IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARILYN EDWARDS-DIPASQUALE	:	CIVIL ACTION
v.	:	
WILFRAN AGRICULTURAL INDUSTRIES, INC.	:	NO. 00-3818

MEMORANDUM AND ORDER

HUTTON, J. December 17, 2001

Plaintiff, Marilyn Edwards-DiPasquale ("Plaintiff"), filed the instant action against Defendant Wilfran Agricultural Industries, Inc. ("Defendant" or "Wilfran") seeking relief for unlawful sex-based harassment suffered by Plaintiff during the five month period of her employment. Defendant filed no answer to the complaint or responsive motions. Accordingly, Plaintiff obtained a default judgment in this case for failure of the Defendant to appear, plead or otherwise defend. Liability having been determined, the Court conducted a hearing to determine Plaintiff's entitlement to damages on September 28, 2001. Plaintiff then filed her prosed findings of fact and conclusions of law with the Court on October 25, 2001. Upon consideration of the allegations contained in the Complaint, the testimony of Plaintiff, and exhibits received in evidence at the hearing, the Court makes the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

A. Background

1. On July 27, 2000, Plaintiff filed the instant complaint alleging sexual harassment pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e to 2000e-17 (1994) and the Pennsylvania Human Relations Act ("PHRA"), 43 Pa. Con. Stat. Ann. §§ 951-963 (West 1991).

2. Plaintiff also alleged that Defendant retaliated unlawfully and intentionally against her because she opposed unlawful discrimination in violation of her federally protected rights under 42 U.S.C. § 2000-3(a). See Compl. at ¶ 37.

3. Service of Summons and Complaint was executed upon Defendant on September 28, 2000. The Summons was accepted by William Franks, president and owner of the Defendant. See Return of Service, Docket No. 2.

4. Defendant failed to respond to the complaint and filed no objections or responsive briefs in this action.

5. On December 14, 2000, Plaintiff requested a default judgment against Defendant. See Docket No. 3.

6. The Court ordered entry of default judgment on December 15, 2000.

7. Default having been entered, the Court finds that Defendant discriminated unlawfully and intentionally against Plaintiff because of her sex in violation of her federally protected rights,

and her rights under the PHRA.

8. On September 28, 2001, the Court held a hearing to determine the amount of damages to be awarded to Plaintiff. Defendant failed to appear at the hearing.

B. Plaintiff's Claims Under Title VII and the PHRA

1. Defendant, Wilfran Agricultural Industries, Inc., is a Pennsylvania Corporation doing business in Malvern, Pennsylvania.

2. Plaintiff is a female resident of the state of Delaware, and resides at 1917 West Zebanco Drive in Woodmill Village, Wilmington, Delaware.

3. Plaintiff was employed by Defendant as a dairy sales administrator in June of 1998. See Edwards-DiPasquale Dep. Test. of September 28, 2001 (" Edwards-DiPasquale Test.") at 4, line 12.

4. At all relevant times, Ted Sosangelis, Scott Knox, and Eric Insinger were agents and employees of Defendant with supervisory power over Plaintiff.

5. At all relevant times, William Franks was the president and owner of Defendant, and Defendant employed approximately nineteen (19) people. See Edwards-DiPasquale Test. at 4, line 23; at 5, line 7.

6. During the course of her employment, Plaintiff was repeatedly subjected to inappropriate sexual comments and questions in the workplace concerning her sexual activity. Plaintiff's first

supervisor, Ted Sosangelis, asked Plaintiff "about what color panties [she] was wearing" (Id. at 5, lines 24-25), and asked "about the difference between sex with . . . [Plaintiff's] ex-husband and the man [she] was dating." Id. at 9, lines 1-6.

7. Plaintiff's next supervisor, Scott Knox, placed an article about anal sex on Plaintiff's desk and when questioned by Plaintiff as to why he gave her the article, Scott Knox responded "Well, isn't that what you and your boyfriend do?" Id. at 7, line 24. In addition, Plaintiff was exposed to pornographic e-mails. See id. at 10, lines 1-13.

