BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NO. 0091013692:

CLINTON EMLY,	) Case No. 815-2010
	)
Charging Party,	)
	) ORDER GRANTING
vs.	) SUMMARY JUDGMENT
	) AND DISMISSING CASE
STEVE PARK APIARIES,	)
	)
Respondent.	)

* * * * * * * * * *

The respondent has moved for summary judgment in this matter arguing that because the charging party has taken the position in his SSDI claim that he cannot perform the functions of his job with Steve Park Apiaries (hereinafter SPA), he should be estopped from claiming disability discrimination because he should not be permitted to claim that he is a qualified individual with a disability. The respondent also seeks summary judgment on the charging party's request for punitive damages. The charging party opposes the motion for summary judgment on liability and the request for punitive damages. With respect to the liability facet of the motion, the charging party argues that his present assertion that he is a qualified person with disabilities is not inconsistent with the assertions he maintained in obtaining his SSDI benefits. With respect to the punitive damages sought, he argues that the Montana Human rights Act permits imposition of such damages in this proceeding. Having considered the parties' written and oral arguments, the hearings officer agrees that the charging party's SSDI claim estops him from arguing that he is a qualified individual with a disability and grants the motion for summary judgment as to liability. In addition, the hearings officer finds that punitive damages cannot be awarded in this proceeding.

FACTS THAT ARE NOT DISPUTED

1. Emly worked for SPA for several years as a laborer. The last time he worked for SPA was during the 2008 season.

2. As a laborer, Emly's job involved working with equipment around the bees, which included loading and unloading bee hives off of semi trailers where they had been stored. Emly deposition, page 9, ll. 11-15. SPA's employment application contained the following job description for Emly's position:

> You will be required to do a lot of bending and heavy lifting with many other movements listed. (Twisting, stooping, squatting, sitting, kneeling, crawling, climbing stairs, walking both indoors and outdoors, working at heights) the day could include long periods of walking, standing (90%) or sitting (10%) as well as outdoors (50%).

3. Emly was a good worker, and his supervisor, Doug Lunstad, noted that he could count on Emly to get things done. Lunstad and Emly's co-workers at SPA were aware that Emly was diabetic and that he would sometimes have problems controlling his blood sugar. Lunstad felt it was reasonable to accommodate Emly with shorter hours and less physically demanding tasks when possible. Emly's co-workers were aware that Emly had diabetes and they tried to watch out for him.

4. In February, 2008, Emly experienced complications from his diabetes that necessitated the amputation of his right leg below the knee on February 15, 2008. At that time, due to his condition, he discontinued working at SPA. Approximately one month after being released from the hospital, Emly was fitted with a prosthetic.

5. In April, 2008, Emly applied for Social Security disability benefits by filing a claim over the telephone. The interview was documented in a disability report that the Social Security Administration prepared as a part of Emly's application for disability benefits. During that interview, Emly was asked in what way his disability limited his ability to work. He responded by saying "I am not able to balance. My last job required climbing onto semi trucks and trailers." Disability Report, p. 2. He answered the question of when he became unable to work by indicating "February 15, 2008. Id. Emly also described his job duties with SPA as climb[ing] on semi trucks to unload beehives, take care of the bees. I would build hives, load honey for shipping, feed bees." Disability Report, p. 3.

6. In describing his daily tasks at SPA, Emly noted that he "carried beehives 30 feet about an hour of my day while checking bees." Disability

Report, p. 3. He also stated that he would frequently lift objects over 100 pounds, and lifted objects weighing 40 pounds. He further indicated that his job functions included walking (6 hours per day), standing (2 hours per day), climbing (1 hour per day), standing (2 hours per day), sitting (2 hours per day), climbing (1 hour per day), stooping (1 hour per day), crouching (1 hour per day), handling, grabbing, or grasping big objects (1 hour per day), and reaching (1 hour per day). Disability Report, p. 3-4.

7. On June 25, 2008, Emly filled out and signed a Functional Report representing to the SSA that his medical condition affects his ability to: lift, walk, bend, stand, kneel, climb stairs, and see. He also stated that after his illness/injury he was unable to "run, climb, jump[,] almost anything"; that he is unable to prepare meals because his leg gives out and his vision is blurry; his leg can't take walking as much, so he doesn't hunt and fish as much as he used to; and that he can only walk 3 to 4 blocks before he needs to stop and rest for 5 to 10 minutes. Functional Report, pp. 2, 3, 5, and 6; attached as Exhibit 6 to Emly deposition.

