

BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NO. 0123015178:

COREY HANSEN,)	Case No. 1923-2012
)	
Charging Party,)	
)	HEARING OFFICER DECISION
vs.)	AND NOTICE OF ISSUANCE
)	OF ADMINISTRATIVE DECISION
C'MON INN,)	
)	
Respondent.)	

* * * * *

I. PROCEDURE AND PRELIMINARY MATTERS

Charging Party Corey Hansen filed a human rights complaint against the respondent C'Mon Inn of Bozeman, Montana alleging that C'Mon Inn discriminated against him in violation of the Montana Human Rights Act when it refused to let him stay at the hotel with his service animal, Hondo. Hearing Officer Gregory L. Hanchett held a contested case hearing in this matter on September 28, 2012 in Bozeman, Montana. Michael San Souci represented the charging party. Tom Stonecipher, attorney at law, represented the respondent. Hansen, his fiancée Monica Jessen, Elias Harmon, present C'Mon Inn property manager, Emmet Matthews, hotel employee, Alexandra Reichert, hotel employee and Troy Ausmus, Billco Investments regional manager, all testified under oath. Charging Party's Exhibits 1, 2, 8, 9, 11 through 21 and respondent's Exhibit's 101 through 107 were admitted into evidence.

Based on the arguments and evidence adduced at hearing, the hearing officer makes the following findings of fact, conclusions of law, and final agency decision.

II. ISSUES

A complete statement of issues appears in the final prehearing order issued in this matter on September 26, 2012. That statement of issues is incorporated here as if fully set forth.

III. FINDINGS OF FACT

1. Charging Party Corey Hansen is, and at all times herein mentioned has been, a resident of the City of Billings, Yellowstone County, Montana. He is a disabled veteran due to service-connected injuries. Among these injuries, he suffers from a permanent post-traumatic induced seizure disorder. His seizure disorder limits him in several major life activities. His seizure disorder requires the aid of a service (seizure alert) dog. Hansen is disabled within the meaning of the Montana Human Rights Act.

2. The Respondent hotel, C'Mon Inn, is located in Bozeman, Montana. It is owned and/or operated by a related entity, Billco Investments LLC of North Dakota, which also does business in Billings, Montana.

3. On August 17, 2011, Hansen's fiancée, Monica Jessen, contacted the Bozeman C'Mon Inn to make an advance reservation to stage a surprise birthday party for Hansen on September 9, 2011, and she reminded the reservation clerk that they would be traveling with Hansen's service dog.

4. Hansen had been accompanied by his seizure alert dog on stays at the Bozeman C'Mon Inn on several occasions prior to September 9, 2011. Approximately two years earlier, the manager had made copies of Hansen's service animal certifications. The manager advised Hansen at the time the copies were made that the certifications would remain on file so that it would be unnecessary for him to bring along this paperwork on future stays with the facility.

5. On each of these prior occasions when Hansen stayed at the Bozeman C'Mon Inn he did not experience any problems with hotel accommodations, and his seizure alert dog, Hondo, was allowed to accompany and stay with him.

6. Hansen arrived at the Bozeman C'Mon Inn on September 9, 2011, accompanied by Jessen and a close friend, Kyle Tidwell, who had traveled from out-of-state. Hondo was also with the trio, wearing his red service dog vest.

7. As they were attempting to register, desk clerk Alexandra Reichert informed Hansen that dogs were not allowed on the premises. Hansen endeavored to explain that because Hondo was a seizure alert dog, they had a right to access, and suggested that the clerk speak with the manager.

8. At that point, a second desk clerk, Emmet Matthews, stepped in and advised Hansen that pets were not allowed, and he would have to leave. Hansen then voiced his frustration and explained that even though under the Americans with Disabilities Act (ADA) service animals, such as Hondo, are not required to be registered, nor can businesses require proof of such registration, his service dog was, in fact, registered. Additionally, Hansen reiterated that the hotel had previously been provided a copy of Hondo's registration, which the hotel had agreed to keep on file. Hansen also told them that Jensen had notified the reservation clerk that they would be traveling with his service dog. Hansen also advised them that Hondo's presence at the C'Mon Inn had never been an issue during his past stays there.

9. In fact, the hotel had maintained in a file drawer in a room above the service desk all of Hansen's dog's registration material that had been previously provided to it. For some reason, staff was not able to locate it on this occasion.

10. When the staff continued to refuse him service, and again demanded that he leave the premises, Hansen dialed the 911 number for the Bozeman Police Department, reporting to the dispatcher that he believed his civil rights, to be accompanied by his service dog, were being violated and that the hotel was discriminating against him. During his attempt to speak with police dispatch, the C'Mon Inn's manager, Jeremy Fatouros, came to the front desk, interrupted his conversation with dispatch and also demanded that Hansen leave immediately. Seeing that Hansen had dialed 911, Fatouros instructed Matthews to also dial 911.

