

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

ROCHELLE COFFEY,
Charging Party,

-v-

ALLEN CONSTRUCTION COMPANY, INC.,
Respondent.

HRB CASE NO.0131016489

FINAL AGENCY DECISION

Charging Party, Rochelle Coffey, filed a complaint with the Department of Labor and Industry (Department), which alleged unlawful discrimination in employment on the basis of sex and age. Following an informal investigation, the Department determined that a preponderance of the evidence supported Coffey's allegations. The case went before the Office of Administrative Hearings 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 May 29, 2015. The hearings officer determined that Coffey had failed to prove her claim that Respondent Allen Construction Company, Inc. had paid her lower wages than male workers younger than herself. The Hearing Officer therefore dismissed the matter with prejudice.

Charging Party filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on September 18, 2015. Paul Gallardo and Daniel J. Flaherty, attorneys, appeared and presented oral argument on behalf of Coffey. Antonia M. Marra, attorney, appeared and presented oral argument on behalf of Allen Construction Company, Inc.

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

There must first be a discussion of the transcripts in this matter. *Admin. R. Mont. 24.9.123(7)* requires a party requesting review of the transcript to file that transcript with the Commission. Coffey filed such a request with the Commission. The initial briefing schedule in this matter required the transcript to be filed not later than July 20, 2015. On July 22, 2015, the Commission received Coffey's written request for extension of the transcript filing deadline. On August 5, 2015, Coffey's request for extension was granted, and the transcripts were required to be filed not later than August 6, 2015. At the time of hearing some six weeks later, on September 18, 2015, transcripts had not been received by the Commission. As such, transcripts from the proceedings before the Office of Administrative Hearings were not considered in this matter.

Nonetheless, after careful consideration of the record, with the exception of transcripts, and the argument presented by the parties, the Commission determines that the hearing officer's determination should be affirmed in its entirety. As noted above, while *Admin. R. Mont. 24.9.123(4)* requires a review of the complete record to "reject or modify the findings of fact," such review is not required for the Commission to affirm the hearing officer, or for consideration of the "conclusions of law and interpretations of administrative rules in the hearing officer

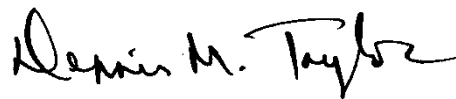
decision.” The Commission determines that findings of fact need not be rejected or modified here, nor does it find that the Hearing Officer’s Decision suffered from some error of law.

ORDER

Therefore, IT IS HEREBY ORDERED, that the appeal of Rochelle Coffey is overruled, and that the determination of the Hearing Officer is AFFIRMED.

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 September, 2015.



Dennis M. Taylor, Chair
Montana 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 September, 2015.

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