COMMONWEALTH OF PENNSYLVANIA

GOVERNOR'S OFFICE

PENNSYLVANIA HUMAN RELATIONS COMMISSION

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| NNEKA PLEASANT,<br>Complainant | : | |
| v. | : | PHRC CASE NO. 200605783<br>EEOC CHARGE NO. 17F200761590 |
| WORDSWORTH ACADEMY,<br>Respondent | : | |

STIPULATIONS OF FACT ON PROCEDURAL PREREQUISITES

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RECOMMENDATION OF PERMANENT HEARING EXAMINER

FINAL ORDER

COMMONWALTH OF PENNSYLVANIA

PENNSYLVANIA HUMAN RELATIONS COMMISSION

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| Nneka Pleasant,<br>Complainant | : | PHRC Case No. 200605783 |
| v. | : | |
| Wordsworth Academy<br>Respondent | : | EEOC No. 17F200761590 |

STIPULATIONS OF FACT ON PROCEDURAL PREREQUISITES

1. Nneka Pleasant ("Complainant" or "Ms. Pleasant") filed her Complaint with the Commonwealth of Pennsylvania Human Relations Commission ("PHRC" or "the Commission") on or about March 27, 2007, against Wordsworth Academy ("Wordsworth" or "Respondent"), PHRC Case No. 200605783.

2. In her Complaint, Complainant alleged that Wordsworth had discriminated against her because of her sex, based on sexual harassment (Count 1 of the Complaint) and constructive discharge (Count 2 of the Complaint).

3. Wordsworth filed its verified Answer to Complaint on or about June 6, 2007, in which Wordsworth denied that it had discriminated against Ms. Pleasant because of her sex and asserted that the Complaint failed to state a claim for which relief can be granted. (Joint Exhibit 2.)

4. The Commission investigated the allegations of Ms. Pleasant's Complaint.

5. At the completion of its investigation, the Commission "determined that probable cause exists to credit the allegations of the Complaint." By letter dated July 13, 2007 the Commission notified the parties of its probable cause determination ("Determination").

6. In its letter of July 13, 2007 the Commission scheduled a conciliation meeting for July 31, 2007.

7. Complainant and Respondent participated in the conciliation meeting, but the attempt at conciliation was unsuccessful. Upon the failure of conciliation, the procedural prerequisites to the holding of a Public Hearing were fulfilled.

8. By letter dated October 26, 2007, the parties were notified that a pre-hearing conference had been scheduled for Wednesday, November 28, 2007 at 10:00 a.m.

9. A pre-hearing conference was held before Carl H. Summerson, then the Hearing Panel Advisor, on November 28, 2007. On November 29, 2007 Mr. Summerson issued a Pre-Hearing Order which, among other things, scheduled a Public Hearing "to commerce at 9:00 a.m. on Thursday, February 7, 2008 and continue through Friday, February 8, 2008 if necessary."

10. The parties' respective counsel were notified by email from Mr. Summerson on December 10, 2007 that the case had been reassigned from a hearing panel of three Commissioners to Mr. Summerson "as a Hearing Examiner."

[signature] 7 Feb 2008

Michael A Davis 2/7/08

## FINDINGS OF FACT*

1. The Complainant is Nneka Pleasant (hereinafter "Pleasant"), an adult female who had been an employee of the Respondent, Wordsworth Academy (hereinafter "Wordsworth") for the five years immediately preceding January 26, 2007. (N. T. 12, 13, 24, 192).

2. The Wordsworth educational facility located at 3905 Ford Road, Philadelphia, Pa. is in a four story building that is the residence for approximately 200 students as well as a school. (N. T. 73, 75).

3. When Pleasant began working for Wordsworth, the program she was in was located at Elkins Park. (N. T. 42, 71).

4. From Elkins Park, Pleasant's program moved to Fort Washington, where it remained until the program was moved to Ford Road approximately one year before Pleasant left Wordsworth's employment. (N. T. 71, 80).

5. Approximately 10 classrooms were located in the basement of the Ford Road building. (N. T. 75).

6. Because Wordsworth's Ford Road facility was the residence for its students, there were three shifts: 7:00a.m. to 3:00p.m; 3:00 p.m. to 11:00p.m; and 11:00 p.m. to 7:00a.m. (N. T. 76, 198).

