

BEFORE THE IOWA CIVIL RIGHTS COMMISSION

JENNIE V. MILLER-SUHR, Complainant,

VS.

ART QUIRING TRUCK DIVISION, INC., and ART QUIRING Respondents.

CP# 06-82-8819

THIS MATTER, a complaint, as amended, filed by Jennie V. Miller-Suhr (Complainant) with the Iowa Civil Rights Commission (Commission) charging Art Quiring Truck Division, Inc. and Art Quiring (Respondent) with discrimination in employment on the basis of sex, came on for hearing in Davenport, Iowa on the 7th day of April 1987, before Hearing Officer Ione G. Shadduck. Complainant was represented by Teresa Baustian, Assistant Attorney General. Respondent was represented by Hugh J. Pries, Attorney at Law. At the close of the Hearing on April 8, 1987, the record was held open for the testimony of Complainant's witness, Harry Carstensen, either in person in Des Moines or by telephone conference call as soon as could conveniently be arranged after his return from California. Respondent resisted the request based on untimely disclosure of the name of the witness. A telephone conference call was set up for April 24, 1987. Prior to the operator completing the contacts, Attorney Pries became unavailable and the call was canceled. The Hearing Officer ordered Teresa Baustian to obtain an affidavit of testimony from the witness. That affidavit was received on May 13, 1987. Attorney Pries was given 10 days from May 28, 1987 (date of order) to respond. No response was received.

All rulings on motions and objections reserved and not ruled on in this proposed decision are denied.

The issues in this case are as follows:

ISSUE I - WAS ART QUIRING'S FAILURE TO OFFER JENNIE MILLER-SUHR FURTHER TRUCK DRIVING WORK BECAUSE OF HER REJECTION OF HIS SEXUAL OVERTURES?

ISSUE II - WAS THE FILING OF A DEFAMATION SUIT BY ART QUIRING AGAINST JENNIE MILLER-SUHR DONE IN RETALIATION FOR FILING OF THIS COMPLAINT WITH THE COMMISSION?

ISSUE III - IN THE EVENT THAT RESPONDENT VIOLATED IOWA CODE CHAPTER 601A, HAS COMPLAINANT ESTABLISHED RIGHT TO ANY REMEDIES PROVIDED IN CHAPTER 601A?

FINDINGS OF FACT

1. The Complainant, Jennie V. Miller-Suhr, timely filed verified complaint CP# 06-82-8819 with the Iowa Civil Rights Commission on June 14, 1982, alleging a violation of Iowa Code section

601A.6, discrimination in employment on the basis of sex, incident occurring on or about May 1 through May 5, 1982.

2. A true copy of the verified complaint was served by certified mail upon the Respondents, Art Quiring Truck Division, Inc. and Art Quiring on June 17, 1982.

3. On July 5, 1985, Complainant filed a verified amendment with the Commission alleging a violation of Iowa Code section 601A.11, retaliation for having filed a complaint with the Commission.

4. A true copy of the verified amendment was served by certified mail upon Respondents on July 22, 1985.

5. The investigation of the complaint was completed on August 8, 1985, probable cause was found for both charges, sex discrimination and retaliation, on August 26, 1985. Notice of probable cause was given Respondent on September 5, 1985. Conciliation was unsuccessfully attempted and Notice of Hearing was issued on September 15, 1986.

6. Sometime in February 1982, Suhr responded to an ad by Quiring for a truck driving job. She was given a run to Chicago in February with another driver. On February 9, 1982 she was given a copy of the Company rules but did not read them at that time as she did not believe that she was going to be hired. (See Respondent's Exhibits G and H)

7. Her next call was on, Saturday, May 1, 1982. She reported to the office at 8:00 A.M. for a trip to Albuquerque, New Mexico and El Paso, Texas. She was told that she was supposed to make a run with another driver, but he refused to take her, therefore, Art Quiring would take her. They left about one o'clock that afternoon. Her status was that of trainee. Delivery was set for Monday morning.

