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

IOWA CIVIL RIGHTS COMMISSION	)	DIA No. 21ICRC0004
	)	ICRC Case No. CP# 07-18-72275
and	)	
JESSICA HAWKINS, Complainant,	)	
v.	)	
RBC HOLDINGS, LLC d/b/a SUNRISE TAP and RANDY LENZE, Respondents.	)	**ORDER NUNC PRO TUNC**

A Proposed Decision was issued in the above-referenced appeal on September 3, 2021. On September 9, 2021, the Iowa Civil Rights Commission filed a Motion for Nunc Pro Tunc Order, noting that the Proposed Decision contained a typographical error in the Order section. The Order incorrectly directed Respondents to pay $10,000 to "Curry," rather than Complainant Jessica Hawkins, as compensation for emotional distress.

A revised Proposed Decision is attached to this order. The revised Proposed Decision is dated with today's date, so that the parties have the full time period allowed by the Commission to appeal. The Proposed Decision dated September 16, 2021 is substituted for the Proposed Decision dated September 3, 2021.

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Case Title: ICRC EX REL JESSICA HAWKINS

Case Number: 21ICRC0004

Type: Order - Nunc Pro Tunc

IT IS SO ORDERED.

Laura Lockard, Administrative Law Judge

Iowa Department of Inspections and Appeals
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Wallace State Office Building, Third Floor
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JESSICA HAWKINS, Complainant,	)	
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v.	)	
	)	
RBC HOLDINGS, LLC d/b/a SUNRISE TAP and RANDY LENZE, Respondents.	)	***REVISED*** **PROPOSED DECISION**

This case involves a complaint filed by Complainant Jessica Hawkins with the Iowa Civil Rights Commission (the Commission) against Respondents RBC Holdings, LLC d/b/a Sunrise Tap and Randy Lenze. After an investigation, the Commission determined that probable cause existed with regard to Complainant's allegations that Respondents discriminated against her in the area of employment based on sex and sexual orientation. On November 23, 2020, the Commission filed a Statement of Charges and transferred the matter to the Department of Inspections and Appeals for a contested case hearing.

A telephone hearing in this matter was held on June 15, 2021. Assistant attorney general Katie Fiala represented the Commission. Complainant Jessica Hawkins was represented by attorney Stuart Higgins. Respondent Randy Lenze appeared. Lenze is the owner of and registered agent for Respondent RBC Holdings, LLC d/b/a Sunrise Tap. The following witnesses testified: Jessica Hawkins; Sarah Jensen; Brenda Phipps; Theda Ford Williams; and Sierra Walker. Commission Exhibits 1-4 and 8-9 were admitted as evidence. Complainant's Exhibits 5-7 were admitted as evidence.

At hearing, Lenze stated at the outset that he was "taking the first and fifth" and did not intend to say anything. Lenze refused to respond to procedural questions regarding exhibit admission and whether he wished to cross-examine witnesses called by the Commission and Complainant. After the testimony of Hawkins and Jensen had been completed, Lenze stated that his phone was about to die, that he was at a pond, and that he had nowhere to charge his phone. The undersigned informed Lenze that the hearing was going to continue without him if he disconnected from the conference line. Lenze responded, "Just send me the paperwork." After the testimony of Phipps, Lenze disconnected from the hearing. Neither the Commission nor the Complainant had any

objection to proceeding with the hearing in Lenze's absence. Lenze had been aware of the hearing date and time since the order setting the date and time was issued on March 16, 2021. Any failure on his part to ensure his ability to participate fully by telephone, which was the hearing modality that he requested, did not justify suspension of the hearing.

Arrangements were made at hearing to hold the record open until July 12, 2021 in order for the parties to submit post-hearing briefs. The Commission and the Complainant each timely submitted a post-hearing brief.

FINDINGS OF FACT

Jessica Hawkins is female and her sexual orientation is lesbian. Hawkins has been in a relationship with her partner, Sarah Jensen, for six years and they parent a son, Connor, together. (Hawkins testimony).

