BEFORE THE INDIANA CIVIL RIGHTS COMMISSION
319 State Office Building
Indianapolis, Indiana

STATE OF INDIANA)
) SS
COUNTY OF MARION)

SHARON LEE LONG,
Complainant

vs. **DOCKET NO. 03508**

INDIANA EMPLOYMENT SECURITY DIVISION

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Complainant's amended complaint charged that she was discriminated against because of her sex when unemployment benefits were denied to her because she was pregnant. Probable cause was found on April 17, 1976

At this hearing, the Complainant was present and was represented by Counsel Mr. Pedro Martinez, Jr., Esq.; and the Respondent was represented by Counsel Mr. Peter C. Americanos, Esq., Deputy Attorney General. At the hearing, the hearing officer took the matter under advisement and entered a decision on March 18, 1976.

Both Respondent and Complainant filed objections to the hearing officer's recommended Findings of Fact, Conclusions of Law, and Recommended Order; Complainant, on March 29, 1976 and Respondent on April 1, 1976. A hearing on these objections was held pursuant to IC 4-22-1-12. Having duly considered the evidence and the arguments of able counsel for the parties, the Commission hereby enters the following decision.

FINDINGS OF FACT

1. On august 22, 1972, complainant commenced her employment at the Randolph Nursing Home in Winchester, Indiana. she became ill on September 4, 1972, whereupon she left work immediately and was hospitalized until September 21, 1972.
2. When Complainant was discharged from the hospital, she was suffering from an ovarian cyst and was also pregnant. Her doctor Dr. Cecil Deckard, advised the Complainant she could continue working but advised her against any lifting.
3. Because Complainant's job as a nurse aide required lifting of patients. She was unable to continue in this employment. The nursing home had no other positions available and refused to give the Complainant a leave of absence.
4. On October 2, 1972, the Complainant filed an application of unemployment compensation benefits with the Muncie office for the Respondent. Indiana Employment Security Division (ESD). The Respondent made a formal determination that the Complainant was ineligible for benefits based upon IC 22-4-14-3(d) which provides, in material part that *"unavailability for work of an individual shall be deemed to exist…with respect to any week…that such individual's employment is due to pregnancy*."
5. Complainant appealed this determination to the appeals referee, who upheld the determination due to the pregnancy of the Complainant.

6. Complainant sought review of this decision by the Employment Security Review Board, which also upheld the determination due to the pregnancy of the Complainant. Complainant did not seek judicial review for the decision of the Review Board.

7. It is undisputed that only females are subject to the condition of pregnancy.
8. As of the time of the Complainant's application for unemployment benefits there was no other physical disability which the Employment Security Act considered as a conclusive demonstration of unavailability for work, and thus, no other temporary disability rendered a person automatically ineligible for unemployment benefits.

CONCLUSIONS OF LAW

1. The singling out of the condition of pregnancy a condition to which only females are subject, as the only disability which conclusively renders a person unavailable for work and thus subject to disqualification of unemployment benefits is a system which excludes persons from equal opportunities because of their sex, and is thus a discriminatory practice as defined by IC 22-9-1-3(1).
2. ESD, when deciding whether or not a person is entitled to unemployment compensation benefits, is exercising a quasi-judicial function. Such decision can be appealed to the Court of Appeals.
3. The Indiana Civil Rights Law defines a public accommodation as "any establishment which caters or offers it services or facilities or goods to the general public". IC22-9-1-3(m).
4. When exercising its quasi-judicial function, ESD is not offering its services to the general public, but is only determining the rights and duties of the parties before it. Thus, it is not a public accommodation.
5. The Indiana Civil Rights Law does not define the term "employment" but defines the term "employer". IC 32-9-1-6(h) and "employee". IC 22-9-1-3(i). Thus, the Indiana Civil Rights Law must be deemed when speaking of employment to be concerned with the relationship of an employer and employee. Though the Indiana Employment Security Division is most definitely concerned with employment. It is not an employer as defined in Section 3(e).

6. Under IC 22-9-1-3(1) there are essentially two criteria for determining whether a certain practice is an unlawful discriminatory practice. First, the practice must be discriminatory or exclude certain persons from equal opportunities; and second, the practice must relate to the acquisition or sale of real estate, education, public accommodation, employment or the extending of credit. The practice of ESD does exclude persons from equal opportunities because of sex, but it is not unlawful because it is not related to any of the areas mentioned in Section 3(1).

7. IC 22-9-1-6(k) (3) stated that if the Commission has found that the person has not engaged in any unlawful practice or violation of IC 22-9-1, it shall state its Findings of Fact and shall issue or cause to be served upon the Complainant an order dismissing the complaint as to such person.

ORDER

1. The Commission hereby orders that this cause shall be dismissed.