**BEFORE THE**
**MISSOURI COMMISSION ON HUMAN RIGHTS**
**STATE OF MISSOURI**

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| **STATE OF MISSOURI ex rel. Anatoly V. Sir,** | ) | |
| **Plaintiff,** | ) | **Case Number: E-11/04-37761** |
| **vs.** | ) | **07-0020 HRC** |
| **Laclede Cab Company** | ) | |
| **Respondent,** | ) | |

## DECISION AND ORDER

After reviewing the record in the above-styled case the Commission Panel adopts the Hearing Examiner's Findings of Facts and Conclusions of Law in the **Amended Recommended Decision on Remand** and issues the following Decision and Order:

**IT IS HEREBY ORDERED THAT:**

1. Respondent cease and desist from further discriminatory practices:

2. Respondent pay Sir $50,000.00 in actual damages for humiliation and emotional distress:

3. Respondent pay Sir $35,000.00 in actual damages for violation of civil rights; and

4. Respondent submit to two years of monitoring and file a report with Missouri Commission on Human Rights, within 60 days of the date of Missouri Commission On Human Rights order adopting this recommended decision, summarizing efforts made by Laclede Cab Company to ensure compliance with Missouri Human Rights Act.

Herman Elmore
Commissioner
Agree ✓
Disagree

Herman W. Elmore Date 4/18/11

James Buford
Commissioner
Agree ✓
Disagree

James H. Buford Date 4/21/11

Jaye A. Jackson
Presiding Commissioner
Agree ✓
Disagree

Jaye A. Jackson Date 4/26/11

# Before the
# Commission on Human Rights
# State of Missouri

| | | |
|---|---|---|
| STATE OF MISSOURI, ex rel. ANATOLY SIR, | ) | |
| Petitioner, | ) | |
| vs. | ) | No. 07-0020 HRC |
| GATEWAY TAXI MANAGEMENT, d/b/a LACLEDE CAB COMPANY | ) | |
| Respondent. | ) | |

**AMENDED RECOMMENDED DECISION ON REMAND**

The Hearing Examiner recommends that the Missouri Commission on Human Rights ("the MCHR") grant Petitioner's complaint pursuant to § 213.075.12.[1] Because Respondent Gateway Taxi Management Company, d/b/a Laclede Cab Company ("Laclede Cab") was an employer as defined by the Missouri Human Rights Act, ("MHRA"), Anatoly Sir was protected by the MHRA. Petitioner proved that there was an adverse employment action based upon Sir's disability and that Sir was qualified for the position for which he applied.

**Procedure**

On May 21, 2007, the MCHR transferred the case to the Administrative Hearing Commission ("AHC") to act as its hearing examiner. On June 11, 2008, the AHC held a hearing in St. Louis at Laclede Cab's request. Assistant Attorney General Vanessa Howard Brown

[1]Statutory references, unless otherwise noted, are to RSMo 2000.

represented Petitioner. Mark J. Rubinelli represented Laclede Cab. The matter became ready for our decision on October 21, 2008, the date the last brief was filed. The recommended decision was issued on December 22, 2008. The report of the hearing officer was generally adopted by the MCHR, which issued its "decision and order" on February 2, 2009. In that decision and order, the MCHR dismissed the complaint and closed the file after concluding that (1) the MHRA did not apply because Laclede Cab was not an "employer;" (2) Petitioner failed to prove that there was an adverse employment action based on disability; and (3) Petitioner failed to prove that Sir was qualified for the position of cab driver.

On March 9, 2009, Petitioner filed a petition for review of that decision with the Circuit Court of St. Louis City. The matter was taken under submission on December 18, 2009. The Circuit Court issued its order and judgment on July 6, 2010. That order and judgment (a) reversed the Commission's findings that that Laclede Cab was not an employer and that no illegal discrimination occurred; and (b) remanded the case to the Commission for reconsideration in light of the circuit court's opinion and judgment, in accordance with § 536.140.5.[2] Hearing Examiner Nimrod T. Chapel, Jr., was assigned the case and, having read and reviewed the evidence and case materials, issues the following recommended decision pursuant to the July 6, 2010, order and judgment of the circuit court.