* The foregoing "Stipulations of Fact" are incorporated herein as if fully set forth. To the extent that the Opinion which follows recites facts in addition to those here listed, such facts shall be considered to be additional Findings of Facts. The following abbreviations will be utilized throughout these Findings of Fact for reference purposes:

N.T. Notes of Testimony
C.E. Complainant's Exhibit
R.E. Respondent's Exhibit
S.F. Stipulations of Fact

7. The majority of Wordsworth employees worked the 7:00 a.m. to 3:00 p.m. shift. (N. T. 77).

8. Shawn Walsh (hereinafter "Walsh) was Wordsworth's Principal and Director of Education for the Stars Program. (N. T. 15, 81, 161).

9. Chris Connor (hereinafter "Connor") was Wordsworth's Residential Director and Mike Britcher (hereinafter "Britcher") was Wordsworth's Vice President of Residential Services. (N. T. 15, 181, 184).

10. Each classroom had both a teacher and an assistant teacher. (N. T. 75).

11. Pleasant was both a Mental Health Worker and a Teacher's Assistant at Wordsworth's Ford Road facility. (N. T. 12, 13).

12. On school days, Pleasant came to the residential area and assisted female children getting ready for school, helped take them to breakfast in the school's cafeteria located on the first floor, then helped return them to the residential area and ultimately to the school in the basement. (N. T. 12, 73, 74).

13. Once school began, Pleasant worked as a teacher's assistant in a class composed of approximately 12 students, 15 to 18 years old. (N. T. 12, 14, 96).

14. During her five year employment with Wordsworth, until January 12, 2007, Pleasant maintained a friendly, mutually supportive relationship with William Taylor (hereinafter "Taylor"). (N. T. 122, 123).

15. Taylor was a behavioral specialist for Wordsworth's residential program. (N. T. 22, 197).

16. Taylor's office was located in the basement outside of the classrooms. (N. T. 22).

17. Taylor's job was to deal with problem children from any one of the ten classrooms. (N. T. 22).

18. Prior to January 12, 2007, Taylor helped Pleasant with car repairs, supported her with problems she was experiencing both at work and home, and on occasion lent her money. (N. T. 124).

19. Prior to January 12, 2007, in the five years Pleasant and Taylor worked in close proximity, Taylor never did anything to Pleasant that she considered harassment. (N. T. 43, 44).

20. Prior to January 12, 2007, Pleasant had no problems at Wordsworth. (N. T. 13).

21. While "horseplay" between employees is not permitted at Wordsworth, it frequently happened. (N. T. 125, 133; RE 4).

22. Pleasant and Taylor had, on occasion, engaged in mutual horseplay. (N. T. 126-127).

23. At approximately 1:30 p.m. on January 12, 2007, as Pleasant was returning to the building, she happened upon Taylor who was also returning to the building. (N. T. 15, 94, 125).

24. As Pleasant and Taylor entered the building, they encountered Kevin Slaughter (hereinafter "Slaughter") as he was escorting a few younger children from the first floor cafeteria to the school area in the basement. (N. T. 15, 84, 149).

25. Slaughter testified that Taylor and Pleasant were in front of the elevator engaged in what he termed "definitely horse playing". (N. T. 150, 151).

26. Slaughter indicated that as he passed by, he witnessed Pleasant laughing as she playfully pushed Taylor away saying "stop f...ing playing". (N. T. 150- 151, 155).

27. Pleasant testified that she had intended to take the stairs down to the school area; however, Taylor pushed her onto the elevator. (N. T. 16, 86).

28. Pleasant further testified that when the doors of the elevator closed, Taylor began to rub her neck, kiss and lick her face, and pull her right breast out and fondle her. (N. T. 16, 17, 46).

29. Taylor and Pleasant agree that the elevator first went up to the second floor, which was vacant, the doors opened and then preceded directly to the basement. (N. T. 17, 69, 86, 136-137).

30. Pleasant indicated that she asked Taylor to stop but he did not until the elevator reached the basement. (N. T. 17, 18).

31. Pleasant added that when the elevator door opened in the basement she adjusted her clothing and Taylor smacked her on the butt as she exited the elevator. (N. T. 18).

32. Although Pleasant testified that Slaughter witnessed her adjusting her clothes and leaving the elevator, Slaughter offered that he did not see Pleasant for approximately 10 minutes. (N. T. 18, 150, 155).

33. Taylor's version was that he began to "play" with Pleasant outside the elevator and bumped her onto the elevator when the doors opened, and that he playfully pushed Pleasant around messing up her hair. (N. T. 125).

34. Taylor indicated that Pleasant was laughing and joking for the minute they were on the elevator saying "stop playing" and "don't mess up my hair". (N. T. 125, 127, 136, 138).

35. Taylor specifically denied either kissing or licking Pleasant's face or putting his hands in her shirt or pants. (N. T. 127).

