Iowa Department of Inspections and Appeals
Division of Administrative Hearings
Wallace State Office Building, Third Floor
Des Moines, Iowa 50319

GERALYN ALLISON, Complainant, -and- IOWA CIVIL RIGHTS COMMISSION v. MIKE CAMPBELL'S BODY SHOP & TOWING, INC., Respondent.	)	DIA No. 13ICRC006 **PROPOSED DECISION**

This case involves a complaint filed by Complainant Geralyn Allison with the Iowa Civil Rights Commission (the Commission) against Respondent Mike Campbell's Body Shop & Towing, Inc. Complainant filed the complaint on April 18, 2012, alleging that Respondent wrongfully denied her service on the basis of her race. After an investigation, the Commission determined that probable cause existed with regard to Complainant's claim that she was denied service on the basis of her race. The Commission filed a Statement of Charges and transferred the matter to the Department of Inspections and Appeals for a contested case hearing.

A hearing was held on March 7, 2014 at the Wallace State Office Building in Des Moines, Iowa. Attorneys Benjamin Humphrey and Benjamin Flickinger represented the Commission. Attorney Martha Shaff represented Respondent Mike Campbell's Body Shop & Towing, Inc. Complainant Geralyn Allison appeared and testified. Respondent called the following witnesses: Anthony Morris and Michael Campbell.

Commission exhibits 9, 10, 12, 13, 18, and 21 were admitted as evidence. Respondent's exhibits A and D were admitted as evidence.

Arrangements were made at the hearing to hold the record open until April 4, 2014 for the parties to submit post-hearing briefs. The Commission and Respondent both timely submitted post-hearing briefs.

FINDINGS OF FACT

Complainant Geralyn Allison is an African American female who lives in West Burlington, Iowa. In April, 2012, Allison had auto insurance through Farmers Insurance. Allison paid extra for a policy that provided roadside assistance, which

included coverage for towing. Allison frequently utilized the roadside assistance that was available to her through her insurance policy. When she needed towing or other roadside assistance, she contacted the insurance company directly, then the insurance company arranged for a local towing company to provide the service. (Allison testimony).

Respondent Mike Campbell's Body Shop & Towing, Inc. is a business in Burlington, Iowa owned by Mike Campbell and his wife, Sally. Respondent has operated in Burlington for 32 years. In April, 2012, Respondent employed one part-time and two full-time tow truck drivers; in addition to those three drivers, Campbell[1] and his son also drove the tow trucks when necessary. Typically, calls would be assigned to the next driver open. If everyone was busy when a call came in, Respondent would call in the part-time driver. Campbell himself goes out whenever he is needed on tow calls; how much he goes out is largely dependent on the weather. In addition to responding to tow calls, Campbell also works in the body shop doing estimates. (Campbell testimony).

Events leading up to and including April 4, 2012 towing call

On March 22, 2012, Allison had her Cadillac DeVille towed by Respondent from a location in Burlington to her residence at 309 Brentwood in West Burlington after the car stopped running. The flat bed tow truck that Respondent used left the vehicle in the driveway of Allison's residence. Allison was unable to get the car running after it was towed to her residence on March 22 and the vehicle was not moved after the tow truck deposited it there. (Exh. 10; Allison testimony).

At some point after March 22 and prior to or on April 4, 2012, Allison had a friend, Antaeus Weddington, come look at the car for her. After looking at the car, Weddington told Allison that the car could not be repaired. On April 4, Allison called her insurance company to arrange for the car to be towed to Alter, a scrap yard in Burlington. Allison had given up on the car, which was why she asked to have it towed to Alter, which does not provide repair services. Allison informed the person on the phone that she wished to have the car towed to Alter. After making this request, Allison received a call back from her insurance company letting her know that Respondent would arrive to tow the vehicle in approximately 45 minutes. (Allison testimony).

Allison was surprised when Respondent's tow truck arrived within approximately 15 to 20 minutes. At the time the tow truck arrived, Allison and Weddington, who is also African American, were outside with the car. The hood of the car was raised and part of the vehicle was being held up with a wooden block. Campbell was the tow truck driver; Campbell had never been the driver when Allison had her car towed by Respondent previously. Allison mentioned to Campbell that he had arrived quickly, explaining that

1 Unless otherwise specified, references to Campbell in the proposed decision are to Mike Campbell.

the insurance company had informed her that it would take around 45 minutes. Campbell then told Allison that she needed to hurry up because he did not have all day. Allison described Campbell's demeanor in the initial interaction as rude. (Allison testimony).

