

BRAD AVAKIAN
COMMISSIONER



CHRISTIE HAMMOND
DEPUTY COMMISSIONER

BUREAU OF LABOR AND INDUSTRIES

**BEFORE THE COMMISSIONER
OF THE BUREAU OF LABOR AND INDUSTRIES
OF THE STATE OF OREGON**

In the Matter of:

Case No. 21-15

**LEO THOMAS RYDER dba LEO'S
BBQ BAR & GRILL,**

FINDINGS OF FACT
ULTIMATE FINDINGS OF FACT
CONCLUSIONS OF LAW
OPINION
ORDER

Respondent.

SYNOPSIS

In a default case, the Agency proved that Respondent fired Complainant because she suffered an on-the-job injury and utilized the provisions of ORS chapter 656. The forum awarded Complainant \$22,092 in back pay and lost tips and \$120,000 in emotional, mental, and physical suffering damages. Respondent was also ordered to undergo training on the correct interpretation and application of the Oregon laws pertaining to injured workers.

The above-entitled case came on regularly for hearing before Alan McCullough, designated as Administrative Law Judge ("ALJ") by Brad Avakian, Commissioner of the Bureau of Labor and Industries for the State of Oregon. The hearing was held on April 28, 2015, at the offices of the Oregon Employment Department located at 119 N. Oakdale Ave., Medford, Oregon.

1 The Bureau of Labor and Industries (“BOLI” or “the Agency”) was represented by
2 administrative prosecutor Cristin Casey, an employee of the Agency. Complainant
3 Robin Sausedo was present throughout the hearing and was not represented by
4 counsel. Respondent was held in default prior to the hearing and did not appear at the
5 hearing.

6 The Agency called the following witnesses: Complainant, and Tiffany Ray,
7 senior investigator, BOLI Civil Rights Division (telephonic).

8 The forum received into evidence:

9 a) Administrative exhibits X-1 through X-13 (submitted or generated prior to
10 hearing);

11 b) Agency exhibits A-1 through A-19 (submitted prior to hearing).

12 Having fully considered the entire record in this matter, I, Brad Avakian,
13 Commissioner of the Bureau of Labor and Industries, hereby make the following
14 Findings of Fact (Procedural and on the Merits), Ultimate Findings of Fact,¹ Conclusions
15 of Law, Opinion, and Order.

16 **FINDINGS OF FACT – PROCEDURAL**

17 1) On April 14, 2014, Complainant filed a verified complaint with the
18 Agency’s Civil Rights Division alleging that she was the victim of the unlawful
19 employment practices of Respondent. After investigation, the Agency issued a Notice
20 of Substantial Evidence Determination on August 1, 2014, in which it found substantial
21 evidence that Respondent had engaged in unlawful employment practices in violation of
22 ORS 659A.040 by terminating Complainant for filing a workers’ compensation claim.
23 (Exs. A1, A16)

24
25 ¹ The Ultimate Findings of Fact required by ORS 183.470 are subsumed within the Findings of Fact –
The Merits.

1 2) On January 23, 2015, the Forum issued a Notice of Hearing to
2 Respondent, the Agency, and Complainant stating the time and place of the hearing as
3 April 28, 2015, beginning at 9:00 a.m., at the Oregon Employment Department, 119 N.
4 Oakdale Ave., Medford, Oregon. Together with the Notice of Hearing, the forum sent a
5 copy of the Agency's Formal Charges, a document entitled "Summary of Contested
6 Case Rights and Procedures" containing the information required by ORS 183.413, a
7 document entitled "Servicemembers Civil Relief Act (SCRA) Notification, a multi-
8 language notice explaining the significance of the Notice of Hearing, and a copy of the
9 forum's contested case hearings rules, OAR 839-050-000 to 839-050-0445. (Ex. X2)

10 3) The Agency's Formal Charges alleged that Respondent terminated
11 Complainant on November 10, 2013, because she suffered a compensable injury while
12 working for Respondent, thereby violating ORS 659A.040(1), OAR 839-006-0115, and
13 OAR 839-006-0117. The Formal Charges asked for lost wages estimated to be "at
14 least \$67,200," out-of-pocket expenses to be proven at hearing, and damages for
15 emotional, mental and physical suffering in the amount of "at least \$30,000." The
16 Formal Charges also asked that Respondent be trained, at his expense, "on the correct
17 interpretation and application of the Oregon laws pertaining to injured workers" and
18 enjoined from violating laws pertaining to injured workers. (Ex. X2)

