

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

TRACY LENHARDT,
Charging Party/Appellant,

HRB CASE NO.0160664

-v-

FINAL AGENCY DECISION

SYSCO CORPORATION,
Respondent/Appellee.

Charging Party, Tracy Lenhardt, filed a complaint with the Department of Labor & Industry (Department), which alleged unlawful discrimination in employment on the basis of gender. Following an informal investigation, the Department determined that reasonable cause supported Lenhardt'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 20, 2018. 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 20, 2018. Charles Cashmore, attorney, appeared and presented oral argument on behalf of Lenhardt. Josh Kirkpatrick, attorney, appeared and presented oral argument on behalf of Sysco Corporation. All members of the Commission present stated they had each reviewed the entire record submitted to the Commission.

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

This case presents allegations discrimination in employment on the basis of gender, with Lenhardt claiming that she was disparately subjected in the terms and conditions of work, in her compensation pay, and in disparately offering her another job, after her job was eliminated in a corporate reorganization.

Before the Commission, Charging Party Lenhardt argues that the Hearing Officer erred in relying upon the witness testimony as to Sysco Corporation's established employment practices, instead of determining that Sysco Corporation failed to provide competent evidence as to the actual application of those practices to Lenhardt. Specifically, Lenhardt argues that because Sysco Corporations' witness could not testify based her own personal knowledge of how corporate practices where applied, Sysco failed to provide any direct evidence to rebut Lenhardt's prima facia case of disparate treatment.

Because of that failure, Lenhardt argues that Sysco Corporation failed to provide competent evidence to carry its burden of Lendarth's prima facia case of discrimination, and that the Hearing Officer erred by not considering Lenhardt's legal arguments on that point.

Before the Commission, Sysco Corporation argues that there is substantial evidence in the record to support the Hearing Officer's findings of fact and the conclusions of law. Sysco Corporation argues the evidentiary point by saying that after a charging party presents a prima facia case, the respondent need only satisfy the burden of production of evidence, rather than the burden of persuasion.

There is no statutory provision in Montana human rights law which requires that a respondent in a disparate treatment case rebut the charging party's prima facia case with direct evidence. The burden shifting analysis of *McDonnell Douglas Corp v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L.Ed. 668 (1973) means the employer need only bear "the burden of production of a legitimate nondiscriminatory reason" for the pay disparity. *Crockett v. City of Billings*, 234 Mont. 87, 761 P.2d 813, 816 (1988). The employer satisfies its burden of proof by introducing evidence which permits the conclusion that there was a nondiscriminatory reason for the employment action.

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, Conclusions of Law and Recommended Order are supported by substantial credible evidence and represent correct legal analysis.

ORDER

IT IS HEREBY ORDERED, that the hearing officer decision is AFFIRMED IN ITS ENTIRETY.

Either party may petition the district court for judicial review of the Final Agency Decision. *Sections 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.

§ *Section 2-4-702(2)*.

DATED this 17th day of August, 2018.

Handwritten signature of Sheri K. Sprigg in cursive script.

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 17th day of August, 2018.

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