

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

LYNDSAY STOVER,
Charging Party/Appellee,

-v-

THE BUM STEER AND JAY WILSON,
Respondent/Appellant.

HRB CASE NOS. 0121015483 &
0121015484

FINAL AGENCY DECISION

Charging Party, Lyndsay Stover, filed a complaint with the Department of Labor and Industry (Department), which alleged unlawful discrimination in employment on the basis of sex and retaliation. Following an informal investigation, the Department determined that a preponderance of the evidence supported Stover'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 officer issued a Decision on March 28, 2014. The hearings officer determined that Respondents had discriminated against Stover, and that damages should be awarded to compensate Stover for past and future lost wages, therapy, and emotional distress.

Both Lyndsay Stover and The Bum Steer and Jay Wilson filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on July 14, 2014. Julie Goodkind and Elizabeth Clark, attorneys, appeared and presented oral argument on behalf of Stover. Richard Buley, attorney, appeared and presented oral argument on behalf of The Bum Steer and Jay Wilson.

The Bum Steer and Wilson appeal argued that the damages entered in the Decision below were excessive in light of the short duration of Stover's employment with the Bum Steer, and the fact that Stover did not immediately begin to look for work. Respondents further argued that Stover's distress damages were contradicted by her later successful employment.

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

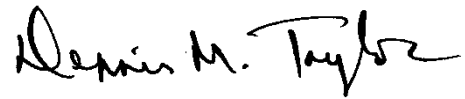
After careful consideration of the complete record and the argument presented by the parties, the Commission determines that the hearing officer's findings of fact and conclusions of law with regard to the issues presented in this appeal are supported by the facts in the record and the law of the area.

ORDER

IT IS HEREBY ORDERED, that the appeal of Jay Wilson and The Bum Steer is DENIED. The Decision below is not modified except as specified by the order entered concurrently following the appeal of Stover.

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 31st day of July, 2014.

A handwritten signature in black ink that reads "Dennis M. Taylor". The signature is written in a cursive style with a large initial 'D' and a long, sweeping tail on the 'y'.

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 31st day of July, 2014.

ROBERT TERRAZAS
JULIA D. GOODKIND
ELIZABETH A. CLARK
TERRAZAS LAW OFFICE
P.O. BOX 9077
MISSOULA, MT 59807

RICHARD BULEY
TIPP & BULEY, P.C.
P.O. BOX 3778
MISSOULA, MT 59806-3778



Annah Smith, Legal Secretary
Montana Human Rights Bureau