19 4) On March 9, 2015, the Agency filed a motion for default based on
20 Respondent's failure to file a timely answer. (Ex. X5)

21 5) On March 23, 2015, the ALJ issued an interim order granting the Agency's
22 motion for default against Respondent. The order read as follows:

23 "On March 9, 2015, the Agency moved for an Order of Default based on
24 Respondent's failure to file an answer to the Formal Charges. The Agency
25 represented that the Formal Charges were issued on January 23, 2015, that
Respondent Leo Thomas Ryder was personally served with the Formal Charges
on February 12, 2015, and that Respondent had not filed an answer.

1 **“ANALYSIS**

2 “OAR 839-050-0130(4) requires that ‘a party must file an answer within 20
3 days after service of the [Formal Charges].’ OAR 839-050-0030(1) provides that
4 service of Formal Charges is complete ‘upon * * * (a) Receipt by the party or the
5 party’s representative[.]’ OAR 839-050-0330(1) provides that default may occur
6 when ‘[a] party fails to file a required response, including * * * an answer, within
7 the time specified in the [Formal Charges].’

8 “In this case, the forum takes official notice that the Formal Charges were
9 issued on January 23, 2015, and that the Notice of Hearing affixed as a cover
10 page to the Formal Charges conspicuously stated:

11 **‘Respondent’s Answer is due 20 days from service of this Notice. If
12 Respondent does not file an answer within 20 days, it may be held in
13 DEFAULT. If held in default, Respondent will not be allowed to participate
14 in the contested case hearing, examine witnesses, or introduce evidence.’
15 (emphasis in original).**

16 “In support of its motion, the Agency attached an Affidavit of Service
17 completed by Charles Simons of Nationwide Process Service, Inc., in which
18 Simons swore that he delivered the Formal Charges to **‘LEO THOMAS RYDER,**
19 personally and in person * * * on February 12, 2015[.]’ Accordingly, the forum
20 concludes that Respondent was served with the Formal Charges on February 12,
21 2015, making Respondent’s answer due on March 4, 2015. 39 days have
22 elapsed since February 12, 2015, and Respondent has not yet filed an answer.

23 “Based on Respondent’s failure to file an answer in the time set out in the
24 Notice of Hearing, this forum **GRANTS** the Agency’s motion and finds
25 Respondent in default. If Respondent is not granted relief from default,
Respondent will not be allowed to participate in any manner in the hearing,
including, but not limited to, presentation of witnesses or evidence on
Respondent’s behalf, examination of Agency witnesses, objection to evidence
presented by the Agency, making of motions or argument, and filing exceptions
to the Proposed Order. OAR 839-050-0330(4).

“Relief from default may be granted if Respondent shows good cause,
within ten days after the date of this order, for failing to timely file an answer.
Respondent’s request for relief must be in writing and accompanied by a written
statement, together with appropriate documentation, setting forth the facts
supporting the claim of good cause. OAR 839-050-0340.

“IT IS SO ORDERED”

(Ex. X6)

1 6) For the next three weeks, Complainant, who described herself as "tough,"
2 self-treated her injury by wearing a brace that she purchased and icing her hand. On
3 August 2, 2013, she finally visited a doctor, who diagnosed her injury as De Quervain's
4 Tenosynovitis, prescribed Naproxen, an anti-inflammatory drug, and had her fill out a
5 workers' compensation claim form. (Testimony of Complainant; Ex. A18)

6 7) When Complainant returned to work after her doctor's visit, Bray was
7 angry at Complainant because she went to the doctor. Before her injury, Complainant
8 had always been Respondent's most-favored worker. After August 2, Bray treated
9 Complainant less favorably. One day, Bray assigned Complainant the job of spraying
10 the entire outside of Respondent's business, including the roof, with "Home Defense."
11 This job required using a sprayer that was operated by manually squeezing a trigger
12 and caused Complainant considerable pain. (Testimony of Complainant)

13 7) Complainant continued to work all of her scheduled shifts. She also
14 worked additional shifts for absentee co-workers between July 14 and November 10,
15 2014. (Testimony of Complainant)

16 8) Sometime between August 2 and November 10, 2014, Bray complained to
17 Complainant that Respondent had been fined \$8,000 because Respondent did not have
18 workers' compensation insurance. (Testimony of Complainant)