11. Three Bozeman police officers arrived at the C'Mon Inn approximately ten minutes after Mathew's call. The officers told Hansen since the C'Mon Inn was "private property," and he had been ordered to leave, their hands were essentially tied and if he did not leave he would be jailed for criminal trespass. Consequently, Hansen, his fiancée and his friend had no alternative but to leave with his service dog.

12. The staff on hand that night obviously believed that Hansen was required to produce documentation to show that service animals were properly registered even though such a showing is not required by law and even though Hondo was wearing a service vest.

13. C'Mon Inn failed to provide a reasonable accommodation for Hansen when they refused to let him stay on the premises with his service dog.

14. Hansen suffered emotional distress as a result of the incident. He has felt anxiety and suffered from sleeplessness as a result of the respondent's illegal conduct.

15. C'Mon Inn's failure to provide Hansen with an accommodation caused him emotional distress that is compensable. An award of \$15,000.00 is reasonable and necessary to make Hansen whole for the emotional distress he suffered as a result of the discrimination he suffered from C'Mon Inn's unlawful conduct.

16. Imposition of affirmative relief to lessen the likelihood of any future violation of the Montana Human Rights Act is also necessary.

IV. OPINION¹

A. C'Mon Inn Discriminated Against Hansen.

Mont. Code Ann. §49-1-102 provides that "The right to be free from discrimination because of . . . physical . . . disability . . . is recognized as and declared to be a civil right. This right must include but not be limited to:

* * *

(b) the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement."

Montana Code Annotated §49-2-304(1), the Montana Public Accommodation statute, states that : "it is an unlawful discriminatory practice for the owner . . . of a public accommodation: (a) to refuse , withhold from, or deny any of its services, goods, facilities, advantages, or privileges because of . . .physical . . . disability . . ." Unlawful discrimination against a person with a disability includes failing to make reasonable modification in policies or procedures when necessary to make the services offered to the public available to a disabled person, unless the public accommodation demonstrates that making the modification would fundamentally alter the nature of its services. Admin. R. Mont. 24.9.609(3)(a). Discrimination based on physical disability includes failure to make reasonable accommodations required for an otherwise qualified person who has a disability. Mont. Code Ann. §49-1-101(19)(b); McDonald v. Dept. of Environmental Quality, 2009 MT 209, ¶40, 351 Mont. 243, 214 P.3d 749.

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

The Montana Supreme Court has approved the practice of looking to federal law for guidance in determining the extent of Montana law in areas of discrimination based upon physical disability. McDonald, supra.

28 CFR 36.302 (c) (6) prohibits public accommodations from asking about the extent or nature of a person's disability. It prohibits a public accommodation from requiring a disabled person to produce documentation of the service animal's status. Under certain circumstances, a public accommodation may ask whether a service animal is required because of a disability and may inquire about what service the animal has been trained to perform. 28 CFR 36.302 (c) (7) requires public accommodations to permit disabled persons to be accompanied by their service animals in all areas of the accommodation where members of the public are permitted to go.

Applying these principles to the facts before this tribunal, it is patently clear that C'Mon Inn discriminated against Hansen on the basis of his physical disability by refusing him accommodation because he was accompanied by his service animal. There is no doubt that Hansen needed his service animal because of his seizure disorder. Likewise, there is no doubt that Hansen was disabled within the meaning of the Montana Human Rights Act.²

Hansen's testimony demonstrates credibly and unequivocally that Hondo was wearing a service animal vest at the time Hansen and Hondo entered the C'mon Inn to register. For reasons not clear to the hearing officer, the respondent's personnel refused to permit the properly attired service animal to remain on the premises. They continued to refuse to do so despite Hansen's repeated efforts to explain his need for Hondo and the fact that he had been permitted to stay at the hotel with Hondo on several previous occasions.

In an effort to counter Hansen's case, C'Mon Inn suggests that Hansen's confrontive nature was the cause of his being excluded from the premises. The hearing officer does not agree for two reasons. First, the 911 recording of Hansen does not suggest that Hansen was combative in any manner, much less to such a

² At the conclusion of the hearing, the respondent made an argument that Hansen was not disabled within the meaning of the Montana Human Rights Act because there was no evidence proffered to show that he was impaired in a major life activity as a result of his seizure disorder. The respondent initially asked to brief that issue but then withdrew that request. The evidence here demonstrates overwhelmingly that Hansen's seizure disorder limits one or more of his major life activities including, but not limited to, running, riding, and driving a motor vehicle (none of which he can do because of his seizure disability).

degree that he posed any risk to any one at the hotel. Second, the reason that hotel management called 911 (as made plain by Matthews' testimony) was not out of a concern that Hansen posed any threat but because the hotel manager, concerned that 911 had been called, was attempting "to cover his tracks" by also calling 911. The facts are clear that hotel personnel were not going to permit Hansen's service animal on the premises, denying Hansen a reasonable accommodation for his disability that the same facility had repeatedly provided to him in the past.

