

BEFORE THE MONTANA DEPARTMENT  
OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NO. 0079012124:

MICHELLE CURRIER, ) Case No. 1581-2007  
 )  
 Charging Party, )  
 )  
 vs. ) **DECISION**  
 )  
 OLD MONTANA IRON WORKS, )  
 )  
 Respondent. )

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**I. Procedure and Preliminary Matters**

Charging Party Michelle Currier brought this complaint alleging that her employer, Old Montana Iron Works, LLC., (OMI) discriminated against her on the basis of sex through the conduct of OMI's president, Joe Beasley, by creating a sexually hostile work environment. Currier also alleged that OMI retaliated against her by discharging her from employment.

Hearing Officer Gregory L. Hanchett convened a contested case hearing in this matter on May 21, 2008. Stephanie Breck, attorney at law, represented Currier. OMI did not obtain counsel and did not appear at the hearing. Currier, Jess Carillo, Heidi Robinson, Cynthia Zimmerman, Angela Pitts, and Kurt Fielzer appeared as witnesses and testified under oath. The Charging Party's Exhibit 1 was admitted into evidence.

The preponderant evidence in this matter demonstrates that the respondent created a sexually hostile environment and unlawfully retaliated against Currier. Currier is entitled to lost wages and emotional distress damages because of the Respondent's unlawful conduct. The basis for this decision is set out below.

## II. Issues

A complete statement of the issues in this case is set forth in the May 12, 2008 final prehearing statement issued in this case. Those issues are incorporated into this decision by this reference.

## III. Findings of Fact

1. On April 17, 2006, Joe Beasley, owner Old Montana Iron Works, LLC (OMI), hired Currier to work as his personal administrative assistant at OMI. OMI recruited Currier through a local staffing agency, LC Staffing.

2. On April 21, 2006, Beasley contacted Currier after work hours and asked her to have drinks with him. They met at the "Bulldog" in Kalispell and discussed work.

3. On April 24, 2006, Beasley called Ms. Currier to ask if she would meet him again for drinks at Del's Bar in Somers. This time Beasley did not limit his comments to work. He commented about "how pretty" Currier's eyes were and that Currier was going to be hard to work with because Beasley's wife was a jealous woman and that "we are going to have to be smart about this." Currier ignored the statements.

4. Later that evening, on April 24, 2006, Beasley invited Currier to his cabin on Angel Point on Flathead Lake near Lakeside so that he could listen to Currier's demo CD on his cabin's stereo system. During the visit to the cabin, Beasley made unwelcome sexual advances toward Currier, including kissing her, pinning her down on the bed and trying to remove her clothing. Currier refused his advances and was able to push Beasley off of her and leave. Beasley apologized and tried to talk to Currier but she was so upset and embarrassed that she left the cabin and drove away.

5. After Currier left the cabin, Beasley called her on her cell phone and spoke to her for over 20 minutes. Currier told Beasley she was worried she would lose her job, but he assured her that would not happen and that he was "not like that."

6. On April 25, 2006, Beasley began calling Currier on her cell phone during the day and after business hours, asking her very personal questions such as if she liked to give blow jobs, if she liked oral sex and what made her sexually aroused. Currier told Beasley that she was uncomfortable, disgusted and embarrassed by his questions and to stop harassing her. Despite her protestation, Beasley continued to call Currier on a regular basis on her cell phone and continued to make sexually suggestive comments. These repeated calls made Currier very uncomfortable and caused her anxiety.

7. After April 25, 2006, Currier complained to numerous people about Beasley's sexual advances and harassment. These people included her friend, Kurt Feilzer, OMI employee

Laurie Waldo, Jess Carrillo of Workplace Inc., Heidi Robinson of LC Staffing, Angela Pitts of LC Staffing, and Cynthia Zimmerlee of LC Staffing, among others. Though she did not get extremely graphic or detailed in her descriptions of the harassment, she made it clear that it was sex-related and “everything you can imagine.”

