrimination based on race. Respondent filed an Answer denying all of the allegations.

A four-day civil rights hearing was held in December 1996. The Hearing Referee recommended dismissal of the race discrimination claim and a finding in favor of Claimant's gender discrimination claim. Respondent filed Exceptions to the Referee's Recommendations and both parties presented Oral Argument before the Civil Rights Commission.

In this case, the Commission will decide two issues: (1) whether race was a factor in the decision not to promote Claimant to a Coordinator position, and (2) whether gender was a factor in the decision not to promote Claimant to a Coordinator position. After reviewing the entire record, we: (1) summarily adopt the Hearing Referee's findings that race was not a factor in the decision not to promote Claimant to a Coordinator position, and (2) affirm the recommendation that Claimant was discriminated against based on gender. Our rationale appears below.

I FACTUAL BACKGROUND

The Claimant, Elaine Stephens, is an African-American woman who began working for Respondent, Chrysler Corporation (hereafter "Respondent") on May 10, 1968. Ms. Stephens is a high-school graduate with some courses in higher education. She worked as a janitor in Respondent's predominately African-American staffed Maintenance Department for nearly eighteen years. During those years, 1968-1986,

Hopkins v Baltimore Gas & Elec Co, 871 FSupp 822 (D.Md 1994). Because the ELCRA is modeled after Title VII, Michigan courts have with regularity turned to Title VII for guidance, *Radtke v Everett*, 442 Mich 368, 501 NW2d 155 (1993); *Victorson v Dep't of Treasury*, 439 Mich 131, 482 NW2d 685 (1992); *Matras v Amoco Oil Co*, 424 Mich 675, 385 NW2d 586 (1986)."

Claimant observed that white employees hired into the Maintenance Department were promoted, reassigned and/or transferred to other departments in a relatively short period of time.

In mid-November 1985, Claimant discussed with her supervisor, Henry Carter, her intent to file a complaint with the Michigan Department of Civil Rights based upon her observations and perceived racial discrimination with regard to promotions. Mr. Carter relayed this information to the general foreman, and a few weeks later, on January 6, 1986, Claimant was promoted to Clerk 1 and transferred to the Machine and Plastics Shops. In this position, Claimant kept attendance records for employees in both the Plastics Shop and the Machine Shop. She also routinely handled blueprints and received "on-the-job training" in blueprint reading from the Trade and Craft employees in her shop. On October 12, 1987, Claimant transferred to a Clerk 3 position in the Metal Shop as a replacement for Patricia Smith, a white female. Although Claimant replaced a Clerk 3, her wages and salary were not upgraded to the grade 3 level; Claimant remained a Clerk 1 and continued to receive Clerk 1 salary and benefits.

During the next two years 1987-88, the UAW negotiated its first contract as union representative for the Clerks and Coordinators. Under the newly negotiated agreement, Clerks at grades 1 and 2 were upgraded to grade 3 retroactive to January 5, 1987. Per the terms of this contract, Claimant was upgraded to Clerk 3.

While Claimant worked as a Clerk in the Metal Shop, she observed several male Clerks promoted to the position of "589 Follow-up Coordinator," (hereafter "Coordinator"). Although the duties performed by these Coordinators varied depending on the area assigned, by all appearances, progression from Clerk to Coordinator was an established career path². Claimant applied for a Coordinator position on several occasions, but was never selected.

In early 1988 Ms. Stephens learned that a Coordinator position would soon be available, and on May 16, 1988, she sent a typed letter (Claimant's Exhibit #1) to James Butler and Robert Rokicki, expressing her interest in the position. James Butler was the general supervisor over the Coordinator positions and Robert Rokicki was his manager. Two other female clerks, Patricia Smith and Margarita (Sandberg) Castillo, also expressed their interest in that Coordinator position. Although none of the women

²Some of the men who held the position as Metal Shop Clerk prior to being promoted to Coordinator include: James Butler, Robert Romas, Robert Kluth, Robert Mitchess and Leyon Walton. (Transcript Vol. 1, p. 61-62).

who expressed an interest in the Coordinator position were interviewed, Respondent contends that they were considered. Ultimately, in January 1989, Thomas Horlacher, a white male, was selected to fill the vacant Coordinator position.