Hawkins was hired to work full-time as a bartender at Respondent RBC Holdings, LLC d/b/a Sunrise Tap in October 2017 by Respondent Randy Lenze. Lenze was the owner of Sunrise Tap. At the time Hawkins was hired, Sunrise Tap had three other employees in addition to her. Pam Sanders was the bar manager. Hawkins' job duties included making drinks, stocking coolers, rotating shelves, cash management, cleaning, and preparing and serving food. Hawkins had approximately nine years of bartending experience before starting work for Respondents. (Hawkins testimony).

Sunrise Tap is a relatively small establishment, with seating for approximately 50 people. Lenze would often work at the bar, cooking, serving drinks, and cleaning. Lenze did not always work during Hawkins' shifts, but if he was not working he was almost always in the bar. Due to bar's small size, it was not customary for other employees to work at the same time as Hawkins, although Hawkins and Sanders typically overlapped shifts approximately once a week. (Hawkins testimony).

Hawkins was not aware of any employee handbook that Respondents provided during the time she was employed. She was never told what to do if she had any issues with her employment, but she would typically talk to Lenze or Sanders if an issue arose. (Hawkins testimony).

Lenze was aware that Hawkins was a lesbian and that she lived with Jensen and their son Connor from the very beginning of her employment. Hawkins introduced Lenze to Jensen and identified Jensen as her girlfriend a couple days after she began working at the bar. (Hawkins, Jensen testimony).

During the time that Hawkins was working at the bar, Lenze repeatedly referenced her sexual orientation during on-the-clock conversations. On one occasion when Hawkins was working, Lenze came up to her and told her that he had a dream that Hawkins was

laying next to him on one side and Jensen was laying next to him on the other side in a "Randy sandwich." Jensen also recalled being present when Lenze made this comment. (Hawkins, Jensen testimony).

Lenze also repeatedly complained to Hawkins that she was worthless because she would not do "what the other girls did." Hawkins was confused by these statements as she always performed the job duties that were expected of her. When Hawkins asked for clarification, Lenze would tell her that she would not do what he wanted her to do because she was not straight and because she liked "girls, not guys." Hawkins interpreted these statements by Lenze as meaning that she would not engage in sexual activity with him. Hawkins estimated that Lenze made these comments to her on at least a weekly basis. When Lenze made these comments, Hawkins tried to brush it off while still making it known that the comments were not appropriate or welcome. She would tell Lenze to knock it off or say things like, "That's not how I am." (Hawkins testimony).

When Hawkins first began working at the bar, Jensen would bring Hawkins dinner to eat over her dinner break. While Jensen was waiting for Hawkins to finish her dinner, Lenze came over and physically shooed her out of the way, stating, "Get out of here, you don't need to be here." Lenze was continually asking what Jensen was doing at the bar when she brought Hawkins dinner and would tell her she needed to go. If Jensen got at all close to Hawkins at the bar, Lenze would shoo her away or say, "That's gross." As far as Hawkins knew, none of the other bartenders were gay or lesbian. Other bartenders' partners or spouses visited them at the bar and Lenze never voiced any objection. (Hawkins, Jensen testimony).

Lenze also made comments to Hawkins during her employment about customers being uneasy or uncomfortable when Jensen was at the bar; he stated that the customers did not want Jensen in the bar. Hawkins never observed that customers had any issues with Jensen or their son Connor being at the bar. Most of the patrons were regulars and Hawkins would talk to them on a regular basis. No one ever made any negative comments to Hawkins or to Jensen regarding their sexual orientation. (Hawkins testimony).

At one point, Hawkins requested time off for a birthday party for Connor. Sanders typically did the schedule and gave Hawkins the day off that she had requested for Connor's party. The person who Sanders put on the schedule was unable to work for some reason and Lenze contacted Hawkins to tell her that she needed to work. Hawkins told Lenze that she could not work because of Connor's birthday party and Lenze stated that she could not take the day off because Connor was not her biological child. Sanders ultimately interceded and Hawkins was able to take the day off. (Hawkins testimony).

