

**OHIO CIVIL RIGHTS COMMISSION**

IN THE MATTER OF:

**CHARLES R. GORDON**

Complainant

and

**CITY OF COLUMBUS,  
DEPARTMENT OF PUBLIC SAFETY,  
DIVISION OF POLICE**

Respondent

Complaint #8444  
(COL) 71120597 (25258) 010598  
22A-98-3309

Complaint #8618  
(COL) 71070698 (26098) 100198  
22A-99-3300

**HEARING EXAMINER'S FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND DISCUSSION ON RESPONDENT'S MOTION TO DISMISS**

**BETTY D. MONTGOMERY  
ATTORNEY GENERAL**

Matthew D. Miko, Esq.  
Assistant Attorney General  
Civil Rights Section  
State Office Tower, 15<sup>th</sup> Floor  
30 East Broad Street  
Columbus, OH 43215-3428  
(614) 466-7900

**Counsel for the Commission**

John W. Waddy, Jr., Esq.  
111 Hamilton Park  
Columbus, OH 43203  
(614) 436-2956

**Counsel for Complainant**

Kristine L. Hayes, Esq.  
Assistant City Attorney  
City Hall, Room 200  
90 West Broad Street  
Columbus, OH 43215-4184  
(614) 645-7385

**Counsel for the Respondent**

Charles R. Gordon  
P. O. Box 360421  
Columbus, OH 43236

**Complainant**

**HEARING EXAMINER'S REPORT BY:**

Franklin A. Martens, Esq.  
Chief Hearing Examiner  
Ohio Civil Rights Commission  
1111 East Broad Street, Suite 301  
Columbus, OH 43205-1379  
(614) 466-6684

## INTRODUCTION AND PROCEDURAL HISTORY

Charles R. Gordon (Complainant) filed sworn charge affidavits with the Ohio Civil Rights Commission (Commission) on January 5, 1998 and October 1, 1998, respectively.

The Commission investigated both charges and found probable cause that the City of Columbus, Department of Public Safety, Division of Police (Respondent) engaged in unlawful discrimination in violation of Revised Code (R.C.) § 4112.02(I).

The Commission attempted, but failed to resolve this matter by informal methods of conciliation. The Commission subsequently issued Complaint #8444 on December 10, 1998; Complaint #8618 was issued on August 19, 1999.

The Complaints allege that Complainant was denied a position as a helicopter aircrew officer in retaliation for having filed previous charges of discrimination against Respondent.

Respondent filed timely Answers to the Complaints, admitting certain procedural allegations but denying that it engaged in any unlawful discriminatory practices.

Respondent filed a Motion to Dismiss on March 22, 2000. The Commission filed a reply to the Motion on April 4, 2000. On June 12, 2000, the Commission took the deposition of Thomas W. Rice, formerly the Safety Director for the City of Columbus, in order to assist the Hearing Examiner in ruling on Respondent's Motion. The deposition, consisting of 37 pages and three exhibits, was filed on August 7, 2000.

### **FINDINGS OF FACT**

1. Complainant filed sworn charge affidavits with the Commission on January 5, 1998 and October 1, 1998, respectively.

2. The Commission determined that it was probable that Respondent engaged in unlawful discrimination in violation of R.C. § 4112.02(I).

3. The Commission attempted to resolve this matter by informal methods of conciliation. The Commission issued Complaint #8444 and Complaint #8618 after conciliation failed.

4. Complainant has been employed by Respondent as a police officer since 1978. Prior to July 3, 1996, he was assigned to the Helicopter Unit as a helicopter pilot. On July 4, 1996, he was administratively transferred from that position. He filed a grievance alleging that he had been improperly transferred. The transfer did not involve any loss in pay or benefits. Police Chief James Jackson denied the grievance.

5. In September 1997 and June 1998, respectively, Complainant bid on vacancies in the Helicopter Unit. He was denied both positions and filed a grievance. Chief Jackson denied both grievances.

6. The grievance process in 1998 provided that the Safety Director responded to all grievances after Chief Jackson responded. This was known as the fourth step in the process. The next step is arbitration.

