

**BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY**

<hr/> Linda Schofield,)	
Charging Party,)	<i>HRC Case No. 0001009329</i>
versus)	<i>Final Agency Decision</i>
Hydrometrics, Inc.,)	
<hr/> Respondents.)	

I. Procedure and Preliminary Matters

Linda Schofield filed a complaint with the Department of Labor and Industry on July 31, 2000. She alleged that Hydrometrics, Inc., a corporation, discriminated against her on the basis of age (d.o.b. 5/20/47) when it discharged her from her position as Senior Secretary (Secretary IV) on or about February 1, 2000. On February 23, 2001, the department gave notice that Schofield's complaint would proceed to a contested case hearing and appointed Terry Spear as hearing examiner. The parties stipulated to extend department jurisdiction beyond one year after complaint filings.

Contested case hearing proceeded on June 3, 2002, in Helena, Lewis and Clark County, Montana. Schofield attended with counsel, James Hunt. The corporation attended through its counsel, Bill Hanson. Linda Schofield, Garth Block, Sanna Yost, Lory Brager, Denece Street and Betty Brewer testified. Schofield filed her final post-hearing brief on November 25, 2002. The hearing examiner's exhibit and file dockets accompany this decision.

II. Issues

The issue in this case is whether the corporation discriminated against Schofield on the basis of her age when it discharged her from her position as Senior Secretary. A full statement of issues is in the final prehearing order.

III. Findings of Fact

1. The Charging Party, Linda Schofield, worked for the Respondent, Hydrometrics, Inc., a corporation, beginning in April 1987. The corporation terminated her employment on February 1, 2000.

2. When her employment with the corporation ended, Schofield was 52 years of age and the oldest secretary in the Helena office. For the last 6 years of her employment, Schofield had been a Grade 8 Senior Secretary, earning a salary of \$13.61 per hour when her employment ended. When the corporation

discharged her, Schofield was the most senior and highest paid grade 8 secretary in the Helena office. In February 2000, the corporation retained two other Grade 8 Senior Secretaries, Denece Street and Wendy Williams. Street and Williams were each 28 years old, had each worked for the corporation for substantially fewer years than Schofield, and were earning less money than she had earned. At the time of her discharge, Schofield was also a certified professional secretary. No other corporation employee held that certification.

3. The corporation was downsizing in 2000. It retained Street to help Alan Erickson close down the East Helena operation, after which the corporation also discharged Street. Williams had better performance reviews than Schofield.

4. Schofield, because of her greater experience and professional certification, reasonably considered herself capable of more than secretarial work, and the work she had performed for the corporation was higher level work. When the downsizing changed her duties to more typical secretarial duties, she was upset. As a result, she did not interact as successfully with other employees as Street and Williams did.

5. Schofield's resistance to the changes, and her growing outrage that she was not shown the deference she believed her experience and expertise should command, caused conflicts with other employees. That, in turn, affected the corporation's view of her value as an employee in a time of economic difficulty.

6. Although Schofield's job performance was satisfactory, the corporation did not require an employee of Schofield's qualifications and experience for the work that remained. In addition, Schofield received a higher salary than Williams and Street. She was also harder to work with, because she had difficulty accepting her diminished role. Her attitude had a significant effect on the corporation's decisions, both in Williams' better performance reviews and in the ultimate decisions about which secretaries to retain. The decisions were neither made nor influenced by Schofield's age.

IV. Opinion

Montana law prohibits discrimination against an employee in terms and conditions of employment because of age. §49-2-303(1)(a) MCA.

The Montana Human Rights Act prohibits discrimination in a substantially similar manner to that of Title VII of the Federal Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. Absent direct evidence of discrimination, Montana has adopted the three-tier proof analysis formulated by the United

States Supreme Court for Title VII claims of illegal discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); ***adopted and applied***, *Hearing Aid Institute v. Rasmussen*, 258 Mont. 367, 852 P.2d 628 (1993); *Crockett v. City of Billings*, 234 Mont. 87; 761 P.2d 813 (1988); *Johnson v. Bozeman School District*, 226 Mont. 134, 734 P.2d 209 (1987); *European Health Spa v. H.R.C.*, 212 Mont. 319, 687 P.2d 1029 (1984); *Martinez v. Yellowstone Co. Welf. Dept.*, 192 Mont. 42, 626 P.2d 242 (1981).

Although Schofield offered evidence of conflict with fellow employees, she did not establish that the conflict resulted in any respect from her age. Thus, the indirect evidence analysis of *McDonnell Douglas* is appropriate.

