BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

IN RE: OFFICE OF ADMINISTRATIVE HEARINGS CASE NO. 2276-2015

DANIELLE JONES A/K/A DANIELLE ANANEA,	)
Charging Party,	) HEARING OFFICER DECISION
	) AND NOTICE OF ISSUANCE OF
vs.	) ADMINISTRATIVE DECISION
ALL STAR PAINTING, INC., AND NORMAN HODGES,	)
Respondents.	)

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I. PROCEDURE AND PRELIMINARY MATTERS

Danielle Jones, a/k/a Danielle Ananea, brought this complaint alleging that her employer, All Star Painting, Inc. (All Star), owned by Norman Hodges, discriminated against her in her employment on the basis of gender by subjecting her to a hostile work environment.

Hearing Officer Caroline A. Holien convened a contested case hearing in this matter on November 19, and November 20, 2015 in Billings, Montana. Attorneys Ryan R. Shaffer and Ali Archual, pro hac vice, represented Jones. Attorney T. Thomas Singer represented All Star and Hodges.

At hearing, Jones, Ryan Jones, Stacey Hemming, Dustin Ritts, Alec Neibauer, Norman Hodges, Debbie Flud, Jeffrey Jones, Tim Flud, Judy Senteny, Dennis Unsworth, Clay Trimble, Maddy Main, Marvin Thomas, Patricia Berlanga, Jason Amundsen, Mike Gesuale, Regina Robinson, Laura Nelson, David Voth, and Claire Oravsky testified under oath.

Charging Party's Exhibits 2, 5, and 6 were admitted into evidence. Respondent's Exhibits 103 through 106, 107 (redacted), 138 through 141 (sealed), and 142 through 156 were admitted. Charging Party provided a pair of pink shorts

(Respondent's Exhibit 101) that were representative of the type of shorts she wore at work as per the demand of Respondents. The shorts were not offered as an exhibit and were used for demonstrative purposes only.

The parties submitted post-hearing briefs and the matter was deemed submitted for determination after the filing of the last brief which was timely received in the Office of Administrative Hearings on January 21, 2016. Based on the evidence adduced at hearing and the arguments of the parties in their post-hearing briefing, the following hearing officer decision is rendered.

II. ISSUES

1. Did All Star Painting, Inc. and Norman Hodges discriminate against Danielle Jones, a/k/a Danielle Ananea, on the basis of gender (female), in violation of the Montana Human Rights Act, Title 49, Chapter 2, Mont. Code Ann.

2. If All Star Painting, Inc., and Norman Hodges did illegally discriminate against Danielle Jones, a/k/a Danielle Ananea as alleged, what harm, if any, did she sustain as a result and what reasonable measures should the department order to rectify such harm?

3. If All Star Painting, Inc., and Norman Hodges did illegally discriminate against Danielle Jones, a/k/a Danielle Ananea as alleged, in addition to an order to refrain from such conduct, what should the department require to correct and prevent similar discriminatory practices?

III. FINDINGS OF FACT

1. All Star Painting, Inc. (All Star) employed Danielle Jones as a painter beginning on or about July 29, 2014. Jones' last day of work was approximately September 12, 2014.

2. At all times relevant to this matter, Jones has used the names Danielle Sands, Danielle Ananea, and Danielle Jones.

3. Jones worked approximately six weeks for All Star. All Star paid Jones a total of $1,130.50 in wages.

4. Norman Hodges is the sole owner of All Star. Hodges meets with clients, prepares estimates, completes payroll and generally directs the performance of the

crew. Hodges typically meets the crew at the start and at the end of the work day. Hodges does not typically remain at the job site throughout the day.

5. Hodges hires crew members. Hodges typically directs new crew members to be safe on the job; to take a morning and afternoon break; to take a 30-minute lunch break if the crew member brings a lunch or a one hour break if the crew member leaves the job site; to watch his or her language on the job site because the homeowner is typically home; and to wear painter's whites.

6. All Star runs one three- or four-person crew. Marvin Thomas has been the crew supervisor for the past four years.

7. During the summer of 2014, the crew largely consisted of Jones, Thomas and Ellen Knier, who was Thomas' girlfriend at the time.

8. Thomas reports to Hodges the number of hours crew members work on a daily basis.

9. Jones' rate of pay was initially $10.00 per hour. Hodges increased Jones' rate of pay to $11.00 per hour during the third week of her employment due to his satisfaction with her work.

