

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF HUMAN RIGHTS

State of Minnesota by)
William L. Wilson, Commissioner,)
Department of Human Rights,)
)
Complainant,) REPORT OF HEARING EXAMINER
)
VS.)
)
Mary Devine and Willows)
Convalescent Centers, Inc.,)
)
Respondents.)

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Hearing Examiners on June 6 and 9, 1977, in the Hennepin County Government Center, Minneapolis, Minnesota. The record remained open through October 10, 1977, for the submission of post-hearing briefs.

Norman B. Coleman, Special Assistant Attorney General, 240 Bremer Building, Saint Paul, Minnesota 55101, appeared as counsel on behalf of the Complainant. Frederick E. Finch, Esq., 4744 IDS Center, Minneapolis, Minnesota 55402, appeared as counsel on behalf of Respondents, Mary Devine and Willows Convalescent Centers, Inc.

Notice is hereby given that pursuant to Minn. Stat. 363.071, subd. 2, this is the final decision of the Department of Human Rights, and under Minn. Stat. 5 363.072, any person

aggrieved hereby may seek judicial review pursuant to Minn. Stat.
15.0424 and 15.0425.

Based upon all of the files, records and proceedings herein,
the Hearing Examiner makes the following:

FINDINGS OF FACT

1. on September 11, 1973, Ruth Kryduba (the charging party
in this action) commenced employment with Willows Convalescent

Centers, Inc. (hereafter Willows) as a receptionist. Prior to beginning employment at Willows, she had worked as a receptionist at H. Brooks and Company. During her first day of employment, Ms. Kryduba was instructed by Mary Devine, her supervisor, as to Willows' personnel policies and regulations and was given oral and written explanations of her job duties as a receptionist. Ms. Devine informed Kryduba that there was a 520 hour probationary period for all new employees.

2. During the first several weeks to a month, Ms. Kryduba's employment with Willows went satisfactorily. It is at this time that Respondents contend that Kryduba's job performance began to deteriorate, Ms. Kryduba found out she was pregnant approximately one month after she commenced employment and notified Mary Devine of that fact.

3. Mary Devine and Archie Givens, Jr., president of Willows, testified that approximately three weeks after she commenced employment, Ms. Kryduba began to have problems taking and acting on phone messages. Archie Givens, Jr, testified that he talked to Devine about terminating Ms. Kryduba. Mary Devine stated that what had once been a pleasant relationship with Kryduba turned into a very strained relationship due to a personality change in Ms. Kryduba. Ms. Devine had a conference with Kryduba approximately two weeks after she had been informed about the pregnancy to discuss job performance problems, During the conference, problems of taking phone messages and bad attitudes toward co-workers and residents were talked over.

Two specific mistakes made by Ms. Kryduba resulted in her discharge. The first concerned the failure of Kryduba to follow instructions to interrupt a meeting so that Archie Givens, Sr, could answer an important telephone call. The second involved Kryduba's failure to transmit an important message to a Willows employee.

on November 23, 1973, Ms. Devine terminated Ms. Kryduba's employment with Willows. The explanation for the termination was stated on a Separation Notice as follows: "Slow in absorbing

instructions; procedures; poor attitude towards co-employees; can't expect to stay on job due to pregnancy."

4. Ruth Kryduba testified that subsequent to notifying Mary Devine that she was pregnant, Ms. Devine's attitude toward Ruth changed. Kryduba stated that Devine began to find fault with her job performance although nothing was being done any differently. Ms. Kryduba testified that she was not aware of any changes in her attitude toward co-employees. Polly Wollersheim, a co-employee, testified that the relationship between Mary and Ruth was friendly before Devine was informed of the pregnancy. But that afterward, there was a friction between them. Sue Flor, another co-employee, stated that there seemed to be problems after Ms. Devine was notified of the pregnancy. Terry Kuyava Linn, who began work at willows in the first part of October, noticed personality clashes between Devine and Kryduba almost from the beginning of her employment.

5. In January of 1974, Mary Devine transferred to become the manager of Yorktown, a senior citizens facility run by the Rainbow Corporation. Archie Givens, Sr. was the president of Rainbow. Terry Linn testified that she heard from Barb Portnoy, a Willows employee, that Devine was planning to go to Yorktown a month or two before the transfer occurred. Polly Wollersheim testified that it was her understanding that Mary Devine was intending to go to Yorktown when it opened. Ms. Devine testified that she first considered going to Yorktown only the day before the actual transfer.

6. Mary Devine testified that she had discussed Ms. Kryduba's plans to have a family shortly after Ruth began employment. Ms. Devine stated that "we like to think that an employee can stay with us for awhile." (Tr. at 45)

7. Sue Flor and Polly Wollersheim both testified that Ms. Kryduba's job performance and attitude toward co-employees and residents was satisfactory. Irene Schwartz, a Willows employee, testified regarding one instance when Kryduba was rude to Luther Moen, Willows accountant.

