

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

SHERRI LYNN STAATS,)	
CHARGING PARTY,)	
)	CASE NO. 9801008292
vs.)	
)	ORDER AFFIRMING
WAL-MART INC (STORE #1872),)	DEPARTMENT DECISION
RESPONDENT.)	

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 by the Department of Labor and Industry. Appearing before the Commission was Frederick Sherwood, attorney for the charging party and Nancy Bennett, attorney for the respondent.

The respondent frames three issues for review: 1) Did the hearing examiner err in finding the charging party to have a disability governed by the Act; 2) did the hearing examiner err in awarding back pay; and 3) did the hearing examiner err in awarding front pay? After reviewing the record and considering the arguments made by the parties, the Commission affirms the hearing examiner's decision.

As regards the first issue, the hearing examiner found that the respondent perceived the charging party to be disabled. There is substantial credible evidence in the record to support that conclusion. Respondent's prehearing memorandum refers to the charging party as being disabled. (See Respondent's prehearing memorandum at 3.) The respondent's references to the charging party in its contentions in the prehearing order indicate its position that she was disabled. (Final Prehearing Order at 8.) The closing argument of respondent's counsel at the contested case hearing indicates that the respondent treated the charging party as a disabled individual in applying its own Americans With Disabilities Act policy. (Transcript at 171-172.) Moreover, the entire contested case hearing was conducted and the evidence was presented with a presupposition that the charging party was disabled. The record as a whole indicates that the charging party was regarded as having a disability. Respondent's contention that the attorney representing a party cannot concede the point is a novel but incorrect assertion. The Commission concludes that the hearing examiner properly concluded that the charging party was perceived by the respondent to be disabled in accordance with 49-2-101(19)(a)(iii), MCA.

The Commission finds that the respondent's second issue also is without merit. The respondent's perception of the charging party as a disabled individual and the refusal of the respondent to allow the charging party to continue to work caused her economic loss. It was the position of the charging party that she could continue to perform her duties and she actually demonstrated that she could. The decision to award back pay beginning on the date the charging

party was sent home is supported by substantial credible evidence in the record and was a correct application of section 49-2-506, MCA.

The Commission finds that the third issue presented by the respondent is without merit. An award of monetary relief for future wage loss is certainly within the statutory authority to “require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against”. § 49-2-506(1)(b), MCA. As with the award of back pay, future pay is properly awarded to rectify the harm caused by the discriminatory acts by the respondent.

For the foregoing reasons, the Commission affirms the final agency decision.

IT IS HEREBY ORDERED, that the final agency decision in the above-captioned matter is affirmed.

Dated this __ day of September, 1999.

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

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.

CERTIFICATE OF SERVICE

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

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