

In the Matter of

H. R. SATTERFIELD and Stella Satterfield

dba

The Tool Box

Case No. 19-01

Final Order of the Commissioner Jack Roberts

Issued September 21, 2001

SYNOPSIS

Where Complainant opposed what she perceived to be an unlawful practice and Respondents subsequently refused to hire her for a training position even though Complainant was the most qualified applicant, the Commissioner found that Respondents refused to hire Complainant based on her opposition to unlawful employment practices. The Commissioner awarded Complainant \$2,340 in lost wages but found no basis for awarding mental suffering damages. ORS 659.030(1)(f).

The above-entitled case came on regularly for hearing before Linda A. Lohr, designated as Administrative Law Judge ("ALJ") by Jack Roberts, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held on March 13, 2001, at the Medford office of the Bureau of Labor and Industries, located at 700 East Main, Suite 105, Medford, Oregon. The hearing reconvened for additional testimony on July 17, 2001, after the record was reopened pursuant to OAR 839-050-0410.

Cynthia Domas, an employee of the Agency, represented the Bureau of Labor and Industries ("BOLI" or "the Agency"). Kateena Forster ("Complainant") was present throughout the hearing and was not represented by counsel. Terrance L. McCauley, Attorney at Law, represented H. R. Satterfield and Stella Satterfield ("Respondents"), who were present throughout the hearing.

In addition to Complainant, the Agency called as witnesses: Cheri Ann Forster, Complainant's sister-in-law; Respondent H. R. Satterfield; Betty Moore, Oregon Employment Department supervisor; Janet Chatham, former Jobs Plus Specialist, Oregon Employment Department; Barbara Turner, a BOLI senior civil rights investigator; and David Forster, Complainant's husband.

Respondents called themselves and Dana Zozaya, Respondents' current bookkeeper, as witnesses.

The forum received as evidence:

- a) Administrative exhibits X-1 through X-28;
- b) Agency exhibits A-1 through A-6 (submitted prior to hearing); A-7 (submitted at hearing); A-8, A-9 (submitted after hearing)
- c) Respondents exhibit R-1 (submitted at hearing).

Having fully considered the entire record in this matter, I, Jack Roberts, Commissioner of the Bureau of Labor and Industries, hereby make the following Findings of Fact (Procedural and on the Merits), Ultimate Findings of Fact, Conclusions of Law, Opinion, and Order.

FINDINGS OF FACT – PROCEDURAL

1) On February 14, 2000, Complainant filed a verified complaint with the Agency's Civil Rights Division ("CRD") alleging she was the victim of the unlawful employment practices of Respondents based on Respondents' failure to hire Complainant on August 3, 1997. On September 5, 2000, the complaint was amended to properly identify the Respondents. After investigation and review, the CRD issued a Notice of Substantial Evidence Determination finding substantial evidence supporting the allegations regarding Respondents' failure to hire Complainant.

2) On November 7, 2000, the Agency submitted to the forum Specific Charges alleging Respondents discriminated against Complainant by failing to hire her

because she complained to a state agency about discriminatory comments made by Respondent H. R. Satterfield, in violation of ORS 659.030(1)(f). The Agency also requested a hearing.

3) On November 14, 2000, the forum served on Respondents the Specific Charges, accompanied by the following: a) a Notice of Hearing setting forth March 13, 2001, in Medford, Oregon, as the time and place of the hearing in this matter; b) a notice of Contested Case Rights and Procedures containing the information required by ORS 183.413; c) a complete copy of the Agency's administrative rules regarding the contested case process; and d) a separate copy of the specific administrative rule regarding responsive pleadings.

4) On December 5, 2000, Respondents, through counsel, filed a timely answer to the Specific Charges.

5) On January 12, 2001, the forum ordered the Agency and Respondent each to submit a case summary including: lists of all persons to be called as witnesses; identification and copies of all documents to be offered into evidence; a brief statement of the elements of the claim (for the Agency only); a brief statement of any defenses to the claim (for Respondent only); a statement of any agreed or stipulated facts; and any damages calculations (for the Agency only). The ALJ ordered the participants to submit case summaries by March 2, 2001, and notified them of the possible sanctions for failure to comply with the case summary order.