19 9) On November 10, 2013, Complainant went to work and Bray handed her
20 some workers' compensation paperwork to sign that constituted Complainant's formal
21 filing of a workers' compensation claim. Complainant had the same paperwork at home
22 but had not yet signed it or mailed it in. Complainant signed the paperwork Bray gave
23 her. Then, with her eyes "blazing," Bray angrily stated "so you're really filing a workers'
24 comp claim! I would scratch that out if I were you." Complainant crossed out her
25 signature, believing she would otherwise be fired. Bray took the papers into her office,

1 then came out a few minutes later and told Complainant she was "letting her go." Bray
2 added that she didn't have to give Complainant a reason for firing her. Complainant
3 had a duplicate copy of the same workers' compensation paperwork at home and
4 subsequently signed it and mailed it in. (Testimony of Complainant)

5 10) Complainants' workers' compensation claim was accepted. (Testimony of
6 Complainant; Ex. A18)

7 11) Prior to November 10, 2013, Complainant had never received any
8 warnings or disciplinary action regarding her work performance with Respondent.
9 (Testimony of Complainant)

10 12) Complainant has actively sought employment since her termination. At
11 the time of hearing, she had not yet found comparable employment. Since her
12 termination, she has lived off her savings, child support payments, and the approximate
13 \$3,000 she has earned doing miscellaneous work, \$500 of which she earned between
14 November 10, 2013, and July 29, 2014. (Testimony of Complainant)

15 13) On July 29, 2014, Respondent registered his business as a limited liability
16 company and opened a family-oriented barbecue restaurant in another location in
17 Grants Pass. Around that same time, the business location where Complainant worked
18 was closed. Since then, the limited liability company has only employed members of
19 Respondent's family and has not employed a bartender. (Testimony of Complainant;
20 Ex. A5)

21 14) Had Complainant not been terminated, she would have worked for
22 Respondent until July 29, 2014. Between November 10 and December 31, 2013, she
23 would have earned \$2,016 in wages (7 weeks x 32 hours x \$9 per hour) and \$2,240 in
24 tips (7 weeks x 32 hours x \$10 per hour), for a total of \$4,256. Between January 1 and
25 July 29, 2014, she would have earned \$8,736 in wages (30 weeks x 32 hours x \$9.10

1 per hour²) and \$9,600 in tips (30 weeks x 32 hours x \$10 per hour), for a total of
2 \$18,336. In total, she would have earned \$22,592 in wages and tips, had she not been
3 terminated. (Testimony of Complainant; Calculation of ALJ)

4 15) Complainant has a daughter who was 11 years old when Complainant
5 was fired. Prior to Complainant's termination, Complainant and her daughter had been
6 friends with Respondent, Bray, and their two sons, Spencer and Scotty. The sons were
7 frequent visitors at Complainant's house and had stayed at Complainant's house the
8 weekend before Complainant was fired. Complainant's daughter was especially fond of
9 Respondent's older son and her first question after Complainant was fired was whether
10 Scotty could still come over. Complainant's daughter was "heartbroken" when she
11 realized she would no longer be able to spend time with Scotty after Complainant was
12 fired. Her daughter's reaction has caused Complainant considerable emotional pain.³

13 (Testimony of Complainant)

14 16) Complainant sincerely believed that she and Respondent were good
15 friends. She felt betrayed when she was fired, "like when you find out your wife's been
16 cheating with your best friend." Complainant has always taken pride in her work and
17 being fired was a "big blow" to her self-esteem and felt like a "knife in the back" to her.

18 (Testimony of Complainant)

19 17) Complainant is a single parent. Before she was fired, Complainant had
20 made plans to take her daughter to Disneyland to fulfill a promise she had made two
21 years earlier. Shortly before she was fired, Complainant told her daughter that they
22 would be going to Disneyland at the end of November. Complainant took her daughter

24 ² Oregon's minimum wage rose to \$9.10 per hour in 2014. Without more evidence, the forum calculates
25 Complainant's 2014 back pay at the minimum rate that Respondent would have been required by law to pay.

³ Complainant testified "[i]t breaks my heart as well as hers."

