

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

PAUL BOHAN,
Charging Party/Appellant,

HRB CASE NO.0170445

-v-

FINAL AGENCY DECISION

CITY OF MISSOULA,
Respondent/Appellee.

Charging Party, Paul Bohan, filed a complaint with the Department of Labor & Industry (Department), which alleged unlawful discrimination in employment and governmental services on the basis of disability. Following an informal investigation, the Department determined that reasonable cause supported Bohan's allegations. The case went before the Office of Administrative Hearings of the Department of Labor & Industry, which held a contested case hearing, pursuant to Mont. Code Ann. § 49-2-505. The hearing officer issued a Decision on July 9, 2018. The hearing officer entered summary judgment in favor of the Respondent and determined that discrimination did not occur.

Charging Party filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on September 14, 2018. Paul Bohan appeared and presented oral argument on his own behalf. Jack Jenks, attorney, appeared and presented oral argument on behalf of City of Missoula.

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. Mont. Code Ann. § 2-4-621(3). The commission reviews conclusions of law for correctness and to determine whether the hearing officer misapplied the law to the facts of the case. The commission reviews findings of fact to determine whether substantial evidence exists to support the particular finding. Admin. R. Mont. 24.9.123(4)(b); *Schmidt v. Cook*, 2005 MT 53, ¶ 31, 326 Mont. 202, 108 P.3d 511. “Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. It consists of more than a mere scintilla of evidence but may be less than a preponderance.” *State Pers. Div. v. DPHHS*, 2002 MT 46, ¶ 19, 308 Mont. 365, 43 P.3d 305.

FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of various interactions between Charging Party, Paul Bohan ("Bohan") and Respondent, the City of Missoula ("the City "). The specific interaction between Bohan and the City at issue concerned a series of e-mails on or about February 27, 2017, in which City Council member Jon Wilkins responded to a series of Bohan's e-mails by stating that Bohan needed to be on medication. Bohan has, over the last several years been involved in a number of matters with the City in which he was dissatisfied with the City's responses to his specific concerns. The prior matters include, among others, the 2007 construction of a baseball stadium in Missoula, and the City's acquisition by condemnation of the Missoula water utility from private ownership. The only issue that is timely before the Commission is the February 27, 2017, incident.

After receiving Bohan's complaint of discrimination, the Human Rights Bureau of the Department of Labor and Industry proceeded with an informal investigation pursuant to § 49-2-504, MCA. As a result of the informal investigation, the Human Rights Bureau concluded there was reasonable cause to set the Bohan complaint for hearing with the Department's Office of Administrative Hearings.

After the case was sent to the Office of Administrative Hearings, the City of Missoula moved for summary judgment in the case. The Hearing Officer found, as a matter of law, that the City of Missoula did not discriminate against Bohan in employment or in access to any government services. The Hearing Officer determined that there were no material contested issues of fact, and went on to analyze the facts and the law to conclude that the City of Missoula had not unlawfully discriminated against Bohan in the area of employment, nor had the City of Missoula denied Bohan access to government services in violation of the Governmental Code of Fair Practices.

DISCUSSION

Before the Commission, Bohan argues the Hearing Officer and the Human Rights Bureau ignored his underlying complaints about the City of Missoula and that they did not properly address his claims of unlawful discrimination and failure to accommodate his ADHD condition. Bohan argues the Human Rights Bureau improperly characterized his complaint as arising out of employment, and therefore the Human Rights Bureau and the Hearing Officer failed to address the correct issue(s) in Bohan's complaint.

Bohan attached to his briefs a large number of documents which Bohan contends are evidence of his improper treatment by the City of Missoula, as well as unfair treatment by other entities, including the *Missoulian* newspaper. Bohan also submitted various other materials, including recordings from the October 20, 2014 and October 21, 2013, City Commission meetings.

The City of Missoula argues that the record supports the Hearing Officer and that the Hearing Officer correctly applied the law. The City of Missoula moved to strike all of Bohan's attachments to his brief(s) that were not part of the record in front of the Hearing Officer.

As a preliminary matter, the Commission addressed the Motion to Strike made by the City of Missoula. Following discussion, the Commission stated that it would not consider matters outside of the record, but denied the City's Motion to Strike.

The Commission thereafter considered the Hearing Officer Decision on the merits. The Commission notes that the case turns on whether or not the City improperly denied governmental services to Bohan, and not on employment discrimination, as Bohan has never sought employment nor been employed by the City. The Commission determined that the Hearing Officer's decision did actually analyze the matters timely complained of by Bohan to determine whether the City of Missoula denied Bohan governmental services.

Montana's human rights laws do not impose a code of general civility; rather, they protect persons from unlawful discrimination on the basis of the individual's membership in a protected class. *Campbell v. Garden City Plumbing and Heating*, 2004 MT 231, ¶ 23. While the comment of the City Councilor regarding Bohan supposedly needing medication was inappropriate, the statement alone did not constitute unlawful discrimination against Bohan. Similarly, the fact that the City did not make decisions in accordance with Bohan's preferred outcomes, or that the City does not look into every item he complains of, does not constitute a denial of governmental services or infringe on his right to participate in government. The Hearing Officer correctly found that the City had not denied Bohan any service and that no service offered by the City had harmed Bohan.

After careful consideration of the complete record and the argument presented by the parties, the Commission determines that the Hearing Officer Decision appropriately addressed the substance of Bohan's claims of unlawful discrimination under the Governmental Code of Fair Practices.

ORDER

IT IS HEREBY ORDERED, that the Hearing Officer Decision is AFFIRMED IN ITS ENTIRETY. Either party may petition the district court for judicial review of the Final Agency Decision. *Mont. Code Ann. §§ 2-4-702 and 49-2-505*. 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. *Mont. Code Ann. § 2-4-702(2)*.

DATED this 27th day of September, 2018.



Sheri Sprigg, 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 27th day of September, 2018.

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