BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NO. 0109014463:

SHONNA STEARNS,	)	Case No. 1210-2011
	)	
Charging Party,	)	
	)	HEARING OFFICER DECISION
vs.	)	AND NOTICE OF ISSUANCE OF
	)	ADMINISTRATIVE DECISION
FAMILY SERVICE, INC.,	)	
	)	
Respondent.	)	

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I. INTRODUCTION

Charging Party Shonna Stearns filed a complaint with the Department of Labor and Industry on June 18, 2010. She alleged that respondent Family Service, Inc., her employer at the pertinent time, retaliated against her for opposing illegal discrimination by assisting another Family Service, Inc., employee in submitting an internal complaint of alleged sexual harassment. On January 21, 2011, the department gave notice Stearns' complaint would proceed to a contested case hearing, and appointed Terry Spear as hearing officer.

Family Service, Inc., is a corporation. Human Rights Act contested case hearings before the Department of Labor and Industry follow the same procedural and evidentiary rules as district courts. Corporations can only participate in district court proceedings through an attorney duly licensed to practice in Montana. Audit Services, Inc. v. Frontier West, Inc. (1992), 252 Mont. 142, 827 P.2d 1242, 1246; Continental Realty, Inc. v. Gerry (1991), 251 Mont. 150, 822 P.2d 1083, 1085; Weaver v. Graybill (1990), 246 Mont. 175, 178, 803 P.2d 1089, 1091. Thus, Family Service, Inc., could only appear in this proceeding through such an attorney, and no such attorney ever appeared on behalf of this corporation.

After the corporation's Registered Agent acknowledged service of Notice of Hearing, the corporation never filed an appearance and preliminary prehearing statement (due 20 days after issuance of the notice of hearing, issued January 21, 2011). It subsequently never filed and served its final lists of exhibits and witnesses, requests for the issuance of subpoenas, contentions, requests for relief, proposed uncontested facts and identification of any discovery to use at hearing (due by April 29, 2011).

On May 3, 2011, Stearns filed and served her motion for default of Family Service, Inc. Family Service, Inc., never responded. On May 9, 2011, the Hearing Officer entered the default of Family Service, Inc.

The contested case hearing proceeded on May 16, 2011, in Kalispell, Montana. Stearns attended and participated, with her counsel, Donald Ford Jones, Hohenlohe, Jones, PLLP. Family Service, Inc., in default, did not participate. It's Executive Director and Registered Agent Paul Chinberg was present during the hearing.

Shonna Stearns, Tricia Anderson and Jack Bykonich testified. Exhibits 1, 4-5, 10-11, 20-21, 23-24 and 31-32 were admitted into evidence. Stearns filed the only post-hearing document, "Charging Party's Proposed Findings of Fact and Conclusions of Law and Brief in Support Thereof," on May 25, 2011.

II. ISSUE

The issue in this case is whether Family Services created a hostile work environment and terminated Shonna Stearns in retaliation for her involvement in protected activity.

III. FINDINGS OF FACT

1. Shonna Stearns was hired to work at Family Service, Inc. (FSI), as the temporary part-time Accounting Manager in June 2008 through Kelly Services. In September of 2008, Stearns was hired directly by FSI as its full-time Finance Manager.

2. Stearns performed her job duties as Finance Manager in an exceptional manner. Her Job Performance Evaluation (dated April 13, 2009) rated her quality of work as "consistently meets or exceeds expectations." Before August 14, 2009, Stearns was well liked and well treated by her co-workers and her supervisor, Executive Director Paul Chinberg.

3. On or about August 12, 2009, Chinberg told employees at a staff meeting that FSI had a "zero tolerance" harassment policy. Following the meeting, Trisha Anderson sought out Stearns and asked her to explain what "zero tolerance" meant. Stearns explained that "zero tolerance" meant that harassment would not be tolerated by FSI. Anderson told Stearns she believed she was a victim of harassment, but was afraid to go to Chinberg or the Operations Director D.P. Ewald. Stearns told Anderson to draft a statement about the harassment and she would give the statement to Chinberg for Anderson. Stearns believed as a member of the management team it was her duty to report the alleged sexual harassment.