1 to Disneyland but worried about money constantly during their visit because she had no
2 job to earn money to replace the money she spent on the trip. (Testimony of
3 Complainant)

4 18) Complainant has been constantly employed her entire adult life and had
5 never before been fired. She currently lives in the small town of Rogue River, Oregon,
6 and had worked in Rogue River for 11 years at the time of hearing. She is known by a
7 large number of people in Rogue River. She was embarrassed when she was fired
8 because everyone in town knew about it. Previous to working for Respondent, she had
9 worked in jobs where she was responsible for hiring employees and had always
10 assumed that if an applicant had been fired from a job it meant they had "done
11 something wrong." Based on her this assumption, Complainant believed that
12 prospective employers and the people she knew would assume she had been fired
13 because she had "done something wrong." (Testimony of Complainant)

14 19) Before she was fired, Complainant had made a number of friends in
15 connection with her work as a bartender for Respondent. It was common for these
16 friends to visit her at home. These relationships felt "tight-knit, family close" to
17 Complainant. After she was fired and these friends no longer saw her at work, they
18 have mostly stopped visiting her at home. Complainant feels that she has been
19 forgotten. (Testimony of Complainant)

20 20) Complainant has a lot of self-pride, which has been "much diminished" by
21 the fact that she has to use her daughter's child support to pay for household expenses.
22 It has been hard for Complainant to have to tell her daughter that they cannot afford
23 things because of Complainant's lack of income. A month prior to the hearing,
24 Complainant had to ask her elderly parents and her oldest daughter to borrow \$450 to
25 pay for a school trip to Disneyland for her younger daughter. This was very difficult for

1 Complainant, as she considers herself a "very good mom" and has prided herself on
2 being a "good provider." Complainant had never borrowed money from her family
3 before. She continues to feel badly about having to use the money from child support
4 payments to pay ordinary household expenses. In general, the financial stress from the
5 loss of her job has caused and continues to cause her significant stress. (Testimony of
6 Complainant)

7 21) Ray and Complainant were both credible witnesses. In particular, the
8 forum takes note of Complainant's exceptional candor during her testimony. (Testimony
9 of Ray, Complainant)

10 **CONCLUSIONS OF LAW**

11 1) At all times material herein, Respondent Leo Thomas Ryder was an
12 "employer" as defined in ORS 659A.001(4) who employed six or more persons,
13 including Complainant.

14 2) The actions, statements, and motivations of Roberta Bray, Respondent's
15 fiancé and manager, are properly imputed to Respondent.

16 3) Complainant suffered a compensable injury and invoked the provisions of
17 ORS chapter 656 while employed by Respondent.

18 4) Respondent, acting through his manager Bray, terminated Complainant on
19 November 10, 2014, because she invoked the provisions of ORS chapter 656, thereby
20 violating ORS 659A.040(1), OAR 839-006-0115(1), and OAR 839-006-0117(1)(a).

21 5) The Commissioner of the Bureau of Labor and Industries has jurisdiction
22 of the persons and of the subject matter herein. ORS 659A.800 to ORS 659A.865.

23 6) Pursuant to ORS 659A.850, the Commissioner of the Bureau of Labor and
24 Industries has the authority under the facts and circumstances of this case to award
25 Complainant back pay and money damages for emotional, mental, and physical

1 suffering sustained and to protect the rights of Complainant and others similarly
2 situated. The sum of money awarded and the other actions required of Respondent in
3 the Order below are an appropriate exercise of that authority.

4 OPINION

5 INTRODUCTION

6 In its Formal Charges, the Agency alleges that Respondent violated ORS
7 659A.040(1), OAR 839-006-0115(1), and OAR 839-006-0117(1)(a) by firing
8 Complainant. ORS 659A.040(1) provides:

9 "It is an unlawful employment practice for an employer to discriminate against a
10 worker with respect to * * * tenure * * * because the worker has applied for
11 benefits or invoked or utilized the procedures provided for in ORS chapter 656 or
has given testimony under the provisions of those laws."

12 OAR 839-006-0115(1) provides:

13 "As provided in ORS 659A.040, an employer may not discriminate against
14 employees * * * with respect to * * * tenure or any term or condition of
15 employment because the worker has applied for benefits or invoked or utilized
the procedures provided for in ORS chapter 656 * * *."

16 OAR 839-006-0117(1) provides, in pertinent part:

17 "(1) Pursuant to ORS 659A.040, unlawful employment practices include:

18 "(a) * * * to bar or discharge from employment * * * because a person applies for
19 benefits under or in other ways invokes or uses Oregon Worker's Compensation
system as provided for in ORS Chapter 656."