8. In July, 2008, Emly was denied Social Security disability benefits. After that denial, Emly retained attorney Kevin Chapman, to communicate with the SSA on his behalf. Emly dep., 44:8 - 45:5. Chapman filed a request for reconsideration of the denial of SSDI benefits, noting "Mr. Emly is significantly disabled and cannot perform substantial, gainful activity." Charging party's Exhibit 17 attached to his response in opposition to the motion for summary judgment.

9. In August, 2008, the doctor treating Emly for his diabetes released him to return to work with no restrictions. Emly did not provide that release to SPA. Emly did not return to work at that time because he needed eye surgery. The eye surgery resulted in a six week no heavy lifting restriction from Emly's eye doctor. Other than this, there were no restrictions placed on Emly.

10. In January, 2009, Emly returned to SPA seeking work.[1] SPA did not employ him at that time.

[1]The facts surrounding Emly's approaching Lunstad in January, 2009 about obtaining work and Lunstad's response are highly contested. For purposes of this motion, resolution of that issue is not necessary.

11. On March 17, 2009, Chapman provided Dr. Paul Johnson with a questionnaire regarding Emly's medical condition, to assist Emly in his pursuit of Social Security disability benefits. On April 7, 2009, Dr. Johnson filled out this questionnaire, which included the following medical information/opinions:

1. Emly's conditions are "severe," meaning " that his condition imposes <u>significant limitations</u> on his ability to lift, stand, sit, walk, and engage in fine motor manipulation.

2. With regards to any limitations or restrictions that Emly has as a result of his medical conditions: "Mr. Emly is an amputee which limits his ability to work. He can walk and stand, but lifting, pushing, pulling, etc. will be limited by his physical conditions and risk of injury."

3. Such limitations would impact Emly's ability to perform gainful activity through a " decrease in strength, endurance and coordination."

4. Emly's condition would affect his ability to do sedentary work or perform any work for eight hours a day, five days a week.

Correspondence from Chapman (September 16, 2009), attached as Exhibit 8 to Emly deposition. Dr. Johnson's answers were submitted to SSA in support of Emly's application.

12. On September 11, 2009, complications from Emly's diabetic condition forced the amputation of his left leg below his knee, making him a double amputee.

13. On September 16, 2009, Emly's attorney wrote the SSA advising them that Emly had just had his second leg amputation, and stating that as a result, "Mr. Emly has absolutely no ability to engage in substantial work activity." Correspondence from Chapman, p. 1. During his deposition, Emly testified that he agreed that this was an accurate representation of his

condition, both as of September 16, 2009, and as of the date of his deposition. Emly dep., 53:12 - 54:7.

14. On October 6, 2009, the SSA Administrative Law Judge ruled in favor of Emly finding that he was "disabled from February 15, 2008, through the date of this decision." SSA Decision (October 6, 2009), p. 1, attached as Exhibit "E." In his decision, the Administrative Law Judge made the following statements:

> A. after considering the evidence of record, the undersigned finds that the claimant's medically determinable impairment could reasonably be expected to produce the alleged symptoms, and that the claimant's statements concerning the intensity, persistence and limiting effects of these symptoms are generally credible;
>
> B. The state agency medical consultants' physical assessments are given little weight because another medical opinion is more consistent with the record as a whole and evidence received at the hearing level shows that the claimant is more limited than determined by the State agency consultant;
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> C. The claimant is unable to perform any past relevant work; and
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> D. The demands of claimant's past relevant work exceeds the residual functional capacity.

SSA Decision, p. 4.

15. From April of 2008 through September of 2009, Emly consistently pursued Social Security Disability benefits and at no time during that period did the basis for his claim change. Emly dep., RT p.58,ll. 3-18.

SUMMARY JUDGMENT STANDARDS

"Summary Judgment is proper only when no genuine issue of material fact exists and when the moving party is entitled to judgment as a matter of law." Rule 56(c) Mont .R. Civ. P.; Brown v. Demaree, 272 Mont. 479, 481-482, 901 P.2d 567, 569 (1995). The initial burden is on the movant to demonstrate that no material issue of fact exists. Once this burden is met, the non-moving party must then produce some evidence which shows a genuine issue of fact is in question. This can be done through sworn testimony or affidavits. First Security Bank of Anaconda v. Vander Pas, 250 Mont. 148, 152, 818 P.2d 384, 386 (1991). The Montana Supreme Court has explained that once the moving party has demonstrated that there is not an issue of material fact, "the opposing party must present material and substantial evidence, rather than mere conclusory or speculative statements, to raise a genuine issue of material fact." Olympic Coast Inv., Inc. v. Wright, 2005 MT 4, ¶ 20, 325 Mont. 307, ¶ 20, 103 P.3d 743, ¶ 20.

