

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

CINDY FUSON,
Charging Party

-v-

MONTANA STATE LIBRARY AND
CONRAD PUBLIC LIBRARY,
Respondent

HRB CASE NO. 0170508

FINAL AGENCY DECISION

Charging Party, Cindy Fuson (Fuson), filed a complaint with the Department of Labor and Industry (Department) alleging discrimination in public accommodation on the basis of disability. Following an informal investigation, the Department determined that a preponderance of the evidence did not support Fuson's allegations that Respondent, Montana State Library and Conrad Public Library, discriminated against Fuson. The Department issued a Notice of Dismissal. Fuson filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on July 20, 2018. J.R. Casillas appeared and argued on behalf of Cindy Fuson. Jordan Y. Crosby appeared and argued on behalf of Montana Public Library and Conrad Public Library. All members of the Commission present stated they had each reviewed the entire record submitted to the Commission.

The complaint in this matter arises concerning whether the Conrad Public Library discriminated against Fuson on account of her being excluded from the library because she was accompanied by a dog who is claimed to be a service animal. (Charging party conceded that the Montana Public Library is not a proper respondent in this matter.) Fuson argued that 28 CFR § 36.104 sets a very low threshold for a dog to qualify as a service animal. Fuson stated that she had individually trained her dog to perform various functions to assist Fuson in her daily routines

and circumstances. Fuson also pointed to specific AKC training and the dog's registration as a service animal.

Conrad Public Library argued that Fuson had the burden of proof that her dog qualifies as a service animal, and is not a mere pet. Conrad Public Library argued that the dog in question had not been individually trained to perform specific tasks, and that the functions the dog performed were only those that the dog performed naturally and without training. Conrad Public Library pointed to the fact that Fuson could not identify any specific tasks she trained her dog to perform that went above and beyond those of normal canine obedience. It further pointed out that the AKC training occurred after the complained-of incident, and that the training was not service animal training.

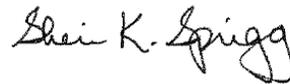
The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. *Section 49-2-511(2), MCA*. Fuson has the burden of proof to show that the investigator committed an abuse of discretion in the informal investigation and in the resulting Final Investigative Report. After careful consideration, the Commission concludes the determination of the Department to dismiss the complaint in this case is not an abuse of discretion.

If a charging party chooses to commence a civil action in district court, the charging party has 90 days after the date this order is issued to file a complaint in district court, in the district where the alleged violation occurred, and seek appropriate relief. *Section 49-2-511(3)(a), MCA*. If a charging party fails to commence a civil action within 90 days, the claims are time barred. *Id.*

Alternatively, a party may ask a district court to review the decision of the Commission to affirm the dismissal of a complaint. *Sections 2-4-702 and 49-2-511(3)(b), 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*.

IT IS HEREBY ORDERED, that Cindy Fuson's objection is **overruled**. The Commission affirms the determination of the Human Rights Bureau to dismiss the complaint against Montana State Library and Conrad Public Library.

DATED this 16th day of August, 2018.

A handwritten signature in cursive script that reads "Sheri K. Sprigg".

Sheri K. 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 16th day of August, 2018.

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