Allison went inside to get the keys for the car and was back outside in a matter of seconds. Allison attempted to hand Campbell the car keys, but he stated that he would not tow her car, adding, "This is fucking bullshit."[2] Allison asked Campbell what he meant, explaining that Respondent towed her cars all the time. Campbell stated that he knew that Respondent frequently provided towing services to her and stated that he had come out on the call personally to see why. Campbell stated that he now saw why Allison always needed towing services. Allison was not sure what Campbell meant. Allison described Campbell's demeanor during this interaction as loud. (Allison testimony).

At that point, Allison informed Campbell that she was going to call Respondent and make a complaint. Campbell identified himself as the owner and told her that if she ever called for towing services again, he would refuse service to her. After making the statement regarding refusal of service, Campbell got into the tow truck and began pulling off. As he was pulling off and closing the door, Campbell yelled, "You fucking niggers." After this interaction with Campbell, Allison testified that she felt hurt, belittled, and less than human. (Allison testimony).

The following day, Allison made another request to her insurance company to have the vehicle towed to Alter. Anthony Morris, the tow truck driver for Jim's Body Shop who responded to Allison's service call on April 5, 2012, recalls that when he arrived to the home the vehicle was parked right at the edge of the driveway, partially on and partially off the driveway. Morris brought a wrecker, which hooks up the front or back of the car and tows with the second set of wheels trailing on the ground. Morris backed the wrecker up to the vehicle and hooked it up; no special work was required to ready the vehicle for towing. Morris recalls that the hood was down and the vehicle was not propped up on a wooden block or jack. (Morris, Allison testimony).

Prior roadside assistance service provided by Respondent

On at least ten occasions prior to the date that gave rise to the complaint, Respondent was the business who Allison's insurance company contracted with to provide roadside assistance services to Allison, including towing.[3] On at least one prior occasion, on July

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2 At hearing, Campbell denied that he made this statement. Instead, he asserted that he said, "This is f-in' bowshit." Bowshit is a phonetic representation of what Campbell said in his testimony; he emphasized that the word he used was not "bullshit."

3 Typically, an insurance company or a car manufacturer who offers roadside assistance to its customers will contract with a motor club to coordinate the service. In Allison's case, Cross Country serviced her roadside assistance policy for part of the time she used Respondent's

25, 2011, Respondent towed a vehicle of Allison's to Alter. Respondent was reimbursed by Allison's insurance company for this service in accordance with the towing rates established by contract. (Allison testimony; Exh. 9, 10).

According to Campbell, the roadside assistance that Respondent provides through a motor club such as AAA or Allison's insurance provider is designed to cover only small work for cars on the road. Campbell noted that they can winch a car out of a ditch if it is less than 25 feet off the road. According to Campbell, if a tow truck driver has to wait for a vehicle to be ready or push the vehicle to a spot where it can be towed, this type of service is not covered by roadside assistance. (Campbell testimony).

Respondent's proffered reasons for refusing service to Allison

Respondent has offered a number of reasons for refusing service to Allison on April 4 and for issuing a blanket refusal for future service. During the course of the Commission's investigation and prior to the Commission filing the Statement of Charges, Campbell provided written responses to a questionnaire the Commission sent to him. Respondent's responses are in italics in the excerpt below.

> 13) What happened in the incident involving Complainant? Give as much detail as possible.
>
> *I went out on a tow, customer was not ready to have vehicle moved, also they misinformed motor club of tow destination. I left without providing service.*
>
> . . .
>
> 1) Complainant alleges several incidents of different treatment by Respondent because of race or that Complainant's race was a factor in Respondent's decisions/actions affecting Complainant. Please answer the following: (1) did the alleged incidents occur and if so when; (2) describe what happened; (3) name, job titles and race of Respondent's decision maker(s) or person(s) involved, and (4) whether any similarly situated employees were treated differently.
>
> *Geralyn Allison was not treated any differently because of race. The incidents described in her statement are false. We did attempt to provide service to her but she was not ready + the motor club would not have reimbursed us for the tow do [sic] to the destination.*

(Exh. 12).

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services; after Cross Country, her policy was serviced by Agero. (Campbell testimony; Exh. 9, 10).

