

BEFORE THE HUMAN RIGHTS COMMISSION OF THE STATE OF MONTANA

RUSSELL DILLON,

Petitioner,

-v-

INTERSTATE COMPANIES, INC.,

Respondent

Case No.: 0041010618

**ORDER AFFIRMING FINAL
AGENCY DECISION**

On or about September 10, 2004, the Montana Department of Labor and Industry's Hearing Bureau issued a Final Agency Decision in the above-captioned matter. Charging Party, Russell Dillon (Dillon), submitted objections and requested oral argument. Jeffery Simkovic appeared on behalf of Dillon and Lee Henderson and Connie Camino appeared on behalf of Respondent, Interstate Companies, Inc. (Interstate). The Commission considered the matter on November 19, 2004.

At the hearing, Dillon argued there was error in that the hearings officer had improperly allocated the burden in his analysis. Using a shifting burden analysis, initially, it was Dillon's burden to show a *prima facie* case. This shifted the burden onto Interstate to set forth a legitimate non-discriminatory reason for its actions. After this, the burden again shifted to Dillon to establish that the reason proffered by Interstate was "pretext" for its discriminatory actions. At the hearing before the Commission, Dillon asserted that he had clearly established "pretext" if the hearings officer had properly weighed the evidence. Dillon argues that it was "more likely than not" that Interstate Companies, Inc., may have had a legitimate business reason for down-sizing, but it had used this as an excuse to terminate Dillon's employment based on age.

In response, Interstate argued that Dillon had not requested the preparation of a transcript for this appeal. Therefore, absent a transcript, Dillon must refrain from arguing testimony from the prior proceeding. Interstate further argued that that record substantially supported the findings of the hearings officer.

After careful and due consideration, the Commission concludes that the Final Agency Decision in this matter is supported by competent substantial evidence and complies with essential requirements of law. See Admin. R. Mont. 24.9.1717(2).

A person who has exhausted all administrative remedies available within an agency and who is aggrieved by a final decision in a contested case is entitled to file a petition for judicial review within 30 days after service of the final agency decision in the district where the petitioner resides, where petitioner's maintains its principal office, or where the agency maintains its principal office. See Mont. Code Ann. § 2-4-702.

IT IS HEREBY ORDERED, that Charging Party's objection is overruled. The Commission adopts the Final Agency Decision issued by the Hearings Bureau.

DATED this ____ day of November 2004.

Chair Gary Hindoien
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned 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 November ____ 2004.

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