

BEFORE THE IOWA CIVIL RIGHTS COMMISSION

DENISE WALKER Complainant

VS.

THE BEST WESTERN AIRPORT INN and JOHN VASHIE, Respondents.

CP# 04-87-16099

THIS MATTER, a complaint filed by DENISE WALKER (Complainant), with the Iowa Civil Rights Commission (Commission), charging THE BEST WESTERN AIRPORT INN and JOHN VASHIE (Respondents), with discrimination in employment on the basis of sex, came on for hearing in Des Moines, Iowa, on July 19, 1988, before IONE G. SHADDUCK, serving as Administrative Law Judge, (AIJ). The case in support of the complaint was represented by Teresa Baustian, Assistant Attorney General, who was not present at the hearing. The Complainant was represented by Stephen D. Lombardi, private attorney. The Respondents were not present, nor did anyone appear in behalf of Respondents. It was noted on the record that the Notice of Hearing was issued on February 16, 1988, by certified mail #32,908, to the Best Western Airport Inn at 1810 Army Post Road, Des Moines, Iowa 50315 and by certified mail #32,909, to John Vashie in care of the Best Western Airport Inn at 1810 Army Post Road, Des Moines, Iowa 50315. It is further noted that both certified Notices have been returned as received. Upon request, Attorney Lombardi informed the AIJ that he had been in contact with Michael Mallaney, Attorney for Vashie in another action, that Vashie was in California and expected to be in Des Moines; Lombardi stated that he and Attorney Mallaney had discussed the complaint at issue and that Mallaney was knowledgeable about the allegations and this hearing.

Attorney Lombardi moved to amend the complaint to have the caption read: Countryside Investment Company, d/b/a The Best Western Airport Inn. This motion is granted as a correction since adequate notice was given to parties as corrected.

Under the Iowa Rules of Civil Procedure section 230, and specifically under subsection "c," Respondents, The Best Western Airport Inn and John Vashie, were declared in default for failure to be present at this Hearing.

Pursuant to Iowa Rule of Civil Procedure section 232, subsection B, the ALJ requested the Complainant to present her evidence.

After having reviewed the record and briefs of counsel, the AIJ makes the following findings of fact, conclusions of law, rulings, recommended decision and order.

FINDINGS OF FACT

I. The Complainant, Denise Walker, timely filed verified complaint CP# 04-87-16099 with the Iowa Civil Rights Commission on April 21, 1987, alleging a violation of Iowa Code section

601A.6, discrimination in employment on the basis of sex, by Respondents The Best Western Airport Inn and John Vashie.

2. The complaint was investigated, probable cause found, conciliation attempted but faded. Notice of Hearing was issued on February 16, 1988.

3. On November 8, 1986, Denise Walker (now Murphy), a female, started employment at The Best Western Airport Inn, Des Moines, Iowa. She started as a waitress at \$2.01 an hour and was promoted to head hostess at \$4.00 an hour. She then became dining room manager in February 1987, at \$265.00 per week, and in April her salary was to be raised to \$325.00 per week. Walker was approximately 24 years of age when she started employment and only had an eighth grade education. She liked her management position and planned to continue her work at Beat Western.

4. John (VINOD) Vashie and his wife Surekha were partners of Countryside Investment Company, 3600 Full Moon Drive, Glendale, California, which owned The Best Western Airport Inn. They were also sole shareholders in the Countryside Management Corporation which managed The Best Western Airport Inn. John Vashie was Walker's boss. Mike Schappaugh was the resident manager. Walker reported directly to Schappaugh. (Complainant's Exhibit B)

5. Walker alleges the following incidents of harassment:

a. during scheduling work, Vashie would play "feetsies under the table, or held grab [her legs and her arms, her breasts] ... and it definitely was offensive..." T. 17-18

b. one time when she refused to go down to his office, he came up after her and insisted she go with him; he then locked the office doors and threw himself upon her and wouldn't remove himself until she threatened to scream;

c. in the dining room, he would grab her bottom as she'd go by;

d. in the office where the copy machine was located, he would come in, close the door, and grab at her "breast and things."

e. sometimes in the dining room he would comer her and not allow her to take care of customers;

f. he would follow her out to the parking lot after work;

g. he offered to buy her a car or give her money to have sex with him; he offered to set her up in an apartment and a better job in Quincy, Illinois, where he apparently owned another motel;

h. he called her at her home requesting her to meet him at a motel to "play around". This continued even after Walker quit. T. 17-26; Complainant's Exhibit C, D, G.