In addition, Campbell wrote the following summary and returned it at the same time as Respondent's questionnaire responses:

> Agero roadside assistance contacted us @ 3:45 pm to 309 Brentwood Street in West Burlington to tow a 1985 tan Cadillac Deville that kept stalling out. That [sic] could not give us a tow destination because customer was undecided. (Agero only reimburses us to tow vehicle to a repair facility). When the [sic] I arrived at 309 Brentwood street the vehicle was up on jack stands, and a guy was taking the radiator out of the vehicle and told me it would be a minute. I discussed with Geralyn where she wanted the car towed to and she said to Alter Scrap yard (which closes at 4:00 pm). I told Geralyn I could not wait around because I had other calls to do, and that the Motorclub would not pay to a scrap yard, and that if she wanted to pay cash we could tow it the next day when Alters was open. I was in NO WAY discriminative to Ms. Allison. Also attached are a couple other tow services that we have previously done for Ms. Allison and had no problem.

(Exh. 13).

At hearing, Campbell acknowledged that the motor club representative told Respondent in the initial call that Allison was requesting that the car be towed to Alter. At hearing and in his deposition, Campbell asserted that Allison misrepresented the towing destination to her insurance company when she requested towing through her roadside assistance coverage. Campbell believed that the motor club, Agero, would not pay for a car to be towed to a scrap yard. Campbell testified that Allison was hiding the true destination because she knew that her insurance company would not pay to have the car towed to a scrap yard. (Campbell testimony).

Campbell also testified at hearing testified that he would not tow Allison's car on April 4 because it was not in "hook and go" condition and because he was concerned that he would not be able to get it to Alter before Alter stopped taking cars for the day. Alter is approximately one and one-half miles from Allison's residence in West Burlington; the business closes at 4:00 PM. (Campbell testimony).

Another reason Campbell offered at hearing for his refusal to tow Allison's car on the date in question was his assertion that the vehicle was parked in an inaccessible location in Allison's front yard. Photographs of Allison's home and driveway show that the driveway sits to the right hand side of the home as the home is viewed from the street.[4] To the left of the driveway approximately three to four feet into the yard is a large tree

4 All references to the orientation of the home and driveway will refer to the view of the home from the street.

approximately one-third of the way between the front porch and a fence that separates the yard from the sidewalk. The fence runs from the driveway along the sidewalk to the home's property line on the left-hand side and then abuts the driveway of the home to the left. Campbell testified at hearing that Allison's vehicle was parked in the yard behind the fence with the front of the vehicle facing the street; according to Campbell's drawing on a photograph of the yard, the vehicle was almost abutting the fence on the left hand side of the yard. (Campbell testimony; Exh. A).

Campbell testified at hearing that the reason he told Allison that he would no longer tow her cars or provide any services to her in the future was that there were always "special circumstances" when Respondent answered calls for her. At hearing, however, Campbell could not recall any extenuating circumstances for any of the ten prior dates on which Respondent provided roadside assistance services, including towing, jump starts, and fuel calls, for Allison. (Campbell testimony).

Respondent's policy for denial of services and denials to other customers

Respondent will refuse service once a truck arrives on the scene if the truck cannot get to the car without a great deal of difficulty or if a driver will have to push a car to a place where it can be hooked up to the wrecker. (Campbell testimony).

Respondent has occasionally denied towing services to other individuals. Respondent ultimately denied towing services to a customer named Linda Daly, for whom towing services were provided several times, because her lane was overgrown and caused damage to Respondent's trucks. (Campbell testimony; Exh. D).

CONCLUSIONS OF LAW

The Iowa Civil Rights Act provides:

> It shall be an unfair or discriminatory practice for any owner, lessee, sublessee, proprietor, manager, or superintendent of any public accommodation or any agent or employee thereof:
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> a. To refuse or deny to any person because of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability the accommodations, advantages, facilities, services, or privileges thereof, or otherwise to discriminate against any person because of race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability in the furnishing of such accommodations, advantages, facilities, services, or privileges.[5]

5 Iowa Code § 216.7(1) (2013).

A public accommodation includes each and every place or establishment that offers services, facilities, or goods for a fee or charge to nonmembers.[6] Respondent does not dispute that it is a public accommodation under the ICRA.