10. Jones worked on approximately nine projects during her six weeks of employment. Each job took approximately three to four days to complete.

11. Jones frequently arrived late or left work early. Jones rarely worked more than two to three days per week due to child care and car issues.

12. Hodges never disciplined or otherwise reprimanded Jones based upon her job performance or attendance.

13. Hodges never reprimanded Jones for not wearing painter's whites and allowed her to continue wearing shorts, t-shirts, and sports bras to the job site.

14. Hodges did not create a hostile working environment for Jones by subjecting her to lewd comments or actions at work. The substantial and credible evidence of record did not support the contention that Hodges actually behaved inappropriately towards Jones.

IV. OPINION[1]

Jones argues All Star discriminated against her on the basis of gender by subjecting her to a hostile work environment throughout her employment through the words and actions of its owner Hodges.

A. Jones' objection regarding the admissibility of character evidence offered by Main, Berlanga and Oravsky.

Hodges called three female witnesses, all of whom testified positively about their interactions with Hodges and denied observing or ever hearing about Hodges engaging in the behavior alleged by Jones. Maddy Main is the daughter of a woman who was friends with Hodges and who had allowed Hodges to stay in her home while he was in Florida. Patricia Berlanga is a private dance instructor who knew Hodges through dancing and who described Hodges as having "ethical behavior in the ballroom." Berlanga testified Hodges stayed at her home while he was doing work at her home and she had no issues or concerns about his behavior. Claire Oravsky also knew Hodges through dancing. Oravsky testified she had never observed nor had she ever heard any complaints about Hodges acting inappropriately toward women.

Each of the women were allowed to testify over Jones' continuing objection. The parties were given an opportunity to provide briefs on the issue of the admissibility of the testimony. Having considered the arguments made at the time of hearing and in the parties' respective briefs, the hearing officer finds the evidence offered through the testimony of Main, Berlanga and Oravsky is admissible to the extent it addresses the truthfulness of Hodges for the reasons set forth below.

It should first be noted that character evidence is inadmissible to prove that the person acted in conformity therewith at times pertinent to the case pursuant to M.R.Evid. 404. However, there are instances in which such evidence may be admissible.

Hodges offers three arguments in support of the admissibility of the testimony of Main, Berlanga, and Oravsky.

Hodges argues the evidence is admissible habit evidence allowed for under M.R.Evid. 406. Montana R. Evid. 406(a) defines habit as being ". . . a person's

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[1] Statements of fact in this opinion are hereby incorporated by reference to supplement the findings of fact. Coffman v. Niece (1940), 110 Mont. 541, 105 P.2d 661.

regular response to a repeated specific situation. A routine practice is a regular course of conduct of a group of persons or an organization." The rule goes on to state:

> Evidence of habit or of routine practice, whether corroborated or not, and regardless of the presence of eyewitnesses, is relevant to prove that conduct on a particular occasion was in conformity with the habit or routine practice. . . Habit or routine practice may be proved by testimony in the form of an opinion or by specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine.
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> M.R.Evid. 406(b),(c).

Factors to consider in determining the admissibility of such evidence is (1)the degree to which conduct is reflexive as opposed to voluntary; (2) the specificity or particularity of conduct; and (3) the regularity of the conduct. U.S. v. Angwin, 271 F.3d 786, 799 (9th Cir. 2001) applying F.R.Evid. 406 (overruled on other grounds by U.S. v. Lopez, 484 F.3d 1186, 1210-11(9th Cir. 2007). Habit cases often involve specific, particularized conduct capable of almost identical repetition. Simplex, Inc. v. Diversified Energy Systems, Inc., 847 F.2d 1290, 1293 (7th Cir. 1988).

Jones contends such evidence is inadmissible due to the varied nature of the circumstances described in the testimony of the witnesses. Jones' argument that the different encounters described in the testimony of Main, Berlanga and Oravsky do not constitute habit evidence due to the varied nature of the encounters, all of which occurred in different settings, at different times and under different circumstances. Given the varied nature of the encounters described in the witness' testimony, Jones' argument that the testimony does not describe a person's regular response to a repeated specific situation is well taken. The circumstances underlying Jones' claim are significantly different from the circumstances described in the testimony of Main, Berlanga and Oravsky. Specifically, Jones was Hodges' employee and not his friend, hostess, dance partner, or dance teacher. Given the distinct differences in the matter at hand and the nature of the relationships described by Main, Berlanga, and Oravsky, their testimony regarding Hodges' treatment of women is not admissible as habit evidence under M.R.Evid. 406 and will not be given consideration.