At another point during Hawkins' employment with Respondents, Hawkins recommended a friend of hers, Brenda Phipps,[1] for a bartending position at Sunrise Tap. Lenze spoke with Phipps on the phone and in person and ultimately placed Phipps on the schedule. After making the decision to hire Phipps and placing her on the schedule but prior to her start date, Lenze found out that Phipps and Hawkins were friends. After discovering that Phipps and Hawkins were friends, Lenze took Phipps off the schedule and decided not to hire her. When Hawkins asked Lenze about reversing his decision to hire Phipps, Lenze asked Hawkins for confirmation that Phipps was also gay. Hawkins affirmed that Phipps is gay. Lenze told Hawkins that it would not work for one of her gay friends to bartend at the bar. (Hawkins, Phipps testimony).

There was a time during Hawkins' employment when Jensen and several other of Hawkins' friends, including Phipps, came to the bar while she was working. Jensen and the others had bought and paid for drinks and food; they intended to be there for a while. Lenze came in and saw Jensen and Hawkins' other friends there and stated loudly, "I'm not entertaining your gay friends. Close it down." Hawkins was forced to close the bar, despite the fact that her friends were paying customers. (Jensen, Phipps, Hawkins testimony).

Sanders recalled hearing Lenze tell everyone in the bar that Hawkins was gay and stating he did not want her there because of that. Sanders also recalled hearing Lenze tell customers at the bar that Hawkins was gay and that he hated it. Sanders heard Lenze say that he would never promote Hawkins because she was gay. (Exh. 8, 9).

Sanders also recalled Lenze making a comment to Hawkins and Jensen about how he would like to be in the middle of a sandwich between the two of them. Sanders recalled that Lenze's treatment of Hawkins got "bad . . . really really bad." (Exh. 8, 9).

Hawkins' hourly rate at the time she was hired was $7 per hour; she typically also earned an additional $200 to $300 per week in tips. Hawkins expressed interest in being considered for the bar manager position to Lenze multiple times during her employment. There was no formal application process for the position, but each time it was open she communicated to Lenze, both through text and verbally, that she was interested in the position. When Sanders left the bar manager position, Sanders told Lenze that Hawkins would be a good candidate for the position. Hawkins had bartended for nine years prior to working for Respondents. She had acted as manager and was the sole bartender at several of her previous positions and had experience managing bars and restaurants. (Hawkins testimony; Exh. 1).

On one occasion when the bar manager position was open, Lenze had Hawkins perform the managerial duties, including inventory and scheduling, on an interim basis. At the time, Hawkins was the most senior bartender employed by Respondents. Lenze

1 Phipps is also known to some people as Brenda Carter. (Phipps testimony).

ultimately hired Monica Harken for the job, passing Hawkins over. Harken is straight. When Hawkins asked Lenze why she was not hired to fill the bar manager position, he again mentioned that she would not do what the other girls do. When she asked what this meant, Lenze chuckled and stated, "You've got a girlfriend." (Hawkins testimony).

After Harken took over the bar manager position, Lenze began directing her to cut Hawkins' hours and to only schedule her when the other bartender was "burnt out." Hawkins quit working for Respondents in early June 2018. Her last paycheck was for the week of June 8, 2018. At the time that she quit, she did not have another job lined up. She was hired for a full-time job with a dog grooming operation on July 16, 2018 and began earning $12 per hour. (Hawkins testimony).

Lenze's poor treatment of Jensen when she visited the bar and of Hawkins caused problems between Jensen and Hawkins in their relationship; Jensen did not understand why Hawkins would continue working for someone like Lenze. The situation caused a great deal of tension for Hawkins at home. Hawkins would often cry before work and then come home from work crying; she felt very stressed out. Lenze's comments that she was worthless in front of customers were emotionally draining. The fact that Lenze did not treat any other employees the same way that he treated Hawkins was particularly distressing to Hawkins. Hawkins' stress related to work and Lenze's treatment of her also impacted her sleep. Hawkins testified that when she thinks about Lenze and the treatment she was subjected to when working for Respondents she feels sick to her stomach. (Hawkins testimony).