20 When the Agency has issued Formal Charges and the respondent defaults, the
21 Agency needs only to establish a prima facie case to support the allegations of its
22 charging document in order to prevail. *In the Matter of Peggy's Cafe*, 7 BOLI 281, 286
23 (1989). The Agency's prima facie case consists of the following elements: (1)
24 Respondent is an Oregon employer at times material herein who employed six or more
25 persons, including Complainant; (2) Complainant applied for benefits or invoked or

1 utilized the workers' compensation procedures in ORS chapter 656; (3) Respondent
2 knew that Complainant applied for benefits or invoked or utilized the workers'
3 compensation procedures in ORS chapter 656; (4) Respondent terminated
4 Complainant; (5) There is a causal connection between Complainant's application for
5 benefits or invocation or utilization of the workers' compensation procedures in ORS
6 chapter 656 and Complainant's termination; and (6) Complainant was harmed by her
7 termination. See, e.g., *In the Matter of Tony Chan*, 15 BOLI 68, 76 (1996); OAR 839-
8 005-0010(1).

9 The undisputed facts supporting the Agency's prima facie case are unusually
10 straightforward and can be summarized in a paragraph. Respondent employed six or
11 more persons during Complainant's employment with Respondent as a bartender.
12 Complainant was Respondent's star employee until she suffered a compensable injury
13 while lifting a heavy tray at work on July 29, 2013. Complainant reported her injury to
14 Respondent and Bray, Respondent's fiancé and manager, and self-treated her injury for
15 three weeks before she visited a doctor. While at the doctor's office, Complainant
16 reported that she had been injured while working for Respondent. Not long afterward,
17 Bray complained to Complainant that Respondent had been fined \$8,000 because
18 Respondent did not have workers' compensation insurance. On November 10, 2013,
19 Bray asked Complainant to sign some workers' compensation paperwork. When
20 Complainant signed it, Bray confronted her in a hostile manner and advised her to
21 "scratch out" her signature. Complainant understood she would be fired if she did not
22 do this and crossed out her signature. A few minutes later, Bray emerged from her
23 office and told Complainant she was fired, giving no reason. Complainant suffered
24 considerable harm from the termination, as set forth in greater detail later in this
25 Opinion. These facts establish all the elements of the Agency's prima facie case except

1 for element (5), the causation element, which requires the Agency to show a connection
2 between these facts and Complainant's termination.

3 The forum concludes that the Agency established the causation element based
4 on the following: (1) Bray's hostility towards Complainant because of the \$8,000 fine
5 levied on Respondent for not having workers' compensation insurance after
6 Complainant reported her injury to her doctor; (2) Bray's threatening statements to
7 Complainant on November 10, 2013, in connection with Complainant's signature on her
8 workers' compensation paperwork; (3) Bray's termination of Complainant only minutes
9 after Complainant signed, then crossed out her signature on her workers' compensation
10 paperwork;⁴ and (4) the absence of any reliable evidence in the record of any legitimate,
11 nondiscriminatory reason Respondent may have had for terminating Complainant.⁵

12 In summary, the Agency established all the elements of its prima facie case by
13 reliable, credible, and undisputed evidence, leading the forum to conclude that
14 Respondent violated ORS 659A.040(1), OAR 839-006-0115(1), and OAR 839-006-
15 0117(1)(a) in terminating Complainant.

16 **DAMAGES**

17
18 The Agency seeks \$67,200 in lost wages and tips and "at least \$30,000" in
19 damages for mental, emotional, and physical suffering.

20
21
22 ⁴ See *In the Matter of Maltby Biocontrol, Inc.*, 33 BOLI 121, 156 (2014) (In a case alleging discharge
because of cooperation with a law enforcement agency conducting a criminal investigation, causal
connection was shown by respondent's discharge of complainant only an hour after respondent learned
that complainant had made statements to police).

23
24 ⁵ Ex. A15, offered and received at hearing, contains statements made by Bray to the Employment
Department in connection with Complainant's claim for unemployment benefits. Bray stated to an
Employment Department representative that Complainant was discharged for "bad mouthing"
25 Respondent to customers. These notes constitute double hearsay and the forum gives them no weight.