8. Beasley’s harassment and harassing phone calls continued until May 12, 2006 when Currier confronted Beasley again and told him that his behavior was unacceptable. Beasley apologized and told her she was doing a good job at OMI.

9. The following day, on May 13, 2006, Currier’s coworker, Laurie Waldo, called Currier and told her that Beasley had told her that he was not sure Currier was “going to work out” because he did not know how well she could handle a start up company “and some other things.” Currier believed that she would be fired because she was unwilling to accept his sexual advances.

10. On Monday, May 15, 2006, Beasley asked Currier what was bothering her and she told Beasley that she was angry because she had heard he said she was “not going to work out.” Currier asked Beasley if he was not happy with her because of her performance on the job or because she put a stop to his advances. Beasley became hostile and angry and denied that he had said she was “not working out.”

11. For approximately the next six weeks, Beasley intentionally avoided contact with Currier and only spoke to her when it was absolutely necessary. When Mr. Beasley was in the office and had to interact with Currier, Beasley was unpleasant to deal with, easily angered and irritated, making it increasingly more difficult to work with him. Despite the open hostility, Currier continued to come to work and perform her job duties in a satisfactory manner.

12. On July 5, 2006, Jeremy Michels, OMI’s Operations Manager, terminated Currier’s employment. When Currier asked why she was being terminated, Michels told her that OMI was laying employees off and since she was the last one hired they were letting her go first. Michels said nothing about Currier’s job performance at that time.

13. At no time during her entire employment with OMI did Beasley, Michels, or any other agent or employee of OMI tell Currier that they were in any way dissatisfied with her job performance.

14. OMI discriminated against Currier in employment on the basis of her sex (female/sexual harassment/quid pro quo) and retaliated against her (by discharging her) after she refused Mr. Beasley’s sexual advances and complained to him about the harassment.

15. Currier has been discriminated against in the area of employment because of her sex (female/sexual harassment/quid pro quo), in violation of the Montana Human Rights Act, Title 49, Chapter 2, MCA and Title VII of the Civil Rights Act of 1964, as amended.

16. OMI was Currier's employer as defined by Montana Code Annotated Title 49.

17. While employed at OMI, Currier was paid approximately \$500.00 per week. Between the time of her discharge and the date of the hearing in this matter (approximately 87 weeks of time), she will have total lost wages of \$8,110.00. This represents the difference between what she would have made in wages if she had remained employed at OMI (\$43,500.00 for the 87 weeks (\$500.00 per week x 87 weeks=\$43,500.00)) and what she made working for other employers after she was discharged, a total of \$35,390.00 (\$43,500.00-\$35,390.00=\$8,110.00). In addition, between September, 2006 (the date that Currier would have first been paid benefits if she had continued working at OMI) and the date of hearing, Currier would have been provided health care and other fringe benefits worth \$6,300.00. During this time period, she received no fringe benefits because her other employment did not offer her any such benefits. All together, during the time period between her discharge and the hearing, Currier lost a total of \$14,410.00 in wages and benefits (representing \$8,110.00 in lost wages and \$6,300.00 in lost fringe benefits) as a result of OMI's unlawful conduct.

18. Currier suffered emotional distress as a result of the sexual harassment that she endured at the hands of OMI's president. She was embarrassed and humiliated by his conduct which was repeated over a period of weeks. She had to endure Beasley's hostility for almost two additional months after the sexual harassment stopped. She had to deal with the humiliation of being fired from her job. She was impacted in her relationship with her minor children, which caused her further angst. Her loss of her job created anxiety and uncertainty, particularly in light of the fact that she had to provide not only for herself but also for her children. In light of these circumstances, \$40,000.00 is reasonable to compensate her for her emotional distress.

