

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

BARBARA G. THOMPSON

V.

CENTRAL SECURITY AGENCY, INC.

**Civil Action No.
98-2474**

MEMORANDUM

Broderick, J.

March 8 , 1999

Plaintiff Barbara G. Thompson brings this sex discrimination action under Title VII. Plaintiff served the Complaint on Defendant Central Security Agency on July 28, 1998 and filed proof of service on August 4, 1998. Defendant failed to plead or otherwise defend, and on September 29, 1998, the Clerk entered default. On March 3, 1999, this Court held an evidentiary hearing limited to the issue of damages. For the reasons stated below, this Court will enter default judgment in the amount of \$23,485.32.

The decision whether to enter a default judgment is left to the sound discretion of the court under rule 55(b)(2) of the Federal Rules of Civil Procedure. Byrd v. Keene Corp., 104 F.R.D. 10, 12 (E.D.Pa 1984)(Pollak, J.) citing 10 Wright & Miller, § 2685. Rule 55(d) provides that default judgments are subject to the limitations in Rule 54(c). Therefore, a default judgment “shall not be different in kind from or exceed in amount that prayed for in the demand for judgment.” Fed.RCiv.P. 54(c). Plaintiff’s damage award is thus limited to her demand for “back-pay, front-pay, lost benefits, compensatory damages for physical pain and suffering, mental anguish, emotional distress, punitive damages, costs and reasonable attorney’s fees.”

At the hearing on March 3, 1999, Plaintiff appeared, represented by counsel. Plaintiff

presented proof of service on Defendants of the notice of the hearing. Defendants did not appear. The Court heard testimony from only one witness, the Plaintiff. Based on the well pleaded allegations in the complaint and the testimony at the hearing, the following facts are undisputed:

Plaintiff is presently 38 years old. Beginning on or around September 1, 1997, Plaintiff was employed as a security guard by Defendant Central Security Agency, Inc. (“CSAI”). Her supervisor was Daniel Davis. Beginning in late October 1997, Mr. Davis began making unwelcome sexual advances towards Plaintiff.

The first incident occurred while Plaintiff was working on site at Kenny Systems. She was “making rounds” and Mr. Davis followed her into a hallway. Mr. Davis touched and kissed Plaintiff, pulled down Plaintiff’s pants, rubbed his penis against Plaintiff’s buttocks and fondled Plaintiff’s breasts. Plaintiff told Mr. Davis to stop and tried to push him away.

On another occasion when Plaintiff and Mr. Davis were alone, Mr. Davis took out a gun. Mr. Davis removed the bullets, handed the gun to Plaintiff, and asked her to shoot it. Mr. Davis told Plaintiff that she would get her own gun if she was a “good girl.” Rather than pull the trigger, Plaintiff handed the gun back to Mr. Davis.

Mr. Davis visited Plaintiff at another work location where she had been assigned by CSAI. Mr. Davis made multiple statements to Plaintiff, describing in detail what he wanted to do to Plaintiff sexually, including “eating” her “clitoris” and wanting her to “sit on [his] face and come in [his] mouth.” Plaintiff rejected his advances.

Finally, when Plaintiff was working at the Avis site at the Philadelphia airport, Mr. Davis came into the company van which was provided as shelter for security workers. Mr. Davis kissed Plaintiff. She told him to stop. Mr. Davis asked Plaintiff what he “would have to give

[her] to have a good time with [him].” Mr. Davis asked Plaintiff to go to a hotel with him in Atlantic City. After Plaintiff rejected his offers, Mr. Davis told her not to tell anyone about their conversation.

As a result of these incidents, Plaintiff was “scared” of Mr. Davis and was afraid to go to work. Around the middle of November, 1997, Plaintiff reported this conduct to Phoebe, who is also a supervisor at CSAI. Defendant CSAI did not take any remedial action to protect the Plaintiff. Instead, Phoebe asked Plaintiff to keep Mr. Davis’s conduct strictly confidential.

