BEFORE THE MONTANA DEPARTMENT OF LABOR AND INDUSTRY

Brent Fry, Charging Party, versus **Granite Peaks Stoneworks**, Respondent.	)	Case No. 0021009768
	)	*Final Agency Decision*

I. Procedure and Preliminary Matters

Brent Fry filed a complaint with the Department of Labor and Industry on August 8, 2001. Fry alleged that Chris Colvin, doing business as Granite Peaks Stoneworks, discriminated against him on the basis of physical disability (missing hand) by denying him the position of stone worker on or about May 15, 2001. On February 4, 2002, the department gave notice Fry's complaint would proceed to a contested case hearing, and appointed Terry Spear as hearing examiner.

The contested case hearing proceeded on May 2 and 3, 2002, in Kalispell, Montana. Fry attended with his counsel, Anne G. Biby, Hash & O'Brien, PLLP. Chris Colvin attended with his counsel, Stephen C. Berg, Johnson, Berg, McEvoy & Bostock, PLLP. Andy Hurlbutt, Roger Felix, Duane Goodwin, Brent Fry, Sharon Colvin, Joshua Lewis, Roger Simpson, Jim Stout, testified. The hearing examiner admitted exhibits 1-3, 5-7, 101, 102A and 102B, 103-105 and 108-109. Fry filed the last post-hearing argument on June 10, 2002. A copy of the hearing examiner's file docket accompanies this decision.

II. Issues

The issue in this case is whether Chris Colvin decided not to hire Brent Fry as an apprentice stone worker, without an independent assessment of Fry's capacity to perform the work safely, because he perceived Fry as suffering from a disability. A full statement of the issues appears in the final prehearing order.

III. Findings of Fact

1. On February 19, 1993, Brent Fry lost his left hand above the wrist in an accidental explosion. He has not worn a prosthesis. After approximately 18 months for multiple surgeries and rehabilitation, Fry returned to regular employment. Within a year of the injury, he began to work part-time on a tree farm, and also worked at cutting firewood for family use at home. He learned

to use axes and then chainsaws with both arms and one hand. At first, he could only work part-time, for as long as he could endure the pain. As he persisted, he developed the muscles he was using and overcame the initial pain.

2. Before the accident, Fry had owned and operated an automobile painting and body repair shop. He returned to work in his shop, unsure if he could do it with both arms but only one hand. Over time, he tried the work and decided he could do it without problems.

3. Fry also returned to his recreational activities after his accident. He learned to use his left elbow and abdomen to hold his fishing pole to reel in fish. He learned how to water ski and how to operate his motorcycle with two arms and one hand. In the winter of 2001-02, Fry switched to pellets for the family's wood heat, because he was tired of "messing with" firewood, but he remains capable of cutting firewood.

4. Fry had successfully returned to manual labor, both in his own shop and working for others. He worked for Anderson Tree Farm during the winter of 1996 or 1997 (September-October to the end of December). He ran the shaker on the tractor, trimmed the Christmas trees with a chain saw, he did the baling and the loading with the conveyer belt, he stacked the baled trees in the storage building, he trimmed and fit two-by-fours to cage the trees and he also shoveled snow. He was one of three employees who stayed and worked the entire season for Anderson.

5. Fry's father also owns and operates a race car. Since returning to work after losing his left hand, Fry has driven in races, worked in the pits and generally assisted his father in the racing operation.

6. In the spring of 2001, Fry had been self employed doing paint and body work on automobiles for approximately five contiguous years. His net income for 1998 through 2001 was $5,994.00, $3,682.00, $10,500.00, and $8,593.00.

7. Fry can use the high speed electrical tools involved in body work on cars, including grinding and buffing tools, saws, belt-sanders and routers. All of these power tools involve high speed moving parts--belts on wheels, cutting edges vibrating or rotating, spinning or reciprocating metal surfaces with either cutting, abrading or polishing attachments. Fry is able to use the tools to perform both crude and refined finishing operations on vehicle bodies. Operating his own shop, with deadlines he sets for himself, he has used the tools proficiently and safely.

