

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

BRYAN JOHNSON,)	
Charging Party,)	
)	CASE NO. 0009009346
v.)	
)	ORDER AFFIRMING
KMART CORPORATION,)	DISMISSAL
Respondent.)	

The above-captioned matter came before the Montana Human Rights Commission (Commission) on July 16, 2001. The matter was before the Commission for consideration of the Charging Party's objection to the dismissal of the complaint. The parties submitted initial briefs in which Charging Party requested oral argument. Charging Party's reply brief was untimely filed and the Commission issued its Order Regarding Timeliness on May 1, 2001. In its Order the Commission stated that Charging Party's reply brief could not be considered because it was untimely filed. Thus, the matter was considered on the record, the initial briefs, and oral arguments of the parties. Appearing for Charging Party was Jeffrey Simkovic. Jesse Beaudette appeared for Respondent.

After reviewing the record, the Commission finds that the Human Rights Bureau properly dismissed the matter. The record shows that Charging Party stated a prima facie case of retaliation because he complained of sexual harassment and subsequently was subjected to phone monitoring and intimidating behavior by his superiors. However, the Investigator found that Respondent articulated a legitimate, non-discriminatory business reason for its actions. Respondent produced evidence that it did not take adverse action against Charging Party: Charging Party's phone calls were monitored because they were excessive and Charging Party was not fired or told that he was fired after an argument with a supervisor during which Charging Party's store keys were taken away from him. The Investigator found that Charging Party did not suffer adverse employment action on account of complaining of sexual harassment. The Investigator did not abuse her discretion when she concluded that a preponderance of the evidence did not support Charging Party's allegation that he was retaliated against. *24.9.1714(3), ARM*. Accordingly, the notice of dismissal and the notice of right to file civil action in district court must be affirmed.

IT IS HEREBY ORDERED, that the Charging Party's objection is unanimously overruled and the notice of dismissal is affirmed.

Dated this __ day of July, 2001.

Gary Hindoien, 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 AFFIRMING DISMISSAL** was served on the following persons by U. S. Mail, postage prepaid on the _____ day of July, 2001.

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