1 **Lost Wages and Tips**

2 The commissioner has the authority to fashion a remedy adequate to eliminate
3 the effects of unlawful employment practices. *In the Matter of From the Wilderness*, 30
4 BOLI 227, 290 (2009). The purpose of back pay awards in an employment
5 discrimination case is to compensate a complainant for the loss of wages and benefits
6 that he or she would have received but for the respondent's unlawful employment
7 practices. Awards are calculated to make a complainant whole for injuries suffered as a
8 result of the discrimination. *In the Matter of Trees, Inc.*, 28 BOLI 218, 251 (2007). A
9 complainant who seeks back pay is required to mitigate damages by using reasonable
10 diligence to find other suitable employment. *In the Matter of Rogue Valley Fire*
11 *Protection*, 26 BOLI 172, 184 (2005).

12 Through Complainant's credible testimony, the Agency established that she has
13 diligently sought other suitable employment after her discharge and had not yet found
14 such employment at the time of the hearing. Complainant's credible testimony also
15 established that, had she not been fired, she would have continued to work for
16 Respondent until on or about July 29, 2014.⁶ While employed by Respondent,
17 Complainant was paid \$9 per hour, worked an average of 32 hours per week, and
18 received an average of \$10 in tips per hour. At a minimum, her wage would have
19 increased to \$9.10 per hour as of January 1, 2014. Between November 10 and
20 December 31, 2013, she would have earned \$4,256 in wages and tips.⁷ Between
21 January 1 and July 29, 2014, she would have earned \$18,336 in wages and tips.⁸ In
22 total, she would have earned \$22,592 in wages and tips, had she not been terminated.

23 _____
24 ⁶ See Finding of Fact #13 – The Merits.
25 ⁷ See calculations in Finding of Fact #14 – The Merits.
⁸ *Id.*

1 Between November 10, 2013, and July 29, 2014, she earned \$500 in mitigation of her
2 wage loss. Subtracting \$500 from \$22,592, the forum concludes that \$22,092 is the
3 amount of wages and tips Complainant lost as a result of her termination.

4 **Emotional and Mental Suffering Damages**

5 In determining an award for emotional and mental suffering, the forum considers
6 the type of discriminatory conduct, and the duration, frequency, and severity of the
7 conduct. It also considers the type and duration of the mental distress and the
8 vulnerability of the complainant. The actual amount depends on the facts presented by
9 each complainant. A complainant's testimony, if believed, is sufficient to support a
10 claim for mental suffering damages. *In the Matter of Crystal Springs Landscapes, Inc.*,
11 32 BOLI 144, 170 (2012).

12 In this case, the evidence of Complainant's emotional and mental suffering was
13 her own compelling testimony. She testified at length and in considerable detail about
14 the emotional and mental suffering she experienced as a result of her termination.
15 Complainant is a person who has always prided herself in her work and being a loyal
16 employee and felt especially that way towards Respondent. She testified convincingly
17 that she did everything she could to mitigate the effects of her workplace injury on
18 Respondent, to the extent of even offering to pay part of her medical bill. She continued
19 to work through considerable physical pain, working extra shifts for employees who had
20 unexpected absences, and manually coating the entire outside of Respondent's
21 business with Home Defense. She had never been fired from a job before and has
22 always been self-sufficient. At one point while she was testifying about the effects of
23 her termination, she became so distraught that the ALJ had to temporarily adjourn the
24 hearing so that she could recover enough to continue her testimony. Based on her
25 testimony and demeanor, the forum has no doubt that, at the time of the hearing,

1 Complainant still experienced the types of suffering related to her termination that are
2 summarized below. The forum's findings about the type, extent, and duration of her
3 suffering are set out in detail in Findings of Fact #15-20 and need not be repeated in
4 their entirety here. Summarized, Complainant has suffered the following as a result of
5 her termination:

- 6 • An intense feeling of betrayal
- 7 • Severe financial stress caused by loss of income and anxiety from that stress
- 8 • Embarrassment
- 9 • Loss of many friends
- 10 • Emotional pain from her daughter's heartbreak
- 11 • Major loss of self-esteem
- 12 • Belief that all the people she knew in the community of Rogue River would think
13 she was fired because she "did something wrong"
- 14 • Feeling bad and loss of self-pride because she has had to use the money from
15 child support payments to pay ordinary household expenses, had to borrow
16 money from her elderly parents and her older daughter to send her younger
17 daughter on a school trip, and has had to tell her daughter they cannot afford
18 things because of Complainant's lack of income.

