

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

KAREE VIEYRA,
Charging Party/Appellant,

HRB CASE NO. 0111015153

-v-

FINAL AGENCY DECISION

KELLEY ETZEL,
Respondent/Appellant.

Charging Party, Karee Vieyra, filed a complaint with the Department of Labor and Industry (Department), which alleged unlawful discrimination in employment on the basis of sex (pregnant female). Following an informal investigation, the Department determined that a preponderance of the evidence supported Vieyra'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 Hearings Bureau issued a Decision on January 25, 2013, which determined that Kelly Etzel discriminated against Karee Vierya on the basis of sex when Etzel authorized Vierya's termination from employment with the Bella Sauvage Salon because Vierya was pregnant and temporarily limited in the performance of certain work tasks. The hearing officer concluded that Vierya proved discrimination by direct evidence and ordered that Etzel to undertake training in discrimination law; to allow the Human Rights Bureau to review her employment policies and procedures; and to refrain from ever again taking adverse action against any employee because the employee is pregnant. In addition, the hearing officer ordered Etzel to pay to Vierya the sum of \$55,482.42 for lost earnings; \$3,145.23 for prejudgment interest accrued on past lost earnings as of the date of the Hearing Officer's Decision, and \$50,000.00 for emotional distress, for a total of \$108,627.65.

Karee Vieyra and Kelley Etzel both filed appeals with the Montana Human Rights Commission (Commission). The Commission considered the matter on July 18, 2013. Phillip Hohenlohe, attorney, appeared and presented oral argument on behalf of Karee Vieyra. Elizabeth O'Halloran, attorney, appeared and presented oral argument on behalf of Kelley Etzel.

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. *See, Denke*, 39.

DISCUSSION

After careful consideration of the complete record and the argument presented by the parties, the Commission determines that the hearing officer's findings of fact are based on substantial evidence in the record and not clearly erroneous. The Commission further concludes that the hearing officer correctly applied the law in this case.

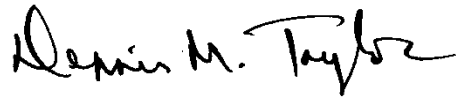
ORDER

IT IS HEREBY ORDERED, that the cross-appeals of both Karee Vieyra and Kelley Etzel are DENIED.

IT IS FURTHER ORDERED that the Commission affirms, adopts and incorporates the Hearing Officer's Decision in its entirety.

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. A party must promptly serve copies of a petition for judicial review upon the Human Rights Commission and all parties of record. *Section 2-4-702(2), MCA.*

DATED this 24th day of July, 2013.



Dennis M. Taylor, 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 24th day of July, 2013.

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