19. If Currier had not been discharged nor subjected to the sexually hostile environment she encountered at OMI, she would have continued to work there garnering total annual wages and benefits in the amount of \$29,600.00. Because she was discharged, however, she had to seek alternative career plans in order to mitigate her damages. After carefully reviewing her options, she reasonably decided that the best method to mitigate her damages was to work part-time while raising her two sons and simultaneously pursue a college degree. She has taken part-time work of 20 hours per week working as a waitress at the Outlaw Inn in Kalispell. She makes \$6.50 per hour plus approximately \$200.00 in tips each week, or a total of \$332.00 per week in income. She receives no benefits. Her annualized part-time income equates \$17,600.00 (\$330.00 per week x 52 weeks=\$17,600.00). Currier will obtain her degree in May, 2009.

20. Currier will be unable to regain her rightful place in the job market until she graduates from college in May, 2009. Her inability to do has been directly caused by OMI's

illegal conduct through its president. Carrier cannot return to OMI in light of the unlawful conduct of its president and the nature of the discriminatory conduct. The difference between her part-time income and what she would have made between the time of the hearing (May 21, 2008) and May 31, 2009, the date of her graduation, is approximately \$12,440.00 (\$29,600.00-\$17,160.00 = \$12,440.00). In order to be made whole, Carrier is entitled to future lost wages of \$12,440.00.

21. The law requires affirmative relief and OMI should be enjoined from any further discriminatory acts. It is proper and reasonable to enjoin OMI from similar conduct in the future, and to require it to adopt a policy to insure that no similar treatment of other OMI employees occurs in the future.

## IV. Discussion And Analysis<sup>1</sup>

### A. *Beasley and OMI Discriminated Against Copley By Creating A Sexually Hostile Work Environment.*

Montana law prohibits employment discrimination based on sex. §49-2-303(1), MCA. An employer directing unwelcome sexual conduct toward an employee violates that employee's right to be free from discrimination when the conduct is sufficiently abusive to alter the terms and conditions of employment and create a hostile work environment. *Brookshire v. Phillips*, HRC Case #8901003707 (April 1, 1991), *aff'd sub. nom. Vanio v. Brookshire* (1993), 852 P.2d 596. As the Montana Supreme Court has explicitly recognized, "[w]ithout question, when a supervisor sexually harasses a subordinate because of the subordinate's sex, that supervisor 'discriminate[s]' on the basis of sex" and violates the Montana Human Rights Act. *Harrison v. Chance* (1990), 244 Mont. 215, 221, 797 P.2d 200, 204, citing *Meritor Savings Bank FSB v. Vinson*, (1986) 477 U.S. 57,64.

The anti-discrimination provisions of the Montana Human Rights Act closely follow a number of federal anti-discrimination laws, including Title VII of the Federal Civil Rights Act of 1964, 42 U.S.C. §2000e *et seq.* Montana courts have examined and followed federal case law that appropriately illuminates application of the Montana Act. *Crockett v. City of Billings* (1988), 234 Mont. 87, 761 P.2d 813, 816.

A charging party establishes a *prima facie* case of sexual harassment with proof that she was subject to "conduct which a reasonable woman would consider sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment." *Ellison v. Brady*, 924 F.2d 872, 879 (9<sup>th</sup> Cir. 1991). "Harassment need not be severe and pervasive to impose liability; one or the other will do." *Hostetler v. Quality Dining, Inc.*, 218 F.3d 798, 808 (7<sup>th</sup> Cir. 2000). A totality of the circumstances test is used to determine whether a claim for a hostile work environment has been established. *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23, (1993); *Benjamin v. Anderson*, 2005 MT 123, ¶53, 327 Mont. 173, ¶53, 112 P.3d 1039, ¶53. The relevant factors include "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." *Harris*, 510 U.S. at 23; *Benjamin*, ¶ 53.

The standard for finding a hostile environment must be "sufficiently demanding to ensure that [anti-discrimination law] does not become a 'general civility code.'" *Faragher, supra*, citing *Oncale v. Sundowner Offshore Serv., Inc.*, 523 U.S. 75 (1998). The correct standard when properly applied will filter out complaints attacking "the ordinary tribulations of the workplace, such as the sporadic use of abusive language, gender-related jokes, and occasional teasing."