8. Mary Devine testified that at the time Ruth Kryduba

was told of the termination, Ms. Devine responded to Ruth's concern about what the other employees would say by stating that Willows would tell people that Ruth had terminated because the pregnancy would make transportation difficult during the winter months. That this is the reason the Separation Notice, which was prepared by someone else at Devine's direction, was worded the way it was. Polly Wollersheim testified that she overheard part of the termination conference when the "pregnancy transportation" excuse was discussed,

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following

CONCLUSIONS

1. The Hearing Examiner has jurisdiction over this matter pursuant to Minn. Stat. sec. 363.071 (1976) and 15.052 (1976).

2. Complainant gave proper notice of the hearing in this matter, and all relevant, substantive and procedural requirements of law and rule have been complied with.

3. Respondent has argued that the Examiner's ruling regarding the receipt of Respondents' Exhibits L and M should be reversed so that they will be received and considered as evidence supporting Respondents' case,

At hearing, Respondents were allowed to make an offer of proof after the Examiner ruled that Exhibits L and M were inadmissible on the ground that the documents were hearsay. This ruling will not be reversed,

4. Respondents argue that the Examiner should strike the cross-examination testimony of Paulette Wollersheim on the ground that it exceeds the scope of the direct examination and lacks probative value.

At hearing, Ms. Wollersheim was asked on direct examination by Respondents to read part of a statement she had given to a Human Rights Investigator. On cross, Complainant inquired as to other parts of the statement not read on direct. Respondent objected on the ground that the inquiry was beyond the scope of the direct. The Examiner overruled that objection. At the end of

Ms. Wollersheim's testimony, Respondents made a motion to strike the cross-examination regarding parts of the statement not read on direct. The Examiner reserved a ruling on the motion to strike.

After a review of the transcript, the Examiner rules that Respondents' motion to strike is denied.

5. Respondents have argued that the Examiner should take official notice of the fact that receptionist jobs were available in the Minneapolis area at the time Ruth Kryduba's employment with Willows was terminated.

As attachments to its brief, Respondents submitted "Help-Wanted" ads for the job of receptionist excerpted from the November 25 and December 2, 1973, Minneapolis Tribune. By way of an October 3, 1977, post-hearing order, the Examiner stated that notice would be taken of the fact that advertisements for the position of receptionist appeared in the "Help-Wanted" section of the Tribune on the dates stated above.

6. Ruth Kryduba's job performance was not perfect. She did not deny the fact that she had made the two "major" mistakes set out in Finding 3. However, Ms. Devine's and Mr. Givens' testimony that Ruth's bad attitude toward others and mishandling of many phone messages were the reasons for her discharge, was largely conclusional and not supported by specific evidence. The record shows, rather, that Ms. Kryduba's job performance was satisfactory and she had a good attitude.

The record indicates that Mary Devine knew of the possibility of going to the new Yorktown facility well before the January, 1974 transfer. Ruth Kryduba's pregnancy meant that a new receptionist, a position Ms. Devine supervised, would have to be trained when Kryduba left either permanently or on maternity leave in the early spring. The Examiner concludes that Ruth's pregnancy played a significant role in the decision to terminate her. That the termination was in violation of Minn. Stat. 363.03, subd. 1(2)(b). Mary Devine told Ruth Kryduba that the "pregnancy transportation" excuse would be used as the reason for termination; however, the

clear language of the Separation Notice, which was made out pursuant to Devine's instructions, states the real reasons. The Examiner does not believe that the "pregnancy transportation" excuse was misconstrued to read "can't expect to stay on the job due to pregnancy."

7. Ruth Kryduba testified that following her termination by Willows, she made no effort to seek other employment. The Examiner will follow a very recent Minnesota Supreme Court decision, Soules v. Independent School District No. 518, August 26, 1977 Finance and Commerce, regarding damages and mitigation. Soules states that a reduction in the amount of recoverable wage loss can be made if the evidence establishes that the employee made no reasonable effort to seek or accept similar employment. In the instant case, the record shows that the employee made no efforts to seek similar employment. It also shows that the employee was several months pregnant when the termination occurred. The Examiner concludes that, because of the pregnancy and impending birth, Ruth Kryduba did not unreasonably fail to seek other similar employment,

8. Ruth Kryduba was given two weeks of severance pay when she was discharged. It was stipulated that damages could only be awarded through May 20, 1974, the date of the birth, Consequently, Ms. Kryduba is entitled to twenty-three weeks of pay at the salary she would have been receiving from December 10, 1973 through the week ending May 17, 1974. It was stipulated that the rate of pay for that period was \$2.46 per hour, or \$98.40 per week, coming to a total of \$2,263.20 for the twenty-three week period.

9. The Examiner concludes that Ruth Kryduba is entitled to \$100 in punitive damages from Mary Devine and \$200 in punitive damages from Willows because of the discriminatory intent and result of the termination.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

O R D E R

1. That Respondents cease and desist from discriminating against any person upon the basis of sex with respect to the rights secured by Minn. Stat. sec. 363.03, subd. 1(2).

2. That Respondent Mary Devine pay \$100 in punitive damages to Ruth Kryduba; that Respondent Willows pay \$2,263.20 in compensatory damages, plus 6 percent interest from May 17, 1974, and \$200 in punitive damages to Ruth Kryduba,

Dated: October 25, 1977,

PETER C. ERICKSON
Hearing Examiner