

NOV 15 2013

INDIANA STATE
CIVIL RIGHTS COMMISSIONSTATE OF INDIANA
CIVIL RIGHTS COMMISSION

STEFANIE BARBOUR)	DOCKET NO.:	EMse12041101
Complainant,)	EEOC NO.:	24F-2012-00455
)		
v.)		
)		
SOLAR TEK ENERGY,)		
Respondent.)		

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On October 29, 2013, Administrative Law Judge ("ALJ") Noell F. Allen for the Indiana Civil Rights Commission ("ICRC") entered her Proposed Findings Of Fact, Conclusions Of Law, And Order ("the proposed decision").

No objections have been filed to the ICRC's adoption of the proposed decision.

Having carefully considered the foregoing and being duly advised in the premises, the ICRC hereby adopts as its own the findings of fact, conclusions of law, and order proposed by the ALJ in the proposed decision, a copy of which is attached hereto and incorporated herein by reference.

INDIANA CIVIL RIGHTS COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER

Dated this 15th day of November 2013.

To be served by CERTIFIED MAIL to the following parties:

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Attn: Kyle F. Biesecker
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**STATE OF INDIANA
CIVIL RIGHTS COMMISSION**

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Complainant,)	EEOC NO.:	24F-2012-00455
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SOLAR TEK ENERGY,)		
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**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

The undersigned Administrative Law Judge (“ALJ”) for the Indiana Civil Rights Commission (“ICRC”) conducted a hearing on damages on September 26, 2013. Complainant, Stefanie Barbour (“Barbour”), along with her representative, Kyle Biesecker, Esq. participated at the hearing. The Respondent, Solar Tek Energy, did not appear by counsel or otherwise.

Ms. Barbour testified on her own behalf and Complainant’s Exhibits (“CX”) 1 through 3 were admitted without objection. The ALJ ordered that Barbour file her suggested proposed decision on or before October 4, 2013. The cause was taken under advisement.

On October 4, 2013, Barbour filed Complainant’s Proposed Findings of Fact, Conclusions of Law and Order.

Having carefully considered the testimonial and documentary evidence and the arguments of counsel, and being duly advised in the premises, the ALJ now proposes that the ICRC enter the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Stefanie Barbour is an adult woman living, at all material times, in the State of Indiana.
2. Solar Tek Energy hired Ms. Barbour in September 2010 as a payroll finance manager earning \$27,000.00 annually.
3. In April 2011, Solar Tek Energy increased Ms. Barbour’s salary to \$54,000.00 annually.
4. As a payroll and finance manager, Ms. Barbour had access to all employees’ salary information, including salary information for Joe Hamacher.
5. Joe Hamacher, male, performed the same job functions as Ms. Barbour and earned \$93,600

annually.

6. On February 17, 2012, Solar Tek Energy terminated Ms. Barbour from employment.

7. On April 9, 2012, Barbour filed her Charge of Discrimination with the ICRC alleging that she was subject to a hostile work environment based on her gender, she was paid less than similarly-situate males, and that she was terminated based on her gender and/or in retaliation for complaining of harassment and unfair pay based on her gender.

8. On December 3, 2012, ICRC through its Deputy Director issued its Notice of Finding and concluded probable cause existed to believe that an unlawful discriminatory practice occurred.

9. On July 15, 2013, the ALJ properly served upon all parties the Notice of Initial Pre-Hearing Conference to be held on Thursday, August 1, 2013 at 10:30 A.M., Indianapolis time, by conference telephone call to be initiated by the ALJ.

10. Barbour, through her counsel, Kyle F. Biesecker, appeared. The Respondent did not appear.

11. On August 27, 2013, the ALJ entered and served her NOTICE OF PROPOSED DEFAULT ORDER (“NPDO”). The NPDO advised Solar Tek Energy that it could file a written motion requesting that the proposed default order not be imposed and stating the grounds upon which it relied within seven (7) days after service of the NPDO, NPDO, ¶2. The NPDO also advised that if no such motion was filed, the ALJ MUST enter the proposed default order under IC 4-21.5-3-24(c). NPDO, ¶3.

12. Solar Tek Energy did not file a written motion requesting that the proposed default order not be imposed.

13. The Complaint of Discrimination coupled with Ms. Barbour’s testimony set out a *prima facie* case that

14. Default is also appropriate under 910 IAC 1-6-1.

15. Any Conclusion of Law that should have been deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Indiana Civil Rights Commission has jurisdiction to entertain and adjudicate the complainant's complaint in this cause.