4. On August 12, 2009, Stearns took Anderson's statement to Chinberg. Chinberg became very angry and told Stearns that Anderson's complaint was none of her business and that she did not have the authority to report the incident to him.

5. On August 17, 2009, Stearns had a disciplinary meeting with Chinberg and received a letter of reprimand, dated August 14, 2009. The letter of reprimand was formal discipline of Stearns for reporting Anderson's allegations of sexual harassment. At the meeting, Stearns was told that Anderson's allegations were none of her business and that if she assisted with another such report she would be subject to additional discipline up to and including termination. The letter of reprimand included additional alleged job performance issues with Stearns, but the only issue discussed at the meeting was her reporting of Anderson's allegations of sexual harassment.

6. After Stearns reported Anderson's allegations of sexual harassment on August 12, 2009, Chinberg began treating Stearns in a hostile and demeaning manner. He systematically interfered in her relationships with her co-workers and Board members and acted to turn staff and Board members at FSI against Stearns. Stearns was told by co-workers and Board members that she was a "traitor" and that "she should feel guilty about taking a paycheck."

7. After August 12, 2009, Chinberg began a daily process of confronting and yelling at Stearns in her office. Also, whenever a co-worker came into Stearns' office, Chinberg would also enter and glare until the co-workers would leave her office. In front of co-workers and Board members, Chinberg would repeatedly belittle Stearns and accuse her of acting outside the realm of her responsibility. Chinberg would have such volatile interactions with Stearns that other co-workers grew concerned that it would escalate into a physical altercation. At every opportunity, Chinberg denigrated Stearns' contributions and constantly changed his position on what he requested in work product from Stearns.

8. On March 23, 2010, with Chinberg present in Stearns' office, Anderson told Stearns and Chinberg that she needed to change the date of her scheduled maternity leave from April 23, 2010, to April 1, 2010. Chinberg verbally approved the change and Stearns changed the date on Anderson's leave form, initialed the change, and brought the form to Chinberg. Chinberg became upset and told her she did not have the authority to approve the date change for Anderson and that she had overstepped her bounds.

9. On March 23, 2009, Chinberg falsely told members of the Board of Directors that Stearns had failed to turn in a grant accounting report he had repeatedly requested. In fact, Stearns had emailed the report to Chinberg on

March 22, 2009. He allowed Board members to believe Stearns failed to present requested information and that she was committing direct insubordination.

10. Believing that Stearns was deliberately refusing to provide a report repeatedly requested by Chinberg, the Board viewed what it believed to be her conduct as gross insubordination that needed to be addressed by firing Stearns.

11. On March 26, 2010, FSI terminated Stearns' employment. Chinberg gave her a letter of termination stating she had been terminated for performance, insubordination, and overstepping her bounds. None of the reasons for termination listed in the letter were mentioned or remarked upon in any of Stearns's performance evaluations. None of the alleged issues for which Stearns was reprimanded appear on her performance evaluations, even though Chinberg made detailed comments throughout her performance evaluations.

12. FSI stated in its termination letter that Stearns, "throughout her tenure, . . . displayed a blatant disregard for workplace rules and in working with fellow staff members." These issues were not identified as extreme or problematic areas on her April 2009 or September 2009 performance evaluations.

13. FSI provided to the Human Rights investigator a printed copy of an alleged written reprimand, dated July 14, 2009 (Exhibit 4). FSI represented that Stearns received the July 14, 2009 letter while she was employed at FSI. The letter, allegedly written and signed by Chinberg and delivered to Stearns on or about July 14, 2009, refers to Stearns presenting "a Harassment Letter Charge by a fellow employee [directed toward another fellow employee] to the Executive Director." The only "harassment letter charge" Stearns ever presented to Chinberg was the report authored by Anderson, dated August 12, 2009, clearly referring to harassment that Anderson asserted had occurred on August 4, 2009. The reprimand letter Stearns received on August 14, 2009 (Exhibit 10) is not the same letter as Exhibit 4. Exhibit 4, based upon the evidence of record, is a fabrication, apparently created after Stearns filed her retaliation complaint and submitted to the Human Rights investigator with false representations about the origin of and circumstances surrounding the alleged written reprimand.