The Iowa Supreme Court has held that the Iowa Civil Rights Act establishes a general proscription against discrimination, therefore the Court has looked to corresponding federal statutes as a guide in applying the state Act.[7] To support its race discrimination claim, the Commission must set forth direct evidence of discrimination or an inference of discrimination.[8] Direct evidence demonstrates a specific link between the challenged action and the alleged animus.[9] In the absence of direct evidence of discrimination, the courts use the *McDonnell Douglas* burden-shifting framework.[10] In order to establish a prima facie case of discrimination under § 216.7, a complainant must prove: 1) that she is a member of a protected class; 2) that she sought to enjoy the accommodations, advantages, facilities, services or privileges of a public accommodation; and 3) she did not enjoy the accommodations, advantages, facilities, services, or privileges of the public accommodation in that (a) she was refused or denied the accommodations, advantages, facilities, services, or privileges of the public accommodation under circumstances giving rise to an inference of discrimination, or (b) she was allowed to use the accommodations, advantages, facilities, services, or privileges of the public accommodation, but was otherwise discriminated against in the furnishing of those accommodations, advantages, facilities, services, or privileges by being subjected to markedly hostile conduct that a reasonable person would find objectively unreasonable under circumstances giving rise to an inference of discrimination.[11]

A. *Direct Evidence*

The Commission argues that Campbell's use of the racial slur "nigger" during the interaction in which Respondent denied services to Allison is direct evidence of discriminatory animus in the decisionmaking process. The Commission argues that this demonstrates that it is more likely than not that a motivating factor in Respondent's decision to deny Allison service was her race. Respondent denies that Campbell used

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6 Iowa Code § 216.2(13)(a) (2013).
7 *Casey's General Stores v. Blackford*, 661 N.W.2d 515, 519 (Iowa 2003); *see also DeBoom v. Raining Rose, Inc.,* 772 N.W.2d 1, 7 (Iowa 2009); *Vivian v. Madison*, 601 N.W. 2d 872, 873 (Iowa 1999).
8 *Putman v. Unity Health Sys.*, 348 F.3d 732, 735 (8th Cir. 2003).
9 *Id.* (*quoting Thomas v. First Nat'l Bank of Wynne*, 111 F.3d 64, 66 (8th Cir. 1997)).
10 *Anderson v. Durham D & M, L.L.C.*, 606 F.3d 513, 520-21 (8th Cir. 2010).
11 *Kirt v. Fashion Bug #3253, Inc.*, 479 F.Supp.2d 938, 963 (N.D. Iowa 2007). The Iowa Court of Appeals, in *Kiray v. Hy-Vee, Inc.*, 716 N.W.2d 193, 204 (2006), declined to specifically endorse either of two competing tests to establish a prima facie case where a complainant alleges race discrimination in a public accommodation. Despite a degree of uncertainty in Iowa case law regarding this issue, both the Commission and Respondent endorsed in their briefs the test for establishing a prima facie case articulated in *Kirt*.

the term "nigger" during his interaction with Allison.

Before reaching the question of whether the use of the term "nigger" in the context of the interaction between Campbell and Allison constitutes direct evidence of discrimination, however, it is necessary to determine whether Campbell used the term, a point which is in dispute. This involves evaluating the credibility of Campbell and Allison, the two witnesses who testified regarding the events of April 4.

For a variety of reasons, I credit Allison's testimony that Campbell yelled "fucking niggers" as he was pulling away from Allison's home on April 4. Allison's recitation of the events of April 4 has remained consistent over time. In contrast, Respondent – and Campbell – have offered differing and inconsistent explanations over the course of the Commission's investigation and up through the hearing regarding the alleged reasons that Respondent refused service to Allison.

At hearing, Campbell acknowledged that he told Allison on April 4 that he would not tow her car that day or any other day. In contrast to that testimony, Campbell previously wrote in a letter to the Commission that he told Allison on April 4 that if she wanted to pay cash Respondent could tow her car the next day when Alter was open. By Campbell's own admission at hearing, his statement in the letter is false.