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<sup>1</sup> Statements of fact in this discussion and analysis are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

*Oncale, supra*, quoting Lindemann & Kadue, *Sexual Harassment in Employment Law* 175 (1992). In other words, only extreme conduct can discriminatorily alter the terms and conditions of employment. The objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff's position, considering all the circumstances. *Oncale, supra*, quoting Harris, 510 U.S. at 23. It is appropriate, when assessing the objective portion of a charging party's claim, to assume the perspective of the reasonable victim. See *Ellison, op. cit.* at 879.

Direct evidence "speaks directly to the issue, requiring no support by other evidence," proving the fact in question without either inference or presumption. E.g., *Black's Law Dictionary*, p. 413 (5th Ed. 1979); see also, *Laudert v. Richland County Sheriff's Department*, 2000 MT 218, 301 Mont. 114, 7 P.3d 386. Direct evidence of discrimination establishes a violation unless the respondent proffers substantial and credible evidence either rebutting the proof of discrimination or proving a legal justification. *Laudert, supra*; see also, *Blalock v. Metal Trades, Inc.*, 775 F.2d 703, 707 (6th Cir. 1985).

When a charging party establishes a *prima facie* case of sexual harassment with direct evidence, the burden is then on the employer to prove, by a preponderance of evidence, "that an unlawful motive played no role in the challenged action or that the direct evidence of discrimination is not credible and unworthy of belief." 24.9.610(5) A.R.M. applicable to complaints filed after July 1, 1997, 24.9.107(1)(b) A.R.M.; cf., *EEOC Compliance Manual*, "EEOC: Policy Guidance on Sexual Harassment", No. 137, No. 4046-47, pp. 104-05 (BNA, April 1990).

The credible evidence in this case demonstrates that from an objective standpoint Beasley created a sexually hostile work environment in his actions toward Copley. Beasley was Currier's direct supervisor and the president of the company. During the April 24, 2006 meeting at the cabin, he discussed having sex with her and then attempted to force sex upon her by dragging her into the bedroom at his cabin and then pinning her down on the bed. After this incident, between April 25, 2006 and May 12, 2006, Beasley made repeated calls to Currier on her cell phone and asked her such things as whether she liked oral sex and what would arouse her sexually. His conduct interfered with her ability to carry out her job and forced her to confront Beasley repeatedly and ask him to stop such conduct. His conduct and comments were humiliating and highly offensive both objectively and subjectively. Moreover, like the situation in *Benjamin, supra*, the perpetrator of the unlawful conduct was the company president and Currier's direct supervisor. The totality of the circumstances demonstrates that Beasley created a sexually hostile work environment that violated the Montana Human Rights Act.

Currier's direct evidence of sex discrimination was not countered by OMI as no one appeared at the hearing on behalf of OMI. Accordingly, the hearing officer finds that Currier has demonstrated by a preponderance of the evidence that the OMI unlawfully discriminated against her by creating a sexually hostile work environment.

B. *OMI retaliated Against Currier By Discharging Her From her Position with OMI Because She Spurned Beasley's Sexual Advances.*

Montana law prohibits retaliation in employment practices for protected conduct. A charging party can prove her claim under the Human Rights Act by proving that (1) she engaged in protected activity, (2) thereafter her employer took an adverse employment action against her and (3) a causal link existed between her protected activities and the employer's actions. *Beaver v. D.N.R.C.*, 2003 MT 287, ¶71, 318 Mont. 35, ¶71, 78 P.3d 857 ¶71. See also, Admin. R. Mont. 24.9.610 (2).

Circumstantial evidence can provide the basis for making out a prima facie case. Where the prima facie claim is established with circumstantial evidence, the respondent must then produce evidence of legitimate, nondiscriminatory reasons for the challenged action. If the respondent does this, the charging party may demonstrate that the reason offered was mere pretext, by showing the respondent's acts were more likely based on an unlawful motive or with indirect evidence that the explanation for the challenged action is not credible. Admin. R. Mont. 24.9.610 (3) and (4); *Strother v. Southern Cal. Permanente Med. Group, Group*, 79 F.3d 859, 868 (9<sup>th</sup> Cir. 1996).

