

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

JUDE ELLSWORTH,
Charging Party,

HRB CASE NO. 0210598

-v-

REMAND ORDER

DEPARTMENT OF CORRECTIONS,
Respondent

Charging Party, Jude Ellsworth (Ellsworth), filed a complaint with the Department of Labor and Industry (Department) alleging unlawful discrimination in governmental services on the basis of vaccination status. Following an informal investigation, the Department determined that a preponderance of the evidence did not support Ellsworth's allegations that Respondent, Department of Corrections, unlawfully discriminated against Ellsworth. The Department issued a Notice of Dismissal. Ellsworth filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on May 20, 2022. No oral argument was requested for this hearing.

The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. Section 49-2-511(2), MCA. After careful consideration, the Commission concludes the determination of the Department to dismiss the complaint in this case is an abuse of discretion. The Commission determined the investigator erred in applying the health care facility requirements under § 49-2-312(3)(b), MCA to the entire prison complex. Therefore, the Commission sustains the objection and the case is hereby remanded for hearing to the Office of Administrative Hearings pursuant to § 49-2-505, MCA.

Nothing in this order precludes the parties from engaging in the mediation or other settlement negotiations that would normally occur if the Department's investigative report had found cause. See § 49-2-504(2)(b), MCA.

IT IS HEREBY ORDERED, that Jude Ellsworth's objection is **sustained**. The Commission reopens and remands the case to the Office of Administrative Hearings for hearing.

DATED this 14th day of June 2022.



Peter M. Damrow, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 14th day of June 2022.

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Annah Howard

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