PUNITIVE DAMAGES ARE NOT AVAILABLE IN THIS FORUM

The hearings officer is granting summary judgment in this case because the charging party should be estopped from arguing that he is a qualified individual. While this determination would otherwise obviate the need to discuss the charging party's assertion that he is entitled to punitive damages, the fact that it has been raised in the motion merits a ruling. The charging party asserts that punitive damages are recoverable under 42 U.S.C. 2000e-5, Montana Code Annotated Title 27. His argument is misplaced. Those statutes do not apply to proceedings in this forum. The statute that does apply to this proceeding, Mont. Code Ann. 49-2-506(2), specifically prohibits imposition of punitive damages in this proceeding. See also, Romero v. J & J Tire, 238 Mont. 146, 777 P.2d 292 (1989)(punitive damages are not available in a proceeding under Mont. Code Ann. Title 42, Chapter 2).

EMLY'S ASSERTIONS IN HIS DISABILITY CLAIM ESTOP HIM FROM ARGUING THAT HE IS A QUALIFIED PERSON WITH A DISABILITY.

As both parties correctly note, the charging party's prima facie claim must include a showing that he is a qualified person with a disability, i.e., that the charging party can perform the essential elements of the job with or without reasonable accommodations. See, e.g., Hafner v. Conoco, 268 Mont. 396, 401, 886 P.2d 947, 950 (1994)(a plaintiff's prima facie case includes a showing that

the claimant is qualified for the position); McDonald v. Department of Environmental Quality, 2009 MT 209, ¶40, 351 Mont. 243, 214 P.3d 749 (a person with a physical or mental disability is qualified to hold an employment position if the person can perform the essential functions of the job with or without a reasonable accommodation). The essence of the respondent's motion for summary judgment is that Emly's factual representations in his SSDI claim are so contradictory to his assertions in this disability claim that he should not be permitted to argue that he was a qualified individual since he has repeatedly asserted to SSA that he cannot perform the essential functions of the job.

Because the Montana Human Rights Act is modeled after Title VII of the Federal Civil rights Act, it is appropriate to look to federal case law when evaluating the Montana Human Rights Act. Martinez v. Yellowstone County Welfare Department (1981), 626 P.2d 242.

"When an employee or his physician represents that he is completely disabled from work, employers and fact finders are entitled to believe such representation and it bears on whether an ADA plaintiff is a "qualified individual with a disability." Weigel v. Target Stores, 122 F.3d 461, 467-68 (7th Cir.1997). Pursuit and receipt of SSDI benefits does not automatically estop the recipient from pursuing an ADA claim. Cleveland v. Policy Management Systems Corp., 526 U.S. 795, 797-798 (1999). However, as the Cleveland court stated, "an ADA plaintiff cannot simply ignore the apparent contradiction that arises out of the earlier SSDI total disability claim. Rather, [he] must proffer a sufficient explanation." Cleveland, 526 U.S. at 797-798. "To defeat summary judgment, that explanation must be sufficient to warrant a reasonable juror's concluding that, assuming the truth of, or the plaintiff's good-faith belief in, the earlier statement, the plaintiff could nonetheless 'perform the essential functions' of his job, with or without 'reasonable accommodation.'" Id., 526 U.S. at 807.