Jensen observed that it was difficult for Hawkins to leave the stress related to Lenze and his comments and behavior at work; she came home angry and agitated. Prior to her employment with Respondents, Hawkins had generally been happy. During her employment with Respondents, she was more mopey and did not look forward to work. (Jensen testimony).

CONCLUSIONS OF LAW

Under the Iowa Civil Rights Act of 1965 ("ICRA"),

1. It shall be an unfair or discriminatory practice for any:
   a. Person to refuse to hire, accept, register, classify, or refer for employment, to discharge any employee, or to otherwise discriminate in employment against any applicant for employment or any employee because of the age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability of such applicant or employee, unless based upon the nature of the occupation.[2]

2 Iowa Code § 216.6(1).

While Iowa courts and this tribunal are not bound by federal cases construing federal discrimination statutes when interpreting and applying the ICRA, the Iowa Supreme Court has recognized that the ICRA only establishes a general proscription against discrimination, therefore the Court has looked at times to corresponding federal statutes as a guide in applying the state Act.[3]

The Statement of Charges that initiated this contested case proceeding alleges four counts of discrimination by Respondents: 1) harassment based on sex in violation of Iowa Code section 216.6; 2) harassment based on sexual orientation in violation of Iowa Code section 216.6; 3) failure to promote based on sexual orientation in violation of Iowa Code section 216.6; and 4) constructive discharge in violation of Iowa Code section 216.6.

A. *Harassment*

To establish a harassment claim, a plaintiff must show: 1) she belongs to a protected group; 2) she was subjected to unwelcome harassment; 3) the harassment was based on a protected characteristic; and 4) the harassment affected a term, condition, or privilege of employment.[4] Harassment affects a term, condition, or privilege of employment "[w]hen the workplace is permeated with 'discriminatory intimidation, ridicule, and insult' . . . 'sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment."[5]

The extent to which an employer is liable for harassment depends upon the position of the person perpetrating the harassment. If the harassment is perpetrated by a nonsupervisory employee, a plaintiff must show that the employer knew or should have known of the harassment and failed to take proper remedial action.[6] If the harasser is a supervisor with immediate or successively higher authority over the employee, the employer is vicariously liable for the harassment. An affirmative defense is available in a supervisor case that does not result in a tangible adverse employment action against the plaintiff where the employer can show that the employer exercised reasonable care to prevent and promptly correct any harassing behavior and that the plaintiff employee

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3 *Goodpaster v. Schwan's Home Service, Inc.*, 849 N.W.2d 1, 9 (Iowa 2014) (*citing Casey's General Stores v. Blackford*, 661 N.W.2d 515, 519 (Iowa 2003) and *Loras College v. Iowa Civil Rights Comm'n*, 285 N.W.2d 148, 147 (Iowa 1979)); *see also Vivian v. Madison*, 601 N.W. 2d 872, 873 (Iowa 1999).
4 *Haskenhoff v. Homeland Energy Solutions, LLC* , 897 N.W.2d 553, 571 (Iowa 2017); *Farmland Foods v. Dubuque Human Rights Comm'n*, 672 N.W.2d 733, 744 (Iowa 2003) (*citing Beard v. Flying J, Inc.*, 266 F.3d 792, 797 (8th Cir. 2001)); *see also Watson v. Ceva Logistics U.S., Inc.*, 619 F.3d 936, 942 (8th Cir. 2010).
5 *Haskenhoff*, 897 N.W.2d at 571 (*quoting Farmland Foods*, 672 N.W.2d at 743).
6 *Farmland Foods,* 672 N.W.2d at 744 (*citing Stuart v. Gen. Motors Corp.*, 217 F.3d 621, 631 (8th Cir. 2000)).

unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer to avoid harm.[7] The affirmative defense is not available, however, when the alleged harasser "holds a sufficiently high position within the hierarchy of an organization to be considered the organization's proxy or alter ego."[8]

Hawkins belongs to a protected group; she is female and lesbian. In this case, Lenze's behavior toward Hawkins in the workplace included repeated derogatory references to her sexual orientation and to her same sex partner. In addition, Lenze repeatedly made sexually suggestive comments to Hawkins while she was working. In addition, Lenze made comments to customers indicating that he "hated" Hawkins' sexual orientation. Lenze referred to interactions between Hawkins and Jensen as "gross" and made Jensen, as well as Hawkins' other friends, feel unwelcome at the bar explicitly based on their sexual orientation. Lenze went so far as to order Hawkins to shut the bar down because he did not want to stay open for her "gay friends." Even Sanders, the bar manager, found Lenze's conduct toward Hawkins extreme.

Hawkins took reasonable steps under the circumstances to communicate to Lenze that his repeated sexually suggestive comments, references to her sexual orientation, and negative comments about her partner and her sexual orientation were unwelcome. Lenze was the owner of the bar and the person who hired Hawkins. Hawkins was never made aware of any formal procedure for reporting workplace harassment. Her options for expressing her displeasure in this situation were without question limited by Lenze's position as her supervisor and the owner of the bar.

There is no question that the harassment was based on protected characteristics; specifically, Hawkins' sex and sexual orientation. Lenze made sexually suggestive comments toward Lenze and derogatory statements regarding her sexual orientation.

To establish that harassment is severe or pervasive requires both a subjective determination that the complainant perceived the conduct as abusive and a finding that a reasonable person would also find the conduct abusive or hostile. This objective determination takes into account the totality of the circumstances, including the frequency of the conduct, the severity of the conduct, whether the conduct was physically threatening or humiliating or whether it was merely offensive, and whether the conduct unreasonably interfered with the employee's job performance.[9] Comments being directed at a particular employee, rather than simply "bandied about the workplace with no particular target" or made behind an employee's back, and being made in the presence of other employees lend weight to a finding that the conduct was more severe.[10]

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7 *Faragher v. City of Boca Raton*, 524 U.S. 775, 807, 118 S.Ct. 2275, 2292-93 (1998).
8 *Townsend v. Benjamin Enterprises, Inc.*, 679 F.3d 41, 53 (2nd Cir. 2012).
9 *Farmland Foods*, 672 N.W.2d at 744-45.
10 *Watson*, 619 F.3d at 943 (*citing Sandoval v. Am. Bldg. Maint. Indus., Inc.*, 578 F.3d 787,

As noted above, Hawkins' response to Lenze's conduct reflected her subjective perception of Lenze's behavior as unwelcome. With regard to the objective determination, the totality of the circumstances clearly supports the conclusion that a reasonable person would have found Lenze's conduct to be abusive and hostile. Lenze made sexually suggestive comments to Hawkins and made negative comments about her sexual orientation to Hawkins, to Jensen, and to customers at the bar. The conduct was not infrequent or isolated; the insults and sexually suggestive comments occurred repeatedly and were made directly to Hawkins and in front of others. Despite Hawkins conscientiously completing all required job tasks, Lenze criticized Hawkins' job performance because she was not straight and would not engage in sexual activity with him. The evidence supports the conclusion that Lenze's conduct was sufficiently severe and pervasive to affect the terms and conditions of Hawkins' employment. The Commission and Complainant have established that Respondents created a hostile work environment for Hawkins on the basis of her sex and sexual orientation in violation of Iowa Code section 216.6(1).

Finally, the affirmative defense for supervisor liability is not available here as Lenze can be considered the proxy or alter ego for Respondent RBC Holdings, LLC. Lenze is the owner and registered agent of that entity. Even if the affirmative defense were available, Respondents did not assert the defense or put forth any evidence to demonstrate that they exercised reasonable care to prevent and promptly correct the harassing behavior toward Hawkins.

