

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

JERRY JAMES BRIGHT,
Charging Party/Appellee,

HRB CASE NO.0160423

-v-

FINAL AGENCY DECISION

KB ENTERPRISES, LLC, d/b/a SNAPITZ,
Respondent/Appellant

Charging Party, Jerry James Bright, filed a complaint with the Department of Labor & Industry (Department), which alleged unlawful discrimination in employment on the basis of race and national origin. Following an informal investigation, the Department determined that reasonable cause supported Bright'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 October 10, 2017. The hearing officer entered judgment in favor of Bright, and determined that discrimination did occur.

Respondent filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on January 19, 2018. J. Ben Everett, attorney, appeared and presented oral argument on behalf of Bright. Cynthia L. Walker, attorney, appeared and presented oral argument on behalf of KB Enterprises, LLC, d/b/a Snappitz.

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.

DISCUSSION

Before the Commission, Snappitz argues that Findings of Fact 10-20, 23, and 29-42 are not supported by substantial evidence in the record. It further argues that Bright’s use of the offensive terms should preclude his recovery. Respondent argues that the conclusions of law based on the erroneous findings of fact should be reversed—and thus a finding entered that no harassment occurred. Finally, Respondent argues that, should the discrimination finding be upheld, the damage award should be lessened.

Before the Commission, Bright argues that the FOFs are supported by evidence in the record, and the fact that the facts are contested does not vitiate the evidence present. Based on those facts, Bright argues the conclusions of laws are correct and that the damage award is not excessive.

After careful consideration of the complete record and the argument presented by the parties, the Commission determines that the Hearing Officer Decision should be affirmed in its entirety. The findings of fact of the Hearing Officer were supported by competent substantial evidence and are not to be reweighed on appeal. Further, the Hearing Officer’s conclusions of law based upon the findings of fact were correct. Snappitz failed to meet its burden to show that the damage award was clearly erroneous based on the record, and so the award is affirmed.

ORDER

IT IS HEREBY ORDERED, that the hearing officer decision is AFFIRMED IN ITS ENTIRETY and that the appeal of KB Enterprises, LLC d/b/a Snappitz is dismissed.

Either party may petition the district court for judicial review of the Final Agency Decision. *Sections 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. § *Section 2-4-702(2).*

DATED this 1st day of February, 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 1st day of February, 2018.

J. BEN EVERETT
EVERETT LAW, PLLC
P.O. BOX 969
ANACONDA, MT 59711

MATTHEW I. SACK
SACK LAW, PLLC
1700 W. KOCH, STE. 4
BOZEMAN, MT 59715

CYNTHIA L. WALKER
POORE, ROTH & ROBINSON, P.C.
1341 HARRISON AVENUE
BUTTE, MT 59701



Annah Howard, Legal Secretary
Montana Human Rights Bureau