6) By letter dated January 31, 2001, the Agency requested the caption in this matter be corrected to reflect the correct initials of Respondent H. R. Satterfield. On February 20, 2001, the ALJ issued an interim order amending the caption.

7) The Agency and Respondents filed timely case summaries.

8) On March 6, 2001, the Agency moved for summary judgment based on Respondent H. R. Satterfield's purported admissions to the unlawful employment practices alleged in the Specific Charges. On March 9, 2001, the ALJ issued an interim order denying the Agency's motion because it was untimely.

9) On March 13, 2001, Respondents filed a supplemental case summary.

10) At the start of hearing, pursuant to ORS 183.415(7), the ALJ verbally advised the Agency and Respondent of the issues to be addressed, the matters to be proved, and the procedures governing the conduct of the hearing.

11) During the hearing, the Agency moved to amend the amount of back pay sought downward to seek back pay calculated at the rate of \$6.50 per hour, 40 hours per week, from August 3, 1999, to June 8, 2000, less \$1,813.50 in interim earnings. The Agency's motion was granted.

12) On June 7, 2001, the ALJ, on her own motion, issued an order reopening the contested case record pursuant to OAR 839-050-0410, that stated, in pertinent part:

"At hearing, Agency witness, Barbara Turner, testified she refreshed her memory the day of hearing, prior to her testimony, with notes documenting her contacts with Respondent H. R. Satterfield during her investigation. Respondents' counsel was denied, erroneously, the opportunity to review the notes Ms. Turner used to refresh her memory. Because she relied on the notes the day of hearing for the purpose of testifying and her testimony relates to important issues in this case, I am reversing the ruling. The Agency is hereby ordered to provide to Respondents' counsel all notes and writings Ms. Turner used to refresh her memory for the purpose of testifying in this matter by 5:00 p.m., Thursday, June 14, 2001. After inspecting the documents, counsel may cross-examine Ms. Turner upon them, but must direct the request for cross-examination, in writing, to the Hearings Unit no later than 5:00 p.m., Wednesday, June 20, 2001. If Respondents request cross-examination, I will initiate a telephone conference with the participants to schedule Ms. Turner's testimony for the sole purpose of cross-examination upon the documents provided by the Agency pursuant to this Order.

" * * * * *

"After reviewing the entire record, I find there is insufficient evidence to compute any back pay damages that may be awarded in this matter.

Evidence in the record shows Complainant found replacement employment at Bear Creek ("Harry and David's") for a similar duration and with similar hours and hourly wages as the employment she applied for in July 1999 through the Jobs Plus training program. In fairness to both participants, the Agency is hereby ordered to submit to the Hearings Unit, with copies to Respondents' counsel, documentation, preferably from Bear Creek or its payroll agent, establishing the date Complainant began working for Bear Creek by 5:00 p.m., Wednesday, June 20, 2001."

13) On June 11, 2001, the Hearings Unit received a letter from the Agency providing dates the Agency's witness and case presenter were unavailable for cross-examination purposes.

14) On June 19, 2001, the Hearings Unit received documentation from the Agency that included a letter from Bear Creek Corporation with an attached "Employee Data Summary," that the ALJ marked as exhibit A-8 and received in the record, establishing the date Complainant began working for Bear Creek.

15) On June 20, 2001, the Hearings Unit received Respondents' request for cross-examination.

16) On June 27, 2001, the forum issued an order scheduling a hearing for the purpose of Barbara Turner's cross-examination based on the documents provided to Respondents by the Agency.

17) On July 9, 2001, the Agency requested that the hearing time be changed from 10:00 to 11:00 a.m. to accommodate those who were driving long distances to Eugene, Oregon. The forum granted the Agency's request on the same date.

18) On July 11, 2001, the Agency submitted documentation "for clarification purposes" that included a letter from Bear Creek Corporation and an illegible attachment. The letter reads, in pertinent part:

"This letter is to certify that Kateena Forster was hired by Bear Creek Corporation as a seasonal employee on October 11, 1999. She was placed on layoff status effective December 16, 1999. As of December 16, 2000, she was administratively terminated. This

occurs when an employee has not worked for our company for 12 consecutive months.