8. Fry prepared, on his own, a videotape of his use of various tools on a vehicle. The videotape was not done under the direction of a professional on such presentations. Fry hurried during the taping, to demonstrate his use of as many tools as possible in as short a time as possible. As a result, he did not observe all normal safety precautions (stepping though and standing straddling a fence that appeared to be of barbed wire strands while operating a chain saw, for example). As a further result, he "slipped" with (i.e., lost momentary control of) the grinder/buffer, so that the spinning wheel moved the tool within his grip while he was applying it to the vehicle's surface. The videotape adequately demonstrated Fry's familiarity and proficiency with his tools, but also demonstrated that there are limitations upon his ability to operate the tools. He is familiar with those limitations, and operates within them while working at jobs he knows.

9. Fry's auto body work involves some heavy lifting. An automobile transmission can weigh as much as 125 pounds. Fry can and has lifted transmissions by himself when necessary. He also handles many heavy or ungainly parts--hoods, doors, fenders and bumpers--by himself. He usually enlists the aid of the delivery person for windshield installations, which must be properly placed the first try because of the urethane sealant involved. Sandbags with sand for sandblasting come in 80 to 100 pound bags, which Fry has also handled by himself. He has some limitations--he uses a vice grip braced by his left arm to hold bolts, for example--but he knows those limitations, and works around them in his business.

10. Prior to April 2001, Fry occasionally assisted a friend, Duane Goodwin in Goodwin's tile business. Goodwin had one year's experience working for a competitor of Granite Peaks Stoneworks in the granite/marble business. Goodwin and Fry had discussed forming a partnership in the granite/marble business after Fry obtained some experience working with granite and marble.

11. In April of 2001, Fry's wife, MaryAnn, telephoned Granite Peaks Stoneworks, a sole proprietorship owned and operated by Chris Colvin in Martin City, Montana. Colvin's business cuts, fabricates, finishes and installs granite and marble surfaces in kitchens, bathrooms, and exterior and interior walls, floors, ceilings, counter and table tops and other locations. At Fry's direction, his wife inquired about employment openings for him. After the phone call, she told Fry that there was a job opening. At the time, Colvin was in the process of advertising in the Hungry Horse News for an apprentice marble finisher.

12. Fry called and spoke with Colvin about a job. Colvin encouraged him to come to the shop to apply for the position. Neither Fry nor his wife told Colvin or anyone on his behalf that Fry did not have a left hand.

13. On April 25, 2001, Fry came to the shop and spoke with Joshua Lewis, the shop foreman and Colvin's son. Fry filled out a pre-employment application and demonstrated his ability to operate a pneumatic water polisher, a power tool virtually identical with one which Fry used (without the water attachment) as a grinder and buffer in his auto body business. Fry did not complete every blank in the pre-employment questionnaire.

14. Colvin refers applicants he wants to hire to Workplace Resources, which obtains additional information before employment commences.[1] Lewis did not mention Workplace, Inc., nor say that Fry needed to take any other steps to apply. Lewis did not discuss job duties or safety issues with Fry. He did not check Fry's references. Lewis did not ask Fry whether any accommodation or special equipment would assist him in performing the duties required of a marble polisher.

15. Lewis later gave the pre-employment application to Colvin. Lewis told Colvin that Fry had one hand and had demonstrated his ability to hold tools and to manipulate the pneumatic polisher. Colvin could see that Lewis liked Fry, and that was important to him, since compatibility with Lewis improved an employee's prospects with the company.

16. Colvin did not believe that Fry could perform the tasks necessary for successful employment with the company with his missing left hand. Colvin had been in the granite and marble business for nearly 30 years, most recently as Granite Peaks Stoneworks. Colvin's normal crew consisted of himself plus two or three employees. Granite and marble work required significant strength, arm-hand steadiness, wrist-finger speed and manual dexterity, particularly for the positions of marble setter and marble finisher. These positions required the use of high speed power tools both in a shop setting and on-site. Many of the hand tools necessary in the trade had two handles attached to them with the intent that the handles be grasped by the hands of the user while in use. Safety was a significant concern, primarily in the movement of granite/marble and in the cutting of slabs to specification.

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[1] Workplace, Inc., a labor contracting service, hired individuals that Granite Peaks Stoneworks interviewed and approved for employment. Workplace completed the interview and screening process and then hired the employees to work at Granite Peaks Stoneworks.

17. Colvin did not believe Fry's experience in auto body work and painting would necessarily translate into successfully working with granite and marble. Colvin was also concerned about Fry's ability to lift heavy pieces of stone, to maneuver the stone and to grind it without permanently damaging the granite. A slip of a grinder could damage the surface of a piece, resulting in a loss for the business of the cost of the piece, the cost of the labor to the time of the damage, and possibly the loss of the contract due to the delay in replacing the piece. Colvin thought two hands were necessary for this type of work, for business reasons as well as safety. Colvin thought that Fry could probably do some of the work, but not all of it, and would be at serious risk of harm to himself or damage to the product as to those portions for which he was not suited due to the missing hand.