Hodges also argues that evidence regarding his behavior toward women is relevant if affirmative relief such as training sexual harassment and hostile work environment was to be ordered in this case. Hodges further argues that evidence

regarding Hodges' treatment of women is admissible under M.R. 404(a)(3)(b) and (c), which states:

> (b) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.
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> (c) Character in issue. Evidence of a person's character or a trait of character is admissible in cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense.

To establish a claim of a hostile work environment, Jones must prove (1) she was subjected to verbal or physical conduct of a harassing nature; (2) that it was unwelcome; and (3) that the harassment permeated the work environment to the point that it was sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment. Stringer-Altmaier at ¶22; Nichols v. Azteca Restaurant Ent., Inc., 256 F.3d 864, 873 (9th Cir. 2001).

Jones can establish a prima facie case of sexual harassment with proof that she was subject to "conduct which a reasonable woman would consider sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment." Ellison v. Brady, 924 F.2d 872, 879 (9th Cir. 1991). "Harassment need not be severe and pervasive to impose liability; one or the other will do." Hostetler v. Quality Dining, Inc., 218 F.3d 798, 808 (7th Cir. 2000) (emphasis added, citations omitted).

Jones is not required to show Hodges had motive or intent to act in a discriminatory manner to prove a prima facie case of discrimination based on gender. Further, evidence regarding Hodges' behavior toward female friends, dance partners, dance teachers, and hostesses is not relevant to or probative of the issue of whether Hodges engaged in discriminatory conduct as Jones' employer and affirmative relief is required under the MHRA. Hodges' argument that character evidence is admissible under M.R.Evid. 404(a)(3)(b) and (c) is not persuasive.

Finally, Hodges argues Jones "opened the door" to character evidence by alleging Hodges lied about the events subject to Jones' allegations did not occur; and putting her own credibility into issue by calling witnesses who essentially vouched for her veracity.

Montana R. Evid 608(a) states:

> The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

Both parties attacked the truthfulness of the other in their pre-hearing filings and in their testimony at the time of hearing. As such, given that Jones was allowed to call witnesses who testified they found her to be truthful in their dealings with her, it would be manifestly unfair to deny Hodges that same opportunity.

To the extent that the testimony of Main, Berlanga and Oravsky, as well as Jones' husband, father-in-law, and ex-roommate, addresses the truthfulness or non-truthfulness of Hodges and Jones, the testimony is admissible under M.R. Evid 608(a) and will be given the appropriate evidentiary weight. However, testimony offered by Main, Berlanga and Oravsky regarding Hodges' conduct toward women outside of the employment setting will not be given any consideration.

B. The Credibility of the Testimony Offered by Jones and Hodges

In civil cases, a preponderance of the evidence is sufficient to establish the truth of any fact at issue. Mont. Code Ann. §26-1-403(1). When the record contains conflicting evidence of what is true, the fact finder decides credibility and weight of the evidence. Stewart v. Fisher (1989), 235 Mont. 432, 767 P.2d 1321, 1323; Wheeler v. City of Bozeman (1989), 232 Mont. 433, 757 P2d 345, 347; Anderson v. Jacqueth (1983), 205 Mont. 493, 668 P.2d 1063, 1064. In this regard, the standard for deciding facts remains the preponderance of evidence standard. Cf., Pannoni v. Bd. of Trustees, ¶73, 2004 MT 130, 321 Mont. 311, 90 P.3d 438, (Cotter, dissenting) (defining the preponderance standard as "more likely than not").

The department follows the Montana Rules of Evidence in making contested case fact determinations. "Notice of Hearing," October 25, 2013, p. 2; see also Admin. R. Mont. 24.8.704 and 24.8.746. Applying those Rules, the evidentiary framework for department discrimination cases is the same as that applicable in District Court civil trials. The burden of producing evidence is initially upon the party who would lose if neither side produced any evidence; thereafter, the burden of producing evidence shifts to the party against whom a finding would issue if no

further evidence was produced. Mont. Code Ann. § 26-1-401. In discrimination cases, as in most civil cases, the ultimate burden of persuasion always rests upon the party advancing the particular claim or defense. Id.; Heiat v. Eastern Mont. College (1996), 275 Mont. 322, 912 P.2d 787, 791, citing Texas Dpt. Com. Aff. v. Burdine, (1981), 450 U.S. 248, 253; Taliaferro v. State (1988), 235 Mont. 23, 764 P.2d 860, 862; Crockett v. Billings (1988), 234 Mont. 87, 761 P.2d 813, 818.