“ * * * * *

“Sincerely, Kristi Dye, Supervisor, Employee Services”

To the extent the letter clarified Complainant’s employment period at Bear Creek, the ALJ marked it as exhibit A-9 and received it as evidence in the record.

19) On July 17, 2001, hearing was held in the BOLI conference room located in Eugene, Oregon, to allow Respondents’ counsel the opportunity to cross-examine agency witness Barbara Turner on the notes she used to refresh her memory at the previous hearing. Neither the Agency nor Respondent offered any documents for the record.

20) On July 17, 2001, the Hearings Unit received from the Agency copies of two “Job Summary” documents as replacements for the illegible attachment submitted on July 11. Because the documents were cumulative, they were not marked as exhibits and received in the record.ⁱ

21) The ALJ issued a proposed order on August 2, 2001, that notified the participants they were entitled to file exceptions to the proposed order within ten days of its issuance. Neither the Agency nor Respondents filed exceptions.

FINDINGS OF FACT – THE MERITS

1) At all times material herein, H. R. and Stella Satterfield (“Respondents”), who are husband and wife, were partners and co-owners of an automotive service business known as The Tool Box and were Oregon employers utilizing the personal services of one or more persons.

2) Complainant is a female who submitted an application for employment to Respondents on July 27, 1999, as a referral from the Jobs Plus program administered through the Oregon Employment Department (“Department”).

3) The Jobs Plus program is an on-the-job training program that provides a subsidy for employers who are interested in training eligible candidates for a six month period. Those who receive unemployment benefits, food stamps, or welfare benefits (or all three) are eligible to participate in the program. Employers who request a Jobs Plus candidate to train in their business are required to pay the trainee at least minimum wage for the work performed during the course of the training. The Department reimburses the participating employer at the rate of \$6.50 per hour for the first month and \$5.50 per hour for the remaining five months. After four months, the employer may elect to hire the trainee. If the employer decides not to hire the trainee, the trainee may continue working for the remaining two months with a day off to look for other employment.

4) Respondents placed a job order with the Jobs Plus program on July 20, 1999. The job summary was approved by Respondents and was entered into the Department's computer database as follows:

"THIS IS A JOBS PLUS ON THE JOB TRAINING POSITION

"REQ: 18 YRS OR OLDER, VALID DRIVERS LICENSE (TO DRIVER [sic] CUSTOMERS HOME)

"DUTIES: WRITE REPAIR ORDERS, GIVE ESTIMATES, ORDER PARTS, ANSWER PHONES, CLEAN UP & OTHER DUTIES AS ASSIGNED.

"HRS: TO BE ARRANGED W/EMPLOYER

"PAY: \$6.50 HR

"@ @ APPLY DIRECT WRITE ON APPLICATION * * JOBS PLUS * *"

The job order denotes a 40-hour workweek, day shift.

5) On July 27, 1999, Complainant filled out and left her application for Respondents at their place of business. At the time, Complainant was receiving unemployment benefits and was eligible for the Jobs Plus training program and so indicated on her application. On the application, in the section listing "FORMER

EMPLOYERS,” Complainant indicated she was still employed as a secretary earning \$7.00 per hour with “Superior Roofing” located in “Goldhill, Oregon.” She indicated the period of her employment was from “3/99 to current.” Under “Reason for Leaving” she wrote, “Still there, just not needed.” In the section inquiring about “Job Related Skills” she wrote: “Currently own a roofing company. I answer phones, give bids, check customers [sic] preferences. Order material.” As references, Complainant listed her “business partners” Gene Meyer and James Ebbs.

6) On July 26 and August 3, 1999, the Department also referred two male applicants through the Jobs Plus training program to Respondents.

7) Complainant telephoned Respondents’ business several times to inquire about the status of her application. On or about August 3, 1999, she finally spoke with Respondent H. R. Satterfield who told her he was going over the applications and hers was the best one of the three he had received. Complainant told him she would “do anything” for the job. He responded that he was a married man and was in business with his wife, who would have to approve his hiring a woman.

8) Complainant told her husband that she was “shocked” by Respondent H. R. Satterfield’s comment and, as a result, was “embarrassed that [she] was a woman looking for a job.”