The women complained to Mr. Ziegenfelder about the appointment of Thomas Horlacher and also about not being interviewed, which they equated with not being considered for the Coordinator position. Mr. Ziegenfelder, the Executive Engineer in charge of the Engineering Department including the Coordinators in the shops, explained to them that Thomas Horlacher had an extensive automotive background and corresponding experience, which seemed to mollify the women. During that conversation Mr. Ziegenfelder also informed the three women that blueprint reading was a prerequisite to becoming a Coordinator, and they needed to take a course if they were serious about a Coordinator position. This was the first time the women had heard of this requirement. Also it was contrary to their observation that historically male clerks progressed to Coordinator, without blueprint reading as a prerequisite.

By 1989, the Coordinator positions were becoming more clerical as platform teams came into existence with engineers assuming a lot of the decision-making previously performed by Coordinators. In January 1989, another Coordinator position became available, and although a vacancy notice was never posted, Ms. Castillo, Ms. Smith and Claimant each applied for the position. Ms. Castillo also met with Mr. Butler to discuss her interest in the position. Mr. Butler told her a man was needed in the position because, "the duties involved heavy lifting"³.

David Markin, a white male "contract employee"⁴, assigned to the Trim Shop for two years, as a clerk, also heard about the opening. Shortly thereafter, James Butler informed David Markin that he would be working for him as a Coordinator. No inquiry had been made by James Butler of David Markin's background, experience or education. While still performing his Clerk duties, David Markin began moving his belongings into James Butler's area of supervision and began reviewing some of the procedural manuals used in that Coordinator position.

The three women again complained to Mr. Ziegenfelder and several days later

³Transcript Vol. III, pgs. 25-26.

⁴A person in this category may be employed by a separate concern that supplies workers – hence the reference to being a contract[or] employee. It also may refer to an individual not carried on the books as an employee and who is paid an hourly rate without other benefits, i.e. insurance, pension, vacations, holidays, etc.

David Markin was removed from the position, and David Gentner, a white male, was given the Coordinator position. That same month Claimant, Ms. Castillo and Ms. Smith filed individual complaints with the Michigan Department of Civil Rights.

In November 1989, about eight months after the complaints were filed, Patricia Smith, a white female, was offered a Coordinator position. Earlier that year, Ms. Smith had taken a mechanical drafting course at a community education program; the course included blueprint reading. Ms. Smith testified at the civil rights hearing that in performing her Coordinator duties, she does not have to read blueprints. Ms. Smith withdrew her civil rights complaint after being promoted to a Coordinator position with back pay retroactive to March 13, 1989, the date she filed her civil rights complaint.

Antoinette Ziarko, a white female, was promoted to a Coordinator position in November 1990. Ms. Ziarko had been with Chrysler since 1967 working in the blueprint room. In 1972 she completed a six-month detailing program reverentially referred to as a Burt Bosca course⁵. As part of detailing, Ms. Ziarko learned to make drawings and read blueprints.

In February 1990, Claimant, Ms. Castillo and David Markin enrolled in a blueprint reading course offered by Respondent. All completed the course in April 1990⁶.

Margarita Castillo, a Hispanic woman, was promoted to a Coordinator position in May 1991 but spends her entire time working on Union business for Respondent. She has about four years less seniority than Claimant. Ms. Castillo also withdrew her civil rights complaint after being promoted to a Coordinator position with pay retroactive to March 13, 1989, the date her civil rights complaint was filed.

Ms. Stephens was not promoted and continues with her complaint.

II

ANALYSIS

Claimant alleges gender discrimination in violation of the Michigan Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2202(1)(a); MSA 3.548(202) (1) (a), which provides in relevant part:

- (1) An employer shall not do any of the following:

⁵Bosca, a former automotive technician, is to Chrysler automobile drafting what Montessori is to preschool education.

⁶Claimant Exhibit #5, #6; Respondent #9.

- (a) Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, because of religion, race, color, national origin, age, sex, height, weight, or marital status.

Unlawful discrimination can be established with evidence that Claimant was treated differently than others similarly situated and/or that Respondent was predisposed to discriminate and acted on that disposition.

To establish a prima facie case of discrimination Claimant must prove by a preponderance of the evidence that (1) she was a member of the protected class; (2) she suffered an adverse employment action; (3) she was qualified for the position; but (4) she was not promoted under circumstances that give rise to an inference of unlawful discrimination⁷. Once Claimant has sufficiently established a prima facie case, a presumption of discrimination arises.

