

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

IN RE OFFICE OF ADMINISTRATIVE HEARINGS CASE NO. 851-2019:

LAURENCE STEWART #3011990,)	
)	
Charging Party,)	
)	HEARING OFFICER DECISION
vs.)	AND NOTICE OF ISSUANCE OF
)	ADMINISTRATIVE DECISION
MONTANA DEPARTMENT OF)	
CORRECTIONS, MONTANA STATE)	
PRISON,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

Charging Party Laurence Stewart #3011990 brought this complaint alleging that Respondent Montana Department of Corrections, Montana State Prison (MSP), discriminated against him in the provision of governmental services when he was sexually harassed by an MSP correctional officer. Stewart's initial complaint also alleged that he was retaliated against for reporting the sexual harassment.

Hearing Officer Caroline A. Holien convened a contested case hearing in the matter at MSP in Deer Lodge, Montana. Stewart appeared personally and represented himself. Kristy Cobban, MSP Technical Correctional Services Bureau Chief, appeared as MSP's designated representative. Ira Eakin and Wes Somogy, Attorneys at Law, represented MSP.

Prior to hearing, MSP admitted liability for sexual harassment as alleged in Count I of Stewart's Charge of Discrimination. The Hearing Officer granted Stewart's motion to dismiss Counts II, III, and IV of his Charge of Discrimination at hearing. Therefore, the only issue left to address is what damages, if any, Stewart is entitled to as a result of the discrimination he suffered in the provision of governmental services at MSP on December 3, 2017.

At hearing, Stewart; Cobban; Billie Reich, MSP Program Manager; Alvin Fode, MSP Unit Manager; Jamie Ray, MSP Clinical Therapist; Erin Grunhuvd, MSP Mental Health Treatment Unit Supervisor & Discharge Planner, testified under oath.

The parties stipulated to the admission of Charging Party's Exhibits 1 through 57; 59 through 89; 92; and 93. The parties also stipulated to the admission of Respondent's Exhibits 101 through 106. No other exhibits were offered at hearing.

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. Based on the evidence adduced at hearing and the arguments of the parties in their closings at time of hearing and in their post-hearing briefing, the following hearing officer decision is rendered.

II. ISSUE

What harm, if any, did Laurence Stewart #3011990, suffer as a result of the discrimination he suffered in the provision of governmental services. If Stewart was harmed, what reasonable measures should the department order to rectify such harm and to correct and prevent similar discriminatory practices?

III. UNCONTESTED FACTS

1. Laurence Stewart #3011990 was an inmate in 2017 to present at Montana State Prison (MSP).
2. Stewart was housed in High Side Unit - 1 (HSU-1) in 2017 and into April of 2018.
3. Lucas Griswold was employed as a correctional officer at MSP in 2017 and into 2018.
4. Griswold worked regularly in HSU-1 in 2017 and the beginning of 2018 before being suspended.
5. On December 3, 2017, Griswold sexually harassed Stewart.
6. Griswold made physical contact with Stewart while making sexual comments.

7. Griswold attempted/threatened to strip search Stewart if Stewart did not accept the pat down on December 3, 2017.

8. Griswold stated that he would perform pat downs of entire blocks or units in response to inmates calling him a racist or other insults.

9. Sgt. Christensen and other correctional officers were aware of past sexual and/or inappropriate behaviors by Griswold, but did not report it.

10. Policy and 28 C.F.R. Part 115 require staff to immediately report knowledge or suspicion of sexual abuse or harassment.

11. Pat downs of entire units returning from the chow hall are not normally performed.

12. When pat downs of entire units are performed, they are not normally performed by one officer alone.

13. Stewart and at least fourteen others filed informal grievances (informals) on the December 3, 2017 incident.

14. These informals were allegedly lost or misplaced until June 2018.

15. After receiving no response to the informal, Stewart filed a formal level grievance on January 9, 2018.

16. In response to the formal level grievance, an investigation into the December 3, 2017 incident was requested pursuant to the Prison Rape Elimination Act of 2003 (PREA) on February 20, 2018.

17. Billie Reich, having recalled the informals submitted in December 2017, investigated their whereabouts after receiving and reading Stewart's formal grievance.

18. The informals were allegedly found in the office of Patrick Sheehan, in an envelope dated December 17, 2017 in June, 2018.