## Findings of Fact[3]

### A. Laclede Cab Company

1. Laclede Cab is a domestic corporation registered with the Missouri Secretary of State.

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[2]RSMo Supp. 2010.

[3]Upon reconsideration of the case in light of the Circuit Court's opinion and judgment, we find that certain of the findings of fact made by the AHC in its earlier recommended decision are either conclusions of law incorrectly labeled as findings of fact (i.e., that Laclede Cab's drivers were independent contractors) or inapposite to this recommended decision.

2. Laclede Cab provides transportation for hire for passengers and goods.

3. Laclede Cab operates between 120-140 taxicabs.[4] Laclede Cab is regulated by the Metropolitan Taxi Commission, which sets various requirements for the operation of taxicab companies.

4. Laclede Cab owns the cabs that its drivers operated.[5]

5. Laclede Cab's vehicles are labeled with "Laclede Cab" on their exteriors.

6. Laclede Cab mandated two days of training for its new drivers.[6]

7. Laclede Cab used its radio network to send drivers to pick up customers, and determined which driver to send based on driver location and in which direction the driver was headed.[7]

8. Driving a Laclede Cab taxi is a full-time job.

9. Operating taxicabs was the regular business of Laclede Cab during the time of the events in question.

10. Laclede Cab had its drivers sign an "independent contractor contract" at the time of the events in question.

11. There was no term to the contract of employment between Laclede Cab and its drivers at the time of the events in question.

12. Drivers kept the money they made from cab fares and paid a nominal daily "lease" for the use of the cab.

B. Anatoly Sir

13. Sir's occupation is as a professional driver.

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[4]Tr. at 95.
[5]Deposition of Jerry Standley, May 13, 2008, at 14.
[6]Tr. at 104.
[7]Tr. at 98-99.

14. Sir drove taxis in St. Louis from 1993 until he had a stroke in 1998.

15. Sir had a stroke in August 1998, and had surgery on his brain.

16. At the time of his stroke, Sir was a taxi driver for Riverfront Taxi.[8] Sir really liked driving.[9]

17. As a result of his stroke, Sir's left side is very weak. He has only 50- 60% use of his left leg, and he walks with a limp. His left arm is also limp, and he has only been able to regain 50% use of that arm. Sir can stand for a two-hour period, but it is difficult for him.

18. Sometime after his stroke, Sir recommenced working as a cab driver, working for various companies during the period 1998-2004.

19. In order to perform that work, Sir had to obtain a license from the Metropolitan Taxicab Commission, which he did.[10] Sir also had to pass a physical examination to obtain the license.[11]

C. Laclede Cab Application

20. On or about October 12, 2004, Sir went to the Laclede Cab location to apply for a taxi driver position. He was given an employment application to complete and told to come back 2-3 days later and was told, "Mr. Standley will be waiting."[12]

21. Several days later, Sir returned to Laclede Cab's offices and encountered Standley in Laclede Cab's lobby.

22. Standley asked Sir, "What happened with your hand? Did you have a stroke?" and Sir said that he had had one.

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[8]Tr. at 29.
[9]Tr. at 68.
[10]Tr. at 48.
[11]Tr. at 49.
[12]"Standley" refers to Jerry T. Standley, who was President of Laclede Cab at the time of the events in question.

23. Standley told Sir, "I don't think our insurance would cover you[.]"

24. Standley did not read Sir's application or ask Sir whether Sir had any limitations in driving, could pass a physical exam, or about Sir's prior experience as a taxi driver.

D. Sir's Damages

25. Sir felt "bad" and suffered from depression, pressure in his chest, insomnia, and stress after Laclede Cab refused to hire him because he felt that the rejection based on his disability spoke to his ability as a driver.