14. Stearns' performance evaluations indicated Chinberg only began reporting problems with Stearns performance after Stearns assisted with Anderson's harassment complaint, further confirming the that Exhibit 4 was a fabrication.

15. The reasons stated by FSI for her termination were pretexts for retaliation.

16. Stearns suffered emotional distress as a result of her treatment at work, the loss of a job that she loved, and the humiliation that resulted from the loss of her job.

Before her termination, she was so anxious about seeing Chinberg that she lost sleep, experienced appetite problems and suffered other stress-related physical problems. As a result of the daily harassment she experienced at FSI, Stearns became so depressed that she required and was prescribed medication to cope with her depression.

17. In the months following her firing, Stearns lost interest in her regular activities. She had digestive problems. She lost weight, had frequent headaches and she became irritable. Her relationship with her husband was adversely affected as well. The stress and problems caused by her treatment at work, culminating in her discharge, created a serious strain on her marriage. For the emotional distress Stearns suffered, a reasonable measure to rectify that harm is to award her the sum of $35,000.00, immediately due from FSI.

18. At the time she was fired due to Chinberg's conduct, Stearns was earning an annual salary of $42,848.00. She received benefits, with a value of 3% of salary. The total amount of lost wages and benefits per month (103% of $42,848.00 divided by 12) is $3,677.79, for 15.87 months as of the date of this decision.

19. Stearns had no plans to leave FSI in the foreseeable future, but it is simply unreasonable to act as if Stearns had and has no residual earning capacity left. The Hearing Officer takes administrative notice that an average private sector weekly wage in Kalispell, Montana, recently was $574 per week (AOL Jobs, May 26, 2011) and the average weekly wage in the entire state of Montana as of the date of Stearns' discharge was $625.53 (DLI average weekly wage, 2010, for Unemployment Insurance purposes). By a year after her discharge, it is reasonable to find that Stearns was able to return to work on a full-time basis, and even in the dismal job markets in Montana, she then had and still has a residual income earning capacity of at least $10.00 per hour (slightly more than two-thirds of the AOL Jobs average figure for private sector weekly wages in Kalispell, Montana). Starting over in the job market, it is unreasonable to augment that earning capacity by any projected benefits.

20. The first year of lost wages and benefits totaled $44,133.48. For the past 3.87 months, Stearns' net lost wages and benefits amount to $3,677.79 minus $1,666.67 ($10.00 per hour times 2,000 hours divided by 12 months), for an additional total of $7,783.03 ($2,011.12 times 3.87). Total lost wages and benefits to the date of this decision is $51,916.51, immediately due from FSI.

21. Interest to date on Stearns' past lost wages and benefits is computed by taking daily interest at 10% per annum, divided by 365 days (.027%), times the number of days between the end of each monthly period and the date of this decision, times the monthly loss. For the first 12 months, Stearns' monthly loss was $3,677.79 per month. Daily interest on that monthly loss is $0.99.

22. Applying interest for lost wages and benefits, commencing the first calendar day of each month for the wages and benefits lost during the previous month, and noting that Stearns was timely paid for her wages earned to March 26, 2010, her lost wages and benefits began to accrue interest on April 1, 2010, for March 27-31, 2010. Interest accrued to date on those lost wages and benefits total $77.68 ($3677.79 divided by 31 times .1 divided by 365 times 5 times 478).

23. For the full months' lost wages and benefits in April 2010 through February 2011, the total days of daily interest are 448 plus 417 plus 387 plus 356 plus 325 plus 295 plus 264 plus 234 plus 203 plus 172 plus 144 plus 113, which equals 3,358 days. 3,358 times $0.99 equals $3,324.42.

