

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

TIMOTHY DELHAGEN and COURTNEY
CRAWFORD,
Charging Parties,

HRB CASE NO. 0141016802 &
0141016820

-v-

FINAL AGENCY DECISION

MONTANA REGIONAL IMAGING
CENTER, LLC,
Respondent.

Charging Parties, Timothy Delhagen and Courtney Crawford, 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 Delhagen and Crawford'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 27, 2015. The hearings officer determined that Crawford had failed to prove her case with regard to gender discrimination, and that both parties had failed to prove their cases with regard to retaliation. As such, the matter was dismissed with prejudice.

Charging Parties filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on September 18, 2015. Bryan L. Spoon, attorney, appeared and presented oral argument on behalf of Delhagen and Crawford. Patrick T. Fox, attorney, appeared and presented oral argument on behalf of Montana Regional Imaging Center, LLC.

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

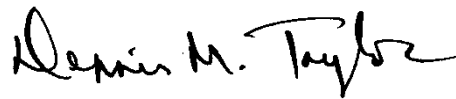
After careful consideration of the complete record and the argument presented by the parties, the Commission determines that the hearing officer's determination should be affirmed in its entirety. At its core, the basis for appeal was whether the hearing officer had improperly admitted evidence and whether that evidence had been considered in issuing the determination. However, the hearing officer was careful to reference the material which had not been considered, though it had been admitted. While there may be some question as to whether the challenged material should have been admitted at hearing, the hearing appears to have been procedurally fair, and the standard of review for reversal or modification on appeal has not been met.

ORDER

IT IS HEREBY ORDERED, that the appeal of Timothy Delhagen and Courtney Crawford is overruled.

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 29th day of September, 2015.

A handwritten signature in black ink that reads "Dennis M. Taylor". The signature is written in a cursive style with a horizontal line underneath it.

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 29th day of September, 2015.

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