26. When Standley refused to hire Sir, he felt a "psychological shock" that was antithetical to democratic principles of freedom and reminded him of communism and dictatorships that he left to come to America. Sir felt that the situation was crazy.

27. Sir felt Standley talked to him like Sir was a "slave," "garbage," and "homeless."

**Conclusions of Law**

The MCHR has jurisdiction to hear and determine this complaint.[13]

Missouri's Constitutional and statutory framework

Missouri law holds that the right of an individual to work is one of the most important and protected rights possessed by an individual. Article I, § 2 of the Missouri Constitution's Bill of Rights provides:

> **Promotion of general welfare--natural rights of persons--equality under the law--purpose of government.**
>
> That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design.

[13]Section 213.075.5.

The function of the MCHR, in conjunction with the executive branch, is to encourage fair treatment of, to foster mutual understanding and respect among, and to discourage discrimination against, any racial, ethnic, religious or other group protected by Chapter 213 RSMo, members of these groups, or persons with disabilities.[14] The MHRA protects important societal interests by prohibiting unlawful employment practices on the basis of race, color, religion, national origin, sex, ancestry, age, or disability.[15]

Discrimination on grounds of disability by employers is prohibited.

Section 213.055.1 states in relevant part:

> It shall be an unlawful employment practice:
>
> (1) For an employer, because of the...disability of any individual:
>
> (a) To fail to refuse to hire...any individual...because of such individual's . . .disability[.]

We must ascertain whether Laclede Cab was an employer, whether Sir was disabled, and whether the decision to refuse to hire Sir was because of that disability.

Laclede Cab was an "employer" and its drivers are not independent contractors.

Section 213.010(7) defines "employer:"

> "**Employer**" includes the state, or any political or civil subdivision thereof, or any person employing six or more persons within the state, and any person directly acting in the interest of an employer, but does not include corporations and associations owned and operated by religious or sectarian groups[.]

Laclede Cab claims that it is not an "employer" because its drivers were independent contractors, so the statutory definition is not helpful with regard to that issue. While "independent contractor" seems not to have a Missouri statutory definition, it does have a judicial one:

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[14]Section 213.020.2.

[15]***State ex rel. Dean v. Cunningham***, 182 S.W.3d 561, 565 (Mo. banc 2006).

> An independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer, except as to the result of his work.[16]

In ***Sloan v. Bankers Life & Cas. Co.***,[17] a discrimination case under the MHRA, the Court set out and applied the Missouri common-law rule distinguishing employees and independent contractors, which it stated as follows:

> Employees and independent contractors are distinguished primarily on the basis of the amount of control the alleged employer has over them. This is determined by considering such factors as: (1) whether the work is part of the employer's regular business; (2) whether the employment requires special skills; (3) whether the person is able to hire assistants; (4) whether the person's work is done with or without supervision; (5) whether the person must furnish his or her own supplies, equipment and materials; (6) whether a contract for a specific piece of work at a fixed price exists; (7) how long the person is employed; (8) how the person is compensated; and (9) the extent to which the person may control the details of his or her work.[18]

(Citations omitted.) Applying these two rules, we conclude that Laclede Cab's drivers were employees, not independent contractors. When we apply the ***Vaseleou*** definition of "independent contractor," we note that the company owned the cars, the company trained the drivers in how to perform, the company's dispatcher sent drivers to get fares based on where the drivers were and what direction they were headed, and driving a Laclede Cab taxi was a full-time job.