Also at hearing, Campbell acknowledged that the representative from the motor club who serviced Allison's policy stated when the call initially came in to Respondent that Allison was requesting that the car be towed to Alter. During the Commission's investigation, Campbell asserted that the motor club representative did not give Respondent a destination when the call originally came in because Allison was undecided. Campbell testified inconsistently at hearing both that he knew from the outset that Allison was requesting a tow to Alter and that she misrepresented the true destination to her insurance company.[12]

Campbell's contradictory statements made at hearing and during the investigation detract significantly from his credibility. For that reason, I find Allison's testimony

12 Campbell attempted to reconcile these contradictory statements with the assertion that Allison told the insurance company representative that she wished to be towed to "Alter Repair," rather than "Alter Scrap." Campbell acknowledged that there is only one auto-related business in Burlington with the name Alter. When pressed to explain the reason for his belief that Allison told the insurance company representative that she wished to be towed to "Alter Repair," Campbell could not articulate any basis for this belief. Campbell's assertion that Allison misrepresented her destination to her insurance company is particularly unpersuasive given that Allison had previously had her car towed to Alter by Respondent under her roadside assistance policy; her insurance paid for that tow without incident. There is no reason to believe Allison would lie about the tow destination, given the fact that a tow to the same destination had previously been covered. Campbell's testimony on this point was convoluted and entirely unpersuasive.

regarding Campbell using the racial slur "nigger" during their interaction more credible than Campbell's denial. Consequently, I will address the Commission's assertion that use of the slur during the April 4 interaction constitutes direct evidence of discrimination.

Direct evidence of discrimination is "'evidence showing a specific link between the alleged discriminatory animus and the challenged decision, sufficient to support a finding by a reasonable fact finder that an illegitimate criterion actually motivated the adverse employment action.'"[13] In order to establish discrimination via direct evidence, the asserted evidence must provide a strong causal link between the alleged discriminatory bias and the adverse action. "It most often comprises remarks by decisionmakers that reflect, without inference, a discriminatory bias."[14]

> Direct evidence includes "evidence of conduct or statements by persons involved in the decisionmaking process that may be viewed as directly reflecting the alleged discriminatory attitude," where it is sufficient to support an inference that discriminatory attitude more likely than not was a motivating factor.[15]

Campbell is an owner, with his wife, of Respondent and he is undisputedly the person who made the decision to deny service to Allison on April 4 and to issue a blanket ban on future service to her. During the course of the only interaction that Campbell and Allison ever had, Campbell used a racial slur to refer to Allison and her friend. During that same interaction and just prior to uttering the racial slur, Campbell made the decision to refuse present and future service to Allison. Use of a racial slur by a principal decisionmaker in the context of the adverse action "constitutes more than a stray remark . . . and directly suggests the existence of bias; no inference is necessary."[16] Such a comment does not simply evidence an awareness of an individual's race; rather; it reveals a negative attitude toward a particular race on the part of the decisionmaker.[17] Under these circumstances, Campbell's statement to Allison constitutes direct evidence of discrimination under ICRA; the Commission has established direct evidence of discrimination by a preponderance of the evidence.

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13 *McCullough v. University of Arkansas for Medical Sciences*, 559 F.3d 855, 860 (*quoting Russell v. City of Kansas City, Mo.*, 414 F.3d 863, 866 (8th Cir. 2005).
14 *Id.* at 861 (citations omitted).
15 *Schierhoff v. GlaxoSmithKline Consumer Healthcare, L.P.*, 444 F.3d 961, 966 (*quoting Radabaugh v. Zip Feed Mills, Inc.*, 997 F.2d 444, 449 (8th Cir. 1993)).
16 *See Browning v. President Riverboat Casino-Missouri, Inc.*, 139 F.3d 631, 635 (8th Cir. 1998) (supervisor and principal decisionmaker's reference to an employee as "that white boy" in the context of his employment warranted an inference of discriminatory attitude sufficient to permit the conclusion that race was a motivating factor in the decision to terminate the employee).
17 *Id.*

Under the *Price Waterhouse* mixed motives method, after direct evidence of discrimination is established, the employer bears the burden of establishing by a preponderance of the evidence that it would have made the same decision even in the absence of the improper motive. The employer's burden is not satisfied by merely articulating a reason for the discharge.[18] Neither the Commission nor Respondent argued this as a mixed motives case in their briefs; Respondent did, however, argue that it had legitimate, nondiscriminatory reasons for refusing service to Complainant. Under these circumstances, application of a mixed motives analysis under *Price Waterhouse* is appropriate.[19]

In its brief, Respondent asserts that Allison was denied services because: 1) the vehicle was not readily accessible to be towed; 2) the vehicle was on jack stands; 3) Weddington was working on the vehicle when Campbell arrived; and 4) Alter was closing at 4:00 PM. Allison does not dispute that the vehicle was on jack stands when Campbell arrived and that Alter was closing at 4:00 PM. Allison disputes that Weddington was working on the vehicle and disputes that the vehicle was not in a location readily accessible to be towed.

