

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

JOSHUA CLARK,
Charging Party/Appellant,

-v-

MISSOULA COUNTY, MONTANA SHERIFF
TERRY MCDERMOTT AND
UNDERSHERIFF JASON JOHNSON,
Respondent/Appellee.

HRB CASE NO.0151017366,
0151017367 & 0151017368

FINAL AGENCY DECISION

Charging Party, Joshua Clark, filed a complaint with the Department of Labor & Industry (Department), which alleged unlawful discrimination in employment on the basis of political belief and retaliation. Following an informal investigation, the Department determined that reasonable cause supported Clark'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 March 27, 2017. The hearing officer entered judgment in favor of 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 July 18, 2017. Quentin M. Rhoades , attorney, appeared and presented oral argument on behalf of Clark. Steven S. Carey, attorney, appeared and presented oral argument on behalf of Missoula County, et al.

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, Charging Party argues that, had he not run for sheriff of Missoula County, he would not have been moved to patrol. Clark argues that it constitutes political discrimination for the newly elected sheriff not to offer him the position of Captain of Professional Standards. Clark further argues that sheriff is not one of the elected officials given the authority to politically appoint.

Before the Commission, Respondent argues that upper level management can be determined with significant discretion of the sheriff. Because of the animosity between Sheriff McDermott and Clark, McDermott had no obligation to retain Clark in upper level management. Respondent further argues that, because of the collective bargaining agreement in place and that Clark had not competed for positions, the only available position outside of management was in patrol, but that it had offered Clark pay protection.

After careful consideration of the complete record and the argument presented by the parties, the Commission determines the findings of fact were supported by competent substantial evidence in the record and the conclusions of law were correct. It appears based upon the record that the decision to move Clark to patrol was not pretextual. As found by the hearing officer,

“Respondents had legitimate, non-discriminatory reasons for reassigning Clark to patrol rather than a captain position. Those reasons included staffing needs, as well as the breakdown of the working relationship between Clark and McDermott caused, in part, by the rancor of the 2014 elections.” Finding of Fact 122. Because the reasons for the change in position were not pretextual and because the hearing officer correctly applied the law, the hearing officer decision should be affirmed in its entirety.

ORDER

IT IS HEREBY ORDERED, that the hearing officer decision is AFFIRMED IN ITS ENTIRETY, and the Hearing Officer Decision and Notice of Issuance of Administrative Decision is adopted as a part of this Final Agency Decision.

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 14th day of August, 2017.



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 14th day of August, 2017.

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