24. The prejudgment interest accrued on lost monthly wages and benefits from March 1, 2011, through March 26, 2011, to date, is $70.14 ($3677.79 divided by 31 times26 times .00027 times 83 days).

25. From March 27, 2011, to the date of this decision, Stearns' monthly loss was $2,011.12. Prejudgment interest on the lost wages and benefits for the last 5 days of March 2011 is $7.27 ($2011.12 divided by 31 times 5 times .00027 times 83 days).

26. Interest to date on Stearns' past lost wages and benefits in April 2011 to the date of this decision is, again, computed by taking daily interest at 10% per annum, divided by 365 days (.027%), times the number of days between the end of each monthly period and the date of this decision, times the monthly loss. With a monthly loss of $2,011.12, daily interest on that monthly loss is $0.54.

27. For the full month's lost wages and benefits in April 2011 to the date of this decision, the total days of daily interest are 83 plus 52 plus 22, which equals 157 days. 157 times $0.54 equals 84.78.

28. The entirety of Stearns' prejudgment interest totals $3,564.29, immediately due from FSI.

29. A reasonable measure to remedy Stearns' future lost wages is to award her monthly payments of the difference between $3,677.79 (her lost wages and benefits) minus $1,666.67 ($10.00 per hour times 2,000 hours divided by 12 months), for a net monthly future loss of $2,011.12, until the second anniversary of her hiring. On July 27, 2011, Stearns will be entitled to 5/30 of that amount for the balance due for the last 5 days of that pay period (no interest accruing on either part of that amount from after the date of this decision), in a total of $335.19, due on that date from FSI. Thereafter, on the 27th calendar day of each month, or the first working day thereafter, Stearns will be entitled to a payment of $2,011.12, due on each such date

from FSI, with the last payment due on March 27, 2012. There is no reason to convert this monthly entitlement to a lump sum. No interest accrues on these future awards unless and until FSI fails to pay monthly amounts as they come due, from which time post judgment interest properly accrues on any and all amounts due and unpaid then and thereafter, in accord with the applicable law.

30. Affirmative relief is necessary to address the risk of retaliatory acts against other employees by this employer in the future. In this case, appropriate affirmative relief includes injunctive relief against FSI and appropriate training for Chinberg and Board members, as specified by the Department's Human Rights Bureau, to ensure that no further acts of discrimination occur.

IV. OPINION[1]

Montana law prohibits retaliation against a person who opposes illegal discrimination. Mont. Code Ann. §49-2-301. To establish a prima facie case of retaliation, Stearns must prove (1) she engaged in protected activity; (2) FSI took a significant adverse action against her; and (3) there was a causal connection between that action and her protected activity. Rolison v. Bozeman Deac. Health Serv., Inc., ¶17, 2005 MT 95, 326 Mont. 491, 111 P.3d 2002; Admin. R. Mont. 24.9.610.

Sexual harassment at work is illegal under the Montana Human Rights Act. Mont. Code Ann. §49-2-303(1)(a). E.g., Harrison v. Chance (1990), 244 Mont. 215, 797 P.2d 200, 204. By assisting a co-employee to file a report of sexual harassment at work, Stearns "opposed" a practice "forbidden under" the Act, which is within the scope of protected activity under the express terms of Mont. Code Ann. §49-2-301; Mont. Code Ann. 24.9.602(a) and (b) (protected activity includes both "aiding or encouraging others in the exercise of rights under the act or code" and "opposing any act or practice made unlawful by the act or code").

Firing Stearns is, beyond cavil, a significant adverse act. In addition, the hostile treatment to which Chinberg subjected her before her discharge, as well as his actions in poisoning the Board's perception of her work, were also acts which would deter a reasonable employee from opposing illegal discrimination at work. "[A]n action is cognizable as an adverse employment action if it is reasonably likely to deter employees from engaging in protected activity." Ray v. Henderson, 217 F.3d 1234, 1243 (9th Cir. 2000).[2]

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[1] Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. Coffman v. Niece (1940), 110 Mont. 541, 105 P.2d 661.