IV. FINDINGS OF FACT

19. On December 3, 2017, Griswold conducted an *en masse* pat search of all inmates returning to HSU-1 from lunch (Griswold Incident). It was later determined

Griswold conducted *en masse* pat searches when inmates called him a racist or other derogatory comments. Ex. 59, p. 14.

20. *En masse* pat searches conducted as retribution for inmate comments is prohibited by the DOC Code of Ethics, which provides that staff “shall provide offenders with human custody and care, void of retribution, harassment, abuse or mistreatment.” Ex. 65.

21. MSP Procedure 3.1.17 states the purpose of searches are “[t]o prevent the introduction of weapons, drugs, alcohol, escape devices, or other contraband onto Prison property.” *Id.*

22. Stewart heard Griswold make comments during the *en masse* pat down to the effect that “he lost his shame years ago when the priest touched him,” and, “tucking his wiener between his legs.” Despite these comments, Griswold’s pat search of the inmates, including Stewart, was perfunctory and nonintrusive.

23. On December 4, 2017, Stewart and 14 other inmates, angry about Griswold’s conduct, filed informals regarding the Griswold Incident. Doc. 30.

24. Stewart had no direct contact with Griswold after the December 3, 2017 incident despite Griswold continuing to work in HSU-1, where Stewart was housed. Stewart made every effort to avoid Griswold and did not see him until January 2018 when Stewart skipped lunch to avoid encountering Griswold.

25. DOC 1.1.17 states the DOC has “zero tolerance relating to all forms of sexual abuse and sexual harassment in accordance with the standards set forth in the [PREA]. Sexual harassment is defined as:

Repeated and unwelcome sexual advances, requests for favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one offender directed toward another or repeated verbal comments or gestures of a sexual nature to an offender by a staff member or service provider.

Ex. 104A, pp. 1-2.

26. PREA requires MSP to offer access to medical examination and treatment; mental health crisis intervention and treatment, and access to a victim advocate who

can offer emotional support services throughout the investigative process or access to qualified prison staff. *Id.* at p. 10,11.

27. PREA further requires that staff who receive a report of sexual harassment will separate the victim from the alleged perpetrator to protect the victim. *Id.* at 8.

28. MSP is required to monitor the conduct and treatment of offenders who reported sexual harassment to prevent retaliation for a minimum of 90 days. Monitoring includes reviewing offender disciplinary reports and housing or program changes. Periodic status checks are also required. *Id.* at 10.

29. MSP has regularly reviewed its PREA policies over the past several years. MSP's policies and procedures have evolved over the years as familiarity with the requirements of PREA have become more clear and MSP staff have gained greater familiarity and expertise working with PREA. See Exs. 103A-104.

30. On or about December 11, 2017, Billie Reich, Program Manager for the MSP Grievance Department, collected the informals filed by Stewart and the other inmates. Reich typically collected grievances on a weekly basis, but she had been out on vacation the previous week. Reich acted pursuant to MSP policies and procedures in collecting the informals from the lockbox in which inmates were allowed to submit their grievances.

31. Reich delivered the informals to Alvin Fode, MSP Unit Manager, that same day. Reich acted pursuant to MSP policy that such complaints are to be treated as "emergent issues" and forwarded to the Unit Manager for response within 48 hours of the grievance having been filed. Reich personally advised Fode that this was an "emergent issue" and must be dealt with accordingly.

32. Fode date stamped the informal grievances December 18, 2017. Fode then forwarded them on to MSP PREA Compliance Manager Patrick Sheehan pursuant to MSP policies and procedures. Ex. 101 (interdepartmental envelope addressed to Sheehan from Fode dated 12/18/2017).

33. On January 9, 2018, Stewart filed a formal grievance after he received no response to his informal grievance. Ex. 31. Stewart's grievance was granted on February 20, 2018, by interim Warden Jim Salmonsens, who forwarded Stewart's complaint to Sheehan. *Id.* at 3.

34. On February 20, 2018, Sheehan filed a Request for Investigation with MSP Human Resources. Ex. 27.

35. On February 22, 2018, Amber Graham, who was a Security Technician at the time, interviewed Stewart regarding his PREA complaint. Ex. 35. Ultimately, Holly Callarman, MSP Human Resources Generalist assigned to investigate the matter, found