36. Upon leaving the elevator, Pleasant first went to her classroom where she began to cry, so she proceeded to the ladies bathroom to compose herself. (N. T. 19).

37. Slaughter indicated that he did see Pleasant "stomping" through the hallway looking angry so he asked her, "what's wrong, are you alright?" (N. T. 151-152, 155; CE 6).

38. Pleasant responded to Slaughter by saying "Bill plays too much". (N. T. 152, 155).

39. Pleasant spoke with David Flesher, the teacher she was assisting, who advised Pleasant that she should go to Human Resources with her allegation. (N. T. 94-95, 175).

40. At Flesher's suggestion, after school ended for the day, at approximately 3:00p.m. Pleasant spoke with Anna Wessells (hereinafter "Wessells"), Wordsworth's Human Relations Coordinator, conveying her version of what had occurred while on the elevator that afternoon with Taylor. (N. T. 20, 63, 95, 179, 180).

41. At that moment, Wessells began an investigation, asking Pleasant to prepare a written statement over the weekend. (N. T. 180).

42. Taylor had been scheduled to work the overnight shift in the residence; however, he did not because Wessells immediately contacted both Walsh and Conner, and Taylor was notified on January 12, 2007 that he was suspended pending an investigation. (N. T. 20, 181).

43. Walsh testified that he informed Pleasant that Taylor would be suspended pending an investigation and that if her allegations were founded, Taylor would not be returning. (N. T. 162-163).

44. When Pleasant left the building on January 12th, Sadie Lane, a teacher's assistant, Tracey Wilkins, a teacher's assistant, Nelson Larson, a behavioral specialist, Kenya Baldwin, a teacher, Sharice Frank-Hayes, a teacher's assistant, Kareen Ajulea, a teacher's assistant, and Taylor were in the parking lot. (N. T. 25-26, 185).

45. Pleasant was restrained by several staff members as she attempted to get at Taylor. (N. T. 130).

46. As Taylor was leaving, Pleasant threw a water bottle striking Taylor's car. (N. T. 130).

47. As Monday, January 15th was a holiday, Pleasant had been asked by Wessells to report to Human Relations on Tuesday morning, January 16th instead of reporting to work. (N. T. 181).

48. Wordsworth's investigation team consisted of Wessells, Walsh, Britcher, Connor, and legal counsel. (N. T. 179).

49. Wordsworth had intended that its investigative team meet with both Pleasant and Taylor on the morning of January 16, 2007; however, the team met with Pleasant and Taylor separately when Pleasant indicated she would not be comfortable with Taylor in the room. (N. T. 98).

50. Pleasant, Taylor and Slaughter each provided written statements to the investigative team. (N. T. 154, 181, 182, 183; CE 5, 6; RE 2).

51. After speaking with Pleasant, Taylor, Slaughter and Flesher, the investigative team initially concurred that something had happened on the elevator and decided to keep Taylor on suspension. (N. T. 184, 207).

52. On January 17, 2007, the investigative team reviewed the incident in the parking lot on January 12th by speaking with all staff members who were present. (N. T. 185).

53. It was determined that Pleasant and Taylor had verbally argued, Pleasant threw a water bottle at Taylor's car, and Pleasant was escorted to her car by Baldwin and Frank-Hayes. (N. T. 186).

54. On January 25, 2007, Pleasant was called to a meeting with Wessells, Walsh and Britcher where Britcher informed Pleasant that the investigation was complete and that the decision had been made to return Taylor to work because the team could not figure out exactly what had occurred and there was no way to prove Pleasant's allegations. (N. T. 22, 172, 189, 196).

55. Because the team believed that Pleasant's version possibly could have happened, Pleasant was informed that Taylor would be mandated to attend a one-on-one sexual harassment training with Wordsworth's legal counsel. (N. T. 186-187, 209, 215).

56. Pleasant was also told that any glance or comment from any staff member generally or Taylor specifically should be reported immediately and further action would be taken, up to and including termination. (N. T. 189-190).

57. Pleasant became angry, tearfully expressing that she did not understand the outcome. (N. T. 22, 189).

58. Pleasant was given time to compose herself. (N. T. 22, 64).

59. When Pleasant was at work on January 26, 2007, she saw Taylor and became anxious and upset. (N. T. 23).

60. Subsequently, it was reported to Walsh that Pleasant was in the hallway yelling over a telephone that she was going to sue Wordsworth. (N. T. 163, 175-176).

61. Walsh proceeded to where Pleasant was and asked Pleasant to come to his office. (N. T. 165).

62. In Walsh's office, he informed Pleasant that she was in violation of Wordsworth's cell phone policy and that she should return to her classroom. (N. T. 165, 176).

