

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

<hr/> <b>KATHY SPELDRICH,</b>	)	HRC Case No. 0031010367
	)	
Charging Party,	)	
	)	
vs.	)	<b>Final Agency Decision</b>
	)	
<b>EDWARD LEVIN JR. D. C.,</b>	)	
	)	
Respondent.	)	
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**I. INTRODUCTION**

Kathy Speldrich filed a complaint against Dr. Edward Levin, Jr., D.C., (Levin) alleging that Levin’s agent (his father) discriminated against Speldrich in employment by refusing to hire her to work as a laborer to help Levin move. Speldrich represented herself in this matter. Peter Maltese, attorney at law, represented Levin. At the pre-hearing conference in this matter, Levin’s counsel conceded that Levin’s father had violated the Montana Human Rights Act and that Levin was liable for his father’s actions. The parties agreed that the hearing would be limited to the question of Speldrich’s damages as a result of the illegal discrimination. In addition, the parties stipulated to hold the contested case hearing telephonically pursuant to Mont. Code. Ann. § 49-2-505 (5).

Hearing Examiner Gregory L. Hanchett convened a telephonic contested case hearing in this matter on November 18, 2003. Speldrich, Larry Dvorak, and Levin all testified under oath. Neither side presented any exhibits. Based upon the evidence adduced at the hearing and the arguments of the parties, the hearing examiner makes the following findings of fact, conclusions of law, and final order.

**II. FINDINGS OF FACT**

1. While searching for part-time work at the Sidney Job Service Center, Larry Dvorak came across a job request placed by Levin. The job request indicated that Levin needed assistance in packing and moving boxes and that Levin would pay \$8.00 per hour for workers that helped him in the move.

2. Dvorak contacted Levin by phone and indicated that he and three other people (one of which was Speldrich) would be responding to his office to assist the move. Dvorak specifically informed Levin that Speldrich would be in the group and coming along to work. Levin indicated that would be fine.

3. On November 22, 2002, Dvorak, Speldrich and two other men showed up at Levin's office to work. At the time, Levin was going back and forth between his office and the trailer onto which Levin's office items were being loaded.

4. Levin's father had come out from his home in North Carolina to help Levin move. Levin's father was directing the move. When Dvorak, Speldrich, and the other two men arrived, they reported to Levin's father.

5. In the presence of Dvorak and the two other men, Levin's father told Speldrich she could not work because she was a woman. Speldrich went outside and asked Dvorak to take her home. Dvorak immediately took Speldrich home. Speldrich was embarrassed to have been rejected in front of her companions and felt very upset.

6. Levin was not present at the time his father dismissed Speldrich, but soon afterward became aware that his father had refused to let Speldrich work. Levin did not immediately talk to his father about the inappropriateness of turning Speldrich away. Nevertheless, he was concerned about it. Sometime after Speldrich had left, Levin chastised his father for turning Speldrich away.

7. Dvorak and the other two male workers worked for 5½ hours that day and were each paid \$54.00 for their labor.

8. Levin was concerned about Speldrich and realized that his father should not have turned Speldrich away. Levin decided that he should pay Speldrich the amount she would have earned had she been allowed to stay. He immediately contacted Dvorak to track down Speldrich so that he could pay her. Dvorak provided Levin with Speldrich's address and phone number.

9. Levin went over to Speldrich's residence with a check in the amount of \$54.00 so that he could pay Levin. He knocked on the door for quite sometime, but to no avail. No one answered the door. Levin also attempted several times to contact Speldrich by phone. Speldrich would not answer the phone.

10. Speldrich was home at the time and knew that Levin was at the door. Speldrich wanted to have no contact with Levin, so she did not answer the door.

11. Levin left Sidney for his new home in Louisiana on November 25, 2002. Prior to leaving that day, he again contacted Dvorak and gave Dvorak the \$54.00 check he had made out to Speldrich. Dvorak agreed to deliver the check to Speldrich and did so.

12. Levin feels great remorse for his father's improper treatment of Speldrich. Levin is thoroughly cognizant that his father's treatment of Speldrich was inappropriate.

13. Speldrich has been in possession of the \$54.00 check since November 25, 2002. She has not, however, cashed that check.

### III. OPINION

Upon a finding of illegal discrimination, the Montana Human Rights Act mandates an order requiring any reasonable measure to rectify any resulting harm, pecuniary or otherwise, to the complainant. Mont. Code Ann. § 49-2-506(1)(b).