8. Plaintiff repeatedly objected to the conduct and questions. See id. at 6, lines 3-4; at 7, lines 16-24; at 9, lines 21-25; at 10, lines 15-20.

9. Plaintiff complained about the behavior to her then-supervisor, Eric Insinger. See id. at 10, line 16. This meeting took place two weeks before Plaintiff was terminated. See id. at 10, lines 23-24.

10. On November 23, 1998, Plaintiff was terminated. Plaintiff was told her termination stemmed from Defendant's agent's belief that she was not "happy here," and that her employment with Defendant was "just not working." See id. at 11, lines 19-21.

11. Plaintiff had never been disciplined by Defendant, nor did Plaintiff receive notice of her termination. See id. at 11, lines 24-25; at 12, lines 2-4.

C. Damages

1. At the time of her termination, Plaintiff's annual salary was $38,000. See id. at 12, line 10.

2. After her termination, Plaintiff received unemployment benefits from December of 1998 until May of 1999. See id. at 13, line 19.

3. From November 23, 1998 until May, 1999, Plaintiff could have made $16075.40 for twenty-two (22) weeks of work at a rate of $730.77 per week ($38,000 annually) if it were not for Defendant's discriminatory conduct.

4. In May of 1999, Plaintiff was rehired by a former employee, Currie Hair, Skin and Nails at an annual salary of $20,000. See id. at 13, lines 20-25.

5. Plaintiff could have made $38,000 from May, 1999 until May, 2000 if it were not for Defendant's discriminatory conduct. Instead, she made $20,000 – a difference of $18,000.

6. In May of 2000, Plaintiff's salary increased to $28,000 annually. See id. at 14, line 6.

7. Plaintiff could have made $38,000 from May, 2000 until May, 2001 if it were not for Defendant's discriminatory conduct. Instead, she made $28,000 – a difference of $10,000.

8. From May, 2001 until the date of this Order in December, 2001, Plaintiff could have earned $24,115.41 for thirty-three (33) weeks of work at a rate of $730.77 per week ($38,000 annually) but for

Defendant's discriminatory conduct. Instead, she earned $17,769.18 at a rate of $538.46 per week ($28,000 annually) – a difference of $6,346.23.

9. **CALCULATION OF BACK PAY**

TIME PERIOD	WILFRAN SALARY (PER WEEK)	OTHER INCOME (PER WEEK)	DIFFERENCE
11/23/98 (termination date) 05/01/99	$38,000 annual $730.77 per wk		**$16,076.94**
22 weeks	$16076.94	(Unemployment) - $16076.94	
05/01/99 (new employment) 05/01/00	$38,000 annual $730.77 per wk	$20,000 annual $384.62 per week	**$18,000**
52 weeks	$38,000	$20,000 - $18,000	
05/01/00 (date of raise) 05/01/01	$38,000 annual $730.77 per wk	$28,000 annual $538.46 per wk	**$10,000**
52 weeks	$38,000	$28,000 - $10,000	
05/01/01 to 12/17/01 (date of Order)	$38,000 annual $730.77 per wk	$28,000 annual $538.46 per wk	**$6346.23**
33 weeks	$24,115.41	$17,769.18 - $6346.23	
		TOTAL:	**$50,423.17**

10. Plaintiff received health insurance benefits during her employment with Defendant, yet provided no evidence to the Court as to the value of such benefits.

11. Plaintiff alleges that she was due a bonus of $5,000 at the end of

each year from Defendant, but has not provided adequate support for the Court to make such a finding.

12. Plaintiff alleges that she sustained severe and pervasive emotional distress from the discriminatory conduct that required psychiatric treatment and medication. See id. at 14, lines 22-24. Plaintiff testified, however, that she had received treatment for depression and taken anti-depressants prior to her employment with Defendant. See id. at 14, lines 22-25; at 15, lines 1-12. Therefore, Plaintiff has not provided adequate support for the Court to conclude that Defendant's conduct resulted in Plaintiff seeking psychiatric treatment or the side effects Plaintiff experiences from being on Prozac.