When we apply the common-law factors from ***Sloan***, we note from the evidence presented that driving a taxi was the regular business of Laclede Cab, the work was basically unskilled labor and definitely not a profession, there was no term to the contract of employment, and while the work was not done under direct supervision through the day, the drivers were

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[16] ***Vaseleou v. St. Louis Realty & Sec. Co.,*** 130 S.W.2d 538, 539 (Mo. 1939).
[17] 1 S.W.3d 555, 561-63 (Mo. App., W.D. 1999).
[18] *Id.* at 562; *see also* ***Maltz v. Jackoway-Katz Cap Co.***, 82 S.W.2d 909, 916 (Mo. 1934).

directed by the dispatcher to pick up fares. We also note that the driver did not supply anything except to pay a nominal daily "lease" for use of the cab. In favor of finding that the drivers were independent contractors, we note that the method of payment was that the driver kept what he made and was not paid by Laclede Cab.

Our conclusion finds support in other tests employed to determine employee-independent contractor status, notably the 20-factor IRS test[19] and the statutory distinction between employees and independent contractors for unemployment compensation purposes.[20] The common element in all these tests and the factors employed therein is the employer's control of the worker's work.

An element not considered under these tests or factors is the label attached by the parties to the relationship. Missouri courts have consistently held that neither calling an employee an independent contractor, as Laclede Cab did consistently throughout the litigation, nor having the drivers sign an "independent contractor contract," as Laclede Cab had its drivers sign, creates an independent contractor status.[21]

Finally, § 213.010(7) requires an employer to employ six or more people in order for the MHRA to apply. While Laclede Cab denied that it employed more than 25 people, and no direct testimony was adduced regarding how many employees Laclede Cab had in October 2004, Standley testified that the company operated 120-140 taxicabs. Since we concluded that the drivers of those cabs were employees, and since common sense dictates that more than six

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[19]Rev. Rul. 87-41.

[20]Section 288.034.5 RSMo Supp. 2010.

[21]*See, e.g.,* ***National Heritage Enterprises, Inc. v. Division of Employment Sec.***, 164 S.W.3d 160, 165 (Mo. App., W.D. 2005) ("[An employer] cannot change an employee into an independent contractor just by a name change or a label."); ***SkillPath Seminars v. Summers***, 168 S.W.3d 465, 470 (Mo. App., W.D. 2005) ("[A]lthough the contract between the parties labeled [claimant] as an "independent" contractor, such self-given labels were not determinative.")

drivers were needed to drive 120 or more cabs, we conclude that Laclede Cab employed six or more people at the time of the events in question.

A finding of employment discrimination under § 213.055 does not depend on a ***McDonnell Douglas*** burden-shifting analysis.

Both our prior recommended decision in this case, and the circuit court's opinion reversing that decision, applied the long-recognized burden-shifting analysis first articulated in ***McDonnell Douglas Corp. v. Green***.[22] As a result of our reconsideration of this case, however, we conclude that § 213.055 does not require such an analysis. As the Supreme Court stated, "Missouri employment discrimination law in a post-MAI[23] 31.24 environment should more closely reflect the plain language of the MHRA and the standards set forth in MAI 31.24 and rely less on analysis developed through federal caselaw."[24] Thus, both ***Daugherty*** and later cases[25] apply the plain language of the statute, instead of the ***McDonnell Douglas*** burden-shifting analysis, in determining whether discrimination occurred.

Sir had a physical impairment that substantially limited his employment.

Petitioner contends that § 213.055 protects Sir because he has a disability. Section 213.010(4) defines disability:

> **"Disability"**, a physical or mental impairment which substantially limits one or more of a person's major life activities, being regarded as having such an impairment, or a record of having such an impairment, which with or without reasonable accommodation does not interfere with performing the job, utilizing the place of public accommodation, or occupying the dwelling in question.

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[22]411 U.S. 792 (1973).

[23]Missouri Approved Instructions, as promulgated by the Supreme Court of Missouri; *see* Rule 70.01.

[24]***Daugherty v. City of Maryland Heights***, 231 S.W.3d 814, 819 (Mo. banc 2007).

[25]*E.g.*, ***Hill v. Ford Motor Co.***, 277 S.W.3d 659, 664-65 (Mo. banc 2009); ***Korando v. Mallinckrodt, Inc.***, 239 S.W.3d 647, 649 (Mo. App., E.D. 2007).