For the reasons discussed above, Campbell has significant credibility problems. I find Allison's testimony that the Cadillac did not move from the time it was towed to her home and dropped off until April 4 credible. Likewise, I credit her testimony regarding the placement of the vehicle. Morris, the tow truck driver who towed the vehicle to Alter on the morning of April 5, largely corroborated Allison's account. He testified that the vehicle was oriented the same way that Allison described and was partially on the driveway, in a location that was readily accessible for him to complete the tow. Campbell, on the other hand, testified that the vehicle was a behind a fence at the far end of Allison's yard with the front end pointed toward the street. A visual inspection of the photograph of Allison's yard reveals that there is no way that the vehicle could have

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18 *Vaughan v. Must, Inc.*, 542 N.W.2d 533, 538-39 (Iowa 1996); *see also Landals v. George A. Rolfes Co.*, 454 N.W.2d 891 (Iowa 1990) .

19 *See Donovan v. Milk Marketing Inc.*, 243 F.3d 584, 586-87 (2d Cir. 2001). The Commission argues that the appropriate question is whether direct evidence establishes that it is more likely than not that a motivating factor in Respondent's decision to deny Allison services was her race. Relying on *DeBoom v. Raining Rose, Inc.*, 772 N.W.2d 1 (Iowa 2009), the Commission argues that in order to prevail on a discrimination case under ICRA it must prove that the protected characteristic was a "motivating factor" in the decisionmaking process. *DeBoom*, however, is a case that was analyzed under the *McDonnell Douglas* burden-shifting model, rather than a case where direct evidence of discrimination was asserted. In *DeBoom*, the Iowa Supreme Court found that, "[I]n discrimination cases, the plaintiff need only demonstrate 'termination occurred under circumstances giving rise to an inference of discrimination' and his or her status as a member of a protected class was *a* determining factor in the decision to terminate employment." *Id.* at 13. There is no indication in *DeBoom* that the Court intended to supplant the typical *Price Waterhouse* analytical framework utilized in cases where direct evidence of discrimination is presented. *See Newberry v. Burlington Basket Co.*, 622 F.3d 979, (8th Cir. 2010) (concluding that *DeBoom* did not alter Iowa law governing ICRA in a mixed motive case).

been left by a tow truck in the spot where Campbell testified it was located and with the front/back orientation that he described. Without a tow truck and with the vehicle in non-working order, there is no plausible explanation as to how Allison would have moved the vehicle between the time Campbell left on the afternoon of April 4 and when Morris arrived on April 5. Consequently, I do not credit Campbell's testimony that the vehicle was inaccessible to the tow truck when he arrived on April 5.

Allison acknowledged that the hood was up when Campbell arrived to tow the car, but denies that Weddington was attempting to remove the radiator or otherwise working on the car. For all of the reasons discussed above, I find Allison's testimony on this point more credible than that of Campbell.

While the facts that the vehicle was up on a block when Campbell arrived and that Alter closed at 4:00 PM are undisputed, I do not find that Respondent would have made the same decision to deny Allison service absent a discriminatory motive. Absent a discriminatory motive, there would have been no reason for Respondent to implement a blanket future ban on services to Allison. Allison had utilized Respondent's services without incident a number of times in the past and Respondent had been fully compensated for those services.

Additionally, it is noteworthy that the explanations Respondent asserts in its brief are not entirely consistent with the explanations that Campbell, on Respondent's behalf, has provided over time. In answer to questions posed by the Commission in its investigation, Campbell asserted that he refused service to Allison in part because she misrepresented her destination to her insurance company. As discussed above, Campbell acknowledged at hearing that Allison told the insurance company when making the initial call that the destination was Alter.

Campbell also asserted at hearing that the reason for his refusing service to Allison on April 4 and instituting a future ban was the fact that there were always special circumstances with Allison's previous roadside assistance calls. During the Commission's investigation, however, Campbell noted that Respondent had provided services to Allison in the past with "no problem."

Respondent's attempt to assert that the true reasons for its actions were not motivated by discrimination, but rather by legitimate, nondiscriminatory reasons falls flat. Campbell's credibility is seriously impaired by contradictory statements made during the course of the investigation and hearing process and by his own admissions that statements made during the investigation were false. Where the record shows, as here, "changing and inconsistent explanations" on the part of the decisionmaker, the allegedly legitimate, nondiscriminatory reasons proffered by Respondent cannot be found to be

anything more than pretext.[20] The Commission has proven that Respondent committed an unfair or discriminatory practice.