II. CONCLUSIONS OF LAW

A. Jurisdiction and Applicable Law

1. The Court has original subject matter jurisdiction over Title VII claims under 28 U.S.C. § 1331 and Plaintiff's retaliation complaints under the Pennsylvania Human Relations Act, 43 P.S. § 955(d) ("PHRA"), as well as Plaintiff's sex discrimination complaint under PHRA, by exercising our supplemental jurisdiction under 28 U.S.C. § 1367(a).

2. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2).

3. The entry of default and default judgment is governed by Federal Rule of Civil Procedure 55. Federal Rule of Civil Procedure 55 reads in pertinent part:

> (a) Entry. When a party against whom a judgment for

> affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.
>
> (b) Judgment. Judgment by default may be entered as follows:
>
> > (1) By the Clerk. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and if he is not an infant or incompetent person.
> >
> > (2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefor ....

Fed. R. Civ. P. 55(a)-(b).

4. Upon determination by the Court that Defendant is in default, all factual allegations of the complaint other than those pertaining to the amount of damages are to be taken as true. Comdyne I, Inc. v. Corbin, 908 F.2d 1142, 1149 (3d Cir. 1990) (citing 10 Wright, Miller, and Kane, Federal Practice and Procedure § 2688). "As such, a default does not

constitute an admission of conclusions of law or of liability." Degen v. Bunce, 1995 WL 120483, at *2 (E.D. Pa. March 13, 1995). Accordingly, "'even after default it remains for the court to consider whether the unchallenged facts constitute a legitimate cause of action.'" Id. at *2 (quoting 10 Wright, Miller, and Kane, Federal Practice and Procedure § 2688).

B. Liability of Defendant

1. Title VII provides that "[i]t shall be an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his [or her] compensation, terms, conditions, or privileges of employment because of such individual's . . . sex." See 42 U.S.C. § 2000e-2(a)(1).

2. Title VII further provides that "[i]t shall be an unlawful employment practice for an employer to discriminate against any of his [or her] employees . . . because he [or she] has opposed any practice made an unlawful employment practice by this title." See 42 U.S.C. § 2000e-3(a).

3. The provisions of the PHRA, 43 P.S. § 955(d) are interpreted consistently with those of Title VII. See, e.g., Clark v. Com. of Pennsylvania, 885 F.Supp. 694 (E.D. Pa. 1995); Barb v. Miles, Inc., 861 F.Supp. 356 (W.D. Pa. 1994) (stating that "courts have uniformly held that PHRA should be interpreted consistently with Title VII"). Therefore, Plaintiff's state-law claim pursuant to the PHRA is appropriately analyzed under the same framework as her Title VII claim.

See Weldon v. Kraft, Inc., 896 F.2d 793, 796 (3d Cir. 1990).

4. Defendant Wilfran is an “employer” within the meaning of 42 U.S.C. § 2000(e) and (b) and within the meaning of the PHRA.

5. Plaintiff exhausted all remedies available to her as set forth in Title VII by filing a timely charge of employment discrimination with the Pennsylvania Human Relations Commission.

6. The Court concludes that Defendant is liable to Plaintiff because Defendant discriminated intentionally and unlawfully against Plaintiff because of her sex in violation of 42 U.S.C. § 2000e-2(a)(1) and 43 P.S. § 955(d), and because Defendant retaliated intentionally and unlawfully against Plaintiff in violation of her rights secured under § 2000e-3(a).

C. Back Pay and Prejudgment Interest

1. Title VII provides that "[i]f the court finds that the [employer] has intentionally engaged in . . . an unlawful employment practice charged in the complaint, the court may . . . order such affirmative action as may be appropriate." See 42 U.S.C. § 2000e-5(g)(1).

2. The PHRA authorizes courts to "order affirmative action which may include, but is not limited to, reinstatement or hiring of employees, granting of back pay, or any other legal or equitable relief as the court deems appropriate." 43 Pa. Cons. Stat. Ann. § 962(c)(3) (Purdon's 1991 & Supp. 1997).