"Major life activity" is defined as follows:

> those life activities which affect employability such as communication, ambulation, self-care, socialization, education, vocational training, employment and transportation[.[26]]

Both this Commission's prior recommended decision and the Circuit Court's order reversing that decision found that Sir had a physical impairment, Laclede Cab does not seriously argue the point, and we agree with the previous decision and order. Sir had a stroke in 1998 and had surgery on his brain. As a result of the stroke, his left side was very weak. He has only 50-60% use of his left leg, and he walks with a limp. His left arm is also limp, and he has only been able to regain 50% use of that arm. Sir can stand for a two-hour period, but it is difficult for him. Sir's experience in trying to obtain employment after his stroke leads us inescapably to conclude that his physical impairment substantially limits the major life activity of employment.

Sir's disability did not interfere with his performing the job of a taxi driver.

The other essential element of a finding of disability under § 213.010(4) is that the physical or mental impairment in question "not interfere with performing the job." While Standley's decision that Sir's impairment would interfere with his job performance was based on their two-minute interaction, Sir actually drove a taxicab for various companies after suffering his stroke during the period 1998-2004. Further, in order to work as a cab driver, he had to pass a medical examination to get his taxicab driver's license from the Metropolitan Taxicab Commission.

Standley expressed concern that Sir would not be able to lift 70-pound loads, but Sir testified that he worked out regularly at the YMCA and could lift 120 pounds. Standley also stated that he did not believe that Sir could operate the taxi with his right hand while talking on

[26]Regulation 8 CSR 60-3.060(1)(C).

Laclede Cab's two-way radio system. That may be so, but accommodating such a problem is the very essence of the "reasonable accommodation" language of § 213.010(4). Because Laclede Cab raised this reasonable accommodation issue as an affirmative defense, it had the burden of proof.[27] It presented no such proof, however, other than Standley's speculation.

On balance, therefore, we conclude that Sir made a sufficient showing that he could perform the job of a taxi driver.

Sir's disability was a contributing factor
in Laclede Cab's refusal to hire him.

This Commission's prior recommended decision stated: "For a prima facie case of disability discrimination, the complainant must show . . . that the plaintiff's disability was a factor in the decision not to hire him or her." Such a finding is consistent with the ***McDonnell Douglas*** burden-shifting analysis,[28] but the Supreme Court's fresh reading of the MHRA has changed this requirement as well. ***Daugherty*** teaches that the person's disability need only be a *contributing* factor in the employer's refusal to hire that person for liability to attach under § 213.055.[29] The "contributing factor" language derives from the MHRA's definition of discrimination as "*any* unfair treatment based on . . . disability."[30]

Sir meets this lower standard easily. Standley testified that he cut the interaction with Sir short once Sir told him that he had had a stroke because, as he told Sir, "I don't think our insurance would cover you, you know." Standley did not read Sir's application or ask Sir whether he had any limitations in driving, could pass a physical exam, or about Sir's prior

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[27] ***Warren v. Paragon Tech. Group, Inc.***, 950 S.W.2d 844, 846 (Mo. banc 1997).

[28] *See* ***City of Clayton v. Missouri Comm'n on Human Rights***, 821 S.W.2d 521, 527-28 (Mo.App., E.D. 1991).

[29] ***Daugherty***, 231 S.W.3d at 820-21.

[30] Section 213.010(5); *see also* ***Daugherty***, 213 S.W.3d at 819, where the Court emphasized "any."

experience as a taxi driver. We conclude that Sir's disability was a contributing factor in Laclede Cab's decision not to hire him.

Damages

At the hearing, Petitioner's counsel suggested a value for damages related to Sir. Neither Sir nor Petitioner is limited by that request, as statements of counsel are not evidence.[31] The damage award is left to the Commission, and the Hearing Examiner relies on the following analysis in making his recommendation.