18. Since early 1999, Colvin had hired twelve individuals via Workplace to work in his business. Two of those twelve individuals still worked for him in April, 2001--his son (Lewis) and Marty Matthiesen. The average employment period for the remaining ten individuals was approximately three months. The position of apprentice marble finisher paid minimum wages ($5.15 per hour) and involved extremely hard and heavy work. The location of the business (Martin City) limited access to the jobs without travel. Colvin started a new apprentice doing heavy unskilled labor, even including work for the business unrelated to granite and marble work, such as installing fence posts on the property. After having time to evaluate the ability and willingness of the new hire, Colvin would assign the lowest level tasks (initial grinding and buffing of the surfaces), which were monotonous, onerous and lengthy. Only after several months of such work would Colvin begin to assign a new apprentice to more skilled and demanding tasks. Many of the ten former apprentices left before receiving any of those assignments.

19. Colvin did not believe Fry would or could properly perform the most skilled and demanding tasks, and doubted that Fry would remain long enough to reach the limits of his ability. Colvin deemed Fry unqualified for the work because of his missing left hand, and decided not to hire him. Colvin made his decision without meeting Fry, discussing his concerns with Fry or engaging in any investigation regarding Fry's abilities and limitations. Colvin did not hire Fry. When Fry called to inquire about the status of his application, Colvin told him that he would not be hired because of his missing hand. Instead, Colvin hired another individual who was not disabled.

20. On August 24, 2001, in response to Fry's Human Rights Complaint, Colvin offered to hire Fry “for the standard probationary 30 days” if Fry completed his application and if Workplace verified his references and accepted him. Fry did not respond. On March 15, 2002, Colvin reiterated the

offer to hire in this proceeding, requesting a 30-day stay of proceedings while Fry decided whether to accept the offer to hire. On March 27, 2002, Fry rejected the offer to hire as pretextual and prejudicial to other job opportunities.

21. Had Colvin hired Fry, Fry would have and could have performed the heavy unskilled labor initially confronting a new hire. Fry could also have performed the lowest level tasks (initial grinding and buffing of the surfaces). Colvin needed employees to perform those tasks, and the business would have received the benefit of Fry's labor. Colvin would have had an opportunity to observe Fry at work. Had he hired Fry and observed his proficiency, Colvin could have reasonably decided not to assign and train Fry to the more skilled and demanding tasks, out of legitimate concerns that Fry was at risk of injury and more likely than other employees to damage the product. Colvin's shop was not a place where Fry could work at his own pace in accord with his own schedule.

22. Fry's purpose in seeking the job was to learn the granite and marble trade. He would not have remained in Colvin's employ once he verified that Colvin would not advance him to the more skilled and demanding tasks. He would not have remained in Colvin's employ for more than one year after his hiring.

23. Fry's auto body shop earnings during the last two full years prior to 2002 averaged $9,546.50. At $5.15 an hour for 52 weeks at 40 hours a week, Fry could have earned $10,712.00 working for Colvin. His wage loss is therefore $1,165.50, or $22.41 per week. Interest at 10% simple per annum from May 1, 2001, through the date of judgment (with the lost wages accruing at $22.41 per week for the first 52 weeks), is $74.21.

24. Fry suffered emotional distress as a result of being rejected for the job without proper consideration. That distress was sufficient to entitle him to the sum of $3,500.00.

25. There is a risk that Colvin may again rely upon his instincts and knowledge of his business without undertaking an adequate independent assessment of the risks of hiring a person with a disability. Therefore, training is appropriately coupled with injunctive relief to address that risk.

IV. Opinion

Montana law prohibits employment discrimination based on physical disability. §49-2-303(1)(a) MCA. To establish a prima facie case of discrimination, Fry must show: (1) he had a disability (protected class

membership); (2) he was otherwise qualified for continued employment and his employment did not subject himself or others to undue risk of physical harm; and (3) Colvin denied him employment because of his disability. *Reeves v Dairy Queen,* 287 Mont. 196, 204, 953 P.2d 703, 708 (1998) (***citing*** *Hafner v. Conoco, Inc*., 268 Mont. 396, 401, 886 P.2d 947, 950 (1994); §§49-4-101, 49-2-303(1)(a) MCA. There is no genuine factual dispute regarding the third element–Colvin did deny Fry employment because of his missing left hand.[2] The facts in question involve the first two elements.

