

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. 16ICRC001
)	
Complainant,)	
)	
v.)	
)	
GEORGE'S PIZZA & STEAKHOUSE,)	
GEORGE PAPADOPOULOS,)	PROPOSED DECISION
ERASMIA "ROSEMARY")	
PAPADOPOULOS AND AGAPI)	
LAGIOTI,)	
)	
Respondents.)	

This case involves complaints filed by Elizabeth Sawyer with the Iowa Civil Rights Commission (the Commission) against Respondents George's Pizza & Steakhouse, George Papadopoulos, Erasmia "Rosemary" Papadopoulos & Agapi Lagiotti. Sawyer's complaint alleges that she was discharged by Respondents due to her pregnancy. After an investigation, the Commission determined that probable cause existed with regard to the allegations contained in the complaint. On March 11, 2016, the Commission filed a Statement of Charges with regard to the complaint and transferred the matter to the Department of Inspections and Appeals for a contested case hearing.

Hearing in this matter was held on July 26, 2016 at the Wallace State Office Building in Des Moines, Iowa, before Administrative Law Judge Tricia Johnston. Attorney Katie Fiala represented the Iowa Civil Rights Commission (the Commission). Respondents George and Rosemary Papadopoulos appeared pro se and presented testimony.

Elizabeth Sawyer and Investigator Michelle Cashman also appeared and presented testimony. Due to a variety of technical and scheduling issues throughout the course of the hearing, several interpreters were involved. Each interpreter verified that they could understand Respondents and interpret accurately for the parties. Each interpreter was sworn in prior to providing translation services. Commission Exhibits 1 through 7 were admitted as evidence.

Arrangements were made at hearing to hold the record open until August 9, 2016 for the parties to submit simultaneous post-hearing briefs. The parties timely submitted post-hearing briefs.

FINDINGS OF FACT

Background

Husband and wife, George Papadopoulos (hereinafter, "George") and Erasmia Papadopoulos (hereinafter, "Rosemary") owned George's Pizza & Steak House, a pizzeria in Sigourney, Iowa, in October of 2014. Respondent Agapi Lagioti, George and Rosemary's daughter, was listed by Respondents as a co-owner of the business. She is living in Greece and did not participate in the hearing or in the investigation. (Exhibit 3; Exhibit 5; George Papadopoulos testimony)

Respondents employed a cook and dishwasher as well as approximately four waitresses during the time period in question. (Sawyer testimony; George Papadopoulos testimony) The waitresses included Martha Pherigo, Sara Pherigo, Brenda Warren and Elizabeth Sawyer. Michael Britt worked as a dishwasher. (Exhibit 3; Sawyer testimony; Cashman testimony; Exhibit 7)

Elizabeth Sawyer (hereinafter, "Sawyer"), was estranged from her husband and living with her boyfriend, Michael Britt in October of 2014. Sawyer testified that she began working for George's Pizza on October 11, 2014. Prior to working for Respondent, Sawyer reported that she had worked primarily as a waitress and had done some housekeeping and landscaping. Britt was working at George's Pizza as a dishwasher. Sawyer applied to work there because it was within walking distance from where she was living and she did not have transportation at the time. She stated she had left her husband and was in need of income. (Sawyer testimony)

George and Rosemary were her supervisors. Initially her job was waitressing but it was changed to include dishwashing. She was initially paid \$4 per hour, but when dishwashing became a part of her job, her hourly rate changed to \$5 per hour. Sawyer reported that she was not paid by check. She was paid directly out of the register. She stated she kept a personal record of hours worked as they were required to do. Sawyer stated she did not have any issues with her employment until the day she was terminated. (Sawyer testimony)

Sawyer's Termination

Shortly after she began working for Respondents, Sawyer learned that she was pregnant. On October 23, 2014, she informed Rosemary that she was pregnant. Rosemary appeared to be disappointed. Sawyer believed Rosemary was about to fire her and asked a co-worker if that was what was about to happen. The coworker told her it was, so Sawyer asked Rosemary if she was being fired. Rosemary was shaking her head as she told her they never have employees that are pregnant. Sawyer stated Rosemary's exact words were, "Oh no, I lose one, but I get to keep another" referring to another employee who was hired at the same time. Sawyer asked her a second time if she was

firing her for being pregnant and received the same response. Rosemary told her they never had pregnant employees and George said it was due to insurance problems. Sawyer took off her apron. As she did so, Rosemary told her to leave it on the counter. If she had not been fired, Sawyer would have taken the apron home to wash it at the end of her shift. (Sawyer testimony; Exhibit 1)

