

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

KATHY CHAVIS,
Charging Party,

HRB CASE NO.014016908

-v-

FINAL AGENCY DECISION

DPHHS/MONTANA CHEMICAL
DEPENDENCY CENTER,
Respondent.

Charging Party, Kathy Chavis, 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 Chavis' 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 February 10, 2016. The hearings officer determined that Respondent Montana Department of Public Health and Human Service, Montana Chemical Dependency Center, had engaged in illegal retaliation against Chavis. Because the case was one of mixed motive, as defined at Admin. R. Mont. 24.9.611, Chavis was not entitled to damages. Nonetheless, certain affirmative relief was ordered.

Charging Party 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 Chavis. Mary Tapper, attorney, appeared and presented oral argument on behalf of DPHHS/Montana Chemical Dependency Center.

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

Chavis raised various arguments in her appeal to the Commission. Most notably, Chavis argued that the hearing officer improperly favored live testimony over documentary evidence, that the hearing officer failed to make findings as to the Governmental Code of Fair Practices, and that the mixed motive analysis was improperly considered.

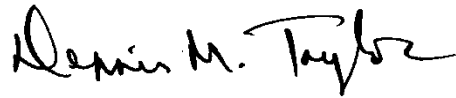
After careful consideration of the complete record and the argument presented by the parties, the Commission affirms the hearing officer's decision in its entirety. The hearing officer is entitled to deference as to credibility determinations and weight of the evidence, and it does not appear that those determinations were improperly made. The decision was supported by competent substantial evidence in the record, and the hearing officer correctly interpreted the law and applied the facts of the case to the law.

ORDER

IT IS HEREBY ORDERED, that the appeal of Kathy Chavis is denied and that the order 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 22nd day of August, 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 22nd day of August, 2016.

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