B. Damages.

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

Damage awards must include compensation for emotional distress suffered as a result of the illegal discrimination when the facts show that the charging party has suffered from emotional distress. The value of this distress can be established by testimony or inferred from the circumstances. *Vortex Fishing Systems*, ¶ 33.

Hansen unquestionably suffered emotional distress from the illegal discrimination he suffered. He was subjected to the humiliation, stress and degradation of being denied the use of a public accommodation because of his disability. He felt anxiety, was upset and was naturally and understandably embarrassed that this happened in the presence of his friends. He has also suffered from sleeplessness as result of the illegal conduct. His testimony in this regard plainly establishes his emotional distress.

Hansen's emotional distress is somewhat like that suffered by the plaintiffs in *Johnson v. Hale* (9th Cir.1991), 940 F.2d 1192; cited in *Vortex* at ¶33. In *Johnson*, the plaintiffs (African-Americans) suffered emotional distress resulting from the refusal of a landlord to rent living quarters to them due to their race. The plaintiffs suffered no economic loss because they were able immediately to find other housing. The incident upon which they based their claim lasted only a fleeting time on a single day. The landlord's refusal to rent to them because of their race occurred with no one else present to witness their humiliation. There was no evidence of any recourse to professional treatment or lasting impact upon their psyches as a result of the discriminatory act. Nevertheless, the Court of Appeals increased their awards from

\$125.00 to \$3,500.00 each for the overt racial discrimination, noting that the “sum would appear to be the minimum that finds support in recent cases . . .” Id. at 1354.

Hansen’s emotional distress is also similar to that suffered by the plaintiff in *Bilbruck v. BNSF*, HRC Case No. 0031010549 (2004). In that case, the hearing officer awarded emotional distress in the amount of \$5,000.00 due to the employer’s refusal to hire an employee because of his disability. The decision to not hire Bilbruck because of his disability was directly communicated to him. Other than the anger Bilbruck felt at the time the decision was communicated to him, Bilbruck had no lingering emotional distress.

Like the plaintiffs in *Johnson* and *Bilbruck*, Hansen was directly confronted with the respondent’s illegal basis for discrimination. As Hansen testified, this caused him a great deal of anguish and humiliation. However, the impact of the discrimination, unlike that in *Johnson* and *Bilbruck*, was not short lived. In addition, the emotional distress felt by Hansen had a greater impact upon him than the emotional distress Bilbruck experienced. Hansen’s emotional distress continued to upset and humiliate Hansen over one year later at the time of the hearing and has also affected his sleep. In light of the evidence adduced at hearing, Hansen is entitled to an award of \$15,000.00 to fairly and reasonably compensate him for the emotional distress he suffered as a result of the illegal discrimination.

C. Affirmative Relief

Affirmative relief must be imposed where there is a finding of discriminatory conduct on the part of an employer. Mont. Code Ann. §§ 49-2-506(1)(a). Affirmative relief in the form of both injunctive relief and training to ensure that the conduct does not reoccur in the future is necessary to rectify the harm 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. C’Mon Inn violated the Montana Human Rights Act when it refused Hansen’s request for a reasonable accommodation by not permitting him to stay in the premises with his service dog Hondo.
3. Hansen is entitled to be compensated for the emotional distress he incurred as result of the illegal discrimination in the amount of \$15,000.00.

4. The circumstances of the discrimination 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 Corey Hansen and against C'Mon Inn for discriminating against Hansen based upon his disability in violation of the Montana Human Rights Act.

2. C'Mon Inn is enjoined from discriminating against any disabled person on the basis of disability.

3. Within 30 days of the date that the order in this matter becomes final, C'Mon Inn must pay Hansen \$15,000.00 in emotional distress damages.

4. Within 90 days of the date that the order in this matter becomes final, C'Mon Inn must develop and implement a specific plan to train all employees and managers about the requirements of the Montana Human Rights Act and about methods to prevent and timely remedy disability discrimination. In developing and implementing this plan, C'Mon Inn shall work with the Montana Human Rights Bureau and any such plan shall be approved by the Montana Human Rights Bureau. In addition, C'Mon Inn shall comply with all conditions of affirmative relief mandated by the Human Rights Bureau.

DATED this 21st day of November, 2012.

/s/ GREGORY L. HANCHETT

Gregory L. Hanchett, Hearing Officer
Hearings Bureau

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NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: Mike San Souci, attorney for Corey Hansen; and Tom W. Stonecipher, attorney for C”Mon Inn:

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 Marieke Beck
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. Contact Annah Smith, (406) 444-4356 immediately to arrange for transcription of the record.

HANSEN.HOD.GHP