63. With that Pleasant walked out of Walsh's office. (N. T. 165).

64. Walsh then went to Wessells' office to indicate he had spoken to Pleasant and that she was upset and would be coming to see Wessells. (N. T. 190).

65. Pleasant arrived at Wessells' office and Wessells asked Walsh to leave so she could speak to Pleasant in private. (N. T. 190).

66. Wessells discussed why Pleasant was upset and encouraged Pleasant to stay working by reflecting on the importance of not just walking off. (N. T. 191).

67. Wessells then reviewed other job postings with Pleasant but Pleasant expressed that she was stressed and anxious and could not stay. (N. T. 192).

68. Pleasant decided to quit and wrote a resignation letter. (N. T. 192; C.E. 1).

69. Pleasant did not go to the police with her allegations. (N. T. 68).

70. Taylor was issued a counseling memorandum advising him that his 8 day suspension would be unpaid and that any further incidents would subject him to discipline up to and including termination. (N. T. 187; R.E. 4).

71. Taylor subsequently completed the mandated one-on-one sexual harassment training. (N. T. 188, 196).

## CONCLUSIONS OF LAW

1. The Pennsylvania Human Relations Commission has jurisdiction over the parties and the subject matter of the complaint under the Pennsylvania Human Relations Act (hereinafter "PHRA").
2. The parties and the Commission have fully complied with the procedural prerequisites to a Public Hearing.
3. Pleasant is an "individual" within the meaning of Section 4(a) of the PHRA.
4. Wordsworth is an "employer" within the meaning of Section 4(b) and 5(a) of the PHRA.
5. Section 5(a) of the PHRA prohibits employers from discriminating against individuals in their employment because of their sex.
6. In order to establish a *prima facie* case of a hostile work environment created by the actions of a co-worker a Complainant must show:
   (a) that she suffered sexual harassment because of her sex;
   (b) that the sexual harassment was severe or pervasive;
   (c) that subjectively the sexual harassment detrimentally affected her;
   (d) that objectively the sexual harassment would detrimentally affect a reasonable woman; and
   (e) that the employer knew of the sexual harassment and failed to take prompt, effective remedial action.
7. Pleasant failed to establish that a reasonable woman would have been detrimentally affected under a totality of the circumstances present in this case.

8. Pleasant failed to establish that Wordsworth failed to take prompt, effective remedial action.

9. To establish that there has been a constructive discharge, a Complainant must establish that her working conditions were so intolerable that a reasonable woman would feel compelled to resign.

10. Before resigning, an employee must give an employer's remedial measures a fair opportunity to s top the harassment.

11. Pleasant failed to show that either a reasonable woman in the same circumstances would have resigned or that she gave Wordsworth's remedial measures an opportunity to work.

## OPINION

This case arises on a complaint filed by Nneka Pleasant (hereinafter "Pleasant") against Wordsworth Academy (hereinafter "Wordsworth") on or about March 27, 2007 at PHRC Case Number 200605783. In her two count complaint, Pleasant generally alleged an incident of sexual harassment on January 12, 2007, which subjected her to a hostile work environment and caused her constructive termination. Pleasant's claims allege that Wordsworth violated Section 5(a) of the Pennsylvania Human Relations Act of October 27, 1955, P.L. 744, as amended, 43 P.S. §§951 et. Seq. (hereinafter "PHRA").

Pennsylvania Human Relations Commission (hereinafter "PHRC") staff conducted an investigation and found probable cause to credit Pleasant's allegations of discrimination. The PHRC and the parties attempted to eliminate the alleged unlawful practices through conference, conciliation and persuasion. However, those efforts were unsuccessful, and this case was approved for Public Hearing. The Public Hearing was held on February 2, 2008, in Philadelphia, Pennsylvania, before Permanent Hearing Examiner Carl H. Summerson. The Post-Hearing brief on behalf of the state's interest in the complaint was received on May 12, 2008, Wordsworth's post-hearing brief was received on May 13, 2008.

Initially, with regard to Pleasant's hostile work environment claim, Section 5(a) of the PHRA states in pertinent part that "It shall be an unlawful discriminatory practice . . . [f]or any employer because of the ... sex ... of any individual ... to ... discriminate against such individual ... with respect to ... conditions or privileges of employment ..." Here, Pleasant's hostile work environment claim can only rest on an allegation that upon learning of her claim, Wordsworth failed to take adequate remedial action. Pleasant does not allege that Wordsworth failed to prevent Taylor's alleged conduct on January 12, 2007, she simply alleges that after she complained about the purported victimization by

Taylor, her work environment became hostile because Wordsworth returned Taylor to work rather than either reassign him or fire him.

