

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

ROBERT W BUTTERFIELD,)
CHARGING PARTY,)
vs.)
SIDNEY PUBLIC SCHOOLS,)
RESPONDENT.)

CASE NO. 9801008296

**ORDER REVERSING FINAL
AGENCY DECISION**

The above-captioned matter came before the Montana Human Rights Commission (Commission) on July 12, 1999. The matter was before the Commission for consideration of the respondent’s appeal from the final agency decision. Appearing before the Commission was Marvin Howe who represented the charging party and William Speare who represented the respondent. After consideration of the record and the arguments of the parties, the Commission finds that the matter was incorrectly decided by the hearing examiner and reverses that decision.

In reviewing the record, the Commission concludes that the hearing examiner’s determination that the charging party is disabled is not supported by substantial credible evidence and is in error as a matter of law. In the present matter the hearing officer concluded that the charging party was disabled because the respondent removed the charging party from his job based on the limitations placed by his doctors. The simple fact that a person is precluded from working a particular job because of a lifting restriction is not determinative of whether a person is disabled under the act. *Thompson v. Holy Family Hospital*, 121 F.3d 537, 540 (9th Cir. 1997). A person claiming to be disabled due to limitations in work must demonstrate that they are precluded from a broad class of jobs. *Id.* The record in the present matter does not establish that the charging party is precluded from performing a broader class of jobs. Absent such evidence, the hearing examiner’s conclusion that the charging party was disabled is in error.

The hearing examiner also concluded that the respondent regarded the charging party as suffering from a substantially limiting impairment. That conclusion was based on the fact that the respondent removed the charging party from his employment due to the doctor-imposed restrictions. A decision by an employer to terminate an employee “based upon the physical restrictions imposed by [his] doctor ... does not indicate that [the employer] regarded [him] as having a substantially limiting impairment.” *Id.*, 121 F. 3d at 541; See also *Sutton v. United Airlines*, No. 97-1943 ___ U.S. ___, (June 22, 1999). The hearing examiner’s conclusion that the charging party was regarded as being disabled was in error.

Absent sufficient evidence in the record to conclude that the charging party was disabled or regarded as being disabled, the respondent was not under an affirmative obligation to provide any reasonable accommodation. The Commission concludes that the respondent did not engage in illegal discrimination in its termination of the charging party from his employment.

A party may appeal from this order by filing a petition for judicial review with the district court no later than thirty (30) days from the service of this order pursuant to Section 2-4-701, et seq., MCA.

It is hereby ordered that the final agency decision is reversed.

Dated this __ day of September, 1999.

Gloria "Patt" Etchart, Chair, Montana Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the foregoing **ORDER REVERSING FINAL AGENCY DECISION** was served on the following persons by U. S. Mail, postage prepaid on the _____ day of September, 1999.

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