

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

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LESLEY COONEY,  
Charging Party,

-v-

MISSOULA SPARTAN, LLC d/b/a SUBARU  
OF MISSIOULA,  
Respondent.

HRB CASE NO.0141016978

FINAL AGENCY DECISION

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Charging Party, Lesley Cooney, filed a complaint with the Department of Labor and Industry (Department), which alleged unlawful discrimination in employment on the basis of age. Following an informal investigation, the Department determined that a preponderance of the evidence supported Cooney'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 August 21, 2015. The hearing officer determined that Cooney had failed to prove discrimination had occurred.

Charging Party filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on January 22, 2016. Ryan Shaffer, attorney, appeared and presented oral argument on behalf of Cooney. Joe Seifert, attorney, appeared and presented oral argument on behalf of Missoula Spartan, LLC d/b/a Subaru of Missoula.

**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.3<sup>rd</sup> 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**

Before the Commission, Cooney argues, in short, that the Hearing Officer incorrectly excluded the testimony of her expert witness, that the Hearing Officer incorrectly found for the Respondent as to pretext, and that the Hearing Officer was incorrect as a matter of law in failing to find discrimination.

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 were supported by substantial evidence in the record, and that her conclusions of law were correct.

The decision whether to admit the testimony of Cooney's expert witness fell within the sound discretion of the hearing officer. The Hearing Officer did not abuse her discretion in denying such testimony, and her reasoning for doing so was extensively outlined in her Order Granting Respondent's Motion to Exclude the Testimony of Peter Glick.

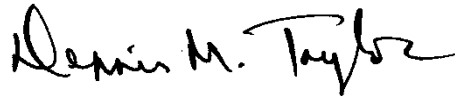
As to the factual disputes, the Commission reviews factual findings not to determine whether alternative factual findings may also be supported by the record, but instead to determine whether substantial evidence in the record supports those facts which were found. In this instance, the findings of fact were supported by such evidence, and the Commission does not find that those facts were misapprehended or that a mistake was made. Based on the facts found, the Hearing Officer's findings as to the law were correct.

## ORDER

IT IS HEREBY ORDERED, that the appeal of Leslie Cooney is denied, and 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 8th day of February, 2016.



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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 8th day of February, 2016.

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Annah Howard, Legal Secretary  
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