[2] Montana looks to federal precedent for guidance when there are substantive similarities in the statutes and also in the public policy considerations. Butterfield v. Sidney P.S., 2001 MT 177, 306 Mont. 179, 32 P.3d 1243; see also, Hafner v. Conoco, Inc. (1994), 268 Mont. 396, 886 P.2d 947.

The evidence adduced by Stearns established that the series of adverse actions by Chinberg built up to her termination by FSI. That evidence also established that the adverse actions commenced after she assisted her co-employee with filing a report of sexual harassment, on August 12, 2010, when she submitted the co-worker's report to Chinberg and he responded by becoming very angry, telling her that Anderson's complaint was none of her business and that she did not have the authority to report the incident to him. Thereafter, within seven months, his hostility escalated and, based on the evidence adduced, led directly to her discharge. Stearns established her case.

Having found discrimination, the department may order any reasonable measure to rectify harm that Stearns suffered as a result of the illegal discrimination. Mont. Code Ann. § 49-2-506(1)(b).

Because she proved that she lost her job because of her participation in protected activity, Stearns is entitled to recover resultant lost wages and benefits. Albermarle Paper Co. v. Moody, 422 U.S. 405 (1975). She has the burden to prove the amounts of losses, but not with unrealistic exactitude. Horn v. Duke Homes, 755 F.2d 599, 607 (7th Cir. 1985); Goss v. Exxon Office Systems Co., 747 F.2d 885, 889 (3rd Cir. 1984); Rasimas v. Mich. Dep't Mental Health, 714 F.2d 614, 626 (6th Cir. 1983). Stearns is entitled to lost wages and benefits from the date of termination to the date of this order.

Prejudgment interest on past lost income is a proper part of the department's award of damages. P.W. Berry v. Freese (1989), 239 Mont. 183, 779 P.2d 521. Calculation of prejudgment interest is proper based on the elapsed time without the lost income for each pay period times an appropriate rate of interest. Reed v. Mineta, 438 F.3d 1063 (10th Cir. 2006). The appropriate rate is 10% annual simple interest, applicable to tort losses capable of being made certain by calculation, only without the requirement of a written demand to trigger commencement of the interest accrual, which is not required in Human Rights Act cases. Mont. Code Ann. § 27-1-210.

Stearns is also entitled to recover for future losses in earnings, because the evidence shows that future losses are likely to result from the discriminatory acts. Martinell v. Montana Power Co. (1994), 268 Mont. 292, 886 P.2d 421. Given Chinberg's hostility toward Stearns, reinstatement is not a feasible remedy. There is no substantial and credible evidence that Stearns will be able to obtain a job in the near future that will provide comparable pay to the FSI position, but there is likewise no substantial and credible evidence that after the date of this hearing she will be unable to find any kind of work, or that she will never be able to find another job paying a comparable wage to that she earned with FIS. Indeed, the evidence of her exemplary performance before the protected activity that triggered retaliation militates

against any finding that she has neither residual earning capacity nor a reasonable prospect of again earning comparable wages. Although Stearns is entitled to front pay, it is reasonable to reduce her front pay by an appropriate residual earning capacity, and to extend it only to the second anniversary of the illegal retaliation.

The further into the future one projects, the less certain it is that the projections will be valid. Montana law gives weight to this concern about long-range prognostication of future wage loss. In the Montana Wrongful Discharge from Employment Act, recovery of lost wages and fringe benefits is for a maximum of four years from the date of discharge. Mont. Code Ann. § 39-2-905(1). There is no explicit comparable statutory limitation for future lost wages in Human Rights Act cases, but clearly the legislature wants future lost wages awards to be carefully considered before extending them far into the future. The Human Rights Act's authorization for the department to require any reasonable measure to rectify harm resulting from illegal retaliation has led the Hearings Bureau, in a number of cases, to limit long-term recovery of lost wages to not more than four years of lost wages after separation from employment.