9) On August 3, 1999, Complainant reported to Betty Moore, an employment supervisor with the Department, that Respondent H. R. Satterfield had told her he was a married man and could not hire a woman until he checked with his wife.

10) On the same day she heard from Complainant, Moore contacted Respondent H. R. Satterfield and told him about Complainant’s complaint. He told Moore that he had told Complainant her application was the best of the three and that he was a married man and would have to go over the applications that evening with his

wife. He also told Moore he had an all-male shop. Moore advised him that in order for his job order to be legal he could not make a hiring decision based on gender. He assured Moore he was considering Complainant for the job because she appeared to be the best qualified, had the nicest handwriting, and she appeared to definitely want the job because she kept calling to let him know that he needed to “make a decision” because she “really wants this job.”

11) Moore called Complainant and told her Respondents were considering her for the job and all Complainant could do was wait and see what happened.

12) On August 3, 1999, Respondent H. R. Satterfield called Janet Chatham, the Jobs Plus coordinator with whom he initially placed his job order. He told Chatham that a woman applicant had complained about him and he was very upset about it. He also told Chatham the applicant had called him repeatedly about the job and during the last telephone call he had told her he was a married man and had to check with his wife before he could “make that kind of decision.” He expressed to Chatham his displeasure with the Jobs Plus program and told her he “did not need this kind of problem.” She referred him to the Bureau of Labor and Industries to get a better understanding of the “do’s and don’ts” of hiring.

13) On August 9, 1999, Moore memorialized a telephone contact with Complainant that reads: “Tina called & said she had not heard from the employer and was going to file a complaint. BRM.”

14) Respondents did not hire anyone for the position and it has remained unfilled since August 1999.

15) On August 16, 1999, the Department referred Complainant to two different employers through the Jobs Plus training program. Complainant was not hired for either training position.

16) On October 11, 1999, Complainant began working for Bear Creek, a local business, as a laborer. She worked five days per week, averaging approximately eight hours per day. She was placed on layoff status effective December 16, 1999.

17) Complainant's husband, David Forster, owns and operates a roofing company under the assumed business name, Superior Roofing. During times material, he had one partner, James Ebbs, who was married to Gene Meyer. Meyer was never a partner in the business and was never on the payroll. Although technically not a partner, Complainant shares in the profits of the business as Forster's wife. She continues to run errands for the business and has worked informally for her husband since the business started in March 1999. Although she receives some money from the business, she has never been on the payroll as a secretary and has never earned \$7.00 per hour from the business. Forster keeps no records of the hours Complainant works for the business.

18) Agency investigator Barbara Turner was assigned to investigate Complainant's complaint. During the investigation, she spoke with Respondent H. R. Satterfield several times and memorialized the conversations. Satterfield told Turner he had never hired a woman before and had to check with his wife before doing so. He also told Turner that he did not want Complainant working for him because she had complained about him. At no time during his conversations with Turner did Satterfield mention Complainant's remark that she would do anything for the job. Turner testified in an objective, straightforward manner and her testimony has been credited in its entirety.

19) Complainant's testimony about Respondent H. R. Satterfield's comments to her in August 1999 was not consistent with her previous statements to Moore and does not comport with either the complaint she originally filed with the Agency or with

the charges issued by the Agency as a result of her complaint. Contrary to her previous statements that Respondent H. R. Satterfield told her he was a married man and would have to check with his wife before hiring a woman, she testified he told her: "I'm a married man and I'm in this business with my wife and I think it could cause problems to have a female in the front – it could cause problems in the back, so me and my wife have decided not to hire a female." She further embellished her testimony by stating she assumed he meant it would cause trouble with the all-male mechanics she had observed in "the back" working on the cars when she submitted her application. The forum finds that the version Complainant reported to the Department and to BOLI at the time the conversation with Respondent happened is the more likely scenario and comports with Respondent's account. Additionally, the statements she made in her application for employment with Respondent further undermine Complainant's credibility. She claimed to be a business owner and that although she was still employed by the business she was just not needed at the time of her application. All of her claims pertaining to her ownership of and employment with Superior Roofing, including the status of her listed references, were contradicted by her husband's testimony. Accordingly, Complainant's testimony was not believed unless it was corroborated by other credible testimony or was inherently credible.

