

closed 9/28/77

This Hearing is called pursuant to NHRS354-A:9, II by Commissioner Romeo J. Rejimbai, Commissioner in Charge of the investigation, and will be conducted in accordance with the Rules of Practice and Procedure for the New Hampshire Commission for Human Rights.

Complainant: Terry McEnaney

Respondent: Green Ridge Steak House, Nashua, New Hampshire

Hearing Commissioners: Walter E. Gibbs
Sylvia Figueredo
Judge Ivorey Cobb

■ Presenting the Complaint: Berel Firestone

Appearing for the Respondent: Joseph E. Michaels, Jr., Esquire
Michaels and Jones, Rochester, New Hampshire

Entered into the record are:

Charge of Discrimination filed 12/3/75, effective on date of verification 1/2/76.

Deferral notice from the United States Equal Employment Opportunity Commission, Docket #TBO6-1227.

Answer of the Respondent dated 6/21/77.

Docket Numbers
ES-1345-320-185
E.E.O.C. #TBO-1227

Terry McEnaney)
New Hampshire Commission for)
Human Rights)
and)
Green Ridge Steak House)

DECISION

At Public Hearing August 19, 1977:

Sitting Commissioners: Ivorey Cobb, Sylvia Figueredo, Walter Gibbs.

1. Complainant in this matter has alleged discrimination because of sex in that she was forced to terminate her position against her desires during her pregnancy.
2. Respondent answers that complainant voluntarily quit her position December 14, 1976.
3. The conflict here is whether or not the respondent's stance forced the complainant to terminate her position.
4. The Commission notes that a long-standing preference whether or not agreed upon mutually between employer and employee constitutes in effect a "policy." In the instant matter the respondent admits to a long-standing "preference" mutually agreed upon in the past between itself and pregnant employees, that such employees would take temporary leave of absence when "they began to show." However, testimony given by respondent is to the effect that although the above "preference" was a normal condition, there would be a willingness on the part of the respondent to accommodate a pregnant employee on request.

5. The Commission notes that although the complainant's immediate supervisor upon learning of complainant's pregnancy from complainant and requesting "policy," stated the company's preference, there was available to the complainant a chain of command through which she could have brought her request to remain employed with her physician's permission through the term of her pregnancy. There is additional testimony that having brought such a request through the chain of command, there would have been no chilling effect on the complainant's status as an employee, nor is there any evidence that had such a request been made it would have been refused.
6. The Commission notes that the complainant made no such request and simply assumed that any such request would have been denied.
7. It is, therefore, the unanimous opinion of the Commissioners that because the complainant chose not to express to her superiors a desire to continue employment, there was no way the employer could have known of such desire and that the complainant did voluntarily quit, on a temporary leave of absence, the respondent's employ.
8. The Commission finds that there is not reasonable cause to credit the allegations made in the complaint.
9. The Commission further notes that a long-standing preference for pregnant employees to take temporary leave of absence because of pregnancy represents a policy in violation of NHRS354-A:8, I, prohibiting discrimination "--- in terms, conditions, or privileges of employment ---".
10. The Commission orders that the respondent take no action that would retaliate or harass the complainant for having brought this action and/or giving testimony.

Dissent in part:

Commissioner Gibbs records his objection to paragraph 9.

This concludes the Commission's action in this matter, and the Commission returns jurisdiction to the United States Equal Employment Opportunity Commission, 150 Causeway Street, Boston, Massachusetts, Docket #TBO6-1227.

A handwritten signature in cursive script that reads "Gail F. Paine".

Gail F. Paine
Chairperson