

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
OF THE STATE OF MONTANA

Steven F. Schreder,)	HRC Case No. 0001009024
Charging Party,)	<i>Order Granting Summary Judgment</i>
versus)	<i>and Dismissing Contested Case and</i>
Montana Dakota Utilities,)	<i>Notice of Review and Complaint</i>
Respondent.)	<i>Filing Rights</i>

MDU moved for summary judgment in two particulars. It moved for summary judgment on claims by Schreder both that MDU caused his alleged total disability and that MDU failed to accommodate him during the time of alleged total disability. MDU labeled these claims “claims after January 13, 1999.” MDU also moved for summary judgment because Schreder did not timely file his complaint of discrimination. MDU labeled this statute of limitations argument “lack of jurisdiction.” MDU also moved to exclude expert testimony for failure timely to disclose. The parties stipulated to extend department jurisdiction beyond twelve months in order that the department would have time to hear and decide the motions in advance of hearing. After the parties briefed the motions, the hearing examiner heard argument on the motions on September 29, 2000.

Ordinarily, the burden upon a party seeking a summary judgment is even heavier in a Human Rights Act contested case than in a comparable proceeding in district court. The department’s jurisdiction rests upon holding a hearing within twelve months of the complaint filing. Should the department improvidently grant a summary judgment, the aggrieved party has no realistic opportunity to obtain review and reversal of the ruling within twelve months. Because the department seeks to honor the legislative mandate that cases should be resolved by a hearing within twelve months of complaint filing, only when there are no possible factual disputes and the legal entitlement to summary ruling is crystal clear will the department grant a dispositive summary judgment motion and eliminate the hearing process. Here, where the parties have stipulated to extend the department’s jurisdiction beyond twelve months, the summary judgment standard applicable is exactly the standard applicable in district court under Rule 56, M.R.Civ.P. §49-2-505(3) MCA.

MDU failed to establish its entitlement, as a matter of law, to summary judgment on Schreder’s “claims after January 13, 1999.” The breadth of the Human Rights Act’s remedial statute allows the department “to require any reasonable measure . . . to rectify any harm, pecuniary or otherwise, to the person discriminated against.” §49-2-506(1)(b) MCA. Schreder can argue that he became totally disabled as a result of MDU’s discriminatory acts, and that he is entitled to recover damages for that total disability, including the loss of wages he would otherwise have earned had discriminatory action not caused total disability. If he proved that MDU did discriminate against him, and thereby caused him to become totally disabled, the

department would have the power to accord him relief for that harm. Likewise, if he proved that but for the impact of MDU's discriminatory acts, he would have been able to work with an accommodation, the department would likewise have the power to accord him relief for that harm. MDU is not entitled, as a matter of law, to summary judgment on those claims.

However, MDU is entitled to summary judgment that Schreder failed timely to file his complaint. The parties agree to the pertinent facts. Schreder has admitted under oath, both in his complaint and in his deposition, that MDU's last discriminatory act against him occurred on December 14, 1998. He filed his Human Rights Act complaint on September 13, 1999. In essence, the parties agree that Schreder filed too late unless a grievance he filed regarding disciplinary action MDU took against him after December 14, 1998 extends his complaint filing time pursuant to §49-2-501(4)(b) MCA. It does not.

Effective December 14, 1998, MDU reassigned Schreder from his auxiliaryman job to a yardman job. Schreder did not want or consent to this reassignment. In fact, Schreder alleged under oath that this reassignment was the last act of discrimination by MDU against him. Schreder could have filed a grievance about this reassignment, but he did not.

Soon after the reassignment, MDU disciplined Schreder, suspending him for two days because of an on the job accident that occurred while Schreder worked as yardman. Schreder did file a grievance over this disciplinary action. The grievance was still pending when Schreder filed his Human Rights complaint.

Pursuant to §49-2-501(4)(a) MCA, Schreder had to file his Human Rights complaint within 180 days after the alleged unlawful discriminatory practice occurred.¹ Pursuant to §49-2-501(4)(b) MCA, only if Schreder initiated efforts to resolve the dispute underlying his Human Rights complaint by filing a grievance with MDU could he extend the filing deadline to a maximum of 300 days. Pursuant to §49-2-501(4)(c) MCA, the department could not consider any complaint Schreder failed to file within the times specified by the statute.

The record is clear, and the parties agreed during oral argument of the motions, that had Schreder prevailed on his grievance, MDU would have withdrawn its disciplinary action. MDU's two-day suspension would have been void. However, MDU's transfer of Schreder, and any prior acts of alleged discrimination, were not the subject of the grievance. No matter what the outcome of the grievance, the matters of which Schreder complained to the department remained unchanged and unaddressed.

¹ Since Schreder's complaint alleges employment discrimination, §49-2-510 does not apply. Since Schreder knew of the last discriminatory act alleged (the job change) when MDU reassigned him, the provisions of the statute regarding discovery of discrimination do not apply.

Schreder's grievance was not an effort "to resolve the dispute underlying the complaint," as the express language of §49-2-501(4)(b) requires. Schreder could not have expected the discrimination of which he subsequently complained to the department to be the subject of a grievance that did not address the discrimination. Even though Schreder references the disciplinary action he grieved in his Human Rights Complaint, he did not classify that disciplinary action as a discriminatory act for purposes of his complaint to the department. He admitted in deposition testimony that he never grieved the allegedly discriminatory acts of MDU.

Schreder cannot obtain the benefit of the extended filing deadline. His failure to file within 180 days of the last discriminatory act bars department consideration of his complaint.

The department need not determine whether additional expert disclosure is necessary. The motion to exclude experts is moot.

THEREFORE, the hearing examiner now grants summary judgment and rules that the department lacks jurisdiction to consider the untimely complaint, in accord with §49-2-501(4)(c) MCA, and therefore dismisses Schreder's complaint pursuant to §49-2-509(3)(a) MCA.

DATED: October 2, 2000.

Terry Spear, Hearing Examiner
Hearings Bureau, Montana Department of Labor and Industry

Notice of Rights to Object and to File a Civil Complaint

Any party dissatisfied with the department's dismissal may seek Commission review (in informal proceedings under §2-4-604 MCA) by filing objections (an original and 6 copies) within 14 days of service of this order upon the parties, plus 3 days for service by mail. **FILE ANY SUCH OBJECTIONS BY OCTOBER 19, 2000**, with Terry Spear, Hearings Bureau, Department of Labor and Industry, P.O.Box 1728, Helena, Montana 59624. At the same time, file copies of your objections with the Human Rights Commission, c/o Kathy Helland, Human Rights Bureau, Department of Labor and Industry, P.O. Box 1728, Helena, Montana 59624-1728, and with all other parties of record. File all submissions subsequent to the objections with the Human Rights Commission, care of Kathy Helland at the indicated address. **DO NOT FILE SUBSEQUENT SUBMISSIONS** with the hearing examiner.

WITHIN 90 DAYS OF THIS ORDER, plus 3 days for service by mail (BY JANUARY 3, 2001) OR WITHIN 90 DAYS OF AN ORDER FROM THE COMMISSION AFFIRMING THIS DISMISSAL, THE CHARGING PARTY MAY COMMENCE A CIVIL ACTION IN DISTRICT COURT PURSUANT TO §49-2-509(5) MCA.