B. *McDonnell Douglas Burden-Shifting Framework*

While I conclude that the Commission satisfied its burden of proving discrimination via direct evidence, the Commission argues in the alternative that it has also proved discrimination under the *McDonnell-Douglas* burden-shifting framework. Even if the Commission had not established discrimination by direct evidence, as discussed above, the Commission has presented ample evidence to satisfy its burden under the *McDonnell Douglas* framework.

Allison is a member of a protected class who sought to enjoy Respondent's services. Respondent refused to provide its services under circumstances giving rise to an inference of discrimination. As discussed above, Respondent called Allison a racial slur during the interaction in which he denied her current and future services. The Commission can clearly make out a prima facie case of discrimination.

Once the Commission establishes a prima facie case, the burden shifts to Respondent to assert a legitimate, non-discriminatory reason for its conduct.[21] As discussed at length above, Respondent has articulated several non-discriminatory reasons for its conduct. I have found Respondent's testimony regarding two of those assertions – that the vehicle was not accessible for towing due to its positioning in the yard and that Weddington was working on the vehicle – not to be credible. The two remaining reasons that Respondent asserts – that the vehicle was up on jack stands and that Alter closed at 4:00 PM – are undisputed.

Once Respondent asserts a legitimate, non-discriminatory reason for its conduct, the burden shifts back to the Commission to demonstrate that the asserted reasons are merely a pretext for discrimination.[22] For the reasons discussed at length above, I find that the Commission presented ample evidence to allow the conclusion that intentional discrimination, rather than the proffered explanations, was the real reason for the refusal of service to Allison.

C. *Damages*

Under the ICRA, a respondent who is found to have engaged in a discriminatory or unfair practice shall be ordered to cease and desist from the discriminatory or unfair practice and to take necessary remedial action. Remedial action includes, but is not limited to, extending to all individuals the full and equal enjoyment of the services of the

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20 *See Edwards v. U.S. Postal Service*, 909 F.2d 320, 324 (8th Cir. 1990).
21 *Kirt*, 479 F.Supp.2d at 966.
22 *Id.* at 967.

respondent denied to the complainant because of the discriminatory or unfair practice and payment to the complainant of damages for an injury caused by the discriminatory practice, including actual damages, court costs, and reasonable attorney fees.[23]

The Commission argues for a damage award of $10,000 to Complainant for emotional distress. The Iowa Supreme Court has recognized that emotional distress damages are allowed under the ICRA.[24] An award of emotional distress damages is appropriate even without a showing of physical injury, severe distress, or outrageous conduct.[25] The Iowa Supreme Court has held that the adequacy of the award in a particular case depends upon the unique facts of that case; comparison with other cases has little value.[26]

Allison credibly testified at hearing that she felt hurt, belittled, and less than human after Campbell refused service to her and called her a highly charged racial slur. There is no evidence regarding how long this incident impacted Allison, nor is there any evidence that Allison sought medical or psychiatric help as a result of the incident. The evidence demonstrates that Weddington was present when Campbell used the racial epithet, but there is no evidence that any other individuals were present.

Under these circumstances, an award of $5,000 for damages for emotional distress is appropriate.

ORDER

The Commission has proven that Respondent Mike Campbell's Body Shop and Towing, Inc. committed an unfair or discriminatory practice. Respondent is ordered to pay $5,000 to Complainant Geralyn Allison as compensation for emotional distress.

Dated this 29th day of May, 2014.

Laura E. Lockard
Administrative Law Judge

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23 Iowa Code § 216.15(9) (2013).
24 *Chauffeurs, Teamsters and Helpers, Local Union No. 238 v. Iowa Civil Rights Commission*, 394 N.W.2d 375, 383 (Iowa 1986).
25 *City of Hampton v. Iowa Civil Rights Commission*, 554 N.W.2d 532, 537 (Iowa 1996) (*citing Hy-Vee Food Stores, Inc., v. Iowa Civil Rights Commission*, 453 N.W.2d 512, 526 (Iowa 1990).
26 *Lynch v. City of Des Moines*, 454 N.W.2d 827, 836-37 (Iowa 1990) (internal citations omitted).

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