After Plaintiff complained, she experienced a reduction in work hours and an assignment to less a desirable work site. Plaintiff had previously worked between 30 and 40 hours per week and been assigned to indoor or sheltered sites. The week following her complaint to Phoebe, Plaintiff worked only 12 hours. Plaintiff was assigned 4 hours of outdoor work, without any shelter, for 3 days. Plaintiff’s employment with Defendant ended on or about November 24, 1997, at which time she claims to have been constructively discharged.

After leaving CSAI, Plaintiff lapsed into depression and began using alcohol and drugs.¹ For several months, she made efforts to find work but her depression and substance abuse contributed to her difficulties in securing employment. Plaintiff has sought appropriate treatment and is currently in rehabilitation. Plaintiff resides at Safety Net, a residential treatment facility, where she participates in group and individual therapy. She speaks to her six children regularly by phone.

With the assistance of a counselor at Safety Net, Plaintiff is currently seeking

¹ Plaintiff testified that she had previously been treated for alcohol and substance abuse in 1991, but had completed her treatment by 1992. At the time she began her employment at CSAI, Plaintiff had been “clean” for 5 years.

employment. She expects to begin training as a nursing assistant/health care worker next month, and anticipates finding employment within three months.

BACK PAY LOSS

The Third Circuit has made it clear that an award of back pay should be the difference between actual wages and the wages the plaintiff would have earned absent discrimination. Gunby v. Pennsylvania, 840 F.2d 1108, 1119 (3d Cir. 1988). Plaintiff has not been employed since she left CSAI. At the hearing, Plaintiff submitted evidence demonstrating that she earned \$5.30 per hour at CSAI. Her average weekly wage for the ten weeks prior to her loss of employment was \$171.06. Plaintiff testified that she left CSAI on or about November 24, 1997, but that she never received her last paycheck from CSAI, and thus seeks back pay from November 15, 1997, through March 3, 1999. Based on the testimony and evidence submitted at the hearing, this Court will award sixty-seven weeks of back pay, at a rate of \$171.06 per week, for a total of \$11,461.02 in back pay.

COMPENSATORY DAMAGES

Title VII authorizes compensatory damages for “future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses.” 42 U.S.C. § 1981a(b)(3). Plaintiff has testified that she expects to complete a training program and be working within three months. She seeks front pay for the additional twelve weeks she expects to be unemployed. This Court will award front pay at a rate of \$171.06 for twelve weeks, discounted to present value, for a total front pay award of \$2,024.30.

Plaintiff testified that Mr. Davis's conduct made her feel "scared" and "embarrassed." Plaintiff testified that as a result of losing her job with CSAI, she slumped into depression and substance abuse. Based on Plaintiff's unchallenged testimony, this Court will award \$10,000 in pain and suffering damages for the distress caused by CSAI's unlawful actions. Therefore, combining the front pay and pain and suffering damages, this Court will award a total of \$12,024.30 in compensatory damages.

PUNITIVE DAMAGES

Under Title VII, punitive damages are available only "if the complaining party demonstrates that 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." 42 U.S.C. § 1981a(b)(1). Plaintiff has not produced any evidence of "malice" or "reckless indifference." Significantly, counsel did not even argue for punitive damages at the hearing. Because Plaintiff has failed to demonstrate "malice" or "reckless indifference," this Court will not award punitive damages.

An appropriate Order follows.

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ORDER

AND NOW, this 8th day of March; upon consideration of Plaintiff's Complaint and Motion for Default Judgment; after a hearing pursuant to Federal Rule of Civil Procedure 55(b)(2); and for the reasons stated in the Memorandum filed on this date;

IT IS ORDERED: Judgment shall be and the same is hereby entered in favor of Plaintiff Barbara G. Thompson and against Defendant Central Security Agency, Inc. in the amount of \$23,485.32.

RAYMOND J. BRODERICK, J.