Based on the U.S. Supreme Court's holding in Cleveland, numerous federal circuit courts have held that a claimant who previously testifies that he is disabled for the purposes of obtaining disability benefits can be judicially estopped from bringing a subsequent ADA claim, unless he provides a sufficient explanation for the contradiction. See: Johnson v. Exxon-Mobile Corp., 426 F.3d 887(7th Cir. 2005), (alleged mistake in dates of disability provided to SSA was not a sufficient explanation to prevent estoppel of ADA claim); Motley v. New Jersey State Police, 196 F.3d 160 (3rd Cir. 1999) (statements concerning the type and extent of plaintiff's injuries and how they prevent him

from working estopped subsequent ADA claim); Opsteen v. Keller Structures, Inc., supra, (statements from plaintiff and his physician to SSA regarding plaintiff's mental condition rendering him unable to work estopped subsequent ADA claim); Mitchell v. Washingtonville Cent. Sch. Dist., 190 F.3d 1, 7-9 (2d Cir. 1999) (plaintiff estopped from asserting he could walk and stand when he made contradictory statements to SSA); Reed v. Petroleum Helicopters, Inc., 218 F.3d 477 (5th Cir. 2000) (statements that plaintiff could not sit for extended periods of time and that her back problems made her unpredictable estopped her from claiming she could perform her essential job functions).

Clearly, judicial estoppel may bar a disability discrimination claim when the plaintiff has made specific factual assertions while applying for Social Security disability benefits which are inconsistent with his subsequent assertion that he is a qualified individual with a disability. See, e.g., Cleveland, supra; Johnson v. Exxon-Mobile Corp., supra; Motley v. New Jersey State Police, 196 F.3d 160 (3rd Cir. 1999); Opsteen v. Keller Structures, Inc., Mitchell v. Washingtonville Cent. Sch. Dist., 190 F.3d 1, 7- 9 (2d Cir.1999); Reed v. Petroleum Helicopters, Inc., 218 F.3d 477 (5th Cir. 2000); Johnson v. Oregon, 141 F.3d 1361 (9th Cir.1998).

> [M]aterial factual statements made . . . in prior disability applications . . . constitute useful evidence" and "may be binding in subsequent ADA claims."... Most commonly, such statements "may be so strong and definitive that they will defeat the plaintiff's prima facie case on traditional summary judgment grounds." Less commonly, courts will apply the "factually driven" doctrine of estoppel to bar ADA representations that are so inconsistent with disability statements as to be "tantamount to a knowing misrepresentation to or even fraud on the court."

Lujan v. Pacific Maritime Assoc., 165 F.3d 738, 740-741 (9th Cir. 1999). Citing; Johnson v. Oregon, 141 F.3d 1361 (9th Cir.1998).

As the respondent correctly points out, Cleveland does not stand for the proposition that charging parties should be allowed to explain why they gave false statements on their SSDI applications. Johnson, supra, 426 F.3d at 891. "[C]ontradictions are unacceptable: a person who applied for disability benefits must live with the factual representations made to obtain them, and if these show inability to do the job then an ADA claim may be rejected without further inquiry." Opsteen, supra, 408 F.3d at 392. As such, "summary judgment may

be appropriate under Cleveland where the SSDI and ADA claims 'involve directly conflicting statements about purely factual matters.'" Parker v. Columbia Pictures Industries, 204 F.3d 326, 333 (2nd Cir. 2000). As the Seventh Circuit explained:

> It was the specter of individuals hopping from forum to forum, making contradictory assertions under oath, that had convinced a number of lower courts, prior to Cleveland, to say that individuals who obtain SSDI benefits on the theory that they are unable to work ought to be estopped from proving that they can, in fact, perform the essential functions of their jobs for purposes of the ADA, or at the very least should be presumed unable to do so. (Internal Cites Omitted). In rejecting this approach, the Supreme Court nowhere spoke of a change of heart akin to [the plaintiff's] as an acceptable way to reconcile the potential inconsistency between SSDI and ADA claims. The only legitimate explanations that the Court recognized were those turning on the distinct legal (and sometimes temporal) contexts of these claims.

Lee v. City of Salem, Indiana, 259 F.3d 667 (7th Cir. 2001), citing Cleveland, supra, 526 U.S. at 802-05, 119 S. Ct. at 1602-03. (Emphasis added).

The 7th Circuit Court of Appeal's decision in Johnson, supra, and the 3rd Circuit's decision in Motley, supra, contain striking parallels to the case before this tribunal and are particularly instructive. In Johnson, the plaintiff applied for SSDI benefits in March, 2003.[2] He filed his ADA discrimination suit against the employer in July, 2003 . He stated on his SSDI application that he became unable to work on the same day that he was discharged from his employer, March 22, 2002. He further stated that he was unable to work because of his disabling condition. His SSDI claim was initially denied. In October, 2003, the SSA reversed its decision and granted the charging party benefits. The employer filed a motion for summary judgment on the ADA claim arguing that the plaintiff's representations in the SSDI application should estop the plaintiff from arguing that he was a qualified disabled person in the ADA complaint. In opposing the motion, the plaintiff attempted to explain