Section 213.075.11 provides in part:

> The panel shall state its findings of fact and conclusions of law, and if, upon all the evidence at the hearing, the panel finds:
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> (1) That a respondent has engaged in an unlawful discriminatory practice as defined in this chapter, the commission shall issue and cause to be served on the respondent an order requiring the respondent to cease and desist from the unlawful discriminatory practice. The order shall require the respondent to take such affirmative action, as in the panel's judgment will implement the purposes of this chapter, including, but not limited to, payment of back pay; hiring; reinstatement or upgrading; . . . [and] payment of actual damages[.]

Cease and Desist Order

In this case, Sir was never afforded employment or the opportunity to complete the process afforded other employees. Therefore, reinstatement or upgrading would not be an appropriate remedy, and a cease and desist order would have no practical effect as to Sir. However, the Hearing Examiner recommends that MCHR issue a cease and desist order so that future employees do not suffer from discriminatory practices.

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[31] ***State v. Dowell***, 25 S.W.3d 594, 609 (Mo. App., W.D. 2000).

Prejudgment Interest

An award of prejudgment interest is also appropriate in cases under the MHRA.[32] The purpose of anti-discrimination laws is to provide "make whole relief," and prejudgment interest is included in this concept.[33] Section 408.040.3[34] awards prejudgment interest equal to the applicable federal funds rate, plus three percent. The federal funds rate, as of December 21, 2010, is 0.25 percent.[35] We allow interest at the rate of 3.25%.[36]

Failure to Hire

Laclede Cab failed to hire Sir on the basis of his disability. Sir dropped his claim for back pay. A very similar case, ***Laclede Cab Co. v. Missouri Commission on Human Rights***, 748 S.W.2d 390 (Mo. App., E.D. 1988), held that back pay in a failure to hire case is not legally justified. The court stated that "[b]y affirmatively requiring the job applicant to complete the application process and giving him an opportunity he was previously denied, the complainant has, in essence, been made 'whole' again."[37] Accordingly, the Hearing Examiner recommends that Laclede Cab be ordered to allow Sir to complete the application process if Sir desires.

Actual Damages for Humiliation and Emotional Distress

Actual damages in a Missouri civil rights case may also include amounts for humiliation and emotional distress.[38] MCHR may award damages for emotional distress even without a medical diagnosis.[39] It is clear that the discriminatory conduct caused great emotional distress to Sir. This discrimination motivated by disability made Sir feel like a "slave," a "servant," or a

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[32] *Id.*
[33] 25 S.W.3d at 609.
[34] RSMo Supp. 2010.
[35] Federal Reserve Bank of New York, "Federal Funds Rate," www.ny.frb.org/markets/omo/dmm/fedfundsdata.cfm.
[36] Section 408.040.
[37] ***Laclede Cab Co.***, 748 S.W.2d at 400.
[38] ***Conway v. Missouri Comm'n on Human Rights***, 7 S.W.3d 571, 575 (Mo. App., E.D. 1999).
[39] *Id.*

"homeless person." Sir's feelings in this regard are the essence of a humiliating experience and are ample evidence of deep emotional distress.

An award of damages for humiliation and emotional distress is well justified in this case. The behavior of the Laclede Cab president was extreme, including the abrupt dismissal of an individual based on Laclede's president's perception of Sir's physical condition. The president's perception was colored by his wife's experience as a stroke victim, based only on a few minutes' observation of Sir's physical state, and without consideration of Sir's qualifications.

Sir was subjected to outright discrimination based on his disability resulting from a stroke and he was asked about it by Laclede's then president just moments before Sir was asked to leave. The nature of the discriminatory conduct shows that damages for emotional distress are well justified. The conduct caused Sir lasting emotional pain. He had trouble physically, psychologically, and in his marriage.

