

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

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ROBERT HAY,  
Charging Party,

-v-

ST. PETER'S HOSPITAL,  
Respondent.

HRB CASE NO.0141016851

REMAND ORDER

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Charging Party, Robert Hay, filed a complaint with the Department of Labor and Industry (Department), which alleged unlawful discrimination in public accommodation on the basis of disability. Following an informal investigation, the Department determined that a preponderance of the evidence supported Emel'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 January 19, 2016. The hearings officer determined that neither discrimination nor retaliation against Hay had occurred, and thus dismissed the claim as lacking merit.

Charging Party filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on May 16, 2016. Roy Andes, attorney, appeared and presented oral argument on behalf of Hay. David McClean, attorney, appeared and presented oral argument on behalf of St. Peter's Hospital.

**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.3<sup>rd</sup> 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 order must be modified as follows for the reasons stated herein:

As stated above, the Commission may reject conclusions of law based on correctness. Finding of Fact Number 19 is rejected because it reflects an incorrect Conclusion of Law. While listed in the Findings of Fact section of the Order, the conclusion is, in fact, one of law. How Harbour behaved during the incident of March 13, 2014 is a question of fact, as reflected in Findings of Fact 13-18. Whether Harbour's conduct was reasonable under the law, as indicated in Finding 19, is a conclusion of law, which the Commission may reject under Mont. Code Ann. 2-4-621(3). In this case, the law requires Harbour to make case-by-case determinations concerning exclusion of a service animal from his ambulance. Because Hay was conscious and stable, and there was no indication that the service animal was out of control, or that Hay would not be able to control him in the ambulance, or that the EMT would be conducting procedures with which the service animal was likely to interfere, Harbour's exclusion of Ozzie was discriminatory.

Finding of Fact Number 21 is modified because it reflects an incorrect Conclusion of Law, not a Finding of Fact. The determination of whether the facts support a finding of illegal discrimination is a conclusion of law, which the Commission may reject or modify under Mont.

Code Ann. 2-4-621(3). This modification is made because the facts indicate that Harbour was working for SPH, and the law makes SPH responsible for his discriminatory actions. Thus, Finding of Fact Number 21, is modified as follows (stricken material interlined, new material underlined):

21. ~~SPH did not engage in any illegal discriminatory action to which this current complaint can speak. However t~~ The Hearing Officer respectfully suggests that SPH would be well-advised to train its management, its caregiving employees and its independent contractors about the current scope of service animal accommodation applicable in Montana. HRB would undoubtedly cooperate in suggesting the appropriate scope of the training and identifying persons or entities who could provide the training.

Conclusion of Law Number 2 is modified because it reflects an incorrect conclusion of law based on the facts of this case. Specifically, it is modified as follows (stricken material interlined, new material underlined):

Robert D. Hay's charges alleging disability discrimination in public accommodation and retaliation against St. Peter's Hospital regarding incidents on January 12, 2010, March 29, 2011, September 27, 2011 and February 13, 2013, and any other incidents occurring before September 26, 2013, are all time-barred. Mont. Code Ann. § 49-2-501(4)(a). ~~His charges alleging disability discrimination in public accommodation and retaliation against St. Peter's Hospital regarding an incident on March 13, 2014 fail because the hospital proved both that it offered reasonable accommodations to Hay, which he refused, and that the accommodation he demanded was not reasonable because it would endanger the health or safety of occupants of the ambulance. Mont. Code Ann. § 49-2-101(19)(b). His charges alleging disability discrimination in public accommodation against St. Peter's Hospital regarding an incident on March 13, 2014 are meritorious because the hospital failed to prove that Hay's service animal was out of control, that Hay's condition was such that he was unable to control it, or that allowing a service animal to accompany Hay would "fundamentally alter the nature" of the services provided. See e.g., *BNSF Railway Co. v. Feit*, 2012 MT 147, ¶ 8, 365 Mont. 359, 281 P.3d 225 (indicating that the MHR should be interpreted consistently with federal discrimination law under the Americans with Disabilities Act); 28 C.F.R. § 36.302(a), (c)(1), (c)(2), and (c)(7) ("Individuals with disabilities shall be permitted to be accompanied by their service animals in all areas of a place of public accommodation where members of the public, program participants, clients, customers, patrons, or invitees, as relevant, are allowed to go.")~~

Next, as a result of the changes explicated above, Order, paragraph 1 is modified as follows (stricken material interlined, new material underlined):

1. Judgment now issues in favor of ~~St. Peter's Hospital~~ Robert D. Hay and against St. Peter's Hospital. ~~Robert D. Hay. Hay's complaint is dismissed with prejudice as without merit.~~

### ORDER

IT IS HEREBY ORDERED that this matter is REMANDED to make the modifications above and for a determination of damages and appropriate affirmative relief.

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 6th day of June, 2016.

/s/ Ronda Howlett//  
Ronda Howlett, Commissioner  
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 6th day of June, 2016.

ROY H. ANDES  
1401 CEDAR STREET, SUITE 7  
MISSOULA, MT 59802

DAVID MCLEAN  
RYAN WILLMORE  
MCLEAN & ASSOCIATES, PLLC  
201 W. RAILROAD, STE. 300  
MISSOULA, MT 59802



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Annah Howard, Legal Secretary  
Montana Human Rights Bureau