Sawyer and Britt left the restaurant together; Britt quitting due to Sawyer being fired. After she was fired, Sawyer was contacted by Sara Pherigo, another waitress at the restaurant, and was told that Rosemary and George were trying to change their decision and would like her back but wanted her to cut back on her hours. They did not make this offer to her directly and Pherigo told her that Respondents would reduce her hours due to her pregnancy. Sawyer did not return to George's Pizza because she was not willing to risk future problems with her employment. She filed a Complaint with the Iowa Civil Rights Commission on October 29, 2014 and an investigation commenced. (Sawyer testimony; Cashman testimony; Exhibit 1)

During the course of the investigation, Respondents were interviewed by Michelle Cashman. During those tape recorded interviews, George informed Cashman that he kept payroll records and work schedules but did not keep the schedule from October 23, 2014 because he would throw them away after a week. He suggested he had an employee handbook, but never provided any payroll documents or handbooks during the course of the investigation. (Exhibit 5; Cashman testimony)

Additionally, during this interview, George claimed Sawyer told Martha Pherigo, another waitress working at that time, that she was pregnant and Martha told her she would be fired, but George claimed he had never fired a girl for being pregnant. He stated his wife lost a baby in 1969 and she would never do that. He believed Martha wanted more hours and said that to Sawyer so she would leave. Also, Martha had Sawyer babysit her two kids and take them to school. George told Cashman that Rosemary told Sawyer not to worry; that she did not want her to lift heavy stuff and no double shifts. He stated the next day she didn't show up. George maintained that he had never terminated anyone. He stated Rosemary called Sawyer to come back to work and he talked to Mike and told him to tell her to come back to work. George stated he never employed pregnant employees at that place. (Exhibit 5; Cashman testimony)

Rosemary informed Cashman during her interview that she did not know Sawyer's name and she only worked there for a couple hours and then she was gone for four days. Rosemary asked Mike Britt where his girlfriend was and he told her she was sick. Rosemary told Cashman that Sawyer then came back and she asked her if she was okay now and she said she was pregnant. Rosemary stated she told her good luck, gave her a kiss and told her she would take care of her. Rosemary stated she told Sawyer she could work the 11-2 shift or the 4:30 -9 shift, but not both and no heavy lifting. Sawyer left and did not come back. Rosemary saw Sawyer taking Martha's kids to school every morning. She was later told Sawyer was not pregnant. Rosemary stated she had a lot of

girls who worked for her while they were pregnant and she did not have them lift heavy stuff. She reiterated that Sawyer only worked a couple of hours. She stated she never in her life fired anybody. She called Sawyer four times asking her to come back and Sawyer didn't call her back. She thought maybe Martha told Sawyer she would be fired because Martha wanted Sawyer to take care of her kids. (Exhibit 6; Cashman testimony)

George and Rosemary gave a conflicting account of events at the hearing. Both Respondents repeatedly changed their story about the amount of time Sawyer worked there before October 23, 2016, at times stating she worked there one day and at times one week. While Rosemary stated in her interview that Sawyer told her she was pregnant, both Rosemary and George testified at hearing that Rosemary overheard Sawyer telling another waitress that Sawyer was pregnant. Rosemary then went over to Sawyer and gave her a hug and a kiss and told her she could not do any heavy lifting and could only work one shift. However, George and Rosemary were inconsistent on this point as well, at times stating they told her she could only work one shift and at times stating they told her she did not have to work more than one shift but did not require her to only work one shift. (George and Rosemary Papadopoulos testimony)

Respondents stated Mike Britt came back to work the next day, October 24, 2014, and they asked him where Sawyer was and he told them she was not feeling well or was sleeping. They denied firing Sawyer due to being pregnant. Both claimed they had many waitresses who worked while they were pregnant and also had family members, including Rosemary herself, who worked while pregnant. This was contrary to George's interview statement that he had not had any pregnant waitresses working for him at the restaurant. (George and Rosemary Papadopoulos testimony)

During the course of the investigation, Cashman also interviewed Sara Pherigo, a waitress working at the restaurant in October of 2014. This interview took place by phone. Pherigo's interview was entered into evidence as Exhibit 7. Pherigo informed Cashman that she had worked at George's for two years, starting on July 8, 2013. Her employment ended three months prior to the interview. She told Cashman it ended when she got pregnant. Pherigo informed Rosemary of the pregnancy and Rosemary waited a little bit, got additional help at the restaurant and decided to tell her she was no good; telling her to leave and not come back. After that Rosemary did try to call Pherigo several times to get her to come back to work. (Exhibit 7; Cashman testimony)