Both post-hearing briefs correctly observe that Taylor was not Pleasant's supervisor but was merely Pleasant's co-worker. This factor is critical with regard to when an employer can be found liable for acts of a co-worker's sexual harassment. Normally harassment of one employee by a co-worker is not actionable unless the sexual harassment is attributable to the employer. Since Taylor was Pleasant's co-worker, to establish a *prima facie* case of a hostile work environment, Pleasant must establish:

(a) that she suffered sexual harassment because of her sex;

(b) that the sexual harassment was severe or pervasive;

(c) that the sexual harassment detrimentally affected her;

(d) that the sexual harassment would detrimentally affect a reasonable person of the same sex as Pleasant; and

(e) that Wordsworth knew of the sexual harassment and failed to take prompt, effective remedial action.

*See* Hoy v. Angelone, 691 A.2d 476 (Pa. Super. Ct. 1997) *aff'd* 720 A. 2d 745 (1998); Andrews v. City of Philadelphia, 895 F.2d 1469 (3rd Cir. 1990); and Dornhecker v. Malibu Grand Prix Corp., 828 F. 2d 307, 308, 44 FEP Cases 1604 (5th Cir. 1987). *See also* Waymire v. Harris County 86 F.3d 424, 72 FEP Cases 637, 639; (5th Cir. 1996), *citing*, Weller v. Citation Oil & Gas Corp., 84 F.3d 191, 194, 70 FEP Cases 1625 (5th Cir. 1996); and Jones v.Flagship International., 793 F.2d 714, 719-20 (5th Cir.) *cert. denied*, 479 U.S. 1065 (1986).

In interpreting the PHRA, Pennsylvania courts have recognized the value of looking to federal court decisions that interpret Title VII. Hoy v. Angeline. citing Kryeski v. Schoff Glass Technologies, 426.Pa. Super. 105, 111-12, 626 A.2d 595, 598 (1993);

Allegheny Housing v. PHRC, 516 Pa. 124, 532 A.2d 315 (1987); and West v. Philadelphia Electric, 45 F.3d 744, 66 FEP Cases 1524 (3rd Cir. 1995).

Wordsworth's post-hearing brief generally suggests that Pleasant is unable to establish a *prima facie* case. More specifically, Wordsworth argues that Pleasant's purported victimization was not because of Pleasant's sex; that single incidents of sexual harassment do not satisfy the "severe" requirement; that Pleasant was not detrimentally affected; that a reasonable person would not have been detrimentally affected; and that Wordsworth's response to Pleasant was reasonable and sufficiently effective to stop the alleged harassment. In effect, Wordsworth submits that Pleasant can not establish a single element of the requisite *prima facie* showing.

Wordsworth's challenge to the requisite *prima facie* showing begins by suggesting that Taylor's actions were not intended as a sexual assault, but that his actions were nothing more than rough horseplay, during which Pleasant may have been touched in an intimate area, but such touching was inadvertent. Wordsworth submits that to meet the standard that harassment was because of Pleasant's sex, the physical conduct visited upon Pleasant must be shown to have been of a sexual nature.

Indeed, offending conduct must be motivated by a Complainant's sex. Durham Life Insurance Co. v. Evans, 166 F. 3d 139, 148 (3rd Cir. 1999). Here, under Pleasant's version of what happened on the elevator, she clearly describes conduct motivated by her sex. Anytime a male intentionally and intimately touches a female on her breast, and licks and kisses her face without permission, a strong inference exists that he did so because the recipient of such unwanted behavior is a woman.

Wordsworth next suggests that single, isolated incidents can never rise to the level of "severe". Wordsworth's post-hearing brief correctly observes that the conduct involved in this case was not "pervasive". However, sexual harassment complained of need not

be both severe and pervasive, one or the other will suffice. Hostetler v. Quality Dining, 83 FEP Cases 513, 521 (7th Cir. 2000), citing Smith v. Sheahan, 189 F.3d 529, 533, 80 FEP Cases 1071 (7th Cir. 1999); and Harris v. Forklift Systems, Inc., 510 U.S. 17, 21 (1993).

