

BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY

IN THE MATTER OF HUMAN RIGHTS BUREAU CASE NO. 0091013577:

ERIC FEIT,)	Case No. 475-2010
)	REMANDED BY: <i>BNSF Railway Co. V. Feit</i> ,
Charging Party,)	CV 10-54-H-DWM and CV 11-01-H-DWM
)	(U.S.D.C.MT 12-03-2012)
vs.)	
)	ON REMAND: FINDINGS
BNSF RAILWAY COMPANY,)	ORDERED BY THE FEDERAL
)	DISTRICT COURT
Respondent.)	

* * * * *

On March 15, 2013, the Hearing Officer convened oral argument on the decision on remand. At the conclusion of the argument, the record was closed, excepting only for submission of additional information requested by the Hearing Officer from counsel for Feit, which was filed and served by counsel's letter, formatted in Adobe and emailed on March 18, 2013.

In their submissions and oral arguments, counsel advocated radically different decision-making by the Hearing Officer in response to the Federal District Court's remand order. Counsel for Feit advocated a decision on remand that would address the meaning of the Montana Supreme Court's "Decision on Certified Question," 2012 MT 147, 365 Mont. 359, 281 P.3d 225, and then make findings in accord with Feit's proposed interpretation of that decision. Counsel for BNSF advocated answering two specific questions identified repeatedly in the Federal District Court's remand order – (1) How much did Feit weigh when he applied with BNSF? (2) Was his weight more than 100% over the norm?

Reading again the Federal District Court's remand order, this Hearing Officer believes that BNSF has correctly stated the very limited purposes for which the case was remanded to the Department. Although the Hearing Officer recognizes the risk stated by counsel for Feit – that giving only the answers to those two narrow questions could result in a further remand – the Department can only follow the order of the Federal District Court, which appears to define "further factual findings consistent with the Montana Supreme Court's decision" as answering the two specific questions and nothing more. The power to address any other issues, such as an independent interpretation of the Montana Supreme Court Decision, might reside with a Federal Appellate Court on appeal of a subsequent decision by the Federal

District Court, or perhaps in the future with the Montana Supreme Court, in appeal of another discrimination claim under Montana law involving the same question of “regarded as” disability due to obesity. This tribunal has no such power on this limited remand.

Findings on Remand:

1. Feit’s weight when he applied for work with BNSF was 220 pounds.
2. Feit’s weight when he applied for work with BNSF was not “more than 100% over norm,” under any meaningful definition of “100% over norm.”

DATED: March 19th, 2013.

Terry Spear
Terry Spear, Hearing Officer
Hearings Bureau, Montana Department of Labor and Industry