Pherigo indicated Respondents had fired a lot of people. Several people, including her fiancé, were in and out of the door due to being fired. She also named other employees, including "Shelby," "Melanie," "Amber," "Holly," "Dawn," "Michael," and "another pregnant girl" whose name she was struggling to remember. She stated this employee came in, worked a week, then told the owners she was pregnant and they told her they could not have a pregnant woman working and she was fired. Later during the course of this interview, Cashman asked Pherigo if she knew Elizabeth Sawyer. Pherigo

responded somewhat excitedly, “[t]hat was her name! ... Elizabeth was the one. She was pregnant. When she told George and Rosemary they fired her for it.” Pherigo stated she was working the day Sawyer was fired. She stated Sawyer, Britt, Rosemary and George sat down and talked. She stated Rosemary and George looked at Sawyer and told her she could not be pregnant, it is stupid, and she could not work there. Pherigo stated that Britt and Sawyer asked Respondents if they were going to fire Sawyer because she was pregnant and Respondents “basically said yes.” Pherigo left at that point to avoid hearing the argument. Britt and Sawyer walked out of the restaurant. Pherigo stated Britt was fired once and left once. When Elizabeth was fired, he was fired. Pherigo identified that her stepmother, Martha Pherigo was present that day as well. She had a falling out with Martha and did not have contact information for her. She further stated another waitress named Brenda was not there. She only worked in the evening. Pherigo recalled they had fired Brenda and brought her back a couple weeks later. (Exhibit 7; Cashman testimony)

Pherigo informed Cashman that prior to leaving, Sawyer said something to them about going to court. The Respondents kept calling her trying to get her to come back and “they kind of panicked.” They kept trying to call her to get back to work but they wanted her to work one day of work, three hours a week. Pherigo stated Sawyer refused to go back after the way they treated her. Sawyer was pulling double shifts almost every day with Pherigo while she worked there. She was there a good two weeks. Pherigo stated she advised Sawyer to keep her pregnancy quiet because she’d heard rumors about what they do when someone gets pregnant because this is how things in the past apparently worked a few other times. (Exhibit 7; Cashman testimony)

Damages

Sawyer stated her other children had been born by Cesarean Section (C-Section) and she knew she would have a C-Section for this child as well. She intended to work until her scheduled C-section on June 22, 2015. (Sawyer testimony)

Following her termination, Sawyer attempted to get another job, applying at a gas station in town, a Mexican restaurant, the local newspaper, the local grocery store, the local liquor store and the public library. She needed to find work within walking distance due to not having transportation. She was not hired at these locations. (Sawyer testimony)

Sawyer stated she was depleting her savings while trying to find work. After some time, she reconciled with her husband. She was not able to find work prior to the birth of her son. Sawyer stated she worked October 11 and 12, 2014 and reported work hours for those dates, but did not consider them in calculating her average work week. (Sawyer testimony)

Sawyer reported her work hours for one week as follows:

October 13, 2014

Worked a total of five hours and fifteen minutes over two shifts

Earned \$32 in tips

October 14, 2014

Worked four hours and 30 minutes

Earned \$14 in tips

October 15, 2014

Worked three hours

Earned \$15.50 in tips

October 16, 2014

Worked two hours and 30 minutes

Earned \$22.10 in tips

October 17, 2014

Worked a total of seven hours and thirty minutes over two shifts

Earned \$31.75 in tips

October 18, 2014

Worked a total of six hours and 30 minutes over two shifts

Earned \$19.25 in tips

October 19, 2014

Worked six hours over two shifts

Earned \$46.50 in tips

(Exhibit 4; Sawyer testimony) As noted previously, Sawyer stated she was initially earning \$4 per hour but it increased to \$5 per hour when they started washing their own dishes. (Exhibit 1; Sawyer testimony) Sawyer was therefore earning \$175 per week in wages based upon a 35-hour work week and was earning \$181.10 in tips. (Exhibit 4)

Sawyer stated she worked the following week as well but could not find that page of her server book where she kept track of her work hours and tips. (Sawyer testimony)

CONCLUSIONS OF LAW

Discrimination Based on Pregnancy

In its Statement of Charges, the Commission alleges a single count of disparate treatment, asserting that Respondents terminated Sawyer upon learning of her pregnancy, stating the pregnancy “was a motivating factor in Respondents’ decision to terminate her employment.” (Statement of Charges)

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.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.²

Discrimination on the basis of pregnancy is also prohibited under state and federal law.³ The ICRA precludes an employer from failing or refusing to hire or terminating an individual because of her sex or pregnancy.⁴ Likewise, the Pregnancy Discrimination Act (“PDA”) precludes an employer for failing or refusing to hire or terminating an individual on the basis of the person’s sex.⁵ The term sex includes “because of or on the basis of pregnancy, childbirth, or related medical conditions.”⁶

¹ Iowa Code § 216.6(1) (2015).

