

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

RONIS BOLLINGER,
Charging Party/Appellant

HRB CASE NO.0131016262

-v-

FINAL AGENCY DECISION

BILLINGS CLINIC,
Respondent/Appellee

Charging Party, Ronis Bollinger, filed a complaint with the Department of Labor and Industry (Department), which alleged unlawful discrimination in employment on the basis of retaliation. Following an informal investigation, the Department determined that a preponderance of the evidence supported Bollinger'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 December 29, 2015. The hearings officer determined that Respondent Billings Clinic did not retaliate against the Charging Party.

Charging Party filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on March 14, 2016. Veronica A. Procter and Philip McGrady, attorneys, appeared and presented oral argument on behalf of Bollinger. Edward Butler, attorney, appeared and presented oral argument on behalf of Billings Clinic.

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. *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. *Denke*, ¶ 39. Discovery disputes are reviewed for an abuse of discretion. *McCulley v. U.S. Bank*, 2015 MT 100 *Pallister v. Blue Cross & Blue Shield of Mont, Inc.*, 2012 MT 198, ¶ 9, 366 Mont. 175, 285 P.3d 562.

DISCUSSION

Charging Party raises three issues on appeal:

First, the hearing officer erred by not finding that the Charging Party's removal of the surgical schedule (containing protected health information) from the surgical department and taking it to a human resources employee (and later to her attorneys) was "protected activity" under the Montana Human Rights Act.

Second, that the hearing officer abused his discretion in denying certain discovery against the Respondent.

Third, that the hearing officer refused to properly consider comparative evidence of Respondent's actions with regards to similarly situated employees.

Respondent argues that the Hearing Officer correctly found that Respondent did not retaliate against Charging Party, that Respondent had good cause to terminate the employment of the Charging Party, and that the reason offered was not a pretext or motivated by retaliatory animus. Respondent further argued that the hearing officer was in the best position to rule on the discovery dispute, and that he did not abuse his discretion.

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

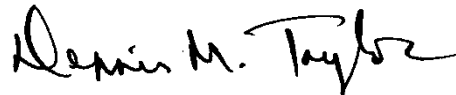
substantial, credible evidence and that the hearing officer correctly applied the law and did not abuse his discretion.

ORDER

IT IS HEREBY ORDERED, that the appeal of Ronis Bollinger 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 27th day of April, 2016.



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 27th day of April, 2016.

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