In cases of alleged sexual harassment, courts have consistently found that the totality of the circumstances must be considered. Harris v. Forklift Systems, Inc., 510 U.S. 17, 23, (1993). See also Burnett v. Tyco Corporation., 81 FEP Cases 1513, 1515 (6th Cir. 2000); and Williams v. General Motors Corp., 187 F.3d 553, 562 (6th Cir. 1999). Here, we find that Pleasant's version of events describes an extremely abusive and unwelcome physical contact of an intimate nature. Courts have recognized that one act of harassment can constitute a hostile environment if the act is egregious. Ferris v. Delta Airlines, Inc., 87 FEP Cases 899, 905 (2nd Cir. 2001); Worth v. Tyes, 87 FEP Cases 994, 1006 (7th Cir. 2001); Smith v. Sheahan, 189 F. 3d 529 (7th Cir. 1990); DiCenso v. Cisneros, 96 F.3d 1004, 1009 (7th Cir. 1996); and Daniels v. Essex Group, Inc., 937 F. 2d 1264, 1273-74 and n.4 (7th Cir. 1991). Here, the victimization as described by Pleasant, amounts to "severe" sexual harassment.

Courts also weigh whether conditions of employment were sufficiently detrimentally altered by determining if the objectionable environment was both objectively and subjectively offensive. Colon v. Environmental Technologies, Inc., 87 FEP Cases 702, 707 (M.D. Fla. 2001). On this account, Pleasant sufficiently demonstrated her subjective belief that her working environment became hostile. She testified that she was so frightened and shocked at Taylor's behavior that she had to seek medical assistance.

However, given the totality of circumstances of the situation, we find that a reasonable woman would not objectively find that the working conditions at Wordsworth had become so poisoned that one could no longer even be around Taylor. Critically,

Taylor and Pleasant had interacted with each other for five years prior to January 12, 2007. At no point had Taylor ever given Pleasant cause to complain about his behavior towards her. Indeed, the evidence reveals that Taylor and Pleasant frequently engaged in mutual physical horseplay. Taylor and Pleasant had a close working relationship where the two interacted on a daily basis. Further, Taylor's unrebutted testimony reveals that he had helped Pleasant with both professional and personal problems, loaned her money, and helped repair her vehicle.

Giving due consideration to the facts present in this case, a reasonable woman would likely form the opinion that any offensive touching that occurred during the elevator incident was more likely than not inadvertent. Further, a reasonable woman would have been able to continue to work with Taylor after he expressed sorrow for what occurred and promised that nothing like that would happen again. For approximately one minute in a five year period, Pleasant became offended by her long standing friend's purported conduct. A reasonable woman would have put the incident into perspective, demanded an apology, and discontinued any further horseplay with Taylor.

Next, we return to another element where Pleasant is unable to sustain a showing of the requisite *prima facie* case. Here, Pleasant simply cannot establish that Wordsworth failed to sufficiently remedy her allegation. From the moment Pleasant began to tell her version of the events of January 12, 2007 to Wessells, an investigation began. Further, on the same day, Taylor was advised that he was being suspended pending an investigation. Pleasant was informed of Taylor's suspension and that if the investigation concluded that her version of events was accurate, Taylor would not be returned from the suspension.

As the investigation preceded, we note that Wordsworth's highest level managers were involved in the investigation. In addition to personal interviews, both Taylor and

Pleasant submitted written statements, as did Slaughter. Furthermore, the investigation team spoke with numerous individuals who were present in the parking lot on the afternoon of January 12, 2007, when Pleasant and Taylor argued.

Reasonably, Wordsworth's investigation was unable to conclude that Pleasant's version was wholly accurate. For five years there had been no complaints, the incident occurred at mid-day and lasted approximately one minute, and there were no witnesses other than Taylor and Pleasant. Employers are under no obligation to believe allegations. The obligation an employer has is to act reasonably to get at the truth. See Swentek v. U. S. Air, Inc., 830 F. 2d 552, 558, 44 FEP Cases 1808, 1813 (4th Cir. 1987). In Knabe v. Boury Corp., 73 FEP Cases 1877, 1884 n.12 (3rd Cir. 1997), the court observed that employees may be faced with a lawsuit filed by an alleged harasser if an employer takes punitive action without ensuring that adequate grounds exist for the action. Here, Wordsworth was faced with an allegation that stood in stark contrast to a five-year history of close, daily interaction without incident.

Regarding the steps Wordsworth did take, Taylor was suspended for eight days without pay, a record of employee counseling was placed in his files confirming that Taylor was mandated to attend a one-on-one sexual harassment training within 30 days, and advised that any reported events would subject him to further discipline up to and including termination. When an employer promptly informs an alleged offender that his conduct will not be tolerated and that the employee would be fired for any further misconduct, prompt remedial action reasonably calculated to end harassment has been taken. Barrett v. Omaha National Bank, 726 F.2d 424, 427, 35 FEP Case 593 (8th Cir. 1984). Prior to bringing Taylor back, the results of the investigation were reviewed with Pleasant, and she was told that Taylor was being brought back and that he was mandated to receive one-on-one sexual harassment training. Pleasant was also advised

that any glance or comment from staff generally or Taylor specifically was to be reported immediately and further action would be taken up to and including termination.

