

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

JANE BRESE,

Charging Party,

-v-

K-MART,

Respondent.

Case # 0059011237

ORDER

Jane Brese (Brese) filed a complaint of disability discrimination and retaliation against K-Mart with the Department of Labor and Industry. The Human Rights Bureau conducted an informal investigation and determined there was reasonable cause to believe discrimination occurred. Therefore, Brese's complaint moved forward in the administrative process to the Hearings Bureau. See § 49-2-505(1), MCA. The Hearings Bureau held a contested case hearing pursuant to § 49-2-505, MCA. Following the hearing, the Bureau issued a decision that determined K-Mart did not discriminate against Brese. The Hearings Bureau did not make a determination regarding the retaliation. Brese filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on May 15, 2007. Mary Ann Sutton appeared and argued on behalf of Brese. David McLean and Ryan Willmore appeared on behalf of K-Mart. David McLean argued on behalf of K-Mart.

In her appeal, Brese first asserted the hearing officer erred in determining that she failed to state a prima facie case of disability discrimination. Brese asserted numerous findings were clearly erroneous. Second, Brese asserted that her constitutional rights were violated by virtue of the posture of the case because she is not entitled to proceed on to district court even though the Human Rights Bureau determined she stated a prima facie case but the Hearings Bureau determined she did not.

Finally, Brese asserted the hearing officer erred in failing to make any findings or conclusions on her retaliation claim.

K-Mart argued the hearing officer's determinations were based on substantial evidence and contained no errors of law. K-Mart did not address Brese's assertions regarding the retaliation claim on appeal.

After careful and due consideration, the Commission affirms in part and reverses and remands in part. The Commission concludes the Hearings Bureau decision in this matter as to the disability discrimination is supported by competent substantial evidence and the conclusions of law are correct. However, the Commission concludes the decision does not comply with the essential requirements of the law in that the Hearings Bureau failed to address the retaliation claim that was included with the disability claim. The Hearings Bureau decision as to the discrimination claim based on disability is affirmed and the Commission hereby adopts and incorporates the decision for purposes of that claim. The decision is remanded to the Hearings Bureau for findings and conclusions on Brese's retaliation claim.

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

DATED this ____ day of June, 2007.

Chair Ryan Rusche
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 this _____ day of June, 2007.

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