20) David Forster readily acknowledged having a "selective memory" and he was biased toward his wife, but he appeared to honestly convey what he perceived at the time relevant events occurred. Although he testified that Respondent H. R. Satterfield's comment to his wife upset her, caused her to "doubt herself," affected her enthusiasm about looking for a job, and lowered her housecleaning standards, he acknowledged that those effects were short lived. He credibly testified that despite Complainant's lack of enthusiasm for looking for work, she readily found employment at

Bear Creek and thereafter went to work every day and met her household responsibilities without difficulty.

21) Cheri Forster's bias toward Complainant, her sister-in-law, was demonstrated during her exaggerated testimony pertaining to Complainant's damages. She claimed that after Complainant told her about Satterfield's comment, she observed Complainant crying a lot, laying in bed all day, not bathing for as many as three days at a time, and that she did Complainant's housework for six months following the comment because Complainant was "bed-bound." However, she also testified that she and Complainant did not speak to each other for six months after the Satterfield comment because Complainant was difficult to get along with and was treating the comment as "this crushed event thing." Both statements cannot be true and the forum believes neither. Her only credible testimony – that she and Complainant started working together at Bear Creek in September or October 1999, working the same shift six to ten hours per day, averaging eight hours per day with overtime – contradicted all of her previous statements. That testimony was believed only because Complainant's husband corroborated it. Accordingly, Cheri Forster's testimony was believed only when it was corroborated by other credible evidence in the record or was inherently credible.

22) Respondent H. R. Satterfield did not deny that he told Complainant he would have to check with his wife before hiring a woman. His purported reasons for making the statement to Complainant, however, are not consistent. He testified that his statement followed what he construed as a sexual overture by Complainant when she said to him she would do anything for the job. When defending his comment to the Department and BOLI, however, he stated he meant only to emphasize to Complainant his business relationship with his wife and the necessity of checking with her first before

hiring someone. The forum finds neither reason particularly believable and relies solely on Respondent H. R. Satterfield's actual words, which are not in dispute, to conclude that Complainant's perception that his comment was discriminatory was not unreasonable.

23) Stella Satterfield's testimony was internally inconsistent and reflected her bias toward her husband and business partner. She stated they ultimately did not hire Complainant because they were "scared" of Complainant's comment that she would do "anything" for the job. Yet, in her earlier testimony she stated that she and her husband had decided to hire Complainant - despite the comment - because Complainant had good handwriting. Overall, her testimony was not reliable and the forum gave it little weight whenever it conflicted with other credible evidence in the record.

24) Betty Moore's testimony was credible. Although her contemporaneous notes consisted solely of cryptic entries in her computer, she demonstrated a clear recollection of her conversations with Respondent H. R. Satterfield and Complainant. The forum has credited her testimony in its entirety.

25) Janet Chatham testified in a straightforward, objective manner. She readily recalled her conversation with Respondent H. R. Satterfield and her memory was consistent with her contemporaneous notes. The forum credits her testimony in its entirety.

ULTIMATE FINDINGS OF FACT

1) At all times material, Respondents H. R. Satterfield and Stella Satterfield co-owned and operated as partners an automotive repair shop under the assumed business name, The Tool Box, and engaged the personal services of one or more persons in the state of Oregon.

2) On July 20, 1999, Respondents, through the Jobs Plus program sponsored by the Oregon Employment Department, advertised an on the job training position at the rate of \$6.50 per hour, 40 hours per week.

3) On July 27, 1999, Complainant was a female who applied for a training position with Respondents through the Jobs Plus program.

4) Respondent H. R. Satterfield told Complainant when she applied that he would have to check with his wife before hiring a woman.

5) Complainant reasonably perceived the comment to be discrimination based on her gender.

6) Complainant called the Oregon Employment Department and complained about Respondent H. R. Satterfield's comment.

7) Complainant was the most qualified of the applicants for the training position.

8) Respondents did not hire Complainant because she complained to the Oregon Employment Department about Respondent H. R. Satterfield's comment.