A violation of the MHRA is akin to the tort of intentional infliction of emotional distress, for which medically documented damages need not be proven with mathematical precision.[40] This method of proof for MHRA cases means that an individual complaining of disability discrimination will have difficulty establishing a precise dollar figure for emotional distress. We address this issue by comparing the evidence of emotional distress suffered by Sir to that suffered by similarly situated persons. A comparable case to Sir's case is ***Equal Employment Opportunity Commission v. Wal-Mart, Inc.***, Docket file number 4:04-cv-00076-GAF (W.D. Mo.), where the employee's damages arose from an application of employment and failure to hire. The plaintiff in that case had cerebral palsy and was asked in the interview if he could work from a wheelchair and told he would be best suited as a greeter. That case settled for $300,000

[40]*See* ***State ex rel. Dean v. Cunningham***, 182 S.W.3d 561, 566 n.4 (Mo. banc 2006).

in mostly compensatory damages, primarily arising from emotional distress. We find that Sir's symptoms and the duration of the period in which he suffered them to be comparable. In this case, Sir applied for a cab driver position, but was rejected after Standley identified Sir's stroke and asked him to confirm the disability, and then Standley decided not to hire Sir and instructed Sir to leave.

Laclede Cab is neither as large nor as sophisticated as Wal-Mart and has had many fewer opportunities to harm the disabled. Given the harm suffered by Sir, the Hearing Examiner recommends that MCHR award Sir $50,000 in actual damages for humiliation and emotional distress.[41]

Actual Damages for Violation of Civil Rights

In ***Conway***,[42] the court awarded actual damages for violation of civil rights in the amount of one third of the amount of the damages for humiliation and emotional distress. In this case, Laclede Cab's violation of Sir's civil rights on the basis of his disability was pervasive and extreme. Additionally, it was the second instance wherein Laclede Cab has been found in violation of the MHRA for discriminating against a disabled person by refusing to hire them. The Hearing Examiner recommends that MCHR award Sir $35,000 in actual damages for violation of civil rights in reliance on the previous violation and finally the clear nature of the violations. A higher award is justified on the facts of this case.

Punitive Damages

Punitive damages may be awarded in a case under the MHRA.[43] Although we find no cases addressing the pleading requirements for punitive damages in a case under the MHRA, as a general proposition the statutes, case law, and rules are clear that "[p]unitive damages must be

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[41] *See* ***Lynn v. TNT Logistics North America, Inc.***, 275 S.W.3d 304 (Mo. App., W.D. 2008).
[42] 7 S.W.3d 571 (Mo. App., E.D. 1999).
[43] ***Kientzy v. McDonnell Douglas Corp.***, 990 F.2d 1051, 1062 (8th Cir. 1993).

pleaded and proved."[44] However, because MCHR's petition does not plead for an award of punitive damages, we do not address whether they are warranted in this case.

Report

In this case, Laclede Cab's conduct is so egregious and a repeat violation of the MHRA that the Hearing Examiner recommends that MCHR order Laclede Cab, at its own cost, to submit to MHRC monitoring for two years, submit to training, and submit a report summarizing efforts made by Laclede Cab to ensure compliance with the MHRA, and that Laclede Cab file this report with MCHR within 60 days of its order adopting this recommended decision and complete training prescribed by the MCHR within 120 days.

**Summary**

The Hearing Examiner recommends that MCHR order Laclede Cab to:

1. pay Sir $50,000 in actual damages for humiliation and emotional distress,
2. pay Sir $35,000 in actual damages for violation of civil rights,
3. cease and desist from further discriminatory practices, and
4. submit to two years of monitoring and file a report with MCHR, within 60 days of the date of MCHR's order adopting this recommended decision, summarizing efforts made by Laclede Cab to ensure compliance with the MHRA.

SO RECOMMENDED on March 31, 2011.

NIMROD T. CHAPEL, JR.
Hearing Examiner

[44] ***Benson v. Jim Maddox Northwest Imports, Inc.***, 728 S.W.2d 668, 669 (Mo. App., E.D. 1987).