² *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).

³ Iowa Code §216.6(2); 42 U.S.C. 2000e(k)

⁴ Iowa Code §§ 216.6(1)(2015), 216.6(2) d.

⁵ 42 U.S.C. § 2000e-2(a).

⁶ *Id.* § 2000e(k).

A complaint of discrimination based on pregnancy is typically analyzed under the same general principles as a complaint of discrimination based on sex.⁷ A complaint of pregnancy discrimination can be proven by direct evidence or by a burden-shifting analysis.⁸ Direct evidence of employment discrimination is evidence showing a specific link between the alleged discriminatory animus and the challenged decision, sufficient to support a finding that the adverse employment action was motivated by illegitimate criteria.⁹ The direct evidence must be strong and clearly point to the presence of an illegal motive for the adverse action.¹⁰

If an employee who claims discrimination in employment based on sex, specifically her pregnancy, is unable to demonstrate direct evidence of employment discrimination, a burden-shifting analysis is performed. The employee must establish a prima facie case of discrimination at which point the Respondent offers legitimate nondiscriminatory reasons for their actions which the Complainant must then prove are pretext for discrimination.¹¹ Sawyer must in that case first produce evidence that she (1) was pregnant; (2) was qualified for her position; and (3) she experienced an adverse action under circumstances giving rise to an inference of discrimination.

There is no need to analyze this complaint under a burden-shifting framework as there is direct evidence of discrimination. Respondents at times acknowledged telling Sawyer she was not to do any heavy lifting and told her she was only to work one shift, not two. That in and of itself is direct evidence of discriminatory treatment based on Sawyer's pregnancy, however it is not the issue raised in the Commission's Statement of Charges.¹²

The undersigned finds Respondents are not credible witnesses. George and Rosemary's testimony at hearing was not consistent with their earlier statements to Cashman, and their statements at hearing were not consistent with each other's statements. Initially, Rosemary and George claimed they could not remember Sawyer's name and continually changed the length of time she worked there from a few hours, to a few days, to a week.

7 *Quaker Oats Co. v. Cedar Rapids Human Rights Commn.*, 268 N.W.2d 862, 867 (Iowa 1978); *Elam v. Regions Fin. Corp.*, 601 F.3d 873, 878 (8th Cir. 2010)

8 *Elam v. Regions Fin. Corp.*, 601 F.3d 873, 878-879 (8th Cir. 2010)

9 *Id.* at 878. *Young v. United Parcel Serv.*, 135 S. Ct. 1338, 1345 (2015); *Smidt v. Porter*, 695 N.W.2d 9, 14 (Iowa 2005).

10 *Griffith v. City of Des Moines*, 387 F.3d 733, 736 (8th Cir. 2004).

11 *McDonnell Douglas Corp. v. Green*, 411 U.S. 795 (1973); *DeBoom v. Raining Rose, Inc.*, 772 N.W.2d 1, 6 (Iowa 2009). *See also Young*, 135 S.Ct. 1354 (under the burden-shifting analysis, the plaintiff must establish "she belongs to the protected class, that she sought accommodation, that the employer did not accommodate her, and that the employer did accommodate others 'similar in their ability or inability to work") *DeBoom*, 772 N.W.2d at 6; *Young*, 135 S. Ct. 1354.

12 *Channon v. United Parcel Serv., Inc.*, 629 N.W.2d 835, 863 (Iowa 2001) (Adverse employment actions include loss of normal work assignments)

Respondents provided no employment or payroll documentation which would have evidenced the length of time Sawyer worked for them.

Respondents contend that they did not fire Sawyer and in fact they have never fired anybody. Their statements were self-serving and defied credulity. They were also contradicted by Pherigo who specifically named a number of employees who had been fired by Respondents. Pherigo herself indicated she was fired when Respondents learned she was pregnant. Although she was not available to testify at hearing, the undersigned listened to her recorded interview and found her statements to be credible.

George stated Rosemary was not told of the pregnancy directly, but overheard it. Rosemary stated Sawyer told her about it directly in her interview with Cashman. While Rosemary and George both claimed Rosemary kissed Sawyer and told her no heavy lifting and discussed restricting her hours, this accounting was directly disputed by Sawyer and Pherigo, who was a witness to the incident.

