

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

ALISCHA MASON,
Charging Party/Appellant,

HRB CASE NO.0160178

-v-

FINAL AGENCY DECISION

MONTANA DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES,
Respondent/Appellee.

Charging Party, Alischa Mason, filed a complaint with the Department of Labor & Industry (Department), which alleged unlawful discrimination in public accommodation on the basis of disability. Following an informal investigation, the Department determined that reasonable cause supported Mason'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 October 20, 2017. The hearing officer entered judgment in favor of Montana Department of Public Health and Human Services, 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 May 18, 2018. Beth Brenneman, attorney, appeared and presented oral argument on behalf of Mason. Mary Tapper, attorney, appeared and presented oral argument on behalf of Montana Department of Public Health and Human Services.

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, Appellant Alischa Mason argues that the hearing officer incorrectly concluded that DPHHS proved that discrimination played no role in its actions. Mason further argues that the hearing officer applied a direct threat analysis, which was not pled by the Respondent, nor were its elements met. Finally, Mason argues that the hearing officer incorrectly placed the burden in this direct evidence case upon her, rather than on Respondent.

Respondent, Montana Department of Public Health and Human Services argues that the hearing officer correctly considered the evidence presented and reached the correct conclusion: that discrimination did not occur. Respondent argues that the direct threat analysis was not applied, nor need it have been for Respondent to prevail.

After careful consideration of the complete record and the argument presented by the parties, the Commission determines that the facts found by the hearing officer are supported by substantial evidence in the record, and that the hearing officer’s conclusions of law are correct.

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. *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 21st day of May, 2018.



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 21st day of May, 2018.

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