B. *Failure to Promote*

The Commission has also alleged that Respondents violated the ICRA by failing to promote Hawkins to the position of bar manager based on her sexual orientation. To establish a prima facie case for a claim of wrongful failure to promote, a plaintiff must show: 1) she is a member of a protected class; 2) she applied for an open position that constituted a promotion; 3) she was qualified for the position; 4) she was rejected by the employer under circumstances giving rise to an inference of discrimination.[11] The establishment of a prima facie case creates a rebuttable presumption of discrimination. The burden then shifts to the employer to rebut the presumption of discrimination by producing evidence that the plaintiff was rejected for the position because of a legitimate, nondiscriminatory reason.[12]

> Establishment of the prima facie case in effect creates a presumption that the employer unlawfully discriminated against the employee. If the trier of fact believes the plaintiff's evidence, and if the employer is silent in the

802-03 (8th Cir. 2009)).
11 *Texas Dep't. of Cmty. Affairs v. Burdine*, 450 U.S. 248, 253, 101 S.Ct. 1089, 1094 (1981).
12 *Id.* at 1094; *McCullough v. Real Foods, Inc.*, 140 F.3d 1123, 1126 (8th Cir. 1998); *Bd. of Supervisors of Buchanan Cty. v. Iowa Civil Rights Comm'n*, 584 N.W.2d 252, 256 (Iowa 1998).

> face of the presumption, the court must enter judgment for the plaintiff because no issue of fact remains in the case.[13]

As noted above, Hawkins is a member of a protected class on the basis of her sexual orientation. She applied for the open bar manager position at Sunrise Tap a number of times; while there was no formal application process, she made Lenze aware verbally and through text that she was interested in the position. The final time during her employment that the position was open, Hawkins performed the duties of the bar manager on an interim basis before Lenze hired Harken for the job. Hawkins was qualified for the job based on extensive experience bartending; she was the most senior employee at Sunrise Tap at the time she applied the final time. Additionally, Sanders had recommended Hawkins for the job when she left.

Hawkins was rejected for the position under circumstances giving rise to an inference of discrimination. Lenze expressly told Sanders that he would not promote Hawkins to bar manager based on her sexual orientation. When Hawkins pressed Lenze on why she was not promoted to bar manager, he told her that she would not do the things other girls do for him and made reference to her having a girlfriend.

Respondents presented no evidence to rebut the presumption of unlawful discrimination created by the establishment of the prima facie case. Under those circumstances, it has been proven that Respondents denied Hawkins a promotion based upon her sexual orientation in violation of Iowa Code section 216.6(1).

C. *Constructive Discharge*

A finding of constructive discharge can be made where "'the employer deliberately makes an employee's working conditions so intolerable that the employee is forced into an involuntary resignation.'"[14]

> Generally, trivial or isolated acts of the employer are not sufficient to support a constructive discharge claim. *Haberer v. Woodbury County*, 560 N.W.2d 571, 576 (Iowa 1997). Rather, the 'working conditions must be unusually 'aggravated' or amount to a 'continuous pattern' before the situation will be deemed intolerable." *Id.* (citation omitted). In addition, conditions will not be considered intolerable unless the employer has been given a reasonable chance to resolve the problem. *Breeding v. Arthur J. Gallagher & Co.*, 164 F.3d 1151, 1159 (8th Cir. 1999); *see First Judicial Dist. Dep't of Correctional Servs.*, 315 N.W.2d at 89. On the other hand, an employee need not stay if he or she reasonably believes there is no

13 *Burdine*, 101 S.Ct. at 1094.
14 *Van Meter Industrial v. Mason City Human Rights Comm'n*, 675 N.W.2d 503, 511 (Iowa 2004) (*quoting First Judicial Dist. Dep't of Correctional Servs. v. Iowa Civil Rights Comm'n*, 315 N.W.2d 83, 87 (Iowa 1982)).

