

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

LYNDSAY STOVER,
Charging Party/Appellant,

-v-

THE BUM STEER AND JAY WILSON,
Respondent/Appellee.

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 Stover appealed to request that the Commission refer the Decision to the Departments of Justice and Revenue. She further requested that damages be increased to compensate her for a semester of tuition lost as a result of the discrimination which occurred.

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 order should be sustained with two related exceptions. First, the Commission finds, based upon a complete review of the record, that Paragraph 194 of the Decision, finding that Stover failed to prove damages related to her academic progress, was a mistake not supported by the effect of the evidence. The Commission finds that evidence supports Stover's claim that the discrimination which occurred against her caused damages to her academic studies. Therefore, Paragraph 2 of the Decision's Order must be modified to increase damages in the amount of tuition, \$3,500.00.

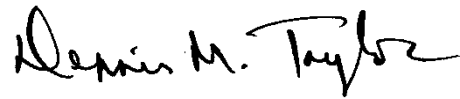
However, the Commission did not find cause or reason for the matter to be referred to other agencies in Montana's state government.

ORDER

IT IS HEREBY ORDERED, that the appeal of Stover is granted in part and denied in part. Stover's request that the matter be referred to other agencies is HEREBY DENIED. Stover's request that damages be increased by \$3,500.00 is HEREBY GRANTED. This request as to damages modifies as stated above the Decision of the hearing officer below.

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.



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