CONCLUSIONS OF LAW

1) At all material times, Respondents H. R. Satterfield and Stella Satterfield were employers subject to the provisions of ORS 659.010 to ORS 659.110.

2) The Commissioner of the Bureau of Labor and Industries has jurisdiction over the subject matter herein and the authority to eliminate the effects of any unlawful employment practices found. ORS 659.022; ORS 659.040; ORS 659.050.

3) The actions, inaction, and knowledge of Respondent H. R. Satterfield, a co-owner, operator, and agent of The Tool Box along with Stella Satterfield, are properly imputed to Respondent Stella Satterfield.

4) ORS 659.030(1) states, in pertinent part:

“For the purposes of ORS 659.010 to 659.110 * * * it is an unlawful employment practice:

“ * * * * *

“(f) For any employer to * * * discharge, expel or otherwise discriminate against any person because the person has opposed any practices forbidden by this section * * *.”

Respondents discriminated against Complainant by refusing to hire her because she opposed Respondents’ unlawful employment practice and, by doing so, violated ORS 659.030(1)(f).

OPINION

The Agency alleges Complainant was denied employment with Respondents because she opposed an unlawful employment practice. ORS 659.030(1)(f) makes it an unlawful employment practice:

“For any employer to * * * discharge, expel or otherwise discriminate against any person because the person has opposed any practices forbidden by this section * * *.” (Emphasis added)

Any person who asserts his or her rights under the statute is protected even if it is found that no discrimination occurred, as long as that person’s belief that it occurred is reasonable. *In the Matter of Pzazz Hair Designs*, 9 BOLI 240, 254, 255 (1991).

In this case, Respondent H. R. Satterfield admits he told Complainant he was a married man and would have to check with his wife before hiring a woman for the Jobs Plus training position. He argues, however, that his response was precipitated by his belief that Complainant’s statement “I will do anything for this job” was sexually motivated and, therefore, Complainant could not have reasonably inferred a discriminatory animus from his response. Evidence in the record does not support that contention. Respondent H. R. Satterfield never mentioned his purported belief that Complainant made sexual overtures to him when inquiring about her application for the training position to those who investigated the complaint. In fact, when questioned by Moore and Turner about his comment to Complainant, he emphasized to both that

Complainant was his first choice for the position. He told both that his intent was to convey to Complainant his need to include his wife in the final decision making process because she was his business partner. At no time did he raise concerns about Complainant's demeanor toward him. Based on those facts, the forum infers Respondent H. R. Satterfield did not perceive Complainant's statement as sexually motivated at the time it was made. The forum concludes, therefore, Respondent H. R. Satterfield's statement to Complainant was enough to raise a question about Respondents' hiring practices and Complainant had the right under the statute to oppose what she reasonably perceived to be an unlawful employment practice.

RETALIATION

A preponderance of the credible evidence shows a causal connection between Respondents' decision not to hire Complainant and her complaint to the Department about Respondent H. R. Satterfield's statement. Respondent H. R. Satterfield readily acknowledged that Complainant was the best candidate of the three applicants for the job. He specifically asked Moore to let Complainant know she was being considered for the job and indicated to Moore she was the best qualified. His anger about the complaint was made evident, however, when he called Janet Chatham, the Jobs Plus program representative, to complain about the complaint Complainant filed and the "type of people" the program was sending him. Chatham testified he repeatedly stated he "didn't need this kind of problem" and, by his attitude, conveyed to her that he was no longer interested in using the program. The forum infers from these facts that but for Complainant's complaint to the Department, Respondents would have hired her for the training position.

Because Respondent Stella Satterfield was a partner in the business and actively participated in making the decision not to hire Complainant, the forum finds she is jointly

and severally liable for any damages Complainant suffered as a result of the unlawful retaliation. See *In the Matter of Lee's Café*, 8 BOLI 1, 16, 17 (1989).