Here, Currier has proven a *prima facie* case of retaliation in her discharge. After she confronted Beasley and thwarted his sexual advances, Beasley became openly hostile toward her at work. The day after she confronted Beasley, Beasley told a fellow co-worker, Laurie Waldo, that he was not sure Currier was "going to work out" because he did not know how well she could handle a start up company "and some other things," even though no one at OMI complained about Currier's job performance. Within six weeks time, Currier was discharged. The reason given was incompatible with Beasley's earlier "concerns" voiced to Waldo. In light of the conflicting basis for discharge and the proximity of the discharge to Currier's confronting Beasley about his inappropriate conduct, it is almost certain that Currier was discharged from her employment for complaining to Beasley about his conduct, telling him to stop and for spurning Beasley's advances. Currier has thus made out a prima facie case of retaliation.

In the face of this *prima facie* case, the burden shifted to OMI to rebut it by showing a legitimate basis for the discharge. OMI did not appear at the hearing and, therefore, did not put on any evidence to rebut the prima facie case. Currier's evidence otherwise establishes by a preponderance of the evidence that OMI discharged her for confronting Beasley about his unlawful conduct and for spurning his sexual advances. Her evidence (particularly the conflicting bases for the discharge relayed to Currier by Waldo and Michels) further shows that any proffered legitimate rationale for the discharge was mere pretext. Currier has thus demonstrated by a preponderance of the evidence that OMI retaliated against her in violation of the Montana Human Rights Act.

C. *Damages.*

The department may order any reasonable measure to rectify any harm Currier suffered as a result of illegal retaliation. Mont. Code Ann. §§ 49-2-506(1)(b). The purpose of awarding damages is to make the victim whole. *E.g.*, *P. W. Berry v. Freese* (1989), 239 Mont. 183, 779 P.2d 521, 523; *see also Dolan v. School District No. 10* (1981), 195 Mont. 340, 636 P.2d 825, 830; *accord, Albermarle Paper Co. v. Moody* (1975), 422 U.S. 405.

A charging party who has proved a human rights violation has a presumptive entitlement to an award of back pay. *Dolan, supra*. Back pay awards should redress the full economic injury the charging party suffered to date because of the unlawful conduct. *Rasimas v. Mich. Dpt. Ment. Health* (6<sup>th</sup> Cir. 1983), 714 F.2d 614, 626. Back pay is computed from the date of the discriminatory act until the date of the final judgment. *EEOC v. Monarch Tool Co.*, 737 F.2d 1444, 1451-53 (6<sup>th</sup> Cir. 1980).

The charging party may also recover for losses in future earnings, if the evidence establishes that future losses are likely to result from the discriminatory acts. *Martinell v. Montana Power Co.* (1994), 268 Mont. 292, 886 P.2d 421, 439. Front pay is an amount granted for probable future losses in earnings, salary and benefits to make the victim of discrimination whole when reinstatement is not feasible; front pay is only temporary until the charging party can reestablish a "rightful place" in the job market. *Sellers v. Delgado Comm. College*, 839 F.2d 1132 (5<sup>th</sup> Cir. 1988), *Shore v. Federal Expr. Co.*, 777 F.2d 1155, 1158 (6<sup>th</sup> Cir. 1985); *see also, Hearing Aid Institute v. Rasmussen*, (1993), 258 Mont. 367, 852 P.2 628. Prejudgment interest on lost income is also a proper part of the damages award. *P.W. Berry, op. cit.*, 779 P.2d at 523; *Foss v. J.B. Junk* (1987), HR No. SE84-2345.