A.

There is sufficient evidence on the record to support a prima facie showing of gender discrimination. Claimant is female and possesses statutorily protected characteristics by virtue of her gender. She was denied promotion to a 589 Coordinator position in January 1988, February 1989, November 1989, November 1990 and May 1991. She was qualified for the Coordinator position⁸, but not selected. However, men with similar or less qualifications were selected, e.g., David Markin, a male, was hired in February 1990 then replaced by Dan Genther, a male who lacked the required clerical experience; Thomas Horlacher, a male who lacked clerical

⁷This four-part proof or test is an adaptation of the United States Supreme Court's *McDonnell Douglas* test to prove a prima facie case of discrimination, *McDonnell Douglas Corp v Green*, 411 US 792; 93 S Ct 1817; 36 L Ed 2d 668 (1973). In adopting this test, we have cautioned that it is not to be applied mechanically, but with due deference to the unique facts of the individual case. *Lytle v Malady*, 456 Mich 1, 27; 566 NW2d 582 (1997), citing *Furnco Construction Corp v Waters*, 438 US 567, 577; 98 S Ct 2943; 57 L Ed 2d 957 (1978). See also *Merkel v Scovill, Inc*, 787 F2d 174, 177 (CA 6, 1986).

Furthermore, this three-step framework should not imply that proof must be presented in three distinct stages. The frame work is merely a means of analyzing the allocation of proof.

⁸In February 1989 Respondent prepared a Salaried Personnel Requisition form for David Markin's appointment to a Coordinator position, with these requirements: a high school diploma, drivers license, and experience filing and typing. The description of work read: "Control and direct stockroom Part Pulls for Vehicle Build Operation installed parts to insure components are at the build site on time. Follow-up and processing of the individual components for shipment to ODMTC, Carron, Creative and other outside sources, to verify content and the timeliness of shipments."

experience, was appointed in February 1988.

Claimant further contends she was not promoted under circumstances that give rise to an inference of unlawful gender discrimination. First, she and other women were treated differently than males similarly situated. Historically, males had progressed from Clerk to Coordinator without formal blueprint reading training as a prerequisite for hire, e.g., James Butler, now general supervisor over Coordinators since 1963, started as a Clerk 1 in the Metal Shop in 1956 and progressed to Coordinator in 1961, without a formal blueprint reading course or experience⁹. Then formal training in blueprint reading was added as a prerequisite to being a Coordinator at a time when the position was becoming more clerical. More importantly, however, even women who did have formal training in blueprint reading were not allowed to fill Coordinator positions until November 1989 after three women filed civil rights complaints.

Claimant further contends that Respondent, specifically James Butler, was predisposed to discriminate against women, and acted on that disposition. With one exception, all Coordinator positions since pre-1956 have been occupied by men. James Butler has had some responsibility for hiring Coordinators since 1963, and total responsibility since 1983 when he replaced Chuck Genetti as general supervisor. However, James Butler did not hire his first woman Coordinator until November 1989 and only after three women filed a civil rights complaint. Eight months after this complaint was filed, two white and one Hispanic women were promoted to Coordinator positions, two in apparent resolution of their civil rights complaints. Ms. Castillo and Ms. Smith were promoted with compensation retroactive to the date their civil rights complaints were filed. Claimant was the only complainant not promoted. Clearly Claimant has established a prima facie case of gender discrimination.

B.

The burden now shifts to Respondent to overcome this presumption of discrimination. To accomplish this, Respondent must articulate a "legitimate, nondiscriminatory reason" for Claimant not being appointed to a Coordinator position. *Texas Dep't of Community Affairs v Burdine*, 450 US 248, 252-253; 101 S Ct 1089; 67 L Ed 207 (1981). Respondent must clearly set forth, through the introduction of admissible evidence, the reasons for Claimant's rejection and the explanation provided

⁹James Butler deposition, p7.

must be legally sufficient to justify a judgement for the Respondent. If Respondent carries this burden of production, the presumption raised by the prima facie case is rebutted, and the factual inquiry proceeds to a new level of specificity. *Burdine* at 254-255. Once the Respondent produces such evidence, even if later refuted or disbelieved, the presumption drops away, and the burden of proof shifts back to plaintiff.