Mont. Code Ann. § 26-1-302, provides, in pertinent parts:

> A witness is presumed to speak the truth. The jury or the court in absence of the jury is the exclusive judge of his credibility. This presumption may be controverted and overcome by any matter that has a tendency to disprove the truthfulness of a witness' testimony; such matters include but are not limited to:
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> . . . .
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> (7) inconsistent statements of the witness;
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> (8) an admission of untruthfulness by the witness;
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> (9) Other evidence contradicting the witness' testimony.

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Mont. Code Ann. §26-1-303(3) provides: A witness false in one part of his testimony is to be distrusted in other.

Both parties offered convincing evidence that they are regarded as being truthful in their dealings with friends and family and are generally well liked people. Evidence was also presented that showed that each had situations in which they were less than honest. For example, evidence was presented that Jones represented to Regina Robinson, owner of Yellowstone River Care, that she held a Certified Nursing Assistant license issued by the State of Arizona, which was later determined to be false. Robinson testified she relied upon Jones' resumé and personal representation that she could produce a CNA license, which would have allowed her to work as a CNA for Robinson. However, Jones has never held a CNA license. Jones testified she completed a CNA course of study in Arizona; paid a fee and completed what she believed to be the necessary paperwork only to discover she was not actually licensed. It is not credible that Jones completed the course work and did not understand that additional steps were required to actually achieve licensure.

Similarly, Hodges represented to HRB Investigator Dennis Unsworth that there had been no complaints filed against his business with the Better Business Bureau (BBB). However, there was evidence presented showing a complaint had

been filed within the 12 months prior to Jones' human rights complaint. It is not credible that Hodges did not recall the BBB complaint particularly when it was specifically asked about by Investigator Dennis Unsworth.

In finding that both parties have a "smoking gun" type event that calls into question the credibility of their testimony, the hearing officer finds that the parties are essentially on equal footing when it comes to credibility. Therefore, the hearing officer is left to weigh the evidence presented.

Jones testified Hodges subjected her to sexually harassing comments and conduct, such as inquiring about her personal grooming and sexual activity; commenting on her physical appearance; placing his hands on her upper thighs and under her shorts while she was on a ladder; sticking her paycheck down her shorts and underwear; sticking a chicken bone down the back of her pants and underwear; and watching her urinate in a trailer at a job site. Jones testified she spent much of her work day "hiding from" Hodges. Jones also testified she began wearing long pants and avoiding ladders due to Hodges' behavior. Jones alleged the incident involving her paycheck was witnessed by two homeowners.

Hodges adamantly denied Jones' allegations. Hodges called nine homeowners, all of whom testified they observed nothing untoward or inappropriate on the job site. Judy Senteny testified All Star painted her house in late summer 2014. Senteny identified Jones as being a member of the crew that worked at her house. Senteny testified she recalled seeing Jones on a ladder at the job site. Clay Trimble testified he could not recall seeing Jones on the crew but did recall seeing the crew, which included one female, wearing shorts when his house was painted in the summer of 2014. Trimble also recalled seeing a female worker on a ladder. Jason Amundsen identified Jones as being a member of the crew working at his house. Amundsen testified he recalled the crew wearing shorts and t-shirts and it appeared to him that the crew worked together well. Laura Nelson testified All Star painted her home during the first week of September 2014 and she and her husband were home for the majority of the time the crew was at their home. Nelson testified she "babysat" the crew because she did not want the crew to disturb her neighbors by being too loud. Nelson denied seeing anything inappropriate and testified she recalled the crew, including Jones, greet Hodges when he stopped at the job site briefly in the morning and in the afternoon. Nelson's husband, David Voth, testified he talked with all three members of the crew, which he described as including one man and two women. Voth testified he observed Jones on a ladder doing trim. Voth testified Hodges was not there during the day and was only there in the

morning and in the afternoon. Many of the homeowners testified it took approximately three to four days for the crew to complete work at their homes.