> possibility the employer will respond fairly. *Kimzey v. Wal-Mart Stores, Inc.*, 107 F.3d 568, 574 (8th Cir. 1997). In determining whether a constructive discharge has occurred, the fact finder uses an objective standard. *Haberer*, 560 N.W.2d at 575.[15]

Whether an employer subjectively intends its actions to result in an employee quitting is irrelevant to a finding of constructive discharge; it is sufficient that the employee's resignation is a reasonably foreseeable consequence of the intolerable working conditions the employer created.[16]

The question to be answered here is whether Respondents made Hawkins' working conditions so intolerable that she was forced into an involuntary resignation. The evidence supports the conclusion that they did. At the point at which Hawkins left her employment with Respondents, Lenze was making sexually suggestive comments to her on a routine basis and indicating that she could not advance in her job because she was not straight and would not engage in sexual behavior with him. Lenze was criticizing Hawkins' job performance based on her unwillingness to engage in sexual activity with him and was making negative comments about her sexual orientation to customers and co-workers. The frequency and severity of the conduct demonstrates that conditions were intolerable for Hawkins and she had no choice but to resign.

Hawkins reasonably believed that Lenze would not respond fairly if she raised concerns directly to him. It was reasonable for Hawkins to believe that staying and attempting to deal with Lenze's behavior directly would have been futile. The nature and context of Lenze's harassing behavior toward Hawkins was such that a reasonable person would not believe that an employer making these types of statements would respond fairly to a request to stop. Under these circumstances, the Commission and Complainant have proven that Hawkins was constructively discharged.

D. *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, payment to the complainant of damages for an injury caused by the discriminatory practice, including actual damages, court costs, and reasonable attorney

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15 *Id.; see also Haskenhoff*, 897 N.W.2d at 595 ("'[I]f an employee quits because she reasonably believes there is no chance for fair treatment, there has been a constructive discharge.'") (*quoting Kimzey v. Wal-Mart Stores, Inc.*, 107 F.3d 568, 574 (8th Cir. 1997)).
16 *Haskenhoff*, 897 N.W.2d at 592; *see also Green v. Brennan*, 136 S.Ct. 1769, 1779-1789 (To prove a constructive discharge claim, "[w]e do not also require an employee to come forward with proof – proof that would often be difficult to allege plausibly – that not only was the discrimination so bad that he had to quit, but also that his quitting was his employer's plan all along.").

fees.[17] In this case, the Commission and Complainant seek damages for Complainant's lost wages and emotional distress, as well as an order that Respondents undergo training on the anti-discrimination provisions of the ICRA for employers.

1. Lost Wages

Hawkins seeks an award of $2,900 for lost wages. Actual damages under the ICRA include damages for lost wages.[18]

Complainant asserts that her weekly wage from Respondents was approximately $580, including her base pay ($280) and tips ($300). After her constructive discharge, Complainant was totally unemployed for approximately five weeks. At $580 per week, Complainant's lost wages would be $2,900. Complainant's calculations are supported by the evidence in the record. Hawkins is entitled to $2,900 in damages for lost wages.

2. Emotional Distress

The Iowa Supreme Court has recognized that emotional distress damages are allowed under the ICRA.[19] An award of emotional distress damages is appropriate even without a showing of physical injury, severe distress, or outrageous conduct.[20] The Iowa Supreme Court has held that the adequacy of the award in a particular case depends upon the unique facts of the case.[21] Complainant seeks a total of $500,000 in emotional distress damages: $250,000 for past emotional distress and $250,000 for future emotional distress.