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[2] In its brief, the charging party asserts that Johnson relates only to an Age Discrimination in Employment Act (ADEA) charge. That is not correct. Johnson clearly also addresses an ADA facet. 426 F. 3d at 891. The propositions in Johnson upon which this tribunal rely emanate from that portion of Johnson that addresses that plaintiff's ADA claim.

away the inconsistencies stating that his condition worsened after he was fired, rendering him unable to work, that the application was completed a year after his total disability, and that he had not filled out the application himself. 426 F.3d at 890. The court of appeals affirmed the summary judgment determination, reiterating the Opsteen holding that a person who applies for disability must live with the factual representations he made to get them and if such representations "show inability to do the job, the plaintiff's ADA clam may be rejected without further inquiry. Id. at 892, citing Opsteen, 408 F.3d at 392.

In Motley, the plaintiff, a police officer, was injured on the job during a police raid in 1990. He continued to work for the police department and sought promotion to the rank of Detective 1. He was not recommended for the position because he could not pass the physical required in order to be promoted to the position. He later sought an accidental disability pension and, in doing so, maintained that he "permanently and totally disabled . . . and . . . physically incapacitated for the performance of his usual duties " as a result of the job injury. 196 F. 3d 162-63. He later filed an ADA complaint against the department for failure to promote him to Detective 1. Id.

The court of appeals affirmed the district court's granting of summary judgment for the employer on the basis that the plaintiff could not demonstrate that he was qualified based on his representations in seeking his accidental disability pension. In doing so, the court noted that "Rather than a general allegation of disability, Motley offered detailed descriptions of his injuries and their impact on his ability to work. The court also found that Motley had failed to proffer a reasonable explanation for his inconsistent statements. 196 F. 3d at 166.

Like the plaintiffs in Johnson and Motley, Emly's SSDI application described his job duties with SPA and his inability to complete those duties in such detail that he can proffer no explanation that reasonably can be interpreted to be consistent with his SSDI claims. Emly described his duties as climbing on semi trucks to unload beehives, building hives, loading honey for shipping, and taking care of and feeding bees. (Disability Report, p. 3, attached as Exhibit 5 to Emly Dep.) He indicated these duties involved carrying beehives 30 feet for about an hour of his day, occasionally lifting objects over 100 pounds, lifting 40 pound objects for between 1/3 and 2/3 of the workday, and such activities as walking, standing, sitting, climbing, stooping, crouching, reaching and handling, grabbing or grasping big objects. (Disability Report,

pp. 3-4.). He also specifically advised the SSA that his medical condition limited his ability to lift, walk, bend, stand, kneel, climb stairs and see. (Functional Report, p. 6, attached as Exhibit 6 to Emly Dep.) In the Functional Report he filled out and signed, Emly also stated with additional specificity that after his illness/injury he was unable to "run, climb, jump[,] almost anything;" that he is unable to prepare meals because his leg gives out and his vision is blurry; that his leg can't take walking as much, so he doesn't hunt and fish as much as he used to; and that he can only walk 3 to 4 blocks before he needs to stop and rest for 5 to 10 minutes. (Functional Report, pp. 2, 3, 5 and 6.) Additional statements were later submitted by Emly's attorney through an evaluation from Dr. Johnson stating, among other things, that "his conditions impose significant limitations on his ability to lift, stand, sit, walk, and engage in fine motor manipulation, and that his condition would affect his ability to do sedentary work or perform any work for eight hours a day, five days a week." (Correspondence from Chapman, September 16, 2009, attached as Exhibit 8 to Emly Dep.)(Emphasis in original).

Emly's representations and statements to SSA in his SSDI case were "unconditional assertions as to disability and work" which are virtually identical to those cases where the various circuits have found judicial estoppel to be appropriate. Such inconsistent representations of a purely factual matter, by their very nature, create a situation where the claimant has either engaged in fraudulent conduct or is playing fast and loose with the courts.