Jones' pay records show she worked approximately 13 hours during the first week of her employment; approximately 22 hours during the second week of her employment; approximately 28 hours during the third week of her employment; approximately 30 hours during the fourth week of her employment; and six hours each week during the final two weeks of her employment.[2]

Jones' weekly hours is important to consider due to Jones' assertion that some of the alleged conduct occurred at other job sites. Jones testified there were no more than two homes after the Voth project which was completed during the first week of September 2014. Jones' last day of work was on or about September 12, 2014. Given that she worked only six hours during the final two weeks of her employment with All Star it is difficult to believe that she worked on two more projects during that period.

Jones also testified the paycheck incident and inappropriate comments occurred prior to the Voth home. Jones testified she believed the paycheck incident occurred at a home near Pioneer Park. Senteny's home is approximately one mile northwest of Pioneer Park. Senteny testified that both she and her husband (David) were home for much of the four days the crew spent at their home. Senteny identified Jones as being a member of the crew and testified speaking directly with Jones at the job site. Senteny denied seeing Hodges act inappropriately toward Jones.

Simple math dictates that the homeowners called by Hodges are most likely the homeowners of all of the homes worked on by Jones during her employment with All Star. The evidence shows Jones worked six weeks for All Star and the crew generally worked five days per week. That would amount to approximately thirty days of actual work with an average of 3.75 days spent on each project. (5days x 6weeks = 30 days/8 projects = 3.75 days on each project). It seems more likely than not that the nine homeowners, including the spouses Voth and Nelson, were the homeowners who could have been in a position to observe the conduct complained of by Jones. However, none of them claimed to have seen a thing despite Jones' contention that the paycheck incident was observed by a homeowner.

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[2] Jones' weekly wages were not broken out by date due to the paystubs including obviously incorrect dates. Neither party disputed the number of hours included in the paystubs or the wages noted as having been paid.

Hodges' testimony, while not terribly persuasive on its own, is bolstered by the testimony of the nine homeowners called to testify. No evidence was presented suggesting that any homeowner had a reason to lie and there was certainly no evidence presented that any of them had a stake in the outcome of this case. For these reasons, Hodges' testimony is determined to be more credible than Jones' testimony.

It should be noted that Marvin Thomas' testimony was found to be wholly unreliable and not credible. Hodges essentially impeached his own witness by introducing into evidence that Thomas lied to the Unemployment Insurance Division when he reported being laid off due to a lack of work in an apparent attempt to improperly obtain unemployment benefits during the fall of 2014. Hodges' testimony that he believed Thomas to be willing to lie in one matter before the Montana Department of Labor and Industry calls into question whether Thomas told the truth when interviewed by Unsworth where he apparently confirmed Jones' allegations or when he denied, under oath, Jones' allegations at hearing. Therefore, Thomas' testimony was given no consideration.

B. Jones has not shown a prima facie case of sexual harassment.

The Montana Human Rights Act prohibits discrimination in the terms and conditions of employment on the basis of sex. Mont. Code Ann. §§ 49-2-303(1)(a) and 49-3-201. Sexual harassment is considered a form of sex discrimination, and a hostile work environment is one form of illegal sexual harassment. Beaver v. D.N.R.C., ¶29, 2003 MT 287, 318 Mont. 35, 78 P. 3d 857; Stringer-Altmaier v. Haffner, ¶20, 2006 MT 129, 138 P.3d 419.

The anti-discrimination provisions of the Montana Human Rights Act closely follow a number of federal anti-discrimination laws, including Title VII of the Federal Civil Rights Act of 1964, 42 U.S.C. §2000e et seq. Montana courts have examined and followed federal case law that appropriately illuminates application of the Montana Act. Crockett v. City of Billings, 234 Mont. 87, 761 P.2d 813, 816 (1988).

To establish a claim of a hostile work environment, Jones must prove (1) she was subjected to verbal or physical conduct of a harassing nature; (2) that it was unwelcome; and (3) that the harassment permeated the work environment to the point that it was sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment. Stringer-Altmaier at ¶22; Nichols v. Azteca Restaurant Ent., Inc., 256 F.3d 864, 873 (9th Cir. 2001). At all

times, Jones retains the ultimate burden of persuading the trier of fact that they have been the victim of discrimination. Heiat, 912 P.2d at 792.

A charging party establishes a prima facie case of sexual harassment with proof that she was subject to "conduct which a reasonable woman would consider sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment." Ellison v. Brady, 924 F.2d 872, 879 (9th Cir. 1991). "Harassment need not be severe and pervasive to impose liability; one or the other will do." Hostetler v. Quality Dining, Inc., 218 F.3d 798, 808 (7th Cir. 2000) (emphasis added, citations omitted).

