

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

ANGELA STRINGER ALTMAIER) Charging Party,)) vs.))) JANET HAFFNER, d/b/a Good Time) Charlie’s Restaurant, R & R Casino, and) Cody Bill’s Steak House, and) FRED HAFFNER) Respondents.)	Cause No. 0011009560 0011009561 0011009562 ORDER REVERSING FINAL AGENCY DECISION
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The above-captioned matter came before the Montana Human Rights Commission (Commission) on November 21, 2002. The Commission considered Respondents appeal to the Final Agency Decision issued July 19, 2002. Oral argument was requested. Jean E. Faure appeared on behalf of Respondent, Janet Haffner-Lynn. Sara Sexe, appeared on behalf of Respondent, Fred Haffner. Elizabeth Best appeared on behalf of Charging Party, Angela Stringer Altmaier.

After listening to argument presented on appeal and a review of the entire record, the Commission reverses the Final Agency Decision issued by the Department of Labor and Industry’s Hearings Bureau.

In briefs submitted, Respondent Janet Haffner-Lynn Respondent argued: (1) there was no “hostile work environment”; (2) the Hearing Officer improperly used prior invalid claims of sexual harassment; (3) the contested case hearing was so fundamentally flawed that Respondent Janet Haffner-Lynn was denied a fair hearing; and (4) the amounts awarded to Ms. Stringer Altmaier for her emotional distress were excessive. In oral argument before the Commission, Respondent Haffner-Lynn did not contest the findings of the officer, rather Respondent Haffner-Lynn contested the application of the law to these findings.

In a separate appeal to the Commission, Respondent Fred Haffner argued: (1) the Hearing Officer did not have credible and admissible evidence to determine that Fred Haffner’s actions were offensive; (2) the Hearing Officer erred in finding Fred Hafner liable as Charging Party’s “employer”; (3) the Hearing Officer erred in finding Fred Hafner jointly liable with Janet Haffner-Lynn; and (4) the Hearing Officer erred in requiring affirmative relief and monetary damages against Fred Haffner. At the proceeding before the Commission, Respondent Fred Haffner joined in arguments made by Respondent Janet Haffner-Lynn.

In considering this matter, the Human Rights Commission concludes that the Findings of Fact issued by the Hearing Officer do not support the corresponding Conclusions of Law and, therefore, the decision is not supported by the essential requirements of the law. 24.9.1717(2), ARM. The Commission finds that the decision fails to support a conclusion that Charging Party was subject to a "hostile work environment." The elements of this claim were laid out by the lower-level decision in the form of a three-prong test: (1) whether the complainant was subjected to verbal or physical conduct of a harassing nature; (2) whether the conduct was unwelcome, and (3) whether the conduct was sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. *Final Agency Decision, pg. 10 (citing Nichols v. Azteca Restaurant Ent., Inc. 256 F.3d 864, 873 (fn. 14) (9th Cir. 2001).*

Although the officer found that Respondent Fred Haffner subjected Charging Party Stringer to unwelcome verbal and physical conduct, the opinion finds this conduct to be "borderline." *Final Agency Decision, pg. 10.* The opinion then relies on Respondent Janet Haffner-Lynn's reaction to Charging Party's complaint to push this into a "hostile work environment." *Final Agency Decision, pg. 11.* The officer explicitly concludes that "[t]he circumstance that created the hostile environment was Haffner-Lynn's reaction to the complaint." *Id.* The Board concludes that retaliation or retaliatory conduct by Respondent Janet Lynn-Haffner is not the conduct referred to in the three-prong test for "hostile work environment." *Id.* Fundamental to a claim for sexual harassment is the showing that the alleged harassment took place "because of . . .sex." *Oncale v. Sundowner Offshore Servs. Inc., 523 U.S. 75, 79 (1998).* Here, the findings may support a conclusion that the conduct of Respondent Janet Haffner-Lynn was retaliatory, but the findings do not support a conclusion that Respondent Haffner-Lynn's conduct was driven by the sex of the Charging Party. And, therefore, this cannot be used to support the elements in a claim for "hostile work environment."

Accordingly, the Commission hereby affirms Conclusions of Law at ¶ 1 and ¶ 3. The Commission hereby rejects and overturns, Conclusions of Law at ¶ 2, ¶ 4, ¶ 5, ¶ 6 and ¶ 7.

Dated this _____ day of December 2002

Mr. Gary Hindoien, Chair
Montana Human Rights Commission

CERTIFICATE OF SERVICE

The undersign employee of the Human Rights Bureau certifies that a true copy of the forgoing Human Rights Commission ORDER was served on the following persons by U.S. mail, postage prepaid, on December ____, 2002.

JEAN FAURE
ATTORNEY AT LAW
PO BOX 1645
GREAT FALLS MONTANA 59403

ELIZABETH BEST
ATTORNEY AT LAW
PO BOX 2114
GREAT FALLS MONTANA 59403

SARA SEXE
ATTORNEY AT LAW
PO BOX 1525
GREAT FALLS MONTANA 59403