Speldrich has no damages resulting from lost wages due to the discriminatory act. Speldrich is not ordinarily employed outside of the home. The particular job involved here was of a limited duration: one day. Within three days after the discriminatory act in this case, Levin delivered a check to Speldrich for the amount of wages she lost as a result of Levin's father's discriminatory conduct. Speldrich has been in possession of that check since November 25, 2002.

Speldrich is entitled to damages for emotional distress inflicted upon her as a result of the unlawful discrimination. The Montana Supreme Court has ruled that compensatory damages for human rights claims may be awarded for humiliation and emotional distress established by testimony or inferred from the circumstances. *Vortex Fishing Systems v. Foss*, 2001 MT 312, ¶ 33, 308 Mont. 8, 38 P.2d 836, 841. The severity of the harm governs the amount of recovery, not the availability of recovery. *Id.* Speldrich suffered the indignity of being turned down for work solely because of her sex (female). The discriminatory act occurred in front of three acquaintances, causing her further embarrassment.

In *Vortex*, the Court affirmed an award of \$2,500.00 for emotional distress damages resulting from the charging party's loss of his job. Much of that emotional distress stemmed from financial problems due to loss of an existing income. Speldrich incurred no financial problems due to the illegal conduct nor did she lose any income as a result of the conduct.

Speldrich's emotional distress is somewhat like that of the plaintiffs in *Johnson v. Hale* (9th Cir.1991), 940 F.2d 1192; *cited in Vortex at* ¶33. In *Johnson*, the plaintiffs (african-americans) suffered emotional distress resulting from the refusal of a landlord to rent living quarters to them due to their race. The plaintiffs suffered no economic loss because they were able immediately to find other housing. The incident upon which they based their claim lasted only a fleeting time on a single day. The landlord's refusal to rent to them because of their race occurred with no one else

present to witness their humiliation. There was no evidence of any recourse to professional treatment or lasting impact upon their psyches as a result of the discriminatory act. Nevertheless, the court increased their awards from \$125.00 to \$3,500.00 each for the overt racial discrimination. In doing so, the court noted that there was evidence that each plaintiff was acutely upset by the incident and that it adversely affected his relationships with white people.

Speldrich's emotional distress was not as great as that demonstrated in *Johnson*, however. Although her three companions witnessed the incident, there is no evidence that she had prior personal experience with discrimination. Furthermore, there is no credible evidence that the discrimination adversely affected her relationships with other persons or other male or female employers.

On the other hand, Montana law expressly recognizes the right to be free from unlawful discrimination. Mont. Code Ann. § 49-1-101. Violation of that right is a *per se* invasion of a legally protected interest. The Montana Human Rights Act demonstrates that Montana does not expect a reasonable person to endure any harm, including emotional distress, which results from the violation of a fundamental human right. *Vainio v. Brookshire*, (1993), 258 Mt. 273, 852 P.2d 596.; *Campbell v. Choteau Bar and Steak House* (1993), HR No. 8901003828. Speldrich suffered emotional distress as a result of Levin's agent's conduct. Her testimony regarding that immediate emotional distress is sufficient to merit an award of \$1,000.00.

Finally, Mont. Code Ann. § 49-2-506(1)(a) provides that an order may prescribe "conditions on the accused's future conduct relevant to the type of discriminatory practice found." In this case, Levin obviously recognizes that illegal discrimination is wrongful. Levin has demonstrated genuine remorse. These two factors, coupled with the considerations that the conduct was perpetrated by an agent without Levin's express consent and that Levin took immediate steps to rectify the discrimination (by seeking to pay Speldrich immediately after the conduct and long before a complaint was filed), demonstrate that affirmative relief is unnecessary in this case.

#### IV. CONCLUSIONS OF LAW

1. The Department has jurisdiction over this case. Mont. Code Ann. § 49-2-509(7).
2. Pursuant to Mont. Code Ann. § 49-2-506(1)(b), Levin must pay Speldrich the sum of \$1,000.00 in damages for emotional distress caused by the illegal act.
3. Affirmative relief is unnecessary in this case as Levin will not engage in further acts of discrimination.

## V. ORDER

1. Judgment is found in favor of Speldrich and against Levin as Levin's agent illegally discriminated against Speldrich in employment based on sex (female).
2. Levin is hereby ordered to pay Speldrich \$1,000.00 as compensation for emotional distress.

Dated: March 2, 2004

/s/ GREGORY L. HANCHETT  
Gregory L. Hanchett, Hearing Examiner  
Department of Labor & Industry