8. The Company Rules include the following provision:

All bedding is furnished and cleaned by the company. It is issued at the start of each dispatch. No one shall enter the sleeper compartment with outer garments. Keep it clean - you don't sleep this way at home.

On this trip, Suhr was required to remove her outer garments on the passenger side of the truck prior to getting into the sleeper. Quiring did the same thing before he crawled into the sleeper. The rule was equally applied to females and males.

9. During this trip Quiring asked Suhr what she would do if "some guy came up and rattled on the door and wanted a favor." During one period when he was in the sleeper Quiring asked: "Are you going to kiss me good night and tuck me in?" Miller- Suhr responded in the negative, telling him that she didn't even kiss her children good night, "What makes you think you're any better?" (Tr.p.27). Quiring then told Suhr to get in the sleeper with him. (Tr.pp. 28,47) When they arrived at the first warehouse, Quiring put his hands on Miller-Suhr's shoulder and informed her that she

didn't have to worry about getting pregnant because he had an operation. Suhr rejected and was offended by all of Quiring's sexual overtures. (See Transcript pages 27-29).

10. They stopped and spent most of one day at Quiring's in-laws.

11. Quiring declined to take a load of lettuce on the return trip because of a time problem.

12. On the return trip there was minimal conversation and no training instruction. Upon return Suhr was only informed that she was off duty. She waited about five days to two weeks and there were no calls from Quiring on making another trip. She then applied for unemployment benefits. Quiring contested the application. Suhr was awarded benefits.

13. It was policy for drivers to leave an extra key to their cars so that the cars could be moved if necessary. Suhr's key remained at the office until her boyfriend went to retrieve it after Suhr had given up being called.

14. On December 9, 1983, Art Quiring filed Petition at Law, C3009-1283 in the Iowa District Court for Muscatine County against Jennie V. Miller (Miller-Suhr) alleging defamation of character as follows in part:

That on or about June 11, 1982, Defendant did maliciously and willfully defame the character of the Plaintiff, charging and accusing Plaintiff of sexually harassing Defendant by writing, publishing and filing a complaint addressed to and received and read by the Iowa Civil Rights Commission, 8th Floor, Colony Bldg., 507- 10th Street, Des Moines, Iowa, 50319.

On December 26, 1985, the district court sustained Defendant's Motion for Summary Judgment in that the allegations by Defendant to the Iowa Civil Rights Commission are protected communications.

15. The Company Rules received by Suhr in February provided as follows:

You must call in between 8 a.m. and 12 noon daily (except Sunday). Failure to do so will result in a \$25.00 fine.

(See Respondent's Exhibit G)

The record indicates that Suhr did not call in nor did Quiring fine her for not doing so. The record indicates that this was an on-the- road rule as opposed to off-time rule and therefore, was not applicable to Jennie Miller-Suhr after Art Quiring told her she was off-duty.

16. Art Quiring is the owner of Art Quiring Trucking Division, an interstate carrier of general commodities. He had been in trucking business for over 40 years.

17. Driver trainees were paid 8-11.5 cents per mile and after 30 days 50% of health insurance.

18. It was generally agreed that when there was a woman trainee, Art Quiring took her out on her first run.

19. Darlo Daly, a driver for Art Quiring who made a delivery in Albuquerque just after Quiring and Miller-Suhr were there, reported that the warehousemen were still talking about how Quiring had treated Miller-Suhr. He also testified that Quiring indicated when they returned from the run that he could not hire her because "she missed too many turns," which Daly, interpreted as an excuse and not the true reason for refusal to lure her, which was her rejection of sexual advances.

CONCLUSIONS OF LAW

1. The complaint, as amended, was timely filed, processed and the issues in the complaint are properly before the Hearing officer and ultimately before the Commission.

2. Art Quiring Truck Division, Inc. and Art Quiring are "employers" and "persons" as defined in Iowa Code §601A.2(2) and (5)(1981), and are therefore subject to Iowa Code §601A.6 and §601A.11 and do not fall under any of the exceptions of 601A.6(5).