It is abundantly clear that Pleasant believes that Wordsworth's action of not terminating Taylor, or at least transferring him, was an inadequate response to his purported behavior. However, the effectiveness of remedial steps is not measured by the extent to which an employer disciplines or punishes the alleged harasser. An employer's response will not be deemed inadequate simply because a Complainant would have liked harsher steps to have been taken. To be sufficient, the steps taken must only be prompt and reasonable. Barrett v. Omaha National Bank, 726 F.2d 424, 35 FEP Cases 593 (8th Cir. 1984). Requiring an employee to work in close proximity to a co-worker who is responsible for prior harassment does not *per se* constitute a hostile work environment. Knabe v. Boury Corp., 73 FEP Cases 1879, 1884 (3rd Cir. 1997). Indeed, corrective steps are considered effective if they stop the alleged harassment. Maher v. Associated Services for the Blind., 929 F.Supp. 809, 814, 70 FEP Cases 1730, 1733 (E.D. Pa. 1996), *aff'd w/o op.* 107 F.3d 862 (3rd Cir. 1997). As a general rule, remedial action should be "reasonably calculated to end the harassment" and "reasonably likely to prevent the conduct from recurring". Berry v. Delta Airlines, Inc., 260 F.3d 803, 86 FEP Cases 1367 (7th Cir. 2001); and Ellison v. Brady, 924 F.2d 872, 54 FEP Cases 1346, 1355 (9th Cir. 1991), *citing* Katz v. Dole., 709 F.2d 251, 256, 31 FEP Cases 1521, 1524 (4th cir. 1983); see also, Knabe v. Boury Corp., 73 FEP Cases 1877, 1883 (3rd Cir. 1997).

In the case of Weston v. COP, SCI Graterford, 85 FEP Cases 1477 (3rd Cir. 2001), one employee touched the buttocks of a co-worker. After receiving a complaint, the employer issued a written reprimand to the offending employee for having violated the employer's policy against sexual harassment. The court ruled that "when an employer's response stops the harassment, there can be no employer liability ... " Id. at 1482, *citing*

Borton v. BMW of North America Inc., 29 F.3d 103, 110, 65 FEP Cases 53 (3rd Cir. 1994).

Similarly, in Waymire v. Harris Cty., 86 F.3d 424, 72 FEP Cases 637 (5th Cir. 1996), following a single incident of sexual harassment, a letter of reprimand was found to be a sufficient penalty. The court indicated that an employer is not required to "use the most serious sanction available to punish an offender, particularly where [the incident] was the first documented offense by [the] individual employee". Id at 640 *citing* Landgraf v. USI Film Products., 968 F.2d 427, 430, 59 FEP Cases 897 (5th Cir. 1992).

In the case of Gawley v. Indiana University, 276 F.3d 301, 87 FEP Cases 1116 (7th Cir. 2001), a female police officer had been sexually assaulted by a co-worker who groped her breasts. After an investigation, the female officer alleged that the offending officer had not been appropriately disciplined because the offending co-worker had only received a counseling memorandum that simply warned him against further harassment. The court found that because the investigation and warning resulted in a cessation of the offensive conduct, the complaining officer had no evidence the employer failed to exercise reasonable case in correcting the harassing behavior. Id. at 112.

There is no doubt that, from Pleasant's perspective, Wordsworth could have done more to remedy her concerns. However, the question to be answered is, what is an employer's responsibility? In the case of Capaci v. Katz & Bestholf, 30 FEP Cases 1541 (E.D. Ia. 1981), among allegations of encounters with sexual overtones, a female employee claimed another employee put his hands on her breast. When the employee was confronted with the accusations he denied the incident occurred. Knowing there had been no past incidents that would give the employer reason to believe the accused employee would engage in such unacceptable behavior, the employer still could not be sure of the truth and simply concluded that something had happened. The accused

employee was spoken to and told the employer would not tolerate such conduct. The accused employee was also told such conduct would place his job in jeopardy. The purported victim was not satisfied that the employer had not fully accepted her version and fired the accused employee. The action taken by the employer was found to be adequate and appropriate under the circumstances. Like in Capaci, Pleasant has not shown that Wordsworth's investigation was lacking in any way or that the range of remedial measures taken by Wordsworth were either unreasonable or inadequate under the circumstances.