Currier has demonstrated lost past earnings of \$14,410.00 in lost wages and benefits from the date of her discharge to the time of the hearing in this matter. She is entitled to interest on the lost wages through the date of decision at the rate of 10% per annum in the amount of \$906.10.<sup>2</sup>

Currier has also sought an award of front pay until May 31, 2009. Due to the nature of Beasley's and OMI's discriminatory conduct toward Currier, she cannot be reinstated at OMI and she will be unable to reestablish her rightful place in the work force until after she graduates from college on May 31, 2009. Front pay in the amount of \$12,440.00 is reasonable and

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<sup>2</sup>The hearing officer calculated interest on the amount of lost wages by determining the daily value of interest on the monthly income lost by the unlawful discharge and then calculating the number of days that have elapsed between the month of lost income and the date of the judgment in this matter, July 11, 2008. This process was applied to each of the months of lost income, and then the interest value for each of these separate months was added together to arrive at the total amount of interest due on the lost income. The daily interest value for the period of lost income following her discharge is \$.10 per day (10% per annum divided by 365 days = .00027% x \$368.84 (the net monthly lost income) = \$.10 per day). The interest due on this lost income through July 11, 2008 is \$906.10.

appropriate in this case. This amount reasonably approximates the loss she will suffer during that time period due to OMI's illegal conduct.

Currier is also entitled to damages for emotional distress inflicted upon her as a result of Beasley's and OMI'S unlawful conduct. The Montana Supreme Court has recognized 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, ¶ 33, 38 P.2d 836, ¶ 33. The severity of the harm governs the amount of recovery. *Id.* Here, Currier has unquestionably suffered emotional distress. Her testimony adequately proves this point. The humiliation of being subjected to the extensive sexual harassment from Beasley, the emotional distress of the uncertainty encountered in having to seek new employment while providing for two children as well as the anguish of the uncertainty caused by the retaliatory discharge justifies an award of \$40,000.00 in this case.

## **V. Conclusions of Law**

1. The Department of Labor and Industry has jurisdiction over this case. Mont. Code Ann. § 49-2-509(7).

2. Beasley and OMI, through Beasley's conduct, violated the Montana Human Rights Act by sexually discriminating against Currier and then retaliating against her by discharging her.

3. Currier is entitled to be compensated for damages due to loss of back pay and expenses she incurred in seeking new employment. She is also entitled to interest on those damages. In addition, she is entitled to front pay through May 31, 2009 and emotional distress damages.

4. Pursuant to Mont. Code Ann. § 49-2-506(1)(b), OMI must pay Currier the sum of \$14,410.00 in damages for lost wages and \$906.10 in prejudgment interest on those damages through July 11, 2008, as well as \$40,000.00 as damages for emotional distress. In addition, OMI must pay Currier front pay totaling \$12,440.00.

5. The circumstances of the retaliation in this case mandate imposition of particularized affirmative relief to eliminate the risk of continued violations of the Human Rights Act. Mont. Code Ann. § 49-2-506(1).

## **VI. Order**

1. Judgment is found in favor of Michelle Currier and against Old Montana Iron Works, LLC, for discriminating and retaliating against Currier in violation of the Montana Human Rights Act.

2. Within 90 days of this order, Joe Beasley must complete sixteen (16) hours of

training, conducted by a professional trainer in the field of personnel relations and/or civil rights law, on the subject of discrimination and terms and conditions of employment, with prior approval of the training by the Human Rights Bureau. Upon completion of the training, Beasley shall obtain a signed statement of the trainer indicating the content of the training, the date it occurred and that Beasley attended for the entire period. Beasley must submit the statement of the trainer to the Human Rights Bureau within two weeks after the training is completed.

3. Old Montana Iron Works, LLC is enjoined from taking any adverse employment action or retaliating in any way against any employee who engages in any activity protected by the Montana Human Rights Act.

4. Old Montana Iron Works, LLC must pay Michelle Currier the sum of \$67,756.10, representing \$14,410.00 in damages for lost earnings, \$906.10 in prejudgement interest on those lost earnings, \$40,000.00 for emotional distress and \$12,440.00 in front pay.

DATED: July 11, 2008

/s/ GREGORY L. HANCHETT

Gregory L. Hanchett, Hearing Officer  
Hearings Bureau, Montana Department of Labor and Industry