COMPLAINANT'S DAMAGES

A. Back Wages

Back pay awards are intended to compensate a complainant for the loss of wages and benefits the complainant would have received but for the respondent's unlawful discrimination. The awards are calculated to make a complainant whole for injuries suffered as a result of the discrimination. See *In the Matter of RJ's All-American Restaurant*, 12 BOLI 24 (1993). In hiring cases, back pay awards are determined by the pay received by the hired comparator during the relevant time period, less mitigation. See *In the Matter of Alpine Meadows Landscape*, 19 BOLI 191 (2000). Here, as in the *Alpine Meadows* case, there is no comparator. No one was ever hired for the training position and there is no testimony indicating a date certain that Complainant would have started working in the position. Respondents testified and the job order submitted to the Department stated that the position paid \$6.50 per hour for a 40-hour workweek. Evidence shows Respondents were still considering applicants on Tuesday, August 3, 1999, and that Complainant was the best candidate at that point. There is no evidence Respondents considered any other candidates after August 3. On the following Monday, August 9, Complainant notified the Department that she had heard nothing from Respondents and was going to file a formal complaint. Absent evidence to the contrary, the forum finds Complainant would have started her first day of work no later than Monday, August 9, 1999. The forum further finds she would have worked a 40-hour workweek at the rate of \$6.50 per hour, as a trainee, until at least December 9, 1999, at which time Respondents, in accordance with the Jobs Plus training program, could have decided not to hire Complainant. Complainant mitigated her damages when

she found replacement employment at Bear Creek for a similar duration and with similar hours and hourly wages. Complainant's right to back wages ceased when she began employment with Bear Creek on October 11, 1999.ⁱⁱ Accordingly, the forum calculates Complainant's damages for lost wages as follows: \$6.50 per hour for 40 hours per week for nine weeks, which equals \$2,340.

B. Mental Suffering

Awards for mental suffering are fact driven and limited to those damages that are a direct result of a respondent's unlawful practice. *In the Matter of Courtesy Express, Inc.*, 8 BOLI 139 (1989); *In the Matter of Baker Truck Corral, Inc.*, 8 BOLI 118 (1989). Here, Complainant gave no testimony regarding the effects of Respondents' retaliatory conduct. Instead, she testified only that she was "shocked" by Respondent H. R. Satterfield's comment which she perceived as discriminatory and that, as a result, she was "embarrassed that [she] was a woman looking for a job." There is no credible evidence to support Complainant's allegation in the Specific Charges that she suffered from "humiliation, embarrassment, distress, and impairment of personal dignity" due to the retaliation that was based on her opposition to an unlawful practice. In fact, evidence shows she found employment shortly after she determined she was not going to be hired by Respondents and while so employed was able to perform her job duties and meet her responsibilities at home without manifesting any mental anguish related to Respondents' failure to hire her. Any embarrassment she may have suffered prior to becoming employed at Bear Creek was mild, short term, and specifically related to Respondent H. R. Satterfield's comment, not his subsequent retaliatory action.

ORDER

NOW, THEREFORE, as authorized by ORS 659.010(2) and ORS 659.060(3), and to eliminate the effects of Respondents' violation of ORS 659.030(1)(f), and in

payment of the damages awarded, the Commissioner of the Bureau of Labor and Industries hereby orders **H. R. Satterfield and Stella Satterfield** to:

- 1) Deliver to the Fiscal Services Office of the Bureau of Labor and Industries, 800 NE Oregon Street, Portland, Oregon 97232-2162, a certified check payable to the Bureau of Labor and Industries in trust for Complainant Kateena Forster in the amount of TWO THOUSAND THREE HUNDRED AND FORTY DOLLARS (\$2,340.00), less lawful deductions, representing wages lost by Kateena Forster between August 9 and October 11, 1999, as a result of Respondents' unlawful practices found herein.
- 2) Cease and desist from discriminating against any applicant for employment based upon the applicant's opposition to unlawful employment practices.

ⁱ Exhibit A-8 included an attachment that provided all of the information the ALJ originally requested. See Findings of Fact - Procedural 13 & 14.

ⁱⁱ See *In the Matter of James Breslin*, 16 BOLI 200, 218 (1997), *affirmed without opinion*, *Breslin v. Bureau of Labor and Industries*, 158 Or App 247 (1999); *In the Matter of the City of Umatilla*, 9 BOLI 91 (1990), *affirmed without opinion*, *City of Umatilla v. Bureau of Labor and Industries*, 110 Or App 151 (1991).