

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

KRISTEN CARLIN AND NATHAN WULF,
Charging Party,

-v-

MIKE CHAMBERS, JENNY CHAMBERS,
CITY OF LIVINGSTON, LIVINGSTON FIRE
AND RESCUE, JEFF SCHOENEN, DAVID
FINE, SHANNON BROWNING AND SETH
RIVARD,
Respondent.

HRB CASE NOS. 0131016227,
0131016226, 0131016319, 0131016318,
0131016232, 0131016230, 0131016229,
0131016231, 0131016317, 0131016316,
0131016315

FINAL AGENCY DECISION

Charging Party, Kristen Carlin and Nathan Wulf, filed a complaint with the Department of Labor and Industry (Department), which alleged unlawful discrimination in employment on the basis of sex and retaliation. Following an informal investigation, the Department determined that a preponderance of the evidence supported Carlin and Wulf'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 29, 2016. The hearings officer determined that discrimination against Carlin had not occurred. The hearings officer further determined that retaliation against both Carlin and Wulf had occurred, and awarded damages as a result. The hearings officer determined that the affirmative duties of the Governmental Code of Fair Practices had been violated, and that various affirmative relief was therefore appropriate.

Charging Parties, Carlin and Wulf along with the Respondents, with the exception of Jenny Chambers, all filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on July 22, 2016. Tim Kelly, attorney, appeared and presented oral argument on behalf of Carlin and Wulf. Michael J. Lilly attorney, appeared and presented oral argument on behalf of City of Livingston, Livingston Fire and

Rescue, Jeff Schoenen and David Fine. Harlan B. Krogh attorney, appeared and presented oral argument on behalf of Mike Chambers, Shannon Browning and Seth Rivard.

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

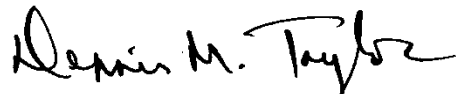
After careful consideration of the complete record and the argument presented by the parties, the Commission determines that the hearing officer's decision should be affirmed in its entirety. Appellants failed to meet their burdens in persuading the Commission that any findings of fact were clearly erroneous as not supported by substantial evidence or that there was a misapprehension about the effect of evidence. Appellants further failed to convince the Commission that an error of law had been made as to any of the myriad issues raised on appeal. As such, the Commission affirms the hearing officer decision.

ORDER

IT IS HEREBY ORDERED, that the appeals are rejected and that the decision of the hearing officer is affirmed in its entirety.

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 29th day of August, 2016.

A handwritten signature in black ink that reads "Dennis M. Taylor". The signature is written in a cursive style with a horizontal line underneath it.

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 29th day of August, 2016.

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