7. The Safety Director reviewed both grievances and issued an Amended Grievance Response on December 23, 1998. The Safety Director sustained the grievances and assigned Complainant to the Helicopter Unit, effective December 27, 1998. He attached eight conditions to Complainant's reassignment. The eight conditions were:

1. Officer Gordon is temporarily assigned to the current Vacancy #908804 position at the heliport for a period of six months.
2. Officer Gordon must be able to obtain an FAA 2<sup>nd</sup> class medical certificate, and comply with all other F.A.A. flight certification requirements.
3. Upon his return, Officer Gordon will successfully complete the standard recurrent training program at the heliport, and complete a minimum amount of time on observer status to be trained on new equipment and procedures.
4. Prior to being placed on full flight status, an objective evaluation of Officer Gordon's flying knowledge, skills and abilities will be conducted by a third-party expert selected and approved by this office.
5. Officer Gordon's performance will be evaluated at approximately the midpoint of the temporary assignment and again at the end of the six month period. I will personally oversee the evaluation process. If Officer Gordon's performance is acceptable, the assignment shall be made permanent.

6. Officer Gordon will be expected to comply with all safety requirements, exhibit a professional attitude and communicate effectively with his supervisors and peers at the heliport.
7. Supervisors and officers assigned to the heliport will be expected to exhibit a professional attitude and communicate effectively with each other and Officer Gordon.
8. A spirit of teamwork and cooperation among all who are assigned to the heliport is encouraged.

(Rice Dep., Ex. 1)

8. Complainant complied with all of the conditions set out in the December 23, 1998 Amended Response. The Safety Director issued a Supplemental Grievance Response on September 30, 1999 permanently assigning Complainant to the heliport, effective December 27, 1998.

9. Complainant was removed from the heliport on November 19, 1999. His removal had nothing to do with the prior grievances that had been ruled upon by the Safety Director. His removal became the subject of another charge affidavit which he filed with the Commission on December 6, 1999.

## CONCLUSIONS OF LAW AND DISCUSSION

1. R.C. § 4112.05(G) provides in pertinent part that reinstatement is an appropriate remedy when there is a finding that a respondent has committed an unlawful discriminatory practice. In this case, Respondent is arguing that the only tangible remedy that could be provided to Complainant was provided to him by Safety Director Rice when he made the Complainant's reassignment to the heliport permanent, retroactive to December 23, 1998.

2. Although Complainant was subsequently removed from his position as a helicopter pilot on November 19, 1999, that removal is not relevant to the allegations contained in Complaint #8444 and Complaint #8618. The facts underlying the November 19, 1999 removal are pending before the Commission in a subsequent charge filed by Complainant.

3. There is a federal lawsuit pending regarding whether Complainant was removed from the Helicopter Unit on June 24, 1996 because of his race. The Commission issued Complaint #8007 which encompassed the same facts

which are pending in the federal lawsuit. That Complaint has been stayed pending the outcome of the federal lawsuit.

4. The deposition of Safety Director Rice shows that it was his intention to make Complainant's reassignment to the Helicopter Unit permanent and unconditional. If the Commission were to go forward and present evidence in a public hearing on Complaints #8444 and #8618, the only relief that could be afforded Complainant would be an Order from the Commission that he was entitled to reinstatement in the Helicopter Unit. This was already accomplished by Safety Director Rice's ruling on his grievance. Therefore, it would be a waste of the Commission's resources to pursue this matter.

5. The underlying goal of Chapter 4112 is to eliminate alleged unlawful discriminatory practices. This goal was accomplished when Safety Director Rice reassigned Complainant to the Helicopter Unit and made the assignment permanent.

6. If additional unlawful discriminatory practices were subsequently engaged in by Respondent when Complainant was once again removed from

the heliport in November 1999, those practices will be addressed if the Commission issues a complaint based on the charge affidavit filed in November 1999.

7. Complainant's removal from the Helicopter Unit in 1996 will be addressed in his federal lawsuit.

### **RECOMMENDATION**

For all the foregoing reasons, it is recommended that the Commission issue Dismissal Orders in Complaint #8444 and Complaint #8618.

---

FRANKLIN A. MARTENS  
CHIEF HEARING EXAMINER

---

August 22, 2000