

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

DARCIE DAVEY,

Charging Party

-v-

IPC INTERNATIONAL CORPORATION,

Respondent/Appellant

Case # 0089013260

FINAL AGENCY DECISION

Charging Party, Darcie Davey, filed a complaint with the Department of Labor and Industry (Department), which alleged discrimination in employment on the basis of gender and retaliation. Following an informal investigation, the Department determined that a preponderance of the evidence supported Davey's allegations. The case went before the Hearings Bureau of the Department of Labor and Industry, which held a contested case hearing, pursuant to § 49-2-505, MCA. The hearing was conducted on July 28 and 29, 2009, and the hearing officer issued a decision on November 17, 2009, recommending dismissal of the complaint. Davey filed a timely appeal with the Human Rights Commission (Commission), which considered the matter on May 18, 2010. By Order of the Commission, dated August 4, 2010, the Commission affirmed the factual findings of the hearing officer and corrected the legal conclusions related to the liability of IPC for unlawful discrimination and retaliation against Darcie Davey. The Commission ordered IPC to pay Davey \$40,144.00 in lost earnings, \$6,021.60 for prejudgment interest, and \$20,000.00 for emotional distress damages. The Commission further ordered IPC to provide affirmative relief to eliminate the risk of continued violations of the Montana Human Rights Act.

IPC and Davey filed cross-petitions for judicial review of the Commission's August 4, 2010 Order in the Montana Eighth Judicial District Court, Cascade County. On July 26, 2011,

the District Court issued a Memorandum and Order Re: IPC's Appeal and Darcie Davey's Appeal (Memorandum), Cause No. ADV-10-831. The District Court determined that the Commission provided insufficient reference to the factual record to support the Commission's conclusion that Davey's discrimination claim was meritorious and remanded the case to the Commission for further proceedings. The September 15, 2011 Order of the Commission presented the legal analysis of the liability of IPC for unlawful discrimination and retaliation, and remanded the case to the Hearings Bureau for a determination of an appropriate damage award.

The hearings officer issued a Decision on Remand on March 23, 2012, awarding a total of \$146,262.98 in damages and ordering that IPC to reinstate Davey in her employment. IPC International Corporation filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on July 18, 2012. Patrick Flaherty, attorney, appeared and presented oral argument on behalf of Davey. Jeffery Foster, attorney, appeared and presented oral argument on behalf of IPC International Corporation.

STANDARD OF REVIEW

The Commission may reject or modify the conclusions of law and interpretations of administrative rules in the hearing officer's decision but may not reject or modify the findings of fact unless the Commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. *Admin. Rules of Mont. 24.9.123(4)*. A factual finding is clearly erroneous if it is not supported by substantial evidence in the record, if the fact-finder misapprehended the effect of the evidence, or if a review of the record leaves the Commission with a definite and firm conviction that a mistake has been made. *Denke v. Shoemaker*, 2008 MT 418, ¶ 39, 347 Mont. 322, ¶ 39, 198 P.3rd 284, ¶ 39. The Commission reviews conclusions of law to determine whether the hearing officer's interpretation and application of the law is correct. *Denke*, ¶ 39.

DISCUSSION

After careful consideration of the complete record and the argument presented by the parties, the Commission affirms and adopts the hearing officer's decision in its entirety.

ORDER

IT IS HEREBY ORDERED, that the appeal of IPC International Corporation is denied.

Either party may petition the district court for judicial review of the Final Agency Decision. *Sections 2-4-702 and 49-2-505, MCA.* This review must be requested within 30 days of the date of this order.

DATED this 23rd day of July 2012.

_____/l.m.minich/_____
L.M. Minich, Chair
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 23rd day of July 2012.

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Annah Smith, Legal Secretary
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