

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

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MITCHELL REINHARDT,  
Charging Party/Appellee,

HRB CASE NO.00710152381

-v-

FINAL AGENCY DECISION

BNSF RAILWAY COMPANY,  
Respondent/Appellant.

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Charging Party, Mitchell Reinhardt, filed a complaint with the Department of Labor & Industry (Department), which alleged unlawful discrimination in employment on the basis of disability and age. Following an informal investigation, the Department determined that reasonable cause supported Reinhardt's allegations. The case went before the Office of Administrative Hearings of the Department of Labor & Industry, which held a contested case hearing, pursuant to Mont. Code Ann. § 49-2-505. The matter has been before the Commission multiple times, and a complete procedural history will not be restated here. At this time, the hearing officer Decision issued on March 23, 2017, is on appeal. The hearing officer entered judgment in favor of Charging Party, and determined that an independent assessment had not been conducted, discrimination did occur, and that damages should be awarded.

Respondent filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on July 18, 2017. Peter Michael Meloy, attorney, appeared and presented oral argument on behalf of Reinhardt. Michelle T. Friend, attorney, appeared and presented oral argument on behalf of BNSF Railway Company.

**STANDARD OF REVIEW**

The Commission may reject or modify the conclusions of law and interpretations of administrative rules in the hearing officer's decision but may not reject or modify the findings of fact unless the Commission first reviews the complete record and states with particularity in the

order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. Mont. Code Ann. § 2-4-621(3). The commission reviews conclusions of law for correctness and to determine whether the hearing officer misapplied the law to the facts of the case. The commission reviews findings of fact to determine whether substantial evidence exists to support the particular finding. Admin. R. Mont. 24.9.123(4)(b); *Schmidt v. Cook*, 2005 MT 53, ¶ 31, 326 Mont. 202, 108 P.3d 511. “Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. It consists of more than a mere scintilla of evidence but may be less than a preponderance.” *State Pers. Div. v. DPHHS*, 2002 MT 46, ¶ 19, 308 Mont. 365, 43 P.3d 305.

## **DISCUSSION**

Before the Commission, Respondent argues that it had no obligation to engage in the interactive process and did engage in an independent assessment. Respondent further argues that Reinhardt was unable to perform the essential functions of the job, and therefore that it ought not be liable. Finally, it argues that the hearing officer’s mixed motive analysis was incorrect, and that damages should not be awarded.

Before the Commission, Charging Party argues that the primary issue is whether an independent assessment had been conducted; because it had not, he was the prevailing party. Reinhardt further argues that, because this is a perceived disability case, the employer was required to engage in the interactive process, rather than him having an obligation to request accommodation. Reinhardt further argues that the damage award was proper.

After careful consideration of the complete record and the argument presented by the parties, the Commission determines that the findings of fact by the hearing officer are supported by competent substantial evidence. The Commission further determines that the hearing officer’s conclusions of law are correct. As such, the hearing officer decision is affirmed in its entirety.

## ORDER

IT IS HEREBY ORDERED, that the hearing officer decision is AFFIRMED IN ITS ENTIRETY, and the Hearing Officer Decision and Notice of Issuance of Administrative Decision is adopted as a part of this Final Agency Decision.

Either party may petition the district court for judicial review of the Final Agency Decision. Mont. Code Ann. §§ 2-4-702 and 49-2-505. This review must be requested within 30 days of the date of this order. A party must promptly serve copies of a petition for judicial review upon the Human Rights Commission and all parties of record. Mont. Code Ann. § 2-4-702(2).

DATED this 17th day of August, 2017.



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Sheri Sprigg, Chair  
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 17th day of August, 2017.

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Annah Howard, Legal Secretary  
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