

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

JAMES FENNER,
Charging Party,

HRB CASE NO. 0131016154

-v-

FINAL AGENCY DECISION

CASCADE COUNTY MONTANA EXPO
PARK,
Respondent.

Charging Party, James Fenner, filed a complaint with the Department of Labor and Industry (Department), which alleged unlawful discrimination in employment on the basis of disability and retaliation. Following an informal investigation, the Department determined that a preponderance of the evidence supported Fenner'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 April 20, 2015. The hearings officer determined that Fenner had failed to prove that discrimination or retaliation had occurred, and dismissed his complaint with prejudice.

Charging Party filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on July 17, 2015. Donald Ford Jones, attorney, appeared and presented oral argument on behalf of James Fenner. Dee Ann Cooney, attorney, appeared and presented oral argument on behalf of Cascade County Montana Expo Park.

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

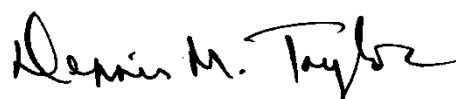
After careful consideration of the complete record and the argument presented by the parties, the Commission determines that the hearing officer's findings of fact are supported by substantial evidence, and that his conclusions of law are correct based on that evidence. The Hearing Officer heard the testimony of the witnesses and the parties. He is therefore entitled to deference from this Commission.

ORDER

IT IS HEREBY ORDERED, that the decision issued by the Office of Administrative Hearings is upheld.

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 3rd day of August, 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 3rd day of August, 2015.

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