The first tier of *McDonnell Douglas* required Schofield to prove her *prima facie* case by establishing four elements:

- (i) that [s]he belongs to a [protected class] . . . ; (ii) that [s]he applied and was qualified for a job for which the employer was seeking applicants; (iii) that, despite qualifications, [s]he was rejected; and (iv) that, after rejection, the position remained open and the employer continued to seek applicants from persons of complainant's qualifications.

McDonnell Douglas, supra, 411 U.S. *at* 802.

The Court noted in *McDonnell Douglas* that this standard of proof is flexible. The four elements may not necessarily apply to every disparate treatment claim. This case involves allegations of a discriminatory layoff. Schofield needed to prove that she was older than the women who remained and replaced her, that she was as qualified to remain in the job as those women, and that despite her qualifications, the corporation did replace her by retaining the younger employees.¹

Schofield proved her *prima facie* case. She was older than the secretaries the corporation retained. She was qualified by training, experience and performance to remain in her job. Despite her qualifications, the company replaced her by retaining younger secretaries whose training, experience and qualifications, while sufficient for the job, were not superior to Schofield's.

Schofield's *prima facie* case under *McDonnell Douglas* raised an inference of discrimination at law. The burden then shifted to the corporation to

¹ *Cf.*, *Martinez, supra*, 626 P.2d at 246, *citing Crawford v. Western Electric Co., Inc.*, 614 F.2d 1300 (5th Cir. 1980) (fitting the first tier elements of *McDonnell Douglas* to the allegations and proof of the particular case).

“articulate some legitimate, nondiscriminatory reason for the employee's rejection.” *McDonnell Douglas*, 411 U.S. **at** 802. The company only had the burden to show, through competent evidence, that it had a legitimate nondiscriminatory reason. *Crockett, op. cit.*, 761 P.2d **at** 817. The company must satisfy this second tier of proof under *McDonnell Douglas* for two reasons:

[It] meet[s] the plaintiff's prima facie case by presenting a legitimate reason for the action and . . . frame[s] the factual issue with sufficient clarity so that the plaintiff will have a full and fair opportunity to demonstrate pretext.

Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 255-56, (1981). A defendant must clearly and specifically articulate a legitimate reason for the rejection of an applicant. *Johnson, op. cit.*, 734 P.2d **at** 212. Schofield's prima facie case shifted the burden to the corporation to produce a legitimate business reason for selecting her as the secretary to discharge in February 2000. *McDonnell Douglas, op. cit.* The corporation's legitimate business reasons for supplanting Schofield need not be well-advised reasons, but must be true reasons that were not motivated by discriminatory animus. *Donaldson v. Merrill Lynch & Co.*, 794 F.Supp. 498, 505 (S.D.N.Y. 1992).

The corporation showed it had legitimate business reasons for laying off Schofield. She commanded a higher wage than the retained secretaries, for performing job duties they all three could competently do. Not only was Schofield a more expensive choice for the corporation, her attitude had already created problems with other employees.

Because the corporation articulated legitimate business reasons for terminating Schofield's employment, she then had the burden to prove that the corporation's reasons were in fact a pretext for age discrimination. *McDonnell Douglas at* 802; *Martinez, op. cit.*, 626 P.2d **at** 246. To meet this third tier burden, Schofield could present either direct or indirect proof of the pretextual nature of the company's proffered reasons:

She may succeed in this either directly by persuading the court that a discriminatory reason more likely motivated the employer or indirectly by showing that the employer's proffered explanation is unworthy of credence.

Burdine op. cit. at 256. Schofield offered evidence that some of the employees with whom she worked may have harbored personal animosities toward her. She did not establish either that such personal feelings stemmed

from discriminatory animus due to her age or that the reasons proffered by the corporation were unworthy of credence.

Schofield had the burden to persuade the fact-finder that the company did illegally discriminate against her. *Crockett, op. cit.*, 761 P.2d at 818; *Johnson, op. cit.*, 734 P.2d at 213. She failed to carry her burden. Her greater qualifications and experience were not demonstrably useful to the corporation after the downsizing, so as to balance the extra costs of her higher salary. Schofield also failed to rebut the corporation's evidence that the conflict Schofield had with other employees resulted from her conduct (which, in turn, resulted from her unhappiness at her reduced role within the operation). Thus, Schofield failed to negate the corporation's evidence that for legitimate business reasons it reasonably found her a better candidate for discharge than the other remaining secretaries.

V. Conclusions of Law

1. The Department has jurisdiction over this case. §49-2-509(7) MCA.
2. Hydrometrics, Inc., did not illegally discriminate against Linda Schofield on the basis of her age when it discharged her from her position as Senior Secretary in February 2000.

VI. Order

1. The department grants judgment in favor of Hydrometrics, Inc.
2. The complaint of Linda Schofield that Hydrometrics, Inc., illegally discriminated against her on the basis of her age is dismissed.

Dated: January 8, 2003

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