

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

IN RE OFFICE OF ADMINISTRATIVE HEARINGS CASE NO. 536-2017:

LONIE STIMAC,	)	
	)	
Charging Party,	)	
	)	ORDER DISMISSING
vs.	)	COMPLAINT AND
	)	NOTICE OF
MONTANA DEPARTMENT OF	)	DISMISSAL OF COMPLAINT
COMMERCE,	)	
	)	
Respondent.	)	

\* \* \* \* \*

The parties hereto, acting through counsel, have stipulated to dismissal of the complaint herein, and issuance of a “right to sue” “letter.” The peculiar circumstances of this case render it appropriate for the Hearing Officer, exercising discretion on behalf of the department, to grant the relief the parties jointly seek. Because this is an extremely unusual set of circumstances, this order will first explain why discretionary dismissal is appropriate.

On March 2, 2016, charging party Lonie Stimac filed a formal complaint with the department. On October 4, 2016, the Office of Administrative Hearings issued an original Notice of Hearing. On October 5, 2016, respondent Montana Department of Commerce acknowledged service of the Notice of Hearing. On October 16, 2016, Stimac acknowledged service of the Notice of Hearing.

Mont. Code Ann. § 49-2-512(2)(b) provides that in addition to dismissal of complaints from the administrative process if the department determines that the complaint is untimely [under Mont. Code Ann. § 49-2-501(5)] and if the department finds that there is no reasonable cause to believe that unlawful discrimination occurred [under Mont. Code Ann. § 49-2-504(7)(b)], the department also shall dismiss a complaint if a period of 12 months has elapsed from the filing of a complaint and neither the department nor the commission has held a hearing pursuant to 49-2-505 or an informal hearing pursuant to 49-2-511.

This particular situation is thus governed by black letter law. If more than 12 months have elapsed since the filing of the original complaint (filed in this case on March 2, 2016), the department must dismiss that complaint. In the event of such a dismissal:

Within 90 days after the department has issued a notice of dismissal pursuant to subsection (2), the charging party may commence a civil action for appropriate relief on the merits of the case in the district court in the district in which the alleged violation occurred. If the charging party fails to commence a civil action within 90 days after the dismissal has been issued, the claim is barred. The court may provide the same relief as described in 49-2-506. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees and costs.

Mont. Code Ann. § 49-2-512(3).

However, there are several statutory exceptions to the requirement that the department must dismiss if 12 months have elapsed since complaint filing and neither the department nor the commission have held a formal or informal hearing. Mont. Code § 49-2-512(2)(b)(i) through (iii). For purposes of the present case, Mont. Code Ann. § 49-2-512(2)(b)(i) is pertinent:

However, the department or the commission may refuse to dismiss a complaint under this subsection (2)(b) if . . . more than 30 days have elapsed since service of notice of hearing under 49-2-505 . . . .

The legislative rationale for this particular exception is fairly straightforward. When a year has passed since complaint filing, and at least thirty days have passed since service of Notice of Hearing upon the last party served, the parties and the department have invested considerable time and expense in the administrative process. For there to have been a Notice of Hearing served by OAH means that the department has already gone through the entire investigative process and either the department or the commission has found reasonable cause to believe that unlawful discrimination occurred. The department and the parties have gone through an effort to resolve the case by conciliation, and the parties have had at least 30 days to commence discovery, since the standard Notice of Hearing includes a provision (found in a footnote to the second full paragraph on page 2 of the Stimac Notice of Hearing) stating:

Parties may commence discovery. To do so properly before issuance of a scheduling order, refer to the DLI Office of Administrative Hearings (<http://dli.mt.gov/hearings>) to obtain a copy of the standard discovery provisions applicable to this case.

Thus, there is good reason to vest OAH with the discretion (“may refuse”) to refuse to dismiss at this point in the proceedings, because of the time and expense already invested in the case in the administrative process.

Given this rationale, OAH has consistently exercised its discretion not to dismiss when 512(b)(I) provides that discretion. Ordinarily, even when both parties agree that they want a dismissal, OAH will refuse to dismiss, because of the significant amount of time and expense put into the administrative process. Starting over in district court is almost never amenable to OAH.