Under the Montana Act, Fry is a person with a disability if he has a physical impairment that substantially limits one or more of a person's major life activities, a record of such an impairment or a condition regarded as such an impairment. §49-2-101(19)(a) MCA. Work is a major life activity. *Martinell v. Montana Power Co.*, 268 Mont. 292, 304, 886 P.2d 421, 428 (1994). In this particular case, the key inquiry is whether Fry's inability safely to perform the range of tasks required to be a marble/granite finisher established his protected class status as a person with a disability. Both Colvin's perception of that disability (which was broader than the disability itself) and the actual disability rendered Fry a person with a disability.

Colvin argued that he only considered Fry unable to perform one very unique job, and therefore did not consider Fry substantially limited in the performance of a broad range of jobs, the requirement to establish that he considered Fry disabled. The question of whether Colvin considered Fry substantially limited in the performance of a broad range of jobs is a fact question. ***E.g.***, *Reeves*, ***op. cit.*** Because Colvin considered Fry unable safely to perform the heavy and exacting tasks of marble/granite finishing and cutting, Colvin necessarily considered Fry substantially limited in the performance of a broad range of jobs (and outside life activities, for that matter)–all jobs that required equally heavy and exacting tasks. Thus, under the particular facts of this case, proof of Colvin's presumption about Fry's inability to do this job established that Colvin considered Fry disabled–unable to perform any job requiring such levels of physical effort and precision.

In fact, Colvin was correct. There is a range of jobs, requiring the extremely heavy and exacting manual labor and power tool operation tasks of this job, to be performed at the direction of and on the schedule of the employer, from which Fry is disabled. Although Fry has learned to perform a

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[2] Colvin's testimony regarding other reasons that factored into his decision not to hire Fry was not credible. Colvin, after the fact, developed other reasons to support his decision, but he based his decision upon Fry's lack of a left hand.

remarkably wide range of physical tasks, he has limitations now that he never had before, and those limitations preclude him from certain kinds of skilled manual labor.

The manual tasks involved in this particular job do seem analogous to the narrow categories of work activity involved in the seminal case requiring greater evidentiary support for a claim of disability under the Americans with Disabilities Act. *Toyota Motor Mfg. Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002); ***see***, *Moysis v. DTG Datanet*, 278 F.3d 819, 825 (8th Cir. 2002). But the Court's reading of the federal act is not binding upon Montana in interpreting the Human Rights Act.

The 1993 Montana Legislature amended the Human Rights Act to conform the Act to the Americans with Disabilities Act. House Bill 496, Laws of Montana 1993, Chapter 407, ***see*** Preamble and Section 3. The legislature presumably adopted the existing federal interpretations and applications of the ADA provisions to which the amendments conformed the Human Rights Act. However, subsequent judicial interpretation of the ADA is not binding on Montana, and Montana will ignore it if public policy mandates a different result. *State ex rel. Kommers v. District Court*, 109 Mont. 287, 96 P.2d 271, 272 (1939) (rejecting judicial interpretation of a statute in the originating jurisdiction that occurred after Montana adopted the same law). One state has already ruled that the Supreme Court's recent narrowing of the ADA in another respect does not apply to that state's disability discrimination law. ***See*** *Dahill v. Police Department of Boston*, 434 Mass. 233, 748 N.E.2d 956 (2001), refusing to apply *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999), to interpret Massachusetts anti-discrimination law because (1) Massachusetts did not have the same legislative history as the ADA regarding coverage and numbers of potential claimants and (2) the Massachusetts law expressly authorized the responsible state agency to adopt interpretative regulations, unlike the ADA, and the adopted regulations were broader than *Sutton*.

Montana adopted regulations requiring an employer to undertake an independent assessment of actual safety risks before taking adverse employment action based upon disability. Rule 24.9.606(8), A.R.M. Montana further developed a rebuttable presumption of pretext when an employer interposes a safety defense to a disability discrimination claim without undertaking the independent assessment before taking adverse action. Rule 24.9.606(7) A.R.M. When the 1997 Legislature moved Human Rights enforcement into the Department of Labor and Industry, the department applied that Commission rule to cases filed after June 30, 1997. 24.9.107(1)(b) A.R.M. The Human Rights Act empowered the agency to adopt substantive and procedural rules. §49-2-204 MCA. Thus, Montana's

broader public policy interpretation of disability existed before the federal courts developed their narrower policy.