3. Back pay is routinely awarded to successful Title VII and PHRA claimants. Loeffler v. Frank, 486 U.S. 549, 558, 100 L.Ed.2d 549, 108 S.Ct. 1965 (1988); Booker v. Taylor Milk Co., 64 F.3d 860, 864 (3d Cir.

1995); Clarke v. Whitney, 975 F.Supp 754, 758 (E.D. Pa. 1997).

4. Back pay is not reduced either by unemployment benefits collected by the Plaintiff or by taxes that would have been paid on the income. Dillon v. Coles, 746 F.2d 998, 1006 (3d Cir. 1984); Craig v. Y&Y Snacks, Inc., 721 F.2d 77 (3d Cir. 1983); Ferris v. Pa. Fed'n Bhd. of Maint. of Way Employees, 153 F.Supp.2d 736, 749 (E.D. Pa. 2001); Clarke, 975 F.Supp at 758.

5. Title VII and the PHRA also impose on claimants a duty to mitigate damages. See Robinson v. SEPTA, 982 F.2d 892, 897 (3d Cir. 1993); Clarke, 975 F.Supp at 758. "Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable." 42 U.S.C. § 2000e-5(g)(1); Booker, 64 F.3d at 864. This means that a back pay award is "reduced by any amounts the plaintiff actually earned or could have earned through the exercise of reasonable diligence." Gallo v. John Powell Chevrolet, Inc., 779 F.Supp. 804, 813 (M.D. Pa. 1991).

6. Back pay awarded to a plaintiff should be the difference between wages Plaintiff would have earned absent discrimination and wages Plaintiff actually earned. See Durham Life Ins. Co. v. Evans, 166 F.3d 139, 156 (3d Cir. 1999) (quoting Gunby v. Pennsylvania Elec. Co., 840 F.2d 1108, 1119 (3d Cir. 1988). Back pay is calculated from the date of unlawful termination to the date of judgment entered in Plaintiff's favor. See Gallo, 779 F.Supp. at 808.

7. The Court concludes that Plaintiff is entitled to an award of in back

pay because she would have earned $116,192.35 from November 23, 1998 until the date of this Order absent Defendant's unlawful discrimination and that she actually earned $65,769.18 from other sources of employment.

a. The Court finds that Plaintiff is entitled to an award of $16,076.94 for back pay lost from November 23, 1998 until May 1, 1999. See supra Part I.C.3.

b. The Court concludes that Plaintiff is entitled to an award of $18,000 for back pay lost from May, 1999 to May, 2000. See supra Part I.C.5.

c. The Court concludes that Plaintiff is entitled to an award of $10,000 for back pay lost from May, 2000 to May, 2001. See supra Part I.C.7.

d. The Court finds that Plaintiff is entitled to an award of for $6346.23 back pay lost from May, 2001 until the date of this Order. See supra Part I.C.7.

8. Judgment shall be entered against Defendant and in favor of Plaintiff for back pay in the amount of $50,423.17.

9. When a Title VII suit results in an award of back pay against a private employer, "there is a strong presumption in favor of awarding prejudgment interest, except where the award would result in 'unusual inequities.'" See Booker, 64 F.3d at 868; see also Taxman v. Board of Educ. of Township of Piscataway, 91 F.3d 1547, 1566 (3d Cir. 1996).

10. The Court finds no unusual inequities in this action. Accordingly, Defendant shall pay to Plaintiff prejudgment interest in an amount to be

determined upon consideration of a motion for prejudgment interest and any response thereto as required in the following Order.

D. Costs

1. "Except when express provision therfor is made either in a statute of the United States or in these rules, costs other than attorney's fees shall be allowed as of course to the prevailing party unless the court otherwise directs." See Fed. R. Civ. P. 54(d)(1); see also EEOC v. Fusaro Corp., 200 WL 375256, at *7 (E.D. Pa. April 11, 2000).