ISSUE I - WAS ART QUIRING'S FAILURE TO OFFER JENNIE MILLER-SUHR FURTHER TRUCK DRIVING WORK BECAUSE OF HER REJECTION OF HIS SEXUAL OVERTURES?

1. The applicable statutory provision is as follows:

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 ... sex ... of such applicant or employee, unless based upon the nature of the occupation...

2. In Hensen v. City of Dundee, 682 F.2d 897 1982), the United States Court of Appeals for the Eleventh Circuit set forth elements which must be proven to establish a claim of sexual harassment. These elements include the following:

a. The employee belongs to a protected group In the case at issue, Jennie Miller-Suhr is female and, therefore, a member of a protected group.

b. The employee was subject to unwelcome sexual harassment. The type of conduct that may constitute sexual harassment has been defined as: "sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature..." 29 C.F.R. § 1604. 1 l(a) (198 1). In order to constitute harassment, such conduct must be unwelcome in that the employee did not solicit or incite it, and in the sense that the employee regarded the conduct as undesirable or offensive. Art Quiring denies any acts of sexual harassment. There was testimony that he usually took the female trainees on their first run. The

scheduling of the trip with Miller-Suhr on Saturday at 1:00 p.m. for a Monday A.M. delivery is suspect. The "undressing" rule, although reasonable based on cleanliness, was not reasonable for mixed driving teams. At least one other witness substantiated the evidence that Quiring has a reputation for sexually harassing the women employees. It is clear that the sexual advances were unwelcome, were not solicited and that Miller-Suhr regarded such conduct as offensive.

c. The harassment complained of was based upon sex. There is no evidence that Quiring treated male employees in the same way he treated Miller-Suhr. It is concluded that but for her sex, Miller-Suhr would not have been subjected to sexual harassment.

d. The harassment complained of affected a "term, condition, or privilege" of employment. The fact is that Complainant was not called in for another run after her rejection of Quiring's sexual overtures. There was conflicting testimony as to policy of calling in during an off-run period. The policy was clear and drivers adhered to the policy of calling every morning when they were on a run. Although the written policy does not differentiate between off-and on-run situations, other drivers understood the policy as applicable only to when they were on the road, and was not enforced in any other manner, and the fact that Miller-Suhr did not call in as the reason she was not given a run is not credible. She had an answering machine and the evidence shows that Quiring did not call her although it was customary to do so when they wanted a driver to take a run. Evidence also supports the fact that runs were available. Testimony by Darlo Daly indicates that Quiring had decided to not hire Miller-Suhr upon their return from the run. The testimony by the Todds, Quiring's in-laws, related to Miller-Suhr being upset because Quiring had reprimanded her, is just not credible.

Sexual harassment is employment discrimination on the basis of sex because demands are made only on female employees and continued employment or advancement is conditional on acceptance. The demands become an additional term or condition of employment, imposed because of gender, thereby violating Iowa Code section 601A.6. See Barnes v. Costle, 561 F.2d 983,989, (D.C. Cir. 1977). It is concluded that Respondent violated Iowa Code Chapter 601A, in its failure to offer Complainant further runs.

ISSUE II - WAS THE FILING OF A DEFAMATION SUIT BY ART QUIRING AGAINST JENNIE MILLER-SUHR DONE IN RETALIATION FOR FILING OF THIS COMPLAINT WITH THE COMMISSION?

1. The applicable statutory provision is Iowa Code section 601A. 11, in pertinent part as follows:

It shall be an unfair or discriminatory practice for:

2. Any person to discriminate against another person in any of the rights protected against discrimination on the basis of .. sex ... by this chapter because such person has ... filed a complaint ... under this chapter...

Art Quiring did file a petition in district court alleging defamation of character, specifically, on the basis of the allegations set forth in this complaint. No other defamatory writings, statements or actions, except the job service information which was also found to be protected communication, were alleged by Quiring in the state court action. The allegation in the pleading constitutes an admission of a retaliatory motive.

Therefore, the issue is purely legal. Does Quiring's state defamation action against Complainant, the charging party, based solely on Complainant's employment discrimination charge, violate Iowa Code 601A.11? The petition was filed on December 9, 1983. The complaint against Quiring was filed with the Commission in June 1982.