"Not more than four years" does not suggest an automatic award of four years of lost wages in every case. Because Stearns' work performance, before her opposition to illegal discrimination prompted employer retaliation, was exemplary, there is no reason to find that she will still suffer from lost wages and benefits for more than two years after her discharge. Recovery of her losses within those two years is reasonable and supported by the credible and substantial evidence in this case. Front pay beyond two years after the date of discharge is not sufficiently supported and would be both unreasonably speculative and unreasonably contrary to the nature of front pay, which is intended to be temporary, until the claimant reestablishes her earning capacity in the market.

The department also has the authority to award money for emotional distress damages. E.g., Vainio v. Brookshire (1993), 258 Mont. 273, 852 P.2d 596. There is ample testimony from Stearns concerning the distress she suffered due to Chinberg's treatment of her while she remained at FSI and the loss of her job. Stearns took great pride in her work and in the support it provided to her family. FSI's actions caused her humiliation and distress, for which the emotional distress award is appropriate.

In addition, requisite affirmative relief that enjoins any further discriminatory acts and prescribes appropriate conditions on the respondents' future conduct to prevent future such discrimination is proper. Mont. Code Ann. § 49-2-506(1)(a). In this case, appropriate affirmative relief includes injunctive relief against FSI and the mandate of appropriate training to ensure that no further acts of discrimination occur.

V. CONCLUSIONS OF LAW

1. The Department of Labor and Industry has jurisdiction over this case. Mont. Code Ann. §49-2-512(1).

2. FSI retaliated against Stearns after and because of her opposition to illegal discrimination at her place of employment. She was subjected to a hostile work environment and eventually discharged from her position, in violation of Mont. Code Ann. §49-2-301.

3. Stearns is entitled to recover the amounts found and awarded herein. Mont. Code Ann. §49-2-506(1)(b).

4. The circumstances of the discrimination in this case mandate the imposition of affirmative relief in order to eliminate the risk of future violations of the Montana Human Rights Act, as determined by the department's Human Rights Bureau in light of this decision. Mont. Code Ann. §49-2-506(1)(a).

VI. ORDER

1. Judgment is granted in favor of Shonna Stearns and against Family Service, Inc., on the charge of illegal retaliation under the Montana Human Rights Act.

2. Within 30 days of the date of this decision, Family Service, Inc., shall pay to Shonna Stearns the sum of $90,480.80, representing $51,916.51 in lost wages and benefits to date, $3,564.29 in prejudgment interest and $35,000.00 in emotional distress damages, and $335.19 in post judgment lost wages and benefits from the date of this decision to July 26, 2011.

3. On the first calendar day (or first business day thereafter if the first calendar day falls upon a weekend or holiday in a particular month) of August 2011, through March 2012, Family Service, Inc., shall pay to Shonna Stearns the sum of $2,011.12.

4. Post judgment interest accrues as provided by law on the payments ordered in paragraphs 2 and 3, if any such payments are not made as ordered herein.

5. The department permanently enjoins Family Service, Inc., from retaliating against any person for opposing illegal sexual harassment of employees of Family Service, Inc.

6. Within 180 days of the entry of this order, Family Service, Inc., shall, in consultation with the Human Rights Bureau, adopt policies regarding discrimination in the workplace that are acceptable to that Bureau.

7. Within 180 days of this order, Family Service, Inc., must arrange and pay for four hours of training to all management, staff, and employees, said training to be

conducted by a professional trainer or trainers in the field of employment discrimination, on the subject of illegal retaliation. The Human Rights Bureau must approve the training.

Dated: July 22, 2011.

/s/ TERRY SPEAR
Terry Spear, Hearing Officer
Montana Department of Labor and Industry

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NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: Donald Ford Jones, Hohenlohe Jones PLLP, attorney for charging party Shonna Stearns, and Paul Chinberg, Executive Director and Registered Agent, Family Service, Inc.:

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).

IF YOU WANT THE COMMISSION TO REVIEW THE HEARING TRANSCRIPT, include that request in your notice of appeal. The appealing party or parties must then arrange for the preparation of the transcript of the hearing at their expense, for appeal of any findings of fact or other matters requiring a full record for review.