There is no valid reason to reject the existing regulation in favor of a new federal interpretation, even if the hearing examiner had that power. The existing regulation precludes Colvin's interpretation, and forecloses any further analysis. ***See***, *Laudert v. Richland County Sheriff's Off.*, 301 Mont. 114, 125, 7 P.3d 386, 394 (2000) (although the statute authorized discretionary monetary recovery against the respondent, a properly adopted regulation exercised the agency's discretion by denying any such recovery upon adequate proof of "mixed motive," and the department properly followed its own regulation rather than the discretionary language of the statute and denied the recovery upon proof of mixed motive). In this contested case proceeding, the regulation, which defines Colvin's conduct as illegal discrimination due to lack of an independent assessment, properly controls. Had Colvin undertaken an independent investigation, instead of making a decision without meeting Fry, let alone evaluating what Fry could safely do in the work environment, he would have verified the legitimacy of his concerns, at least as to the more demanding aspects of marble and granite work. He did not, and therefore his decision not to hire Fry was discriminatory.

Colvin also argued that because Fry could not safely do the full job of marble/granite finisher (nor that of marble/granite cutter), refusal to hire him for the apprentice position was justified. Colvin rejected Fry out of discriminatory animus, without adequate assessment of the risks. By so doing he cost Fry the wages Fry could have earned working up to the limitations he had. That there were limitations which Colvin intuited but failed to verify cannot be a defense that excuses actual discriminatory motive.

The department may order any reasonable measure to rectify any harm Fry suffered, including monetary damages. §49-2-506(1)(b) MCA. The purpose of an award of damages in an employment discrimination case is to ensure that the victim is made whole. *P. W. Berry v. Freese*, 239 Mont. 183, 779 P.2d 521, 523 (1989); *Dolan v. School District No. 10*, 195 Mont. 340, 636 P.2d 825, 830 (1981); ***cf.***, *Albermarle Paper Co. v. Moody*, 422 U.S. 405 (1975).

Fry must prove the wages he lost, but not to unrealistic precision. *Horn v. Duke Homes, Div. of Windsor Mobile Homes, Inc.*, 755 F.2d 599, 607 (7th Cir. 1985); *Goss v. Exxon Office Sys. Co.*, 747 F.2d 885, 889 (3rd Cir. 1984); *Rasimas v. Mich. Dept. of Mental Health*, 714 F.2d 614, 626 (6th Cir. 1983) (fact that back pay is difficult to calculate does not justify denying award).

In this case, the back wages Fry lost would have extended over the time he would have worked for Colvin before reaching the limits of his ability safely to perform. Fry was not seeking a career position as an apprentice marble/granite finisher–he wanted to learn the business to start his own enterprise. Once he found out that he would not go further and get training on the more skilled aspects of the trade, he would not have remained. The only period of actual wage loss arose during that initial year when Fry would have worked successfully within his limitations.

Colvin attempted to cut off his damage exposure for back pay by offering to hire Fry. However, to toll accrual of back wages, an offer must be an unconditional offer of employment comparable to the job previously held or withheld. *Ford Motor Co. v. E.E.O.C.*, 458 U.S. 219, 229-32 (1982). Colvin's 30-day probationary period was hedged with far too many conditions, including his own predisposition to find that Fry could not do the job.

Prejudgement interest on lost income is a proper part of the department's award of damages. *P. W. Berry, Inc.*, ***op. cit.***, 779 P.2d at 523; *Foss v. J.B. Junk*, HRC Case No. SE84-2345 (1987).

Emotional distress is compensable under the Montana Human Rights Act. *Vainio*, ***op. cit.*** Emotional distress recovery under the Act does not require the threshold proof that the emotional distress was serious and severe, required for such recovery in tort cases under *Sacco v. High Country Ind. Press*, 271 Mont. 209, 896 P.2d 411 (1995). *Vortex Fishing Systems, Inc. v. Foss*, 308 Mont. 8, 38 P.3d 836 (2001).