As the respondent notes, it is these specific factual representations regarding Emly's physical limitations and the essential functions of his job with SPA which make his case distinguishable from all of the legal authority he has relied upon to oppose the motion for summary judgment. See generally, Giles v. Gen. Electric Co., 483-246 F.3d 474, 483 (5th Cir. 2001) and Parker v. Columbia Pictures Industries, 204 F.3d 326 (2nd Cir 2000); (In both cases, questions of fact existed regarding whether the physical limitations stated in the claimant's application for social security benefits actually contradicted his claims that he could perform his essential job functions with reasonable accommodations.); and Stoll v. The Hartford, 2006 WL 3955826 (unpublished S.D Cal. 2006) (Claimant's representation that she was temporarily permanently disabled did not contradict subsequent position that she could return to work on a part-time basis with reasonable accommodations.) Judicial estoppel applies in this case and precludes Emly from asserting that in January of 2009, he was able to perform the essential functions of his job at SPA, with or without reasonable accommodation.

In opposing the motion, Emly argues that his claims in this case "can coexist without inconsistency because, after he applied for (and was denied SSDI, his condition improved to the point where he could perform the tasks required of his employment at SPA." This argument does not explain the contradiction, it merely highlights it. It ignores the crucial fact that Emly represented to SSDI that beginning in February, 2008, almost one full year before the alleged discrimination took place, his disability prevented him from doing the job tasks which he was required to do at SPA. It also ignores the fact that Emly continued to represent to SSA until he received benefits that his disability prevented him from doing the job tasks at SPA. These were not mere conclusory assertions such as existed in the cases cited by the charging party. These were detailed factual assertions tied to the specific job duties that he undertook at SPA. Emly painted the picture of his disability in the context of the very job requirements that he performed at SPA and asserted that his disability prevented him from doing these job requirements. He prevailed in his SSDI claim by showing that his disability rendered him completely disabled from performing his duties at SPA. The contradiction of his present assertion that he can perform the job duties is patent when measured against his assertions to SSDI. Moreover, Emly never reported any improvement to his health to SSDI while pursuing his application despite the requirement that he do so. This is the essence of the type of contradiction that is not permitted.

Emly also asserts that there may have been other accommodations that SPA could have undertaken and that it had accommodated him in the past with his diabetes (prior to the time of his first amputation). Emly, however, has not suggested what those accommodations might be. Nor has Emly made any effort to counter the respondent's properly supported assertions regarding what the job with SPA entailed. Emly's argument that the mere refusal to engage in any offer to accommodate creates a triable issue conflates the elements of the charging party's prima facie case. The issue here is whether or not the charging party can now argue that he is a qualified individual. Even assuming he could prove that the employer did not engage in any give and take about accommodation, this would not relieve him of the burden to show that he was otherwise qualified. The argument does not dissuade the hearings officer from his opinion that summary judgment is appropriate in this case.

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ORDER

Based on the foregoing, judgment is entered on behalf of the respondent Steve Park Apiaries and against charging party Clinton J. Emly. Emly's case is hereby dismissed.

DATED: July 20, 2010

/s/ GREGORY L. HANCHETT
Gregory L. Hanchett, Hearings Officer
Hearings Bureau, Montana Department of Labor and Industry

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NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: William J. Mattix, attorney for Clinton J. Emly; and Jared S. Dahle, attorney for Steve Park Apiaries:

The decision of the Hearing Officer, above, which is an administrative decision appealable to the Human Rights Commission, issued today in this contested case. Unless there is a timely appeal to the Human Rights Commission, the decision of the Hearing Officer becomes final and is not appealable to district court. Mont. Code Ann. § 49-2-505(3)(c)

TO APPEAL, YOU MUST, WITHIN 14 DAYS OF ISSUANCE OF THIS NOTICE, FILE A NOTICE OF APPEAL, WITH 6 COPIES, with:

Human Rights Commission
c/o Katherine Kountz
Human Rights Bureau
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

You must serve ALSO your notice of appeal, and all subsequent filings, on all other parties of record.

ALL DOCUMENTS FILED WITH THE COMMISSION MUST INCLUDE THE ORIGINAL AND 6 COPIES OF THE ENTIRE SUBMISSION.

The provisions of the Montana Rules of Civil Procedure regarding post decision motions are NOT applicable to this case, because the statutory remedy for a party aggrieved by a decision, timely appeal to the Montana Human Rights Commission pursuant to Mont. Code Ann. § 49-2-505 (4), precludes extending the appeal time for post decision motions seeking relief from the Hearings Bureau, as can be done in district court pursuant to the Rules.

The Commission must hear all appeals within 120 days of receipt of notice of appeal. Mont. Code Ann. § 49-2-505(5).