19 In conclusion, Respondent's discriminatory conduct has seriously affected
20 Complainant's emotional well-being and continues to do so. The Formal Charges seek
21 "at least \$30,000" in damages for emotional, mental, and physical suffering. The forum
22 concludes that \$30,000, the minimum amount sought by the Agency's pleading, is a
23 wholly inadequate sum to compensate Complainant for her continuing emotional and
24 mental suffering caused by her termination. Based on the above and the amount of
25 damages awarded in a comparable, recent BOLI Final Order, the forum finds that
\$120,000 is an appropriate sum. *See In the Matter of Cyber Center, Inc.*, 32 BOLI 11,
40-41 (2012) (complainant awarded \$120,000 for emotional and mental suffering
comparable to that experienced by Complainant in this case).

1 **Mandatory Training on the Correct Interpretation and Application of Oregon Laws**
2 **Pertaining to Injured Workers**

3 In its Formal Charges, the Agency asked that Respondent be trained, at his
4 expense, "on the correct interpretation and application of the Oregon laws pertaining to
5 injured workers, by the Bureau of Labor and Industries Technical Assistance for
6 Employers Unit or other trainer agreeable to the Agency."

7 BOLI's Commissioner is authorized to issue an appropriate cease and desist
8 order reasonably calculated to eliminate the effects of any unlawful practice found.
9 ORS 659A.850(4). Among other things, that may include requiring a respondent to:

10 "(a) Perform an act or series of acts designated in the order that are reasonably
11 calculated to:

12 "(A) Carry out the purposes of this chapter;

13 "(B) Eliminate the effects of the unlawful practice that the respondent is found to
14 have engaged in, including but not limited to paying an award of actual damages
15 suffered by the complainant and complying with injunctive or other equitable
16 relief; and

17 "(C) Protect the rights of the complainant and other persons similarly situated[.]"

18 This statute gives the Commissioner the authority to require Respondent to undergo
19 training of the type sought in the Formal Charges. The forum finds that this requirement
20 is appropriate in this case.

21 **ORDER**

22 A. NOW, THEREFORE, as authorized by ORS 659A.850(2) and ORS
23 659A.850(4), and to eliminate the effects of Respondent **Leo Thomas Ryder's**
24 violations of ORS 659A.040(1), OAR 839-006-0115(1), and OAR 839-006-0117(1)(a),
25 and as payment of the damages awarded, the Commissioner of the Bureau of Labor
and Industries hereby orders Respondent **Leo Thomas Ryder** to deliver to the
Administrative Prosecution Unit of the Bureau of Labor and Industries, 1045 State Office
Building, 800 NE Oregon Street, Portland, Oregon 97232-2180, a certified check

1 payable to the Bureau of Labor and Industries in trust for Complainant **Robin Sausedo**
2 in the amount of:

3
4 1) TWENTY-TWO THOUSAND AND NINETY-TWO DOLLARS (\$22,092),
5 less lawful deductions, representing wages lost by Robin Sausedo between November
6 10, 2013, and July 29, 2014, as a result of Respondent's unlawful employment practice
7 found herein; plus,

8 2) ONE HUNDRED AND TWENTY THOUSAND DOLLARS (\$120,000),
9 representing compensatory damages for emotional and mental suffering experienced by
10 Robin Sausedo as a result of Respondent's unlawful employment practice found herein;
11 plus,

12 3) Interest at the legal rate on the sum of ONE HUNDRED AND FORTY-
13 TWO THOUSAND AND NINETY-TWO DOLLARS (\$142,092) until paid.

14 B. NOW, THEREFORE, as authorized by ORS 659A.850(2) and ORS
15 659A.850(4), and to eliminate the effects of Respondent's unlawful employment practice
16 found herein, the Commissioner of the Bureau of Labor and Industries hereby orders
17 Respondent **Leo Thomas Ryder** to participate in training on the correct interpretation
18 and application of the Oregon laws pertaining to injured workers by the Bureau of Labor
19 and Industries Technical Assistance for Employers Unit or other trainer agreeable to the
20 Agency.

21 C. NOW, THEREFORE, as authorized by ORS 659A.850(2) and ORS
22 659A.850(4), and to eliminate the effects of Respondent's unlawful employment
23 practices found herein, the Commissioner of the Bureau of Labor and Industries hereby
24 orders Respondent **Leo Thomas Ryder** to cease and desist from violating the
25 provisions of ORS 659A.040 to ORS 659A.052 relating to unlawful employment
discrimination against injured workers.

1 DATED this 30 day of June, 2015.

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5 Brad Avakian, Commissioner
6 Bureau of Labor and Industries

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8 Issued ON: July 1, 2015

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