In *City of Hampton v. Iowa Civil Rights Commission*,[22] the Iowa Supreme Court found that the Commission abused its discretion in making an award of $50,000 for emotional distress in a case where there was a "relatively small amount of evidence supporting the award and [a] total lack of any medical or psychiatric evidence to support it." In that case, the Court reduced the damages for emotional distress to $20,000. The Court also catalogued other cases in which emotional distress damages ranging from $5,000 to $15,000 had been approved under the ICRA.[23]

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17 Iowa Code § 216.15(9).
18 *See, e.g., Hamer v. Iowa Civil Rights Comm'n*, 472 N.W.2d 259, 265 (Iowa 1991).
19 *Chauffeurs, Teamsters and Helpers, Local Union No. 238 v. Iowa Civil Rights Comm'n*, 394 N.W.2d 375, 383 (Iowa 1986).
20 *City of Hampton v. Iowa Civil Rights Comm'n*, 554 N.W.2d 532, 537 (Iowa 1996) (*citing Hy-Vee Food Stores, Inc., v. Iowa Civil Rights Comm'n*, 453 N.W.2d 512, 526 (Iowa 1990).
21 *Lynch v. City of Des Moines*, 454 N.W.2d 827, 836-37 (Iowa 1990) (internal citations omitted).
22 554 N.W.2d 532, 537 (Iowa 1996).
23 *Id.*

In this case, the only testimony regarding emotional distress came from Hawkins and her partner, Jensen. Hawkins and Jensen credibly testified that Lenze's conduct caused strain in their relationship and caused Hawkins to feel sad, angry, and stressed. Hawkins' bad feelings about the treatment she received while employed by Respondents continue to the present day. After careful consideration of the evidence, an award of $10,000 for emotional distress is appropriate and takes into account the emotional distress Hawkins suffered as well as the relatively short length of time that she was employed and subject to the hostile work environment.

3. Training

Finally, the Commission seeks an order requiring Respondents to undergo training on the anti-discrimination provisions of the ICRA for employers. Specifically, the Commission requests that Respondents who have contact with employees participate in two hours of anti-discrimination training approved by the Commission.

The ICRA provides that the Commission may require a respondent to take necessary remedial action to carry out the purposes of the ICRA.[24] The evidence in this case demonstrates that Respondents blatantly disregarded the ICRA. The anti-discrimination training that the Commission seeks is a remedy that will further the purposes of the ICRA and promote future compliance by Respondents in relationships with employees.

E. *Attorney's Fees*

Pursuant to Iowa Code section 216.15(9), upon a finding that a respondent has engaged in a discriminatory or unfair practice, a complainant is entitled to recover "reasonable attorney fees." Along with Complainant's post-hearing brief, attorney Stuart Higgins submitted an itemized billing statement and an affidavit in support of the request for an award of $4,850 in attorney's fees. There is no evidence to suggest that the claimed fees are unreasonable. Hawkins is entitled to an award of attorney's fees in the total amount of $4,850.

24 Iowa Code § 216.15(9).

ORDER

The Commission has proven that Respondents RBC Holdings, LLC d/b/a Sunrise Tap and Randy Lenze committed unfair and discriminatory employment practices with regard to Complainant Jessica Hawkins; specifically, Respondents created a hostile work environment for Hawkins based on sex and sexual orientation, failed to promote Hawkins based on sexual orientation, and constructively discharged Hawkins. Respondents are ordered to pay $2,900 to Hawkins as compensation for lost wages. Respondents are further ordered to pay $10,000 to Hawkins as compensation for emotional distress. Respondents who have contact with employees shall also arrange to participate in two hours of anti-discrimination training approved by the Commission. Respondents shall submit proof of completion of training to the Commission within 90 days of the date of this decision. If Respondents have questions about finding training that will meet this requirement, such questions may be directed to the Commission. Respondents are also ordered to pay $4,850 in attorney's fees.

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NOTICE

Pursuant to 161 Iowa Administrative Code 4.23, any adversely affected party may appeal this proposed decision to the Iowa Civil Rights Commission within 30 days of the date of the decision. The appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. In addition, the appeal shall specify:

a. The parties initiating the appeal;
b. The proposed decision or order appealed from;
c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;
e. The grounds for relief.

The Commission may also initiate review of a proposed decision on its own motion at any time within 60 days following the issuance of the decision.

Case Title: ICRC EX REL JESSICA HAWKINS

Case Number: 21ICRC0004

Type: Proposed Decision

IT IS SO ORDERED.

Laura Lockard, Administrative Law Judge