However, there can be circumstances in which the disadvantages to the parties in further pursuit of the administrative process carry more weight. In this particular case, there have been three administrative complaints filed by Stimac. Simply put, Stimac filed her original administrative complaint when she experienced what she alleged were the initial adverse actions by her employer. As time went by after filing of that complaint, she experienced what she alleged were further adverse actions by her employer, which she believed were in part prompted by her first complaint, and filed a second administrative complaint (the current one). As time went by following this second complaint, she again experienced what she alleged were further adverse actions by her employer, and filed a third complaint. HRB found, for the first and the third administrative complaints, that there was no reasonable cause to believe unlawful discrimination occurred, and Stimac has timely filed civil complaints on the claims asserted in those two administrative complaints, as is her right.

That leaves this current complaint in the administrative process, and Stimac wants to be able to cover the adverse actions before and after those alleged in this complaint, in a single consolidated proceeding, which is simply impossible in this forum at this time. Commerce has credible jurisdictional arguments and arguments of risks of prejudice if matters outside the scope of the present complaint are addressed in the evidence. There is a possibility of inconsistent outcomes in two different forums. There are multiple ways in which each of the parties risks prejudicial developments resulting from the parsing of this case, in this forum, from the other two cases, in district court.

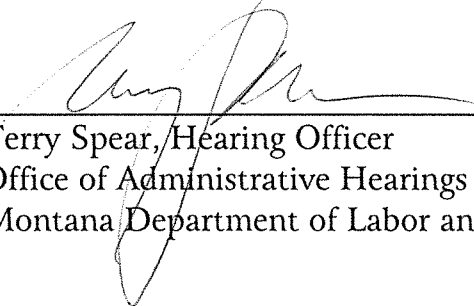
Under these very unique circumstances, which have created a perfect storm of problems with all three cases going forward at essentially the same time, divided into two different forums, OAH's discretion should and is being exercised in favor of the dismissal sought by both parties. This is not a signal to future litigants that it will now be easier to escape the administrative process after utilizing it for an extended period of prehearing litigation. It will not now be easier to do that.

In this case, however, it is appropriate to dismiss, and therefore IT IS HEREBY ORDERED that the complaint of Lonie Stimac in this proceeding, is dismissed in its entirety.

### NOTICE OF DISMISSAL

Pursuant to the express provisions of Mont. Code Ann. § 49-2-512(3), within 90 days after the department's issuance of this notice of dismissal pursuant to subsection 512(2), charging party Lonie Stimac may commence a civil action against the Montana Department of Commerce for appropriate relief on the merits of this case in the district court in the district in which the alleged violation occurred. If Stimac fails to commence a civil action within 90 days after the dismissal has been issued, the claim is barred. The court in which such an action is timely filed may provide the same relief as described in Mont. Code Ann. § 49-2-506. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees and costs. No "right to sue" "letter" is necessary – this notice of dismissal triggers the running of the 90-day period.

DATED: this 24<sup>th</sup> day of March, 2017.

  
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Terry Spear, Hearing Officer  
Office of Administrative Hearings  
Montana Department of Labor and Industry

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CERTIFICATE OF MAILING

The undersigned hereby certifies that true and correct copies of the foregoing document were, this day, served upon the parties or their attorneys of record by depositing them in the U.S. Mail, postage prepaid, or by means of the State of Montana's Interdepartmental mail service, and addressed as follows:

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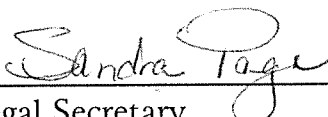
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The undersigned hereby certifies that true and correct copies of the foregoing document were, this day, served upon the parties or their attorneys of record by means of the State of Montana's Interdepartmental electronic mail service.

MARIEKE BECK, BUREAU CHIEF  
HUMAN RIGHTS BUREAU

TIMOTHY LITTLE  
DOLI LEGAL SERVICES BUREAU

DATED this 24<sup>th</sup> day of March, 2017.

  
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Legal Secretary