The provisions under 42 U.S.C. §2000e-3(a) are similar to the Iowa statute. In E.E.O.C. v. Virginia Carolina Veneer Corp., 495 F. Supp. 775, 777-778 (1980), the United States District Court found that employees are protected from employer retaliation for filing complaints with the EEOC. They found further that defendant's action in filing the state court defamation action was unquestionably retaliatory in nature. That court concluded that there is an absolute privilege for filing a discrimination charge and that the absolute privilege is required to ensure the policy of nondiscrimination under Title VII. The Hearing Officer agrees. Iowa Code 601A.15 provides that: "Any person claiming to be aggrieved by a discriminatory or unfair practice may ... file with the commission a ... complaint..." A complaint must be filed to initiate enforcement of the Iowa Civil Rights Act. The legislative intent of §601A.11, was to ensure uninhibited access to the Act's enforcement mechanism. The Court in E.E.O.C. v. Virginia Carolina Veneer Corp., further noted that: "The importance of maintaining free access to the Commission is so great that the truth or falsity of a charge, may not be considered in providing protection to a person filing a charge." The Court granted summary judgment and awarded the Commission attorney fees and cost. In E.E.O.C. v. Levi Strauss & Co, 515 F.Supp. 640,643- 44 (1981), the Court stated that it could not be concluded that all defamation actions in the wake of sexual harassment charges filed before the Commission are violations of Title VII. That case, however, can be distinguished on the basis that the allegations of defamatory remarks were made orally and stated to employees and subordinates of the employer. In the prior case and the case at issue, the only allegations of defamation were in the complaint per se. It is concluded that Respondent violated Iowa Code 601A.11(2).

ISSUE III - IN THE EVENT THAT RESPONDENT VIOLATED IOWA CODE CHAPTER 601A, HAS COMPLAINANT ESTABLISHED A RIGHT TO ANY REMEDIES PROVIDED IN CHAPTER 601A?

Complainant requests loss of income, emotional distress damages and attorney fees.

1. Loss of Income. Complainant was off work from May 6, 1982 through November 1, 1982. She received \$782.24 for November and December 1982, when she found a comparable job. She has continued comparable work since that time. It is concluded that her loss of income should

cover only the period from May 6 to November 1, 1982. Furthermore, the unemployment compensation she received in 1982 should be deducted from this amount. The necessary information to compute a loss of income award is not in evidence. Counsel for the parties shall submit a stipulation as to that amount within 10 days after issuance of this proposed decision.

2. Emotional distress damages. There was no testimony upon which an award for emotional distress can be made. Although it could be concluded that Complainant was emotionally affected simply by the actions of the Respondent, this Hearing Officer refuses to speculate as to what extent that may have occurred.

3. The Complainant incurred actual damages in the amount of \$1,629.53 from the retaliatory defamation suit brought by Art Quiring in response to, and for the purpose of "chilling" Ms. Miller- Suhr's exercise of her rights. Miller-Suhr should be awarded \$1,629.53 as actual damages.

RECOMMENDED DECISION AND ORDER

1. Art Quiring Truck Division, Inc. and Art Quiring committed an unfair and discriminatory act by failing to hire Jennie Miller- Suhr and by retaliating against her for filing this complaint.

2. IT IS THEREFORE ORDERED that Respondent shall cease and desist from further discrimination against women applicants.

3. IT IS FURTHER ORDERED THAT Respondent pay Complainant as loss of income the amount of \$3185.78, with interest from the date of filing the complaint (June 14, 1983) until paid in full at 10 % per annum.

4. IT IS FURTHER ORDERED that Respondent shall pay \$1,629.53 to Complainant as actual damages for attorney fees incurred in the defamation action in state court.

On October 30, 1987, the Iowa Civil Rights Commission, at its regular meeting, adopted the Hearing Officer's proposed decision with the above modifications.

Signed this 18th day of November, 1987.

JOHN STOKES, Chairperson

Iowa Civil Rights Commission