

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

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GARY DELUCA,	)	
CHARGING PARTY,	)	
	)	CASE NO. 0001009185
vs.	)	
	)	<b>ORDER OVERRULING</b>
BENEFIS HEALTHCARE,	)	<b>OBJECTION AND DENYING</b>
RESPONDENT.	)	<b>RIGHT TO SUE LETTER</b>

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The above-captioned matter came before the Montana Human Rights Commission (Commission) on March 20, 2001. The matter was before the Commission for consideration of Respondent's "objection to further proceedings, or, in the alternative, request for right to sue letter arising from the issuance of a final investigative report on September 15, 2000." Oral argument was requested, but withdrawn by the parties. Counsel for Charging Party and Respondent did not appear.

The matter arose as a discrimination in employment on account of disability complaint filed on March 7, 2000. On September 15, 2000, the Investigator issued her final investigative report in which she found that Respondent had discriminated against Charging Party by failing to accommodate his disability. On September 29, 2000, Respondent filed its objection to further proceedings, or, in the alternative, request for right to sue letter. Respondent argued in his brief that the Investigator's cause finding cannot stand because the Bureau is mandated to complete its investigation and make a finding of merit or non-merit within 180 days after the complaint is filed. *Section 49-2-504(4), MCA*. On February 28, 2001, the parties filed their Stipulation for Dismissal with the Hearing Examiner, Terry Spear. On March 2, 2001, the Hearing Examiner issued an Order Vacating Contested Case Hearing Date and Prehearing Schedule, Setting Initial Status Conference and Holding Contested Case in Abeyance. In this Order the Hearing Examiner refused to dismiss the case, stating, "The parties' stipulation to extend department jurisdiction beyond 12 months loses validity if the department dismisses."

Section 49-2-504(4), MCA states that the Human Rights Bureau shall make a finding regarding the merit of a Human Rights Act complaint within 180 days after the complaint is filed. There is no statutory sanction for failing to complete an investigation within 180 days. Section 49-2-509(3), MCA establishes the Department's twelve month jurisdiction over complaints, and sets out certain conditions under which a complaint must be dismissed. A failure to complete an investigation is not one of the conditions warranting dismissal. For the foregoing reasons, the Commission unanimously overrules Respondent's objection and denies its request for a right to sue letter.

IT IS HEREBY ORDERED, that Respondent's objection to further proceedings is unanimously overruled and Respondent's request for right to sue letter is denied.

Dated this \_\_ day of March, 2001.

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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 OVERRULING OBJECTION AND DENYING RIGHT TO SUE LETTER** was served on the following persons by U. S. Mail, postage prepaid on the \_\_\_\_\_ day of March, 2001.

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Farah Davidson, Human Rights Bureau