Respondent denies that gender was a factor in Claimant not being promoted to a Coordinator position. According to Respondent, Claimant was not selected because in each instance, she was always less qualified than the individual selected, specifically, David Markin, Tom Horlacher, Dan Gentner, Patricia Smith, Antoinette Ziarko and Margarita Castillo. Respondent also denies that David Markin was promoted to a Coordinator position. Respondent provides the following individuals qualifications for comparison:

1. Elaine Stephens had three years experience as a clerk in the Engineering Shops, and completed a blueprint reading course offered by Respondent in February 1990.
2. Tom Horlacher began employment with Respondent in 1984 in the body mockup room. He had eight years of experience in job shops before being hired by Respondent and five years experience in the mockup room working with various materials. James Butler promoted him to Coordinator in January 1989.
3. Patricia Smith was a test driver from 1978-1980 and a clerk in the Engineering Shops from 1984 to 1985. She took a Mechanical Drafting class through a community college in March 1989. Mechanical Drafting teaches how to read and draw blueprints. Ms. Smith became a Coordinator in November 1989.
4. Antoinette Ziarko was a blueprint machine operator from 1967 to 1972 and a Clerk in the Engineering Shops for 18 years, from 1972 to 1990. From 1971 to 1972 Ms. Ziarko took a detailing course from the Bosca School of Automotive Design. This was a 24-week course that required 15 hours of class attendance and homework weekly, or 360 hours of effort to complete. EBOM was one of the new technologies being used in Engineering. Ms. Ziarko was better qualified than Claimant by virtue of education, knowledge of emerging technologies and having been a Clerk in the Engineering Shops for 18 years. Ms. Ziarko became a Coordinator in November 1990.
5. Margarita Castillo was an Accounts Payable Clerk from 1972 to 1984. She became a Clerk in the Engineering Shops at the end of 1984. In February 1990 she completed a blueprint reading course offered by Respondent. Ms. Castillo was better qualified than Claimant because she had been a Clerk in the

Engineering shops for seven years. Ms. Castillo became a Coordinator in November 1990.

C.

At this third stage of proof, Claimant must not merely show that Respondent's offered reason was pretextual, but that it was a pretext for gender discrimination. Respondent proffers that Claimant was always less qualified than the individual selected. When the employer advances a legitimate nondiscriminatory reason for an adverse employment decision, the Claimant may establish that the reasons were pretextual by showing any of the following: (1) the reasons have no basis in fact; (2) the reasons offered were not the actual factors motivating the decision, or (3) the reasons if true, were insufficient to justify the decision. *Dubey v Stroh Brewery Company*, 185 Mich App 561, 565-566; 462 NW2d 758 (1990), *lv den* 437 Mich 913 (1991).

Claimant contends that Respondent's reasoning that she was less qualified than others selected, and specifically other white males, is pretextual, having no basis in fact and was not the actual factor motivating the decisions. A preponderance of the evidence supports Claimant's contention.

In February 1988 Robert Ziegenfelder, Executive Engineer over the Engineering Department, verbally informed the Claimant and others that formal blueprint reading training was a prerequisite for hire as a Coordinator. The blueprint reading training requirement was a pretext to quiet the women about the appointment of Thomas Horlacher, because the next year, in February 1989 Respondent selected David Markin to fill a Coordinator position and David Markin did not have blueprint reading experience. In fact, no blueprint reading training formal or otherwise was identified as required, i.e., experience filing, typing and possession of a valid drivers license. This blueprint reading requirement is further suspect because several Coordinators testified to never having to read blueprints as part of their job duties. Clearly, Claimant was at least if not more qualified as David Markin, considering her three years experience in the shops and her on-the-job training in blueprint reading compared to David Markin's short term employment as a non-union contract employee with no blue print reading experience or training. Even more revealing, however, is the reality that several women with formal or on-the-job training in blueprint reading and the required clerical experience were denied Coordinator positions until after the civil rights complaints were

filed¹⁰. However, the inference of gender discrimination pretext does not end here. When the women protested David Markin's selection, Respondent replaced him with Dan Gentner, a white male whose experience was never validated on the record.