A claimant's testimony alone can establish entitlement to damages for compensable emotional harm, *Johnson v. Hale*, 942 F.2d 1192 (9th Cir. 1991). In some cases, the illegal discrimination itself establishes an entitlement to damages for emotional distress because it is self-evident that emotional distress does result from enduring that particular illegal discrimination. ***See, e.g.***, *Carter v. Duncan-Huggins, Ltd.*, 727 F.2d 1225 (D.C. Cir. 1984) (employment discrimination, 42 U.S.C. §1981); *Seaton v. Sky Realty Co.*, 491 F.2d 634 (7th Cir. 1974) (42 U.S.C. §1982 housing discrimination based on race); *Buckley Nursing Home, Inc. v. M.C.A.D.*, 20 Mass.App.Ct. 172 (1985) (finding of discrimination alone permits inference of emotional distress as normal adjunct of the employer's actions); *Fred Meyer v. Bur. of Labor & Industry*, 39 Or.App. 253, 261-262, rev. denied, 287 Ore. 129 (1979) (mental anguish is direct and natural result of illegal discrimination); *Gray v. Serruto Builders, Inc.*, 110 N.J.Super. 314 (1970) (indignity is compensable as the "natural, proximate, reasonable and foreseeable result" of unlawful discrimination).

The facts of the illegal discrimination itself frame a self-evident entitlement to recovery for emotional distress in this case. On the face of it, being denied a job based upon his missing hand, after the extensive work that Fry did to return to full time employment involving manual labor and use of power tools, did inflict emotional distress.

Two black college students suffered emotional distress entitling them to $3,500.00 each from being told that a private landlord would not rent to them because of their race. *Johnson v. Hale*, ***op. cit.*** Comparable emotional distress resulted from Colvin telling Fry that because of his missing hand he could not work for Granite Peaks Stoneworks. $3,500.00 is the reasonable value of the emotional distress he actually suffered as a result.

When the department finds that illegal discrimination occurred, the law requires that it impose affirmative relief, enjoining further discriminatory acts of the kind found and, as appropriate, prescribing conditions on the discriminator's future conduct relevant to the type of discriminatory practice found. §49-2-506(1)(a) MCA. That obligation impels the imposition of affirmative relief upon Colvin. The department must impose general and specific injunctive relief to prevent the recurrence of the discriminatory practice with other applicants who Colvin might regard as disabled, both by enjoining the practice and by requiring that Colvin attend training on disability law.

V. Conclusions of Law

1. The Department of Labor and Industry has jurisdiction over this case. §49-2-509(7) MCA.

2. Chris Colvin, doing business as Granite Peaks Stonework, illegally discriminated against Brent Fry by reason of disability (traumatic amputation of his left, non-dominant hand) when he refused to hire Fry as an apprentice marble finisher without an independent assessment of Fry's ability to perform the essential job duties of the position either with or without a reasonable accommodation.

3. As a proximate result of Colvin's illegal discrimination, Fry lost wages of $1,165.50. Interest at 10% simple per annum from May 1, 2001, through the date of judgment (with the lost wages accruing at $22.41 per week for the first 52 weeks), is $74.21. Fry also suffered emotional distress as a proximate result of Colvin's illegal discrimination. The amount reasonably necessary to rectify Fry's compensable emotional distress as a result of the illegal discrimination is the sum of $3,500.00. §49-2-506(1)(b) MCA.

4. The law mandates affirmative relief against Colvin. The department enjoins him from refusing to hire a job applicant on the basis of perceived or actual disability without an independent assessment of the applicant's ability to perform the essential job duties of the position either with or without a reasonable accommodation. The department further orders Colvin, within 60 days of this final order, to file with the Montana Human Rights Bureau (P.O. Box 1728, ATTN Ken Coman: Human Rights Bureau, Department of Labor and Industry, Helena MT 59624) a proposal to attend 4 hours of training in state and/or federal disability law and avoiding disability discrimination for employers for Bureau approval. §49-2-506(1) MCA.

VI. Order

1. Judgment is found in favor of charging party Brent Fry and against respondent Chris Colvin, doing business as Granite Peaks Stoneworks, on the charge that Colvin discriminated against Fry on the basis of physical disability (missing hand) by denying him the position of stone worker on or about May 15, 2001.

2. The department awards Fry $4,739.71 and orders Colvin to pay him that amount immediately. Interest accrues on this final order as a matter of law until satisfaction of this order.

3. The department enjoins and orders Colvin to comply with all of the provisions of Conclusion of Law No. 4.

Dated: July 19, 2002.

/s/ TERRY SPEAR
Terry Spear, Hearing Examiner
Montana Department of Labor and Industry