

**STATE OF CONNECTICUT
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
OFFICE OF PUBLIC HEARINGS**

Commission on Human Rights : CHRO No. 0510366
and Opportunities *ex rel.*
Adam Szydlo, Complainant :

v. :

EDAC Technologies Corporation, : December 27, 2007
Respondent :

MODIFIED DECISION ON RECONSIDERATION

On December 4, 2007, the complainant filed a motion for reconsideration of the damage calculations set forth in my November 19, 2007 final decision. I granted the motion on December 6, 2007 and directed the other parties to submit written responses to the complainant's substantive allegations on or before December 20, 2007. The respondent filed objections in a timely fashion, adding a request that the back pay award be reduced due to the complainant's alleged failure to take reasonable measures to mitigate his damages.

1. The complainant first challenges my finding that the complainant's salary in 2004 was \$75,229.78, rather than \$75,299.78. The complainant is correct; his 2004 W-2 wage and tax statement (contained in Exhibit C-13) reveals my figure to be in error. Accordingly, the back pay owed for 2005 is \$16,852.56, rather than my previously-calculated \$16,782.56. The back pay owed for 2006 is \$2977.26, rather than \$2907.26.

2. The complainant argues that an annual three percent salary increase should have been reflected in my calculations. As I stated in my final decision,

I will not project the three percent annual increments (see FF #39) into the calculations because they were merit-based and thus not

guaranteed. See *Commission on Human Rights & Opportunities ex rel. Malizia v. Thames Talent, Ltd.*, 2000 WL 35457573 (CHRO No. 9820039, June 30, 2000), appeal dismissed sub nom. *Thames Talent v. Commission on Human Rights & Opportunities*, 2001 WL 1132654 (Conn. Super.), aff'd, 265 Conn. 127 (2003). Moreover, the complainant did not include these salary increases in the calculations set forth in his post-hearing brief.

Having reviewed the parties' arguments, I decline to disturb my prior ruling. The purported annual increase, based on merit, depends upon the respondent's subjective assessment and thus is not guaranteed. Furthermore, as the complainant's attorney points out, the complainant received a merit increase each year "a raise was offered . . ." (Request for Reconsideration, p. 2) The implication of this statement is apparent: merit-based raises were not even given every year. Documentation of salary changes (contained in Exhibit C-7) bears this out, chronicling the complainant's raises only in 1987, 1988, 1989, 1990, 1992, 1995, 1996, 1997, 1999, 2000 and 2001.

3. The remainder of the complainant's request for additional back pay derives from his assumption that I would add the three percent annual increase to the award. Since I do not agree with the underlying premise and have denied the three percent increment, the request for an increased back pay award beyond that acknowledged above remains groundless. Moreover, I decline to consider the complainant's newly proffered evidence--his Volvo Aircraft earnings statement for the two-week period ending November 24, 2007. If the complainant was able on December 4, 2007 (the date of his reconsideration request) to produce documentation of his 2007 earnings through November 24, 2007, he likewise should have been able to produce more than the sole February 4, 2007 earnings statement at public hearings in May 2007 if he desired to create a more realistic and comprehensive (and, from his perspective, more favorable) depiction of his 2007 earnings.

4. The complainant's request for reconsideration of the previously denied front pay award likewise depends upon the inclusion of the three percent increase in my calculations. Accordingly, my prior ruling on front pay remains unchanged.

5. The complainant offers no convincing justification for recovery of the value of the insurance coverage provided by the respondent. Had the complainant incurred actual out-of-pocket medical expenses after his termination, he might have a justifiable claim to recover those expenses, but he has made no such claim. He is, however, entitled to recover \$3213, the cost of obtaining new medical coverage through his wife's employer from July 2005 until February 2006. See *Evans v. State of Connecticut*, 967 F.Sup. 673, 683 (D.Conn. 1997).

The respondent not only contests the complainant's request for reconsideration, but poses its own challenge to my damage award, arguing that the complainant failed to make reasonable efforts to mitigate his losses. In effect, respondent is now making its own separate request for reconsideration of my final decision. Because a party must file a request for reconsideration within fifteen days after service of the final decision, this new challenge is untimely and, accordingly, must be denied. See General Statutes § 4-181a.

The complainant's award is hereby modified in accordance with the foregoing, and the total award increased to \$23,042.82, subject to the imposition of pre-judgment and post-judgment interest as articulated in the final decision.

David S. Knishkowsky
Human Rights Referee