Sawyer gave a credible description of what occurred when she told Respondents she was pregnant. Rosemary and George told her they never have pregnant employees and indicated there was an insurance issue involved. Rosemary told Sawyer that she was losing one employee but got to keep another, referring to another employee that was hired at the same time. As Sawyer began to take her apron off, Rosemary told her to leave it on the counter as she left.

Her description is significantly supported by the statements made by Sara Pherigo. Pherigo was present when Sawyer was fired and recounted what she remembered regarding “the pregnant girl” being fired. Pherigo stated George and Rosemary told Sawyer she could not work there. Immediately following this conversation, Sawyer took off her apron, put it on the counter, and she and Britt left. It is implausible that they would have left in this manner if Sawyer had not in fact been fired.

Despite admitting to Cashman that they told Sawyer she could not do double shifts, George and Rosemary denied saying this to Sawyer when they testified at hearing. It appears Respondents had a change of heart after firing Sawyer and attempted to get her to come back to work, but under conditions that, as noted previously, would be discriminatory based upon Sawyer’s pregnancy.

Sawyer’s pregnancy was not only a substantial motivating factor for Respondent’s actions, it appears to be the sole motivating factor for firing Sawyer. The evidence presented in connection with this investigation shows Sawyer was fired and there is a direct correlation between Sawyer’s pregnancy and the Respondents’ adverse employment action.¹³

13 *EEOC v. Financial Assur., Inc.*, 624 F.Supp 686, 48 BNA FEP Cas 718 (WD Mo. 1985)

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 fees. Damages can also include lost wages due to the unlawful termination.¹⁴

When a complainant finds employment that is equivalent to or better than the position he or she was wrongly denied, the right to damages ends because it is no longer necessary to achieve an equitable purpose; the plaintiff at that point has been restored to the position she would have been in absent the discrimination.¹⁵ The new employment must afford virtually identical promotional opportunities, compensation, job responsibilities, and status as the position from which the complainant was discriminatorily discharged.¹⁶

In this case, Sawyer credibly testified that she was unable to find work during the remainder of her pregnancy within the necessarily limited geographical area near her home. She further testified credibly that she planned to work until her scheduled C-section on June 22, 2015. It had been her intention to work throughout her pregnancy until that date.

Sawyer seeks an award of \$10,200 for lost wages. Sawyer was terminated October 23, 2014. The Commission asserts that Sawyer was working an average of 35 hours per week making \$5 per hour prior to her termination for a total of \$175 per week. She was making approximately \$181 per week in tips, however the Commission recognized in its post-trial brief that tips are variable and therefore requested an average of \$25 per day in tips, or \$125 per week. This conclusion is supported by the available evidence. The Commission's estimation of an average daily income from tips of \$25 is not unrealistic. Adding together her average weekly income from wages and tips, Sawyer would have earned \$300 per week had she not been terminated.

Given that Sawyer intended to work until June 22, 2015, she was out of work for 34 weeks. Sawyer would have earned \$300 per week for 34 weeks for a total of \$10,200 had she not been fired from the Restaurant. An award of \$10,200 in lost wages is appropriate.

14 Iowa Code § 216.15(9) (2015); *Chauffeurs, Teamsters & Helpers, Local Union No. 238 v. Iowa Civil Rights Comm'n*, 394 N.W.2d 375, 382-83 (Iowa 1986); *See, e.g., Hamer*, 472 N.W.2d at 265.

15 *Donlin v. Philips Lighting North America Corp.*, 581 F.3d 73, 84 (3d Cir. 2009) (citing *Ford Motor Co. v. EEOC*, 458 U.S. 219, 236 (1982)).

16 *Id.* at 85 (citations omitted).

ORDER

The Commission has proven that Respondents committed unfair and discriminatory practices with regard to Elizabeth Sawyer. Respondents are ordered to pay \$10,200 to Elizabeth Sawyer as compensation for lost wages.

Dated this 16th day of September, 2016.



Tricia A. Johnston
Administrative Law Judge

cc:

AG Katie Fiala, Attorney for Complainant (ELECTRONIC & FIRST CLASS MAIL)
Elizabeth Sawyer (FIRST CLASS MAIL)
George Papadopoulos, Respondent (FIRST CLASS MAIL)
Erasmia Papadopoulos, Respondent (FIRST CLASS MAIL)
Agapi Lagioti, Respondent (FIRST CLASS MAIL)

NOTICE

Any adversely affected party may appeal this proposed decision to the Iowa Civil Rights Commission within 30 days of the date of the decision.¹⁷ 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.¹⁸

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.¹⁹

¹⁷ 161 IAC 4.23(1).

¹⁸ 161 IAC 4.23(3).

¹⁹ 161 IAC 4.23(2).