

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

PAUL DUNCAN,

Charging Party,

-v-

DEPARTMENT OF REVENUE,

Respondent.

Case # 0081013311

ORDER

Paul Duncan (Duncan) filed a complaint with the Department of Labor and Industry (Department) alleging that the Department of Revenue (DOR) discriminated against him in employment on the basis of his age. Duncan asserted that DOR's practice of "capping" an employee's credit for past experience when that employee is new to a position, for purposes of equity within its pay plan, has a disparate impact on older employees. Following an informal investigation, the Department determined that a preponderance of the evidence did not support Duncan's allegations of unlawful discrimination. The Department issued a Notice of Dismissal. Duncan filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on May 20, 2009.

The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. Section 49-2-511(2), MCA. After careful consideration, the Commission concludes the determination of the Department to dismiss the complaint in this case is an abuse of discretion. Therefore, the Commission sustains the objection and the case is hereby remanded for hearing to the Hearings Bureau pursuant to § 49-2-505, MCA.

Nothing in this order precludes the parties from engaging in the mediation or other settlement negotiations that would normally occur if the Department's investigative report had originally found cause. See § 49-2-504(2)(b), MCA.

IT IS HEREBY ORDERED, that Paul Duncan's objection is **sustained**. The Commission reopens and remands the case to the Hearings Bureau for hearing.

DATED this ____ day of May 2009.

Chair Ryan C. Rusche
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this _____ day of May 2009.

PAUL DUNCAN
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Montana Human Rights Bureau