2. Barbour and Solar Tek Energy are each a “person” as that term is defined in the Indiana Civil Rights Law, IC 22-9 (“the ICRL”). IC 22-9-1-3(a).

3. Solar Tek Energy is an “employer”, as defined by the ICRL. IC 22-9-1-3(h) and (i).
4. The ICRC’s Rule 6.1(1) provides, in material part, that “[w]hen a party has (1) failed to plead or otherwise defend as provided by this article ...such party is in default.” 910 IAC 1-6-1(1).
5. Default is appropriate under 910 IAC 1-6-1(1).
6. A party may be defaulted under the Administrative Orders and Procedures Act for failure “to attend or participate in a prehearing conference”. Ind. Code § 4-21.5-3-24(a)(2).
7. Default is appropriate under Ind. Code § 4-21.5-3-24(a)(2).
8. The ALJ must conduct further proceedings after default without the participation of Respondent. Ind. Code § 4-21.5-3-24(d).
9. The effects of an order by default include that the allegations of the complaint are deemed admitted.
10. The ICRL defines discriminatory practice as the exclusion of a person from equal opportunities because of ... sex ... Every discriminatory practice relating to ... employment ... shall be considered unlawful unless it is specifically exempted by this chapter. Ind. Code § 22-9-1-3(l).
11. Solar Tek Energy engaged in an unlawful discriminatory practice when it terminated Barbour’s employment based on her gender and/or in retaliation for complaining of harassment and unfair pay based on her gender.
12. Indiana Code § 22-9-1-6 provides, in material part as follows:
 - Sec. 6. The commission shall have the following powers and duties:
 - (k)(1) To state its findings of fact after a hearing and, if the commission finds a person has engaged in an unlawful discriminatory practice, to cause to be served on this person an order requiring the person to *cease and desist from the unlawful discriminatory practice* and requiring the person to take further affirmative action as will effectuate the purposes of this chapter, including but not limited to the power:
 - (A) to *restore complainant's losses incurred as a result of discriminatory treatment*, as the commission may deem necessary to assure justice, however, this specific provision when supplied to orders pertaining in employment shall include only wages, salary, or commissions.
13. Where a party has suffered unlawful discrimination, a local Human Rights Commission may “order payment of actual damages, except that damages to be paid as a result of discriminatory

practices relating to employment shall be limited to lost wages, salaries, commissions, or fringe benefits.” Ind. Code § 22-9-1-12.1(c)(8).

14. “Damages in the form of back pay are calculated from the date of discharge to the date of the decision.” *Filter Specialists, Inc. v. Brooks*, 906 N.E.2d 835, 850 (Ind. 2009). The amount of damages is determined by measuring the “difference between plaintiff’s actual earnings for the period and those which [s]he would have earned absent the discrimination of defendants.” *Id.*

15. At the time of Barbour’s termination on February 17, 2012, Barbour earned \$54,000.00 annually or \$1,038.46 weekly. Barbour’s missed earnings are \$91,800.00 (88.4 weeks of earnings).

16. Barbour requests damages for the difference in wages between Barbour and that of a male counterpart, Joe Hamacher. This relief is typically found in violations of the Equal Pay Act of 1963 (“EPA”). The ICRC does not have jurisdiction to resolve issues under the EPA. Therefore, Barbour is not entitled to such relief.

17. Administrative review of this proposed decision may be obtained by parties who are not in default by the filing of a writing specifying with reasonable particularity each basis for each objection within 15 days of after service of this proposed decision. Ind. Code § 4-21.5-3-29(d).

18. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

1. Solar Tek Energy shall cease and desist from excluding persons from equal employment opportunities on the basis of disability and sex.

2. Solar Tek Energy shall post and prominently display statements of its policies to provide equal employment opportunities at its facilities.

3. Solar Tek Energy shall notify, in writing, all staff members of the policies enumerated in Paragraph 2 of this order.

4. Respondents shall deliver to Barbour a check, made payable to “Stefanie Barbour” for \$91,800.00, minus deductions required by law and/or agreement, within thirty (30) days of the effective date of this Order.

5. This Order shall take effect immediately after it is approved and signed by a majority of the members of the ICRC, unless it is modified by the ICRC pursuant to IC 4-21.5-3-31(a), stayed by the ICRC under IC 4-21.5-3-31(b), or stayed by a court of competent jurisdiction.

Dated this 29th day of October, 2013



Noell F. Allen
Administrative Law Judge
Indiana Civil Rights Commission

To be served by CERTIFIED MAIL to the following parties:

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