Wordsworth's investigation was comprehensive, meaningful, deliberate and unusually prompt, and the remedial measures were prudent, adequate and reasonably calculated to stop Taylor's conduct, even viewing the facts in a light most favorable to Pleasant. Accordingly, Pleasant also fails to prove the fifth element of the requisite *prima facie* showing.

Turning to Pleasant's constructive discharge claim, the evidence presented reveals that Pleasant, contending that she was forced to work in an unabated hostile environment, left the same day that Taylor was returned to work. Normally, to establish a constructive termination, a Complainant must prove that the working conditions were so intolerable that a reasonable employee in her position would feel compelled to resign. Webb v. Cardiothoracic Surgery Assoc., 76 FEP Cases 1599, 1603 (5th Cir. 1998), *citing* Faruki v. Parsons S.I.P., Inc., 123 F.3d 315, 319, 75 FEP Cases 18 (5th Cir. 1997). Further, before resigning, an employee must first give an employer's corrective actions a fair opportunity to work. "Part of an employee's obligation to be reasonable is an obligation not to assume the worst, and not to jump to conclusions too fast". Garner v. Wal-Mart Stores, Inc., 807 F. 2d 1536, 1539 (11th Cir. 1987). A reasonable employee would not feel compelled to resign following the institution of measures that are

reasonably calculated to stop the harassment. Landgraf v. USI Film Products., 968 F.2d 427, 59 FEP Cases 897, 899 (5th Cir. 1992), *aff'd in part on other grounds*, 128 L.Ed. 229, 64 FEP Cases 820 (1994). *See also* Burlington Industries v. Ellerth, 524 U.S. 742, 764 (1998); and Faragher v. City of Boca Raton, 524 U.S. at 775, 806 (1998).

Here, not only was Pleasant's resignation objectively unreasonable under the totality of the circumstances present, she resigned without first affording Wordsworth a reasonable opportunity to remedy the circumstance about which she had complained. Pleasant presented no evidence that there would have been a hostile work environment had she returned or that Taylor would have felt free to harm her. *See* Ryczek v. Guest Services Inc., 877 F.Supp 754, 759, 67 FEP Cases 461 (D.D.C. 1995). For these fundamental reasons, Pleasant's Constructive discharge claim fails.

An order dismissing Pleasant's claims follows:

**COMMONWEALTH OF PENNSYLVANIA**

**GOVERNOR'S OFFICE**

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

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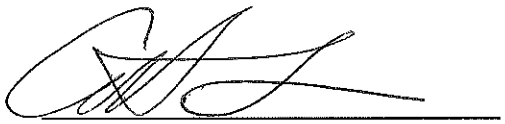
|---|---|---|
| **NNEKA PLEASANT,** | : | |
| **Complainant** | : | |
| | : | |
| | : | |
| **v.** | : | **PHRC CASE NO. 200605783** |
| | : | **EEOC CHARGE NO. 17F200761590** |
| | : | |
| **WORDSWORTH ACADEMY,** | : | |
| **Respondent** | : | |

**RECOMMENDATION OF PERMANENT HEARING EXAMINER**

Upon consideration of the entire record in the above-captioned case, the Permanent Hearing Examiner finds that the Complainant has failed to prove discrimination in violation of Section 5(a) of the Pennsylvania Human Relations Act. It is, therefore, the Permanent Hearing Examiner's recommendation that the attached Stipulations of Fact, Findings of Facts, Conclusions of Law, and Opinion be approved and adopted. If so approved and adopted, the Permanent Hearing Examiner recommends issuance of the attached final Order.

**PENNSYLVANIA HUMAN RELATIONS COMMISSION**

August 15, 2008
Date

By: 
Carl H. Summerson
Permanent Hearing Examiner

**COMMONWEALTH OF PENNSYLVANIA**

**GOVERNOR'S OFFICE**

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| **WORDSWORTH ACADEMY,** | : | |
| **Respondent** | : | |

**FINAL ORDER**

**AND NOW,** this 28th day of October, 2008, after a review of the entire record in this matter, the full Pennsylvania Human Relations Commission, pursuant to Section 9 of the Pennsylvania Human Relations Act, hereby approves the foregoing Stipulations of Fact, Findings of Facts, Conclusions of Law, and Opinion of the Permanent Hearing Examiner. Further, the full Commission adopts said Stipulations of Fact, Findings of Facts, Conclusions of Law, and Opinion as its own finding in this matter and incorporates the same into the permanent record of this proceeding, to be served on the parties to the complaint and hereby

**ORDERS**

that the complaint in this case be, and the same hereby is, dismissed.

By: Stephen A. Glassman, Chairperson

Attest:

Dr. Daniel d. Yun, Secretary