2. A “prevailing party” is one that obtained a "material alteration of the legal relationship of the parties” through either (1) an enforceable judgment on the merits, or (2) a settlement agreement enforceable through a court-ordered consent decree. Buckhannon Bd. and Care Home, Inc. v. West Virginia Dept. of Health and Human Res., 531 U.S. 1004, 121 S.Ct. 1835, 1840, 149 L.Ed.2d 855 (2001).

3. Plaintiff is a prevailing party in this action. Therefore, Defendant shall pay Plaintiff's lawful costs incurred as required in the following Order.

E. Compensatory and Punitive Damages

1. "In an action brought by a complaining party under [42 U.S.C. § 2000e-5] against a respondent who engaged in unlawful intentional discrimination . . . the complaining party may recover compensatory and punitive damages as allowed in subsection (b), in addition to any relief authorized by . . . [42 U.S.C. § 2000e-5(g)]." See 42 U.S.C. § 1981a.

2. Compensatory damages may be awarded for "future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses." See 42 U.S.C. § 1981a(b)(3).

3. Punitive damages may be awarded if "the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual." See 42 U.S.C. § 1981a(b)(1).

4. A plaintiff demonstrates malice or reckless indifference to federally protected rights by showing that the employer "discriminate[d] in the face of a perceived risk that its action will violate federal law." See Fusaro Corp., 200 WL 375256, at *7; Kolstad v. Am. Dental Ass'n, 119 S.Ct. 2118, 2129 (1999).

5. "The sum of the amount of compensatory damages awarded under this section ... and the amount of punitive damages awarded under this section, shall not exceed, for each complaining party, in the case of a respondent who has more than 14 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $50,000." See 42 U.S.C. § 1981a(b)(3)(A).

a. The Court concludes that Plaintiff is not entitled to compensatory damages because she failed to prove that Defendant's discriminatory conduct caused her emotional pain, inconvenience, mental anguish, loss of enjoyment of life and fear. See supra, Part I.C.10.

b. The Court concludes that Plaintiff is entitled to punitive damages of $10,000 because, despite Plaintiff’s notice to Defendant’s agents, Ted Sosangelis, Scott Knox, and Eric Insinger discriminated against her with malice or reckless indifference to her federally protected rights.

III. CONCLUSION

By entry of default, Defendant admitted liability for unlawful sex-based discrimination and retaliation against Plaintiff. At a hearing to determine the amount of damages to be awarded to Plaintiff, Plaintiff presented evidence demonstrating Defendant's unlawful harassment. Plaintiff lost wages due to Defendant's discriminatory conduct, and as such should be awarded back pay plus prejudgment interest. Moreover, Defendant's conduct was maliciously and recklessly indifferent to the federally protected rights of Plaintiff. Therefore, punitive damages are also awarded.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARILYN EDWARDS-DIPASQUALE	:	CIVIL ACTION
	:	
v.	:	
	:	
WILFRAN AGRICULTURAL INDUSTRIES, INC.	:	NO. 00-3818

O R D E R

AND NOW, this 17th day of December, 2001, upon consideration of Plaintiff's complaint (Docket No. 1) and no response thereto, the entry of default against Defendant and no response thereto, Plaintiff's testimony and evidence presented at the damages hearing on September 28, 2001, and Plaintiff’s proposed findings of fact and conclusions of law (Docket No. 6), IT IS HEREBY ORDERED that:

1. Judgment is entered against Defendant and in favor of Plaintiff for back pay in the amount of $50,423.17.

2. Judgment is entered against Defendant and in favor of Plaintiff for punitive damages in the amount of $10,000.

3. If Plaintiff desires to pursue the claim for prejudgment interest, Plaintiff shall serve and file a motion for prejudgment interest on back pay awarded within ten (10) days of the date of this Order. Such motion shall indicate the prejudgment interest rate to be applied, the reason therefor, the prejudgment interest dollar amount sought, and the method of calculation.

4. Plaintiff shall serve and file a motion for costs allowed by

law within ten (10) days of the date of this Order.

BY THE COURT:

_____

HERBERT J. HUTTON, J.