Claimant also was treated different from men when she was required to complete a blueprint training course while that same requirement was not imposed upon the men. Several of Respondent's employees, including James Butler, testified in depositions or at the Rule 12 civil rights hearing that they currently worked or had worked as Coordinators and never received any formal blueprint reading training¹¹. At least one employee, Leyon Walton, testified that taking a blueprint reading course did not improve his job performance¹². Even more glaring is Respondent's admission that "In the best of all worlds, Claimant would have been a Clerk in the 1960's or 1970's in the Engineering Shops. *Management would have given her the Coordinator title* but made her responsible only for shipping parts, *the so-called Shipping Coordinator job*, until she learned to read prints, select suppliers, and ensure prototype parts met Chrysler specifications." (Respondent's Post-Hearing Brief, p.9, Tr. Vol. III, p. 34)

Finally, Claimant contends that discrimination based on sex was the actual factor motivating Respondent's decisions. A preponderance of the evidence also supports this position. Since 1963 when James Butler began hiring and supervising Coordinators, he has not hired a women for a Coordinator position. The only female ever to hold a Coordinator position was appointed prior to James Butler assuming responsibility for hiring Coordinators. It was only after Claimant, Ms. Castillo and Ms. Smith filed civil rights complaints with the Michigan Department of Civil Rights, that James Butler appointed two women to Coordinator positions; both of these women had pending civil rights complaints.

Each was compensated with pay retroactive to March 1989, the date they filed their civil rights complaints. The only complainant not appointed to a Coordinator position and appropriately compensated, is Claimant.

¹⁰Antoinette Ziarko was a blueprint machine operator from 1967-72 and a clerk in the Engineering Shops from 1972-90. In 1972 she completed a highly regarded, 360 hour detailing course with the Bosca School of Automotive Design. Ms. Ziarko could read and draw blueprints, but was not promoted to a Coordinator position until November 1990. (Tr. Vol. II, p. 201) Patricia Smith was a test driver from 1978-1980 and a clerk in the Engineering Shops from 1984-1985; she did not become a Coordinator until November 1989. (Tr Vol I, p190).

¹¹James Butler deposition, p. 7.

¹² Leyon Walton deposition, p. 32.

Respondents' evidence that women have been hired as Coordinators does not dilute the inference of gender discrimination, because the women were not hired as Coordinators until after they filed civil rights complaints. "When the individual who was promoted receives the challenged position only after the plaintiff has filed a discrimination charge, the fact that both individuals are members of the same protected class does not rebut the otherwise established inference of discrimination." *Diaz v American Telephone & Telegraph*, 752 F.2d 1356, 1361 (1985).

Finally, credible testimony has been offered that James Butler expressed his preference to hire males for the Coordinator position by stating that he believed that a man was needed for the job. Claimant has met her burden by showing that Respondents' reasons were mere pretext.

III

CONCLUSION

We adopt the referee's recommended findings in favor of Claimant's gender discrimination claim. Respondent violated the Elliott-Larsen Civil Rights Act by denying Claimant a promotion to the position of Coordinator, because of her gender. The ELCRA permits an award of damages for injury or loss caused by this violation, plus interest at the statutory rate.

Because of the changing nature of the work, the position of Coordinator has been discontinued and no new appointments have been made. Incumbents remain in the job, but they are not replaced when they leave the classification. There is currently no Coordinator position to which Claimant can be appointed. But the discrimination against her must nevertheless be remedied. Had Claimant been promoted she would have received the higher rate of pay and corresponding benefits involved with such pay. Therefore Claimant is entitled to compensatory damages of the difference between what she earned (and will earn) as a Clerk and what she would have earned had she been awarded a Coordinator position in February 1989 (when David Markin was offered the job), plus interest at the statutory rate computed from the date the civil rights complaint was filed until the date the judgment is satisfied in full.

Claimant is also entitled to emotional damages because of the gender discrimination she suffered. Her therapist testified to treating her for depression and anger related to what was ostensibly discrimination. While the treatment was not extensive, there is no question but that Ms. Stephens had some emotional injury from being denied the job of a Coordinator. While impossible to quantify, given the nature of the case, Claimant is awarded \$2500.00 per year from 1989 through 2000 or a total of \$27,500 in emotional distress damages, plus statutory interest¹³ on that amount

beginning with the date the civil rights complaint was filed until the date the judgment is fully satisfied.

Dated: 6/30/00


Gary Torgow

¹³MCLA 600.6013(6), MSA 27A.6013(6), *amended by* 1993 PA 78, for cases filed on or after April 1, 1994.