A totality of the circumstances test is used to determine whether a claim for a hostile work environment has been established. Harris v. Forklift Sys., Inc., 510 U.S. 17, 23, (1993). The relevant factors include "the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance." Harris, 510 U.S. at 23; see also Faragher v. Boca Raton, 524 U.S. 775, 787-88 (1998). The objective severity of harassment should be judged from the perspective of a reasonable person in the plaintiff's position, considering all the circumstances. Oncale, supra, quoting Harris, 510 U.S. at 23. It is appropriate, when assessing the objective portion of a charging party's claim, to assume the perspective of the reasonable victim. It is not necessary that a plaintiff enumerate with precision the exact number of times that she was subjected to offensive conduct in order to demonstrate the pervasiveness required to prove a hostile working environment. Testimony that the plaintiff was subjected to numerous instances of offensive conduct can be sufficient to show that the conduct was pervasive. Torres v. Pisano, 116 F.3d 625, 634-635 (2nd Cir.,1997).

Jones has not met her burden of persuasion. Jones' uncorroborated testimony regarding Hodges' actions was not sufficient to prove a prima facie case of discrimination based on gender. Therefore, Jones has not shown All Star subjected her to a hostile work environment due to Hodges' actions.

V. CONCLUSIONS OF LAW

1. The Department of Labor and Industry has jurisdiction over this case. Mont. Code Ann. § 49-2-509(7).

2. Danielle Jones, a/k/a Danielle Ananea failed to prove that All Star Painting, Inc. and Norman Hodges discriminated against her by subjecting her to a hostile work environment based upon her gender. Mont. Code Ann. §§ 49-2-303(1).

3. For purposes of Mont. Code Ann. § 49-2-505(8), All Star Painting, Inc. and Norman Hodges are the prevailing parties

VI. ORDER

Judgment is granted in favor of All Star Painting, Inc. and Norman Hodges and against Danielle Jones, a/k/a Danielle Ananea. Jones' complaint is dismissed with prejudice as lacking merit.

DATED: This 21st day of March, 2016.

CAROLINE A. HOLIEN

Caroline A. Holien, Hearing Officer
Office of Administrative Hearings,
Montana Department of Labor and Industry

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NOTICE OF ISSUANCE OF ADMINISTRATIVE DECISION

To: Ryan R. Shaffer, Robert L. Stepans, and Ali Archual, attorneys for Danielle Jones, and T. Thomas Singer, attorney for All Star Painting, Inc., and Norman Hodges:

The decision of the Hearing Officer, above, which is an administrative decision appealable to the Human Rights Commission, issued today in this contested case. Unless there is a timely appeal to the Human Rights Commission, the decision of the Hearing Officer becomes final and is not appealable to district court. Mont. Code Ann. § 49-2-505(3)(c).

TO APPEAL, YOU MUST, WITHIN 14 DAYS OF ISSUANCE OF THIS NOTICE, FILE A NOTICE OF APPEAL, Mont. Code Ann. § 49-2-505 (4), WITH 6 COPIES, with:

Human Rights Commission
c/o Marieke Beck
Human Rights Bureau
Department of Labor and Industry
P.O. Box 1728
Helena, Montana 59624-1728

You must serve ALSO your notice of appeal, and all subsequent filings, on all other parties of record.

ALL DOCUMENTS FILED WITH THE COMMISSION MUST INCLUDE THE ORIGINAL AND 6 COPIES OF THE ENTIRE SUBMISSION.

The provisions of the Montana Rules of Civil Procedure regarding post decision motions are NOT applicable to this case, because the statutory remedy for a party aggrieved by a decision, timely appeal to the Montana Human Rights Commission pursuant to Mont. Code Ann. § 49-2-505(4), precludes extending the appeal time for post decision motions seeking relief from the Office of Administrative Hearings, as can be done in district court pursuant to the Rules.

The Commission must hear all appeals within 120 days of receipt of notice of appeal. Mont. Code Ann. § 49-2-505(5).

IF YOU WANT THE COMMISSION TO REVIEW THE HEARING TRANSCRIPT, include that request in your notice of appeal. The appealing party or parties must then arrange for the preparation of the transcript of the hearing at their expense. Contact Annah Howard, (406) 444-4356 immediately to arrange for transcription of the record.

Jones.HOD.chp