6. Walker had two young children at home. Vashie's persistent phone calls and demands for long hours at work (around 79 per week) interfered with her care of those children. Her son failed third grade that year. Walker became very moody and suspicious of male co-workers and suffered emotionally at what she had to go through. T. 33-35.

7. Walker reported the problem to Schappaugh, her immediate supervisor. She also told Vashie many times to quit harassing her.

8. Vashie's actions persisted and eventually, Walker didn't enjoy going to work anymore and could no longer put up with it. She quit on March 6, 1987. She discussed with Vashie the possibility of returning to work but only if he would stop demanding she have sex with him and stop harassing her. He refused to reinstate her unless she would have sex with him at least one time. She did not return to work.

9. Complainant requests damage of back pay, emotional distress, exemplary damages, costs, reasonable attorney fees and interest. T. 41-44.

At the close of Complainant's testimony, Attorney Lombardi was requested to submit a stipulation of would-have earnings of Denise Walker and a stipulation as to attorney fees incurred by this case.

CONCLUSIONS OF LAW

The complaint was timely filed, processed and the issues in the complaint are properly before the Administrative Law Judge and ultimately before the Commission.

Pursuant to Iowa Rule of Civil Procedure section 230-235, Respondents Countryside Investment Company d/b/a The Best Western Airport Inn and John (VINOD) Vashie, should be declared in default for failure to appear at the Hearing on July 19, 1988.

Complainant, Denise Walker, should receive damages as follows:

1. Back pay from the date of constructive discharge, March 6, 1987, to the date of this Hearing in the amount of \$13,623.50, plus interest accrued at the rate of 10% per annum. from April 6, 1987, the date of filing the complaint, and to continue until paid in full.

2. Attorney's fees in the amount of \$3,458.53.

3. Emotional distress damages in the amount of \$25,000.00 with interest at the rate of 10 % per annum. to accrue from April 6, 1987 until paid in full. Vashie's demanding and persistent harassment of Walker was outrageous conduct. Walker not only reported this conduct to her immediate supervisor, but told Vashie directly and repeatedly that his actions were unwelcome, offensive. In this case the outrageousness of Vashie's conduct is adequate evidence that the distress is severe. Paulsen v. Russell, 300 N.W.2d 289, 297 (Iowa 1981).

4. As an owner and employer in the State of Iowa, Vashie's outrageous harassing conduct of his employee in violation of Iowa Code Chapter 601A, his failure to respond to the Commission, an agency of the State of Iowa, by refusing to be present or represented at this Hearing as ordered by the Iowa Civil Rights Commission, are acts clearly in disdain of the law of this State and should be punished by ordering payment of exemplary damages.

RECOMMENDED DECISION AND ORDER

Countryside Investment Company d/b/a The Best Western Airport Inn and John (VINOD) Vashie are declared in default and judgment is entered against them.

1. Countryside Investment Company d/b/a The Best Western Airport Inn and John (VINOD) Vashie are ordered to pay Denise Walker (Murphy) the following:

- a. back pay in the amount of \$13,623.50, plus interest at 10% per annum to accrue from April 6, 1987 until paid in full;
- b. fees in the amount of \$3,458.53, for the professional services of Attorney Stephen Lombardi.
- c. emotional distress damages in the amount of \$25,000.00 plus interest at 10 % per annum. to accrue from April 6, 1987 until paid in full;
- d. transcript costs to be paid to the Iowa Civil Rights Commission in the amount of \$133.70.
- e. exemplary damages in the amount of \$10,000.

Signed this 23rd day of January, 1989

IONE G. SHADDUCK,

Administrative Law Judge

ORDER

The Iowa Civil Rights Commission has received, reviewed and considered the Proposed Decision of Administrative Law Judge Ione G. Shadduck, dated January 23, 1989, and the records in this case.

At its regularly scheduled meeting of February 24, 1989, the Commission adopted the Proposed Decision as its own finding of facts, conclusions of law, decision and order with the following modifications:

ITEM 1e. exemplary damages in the amount of \$10,000, is deleted from the order.

ITEM 1a through 1d are SO ORDERED.

SIGNED this 8th day of March, 1989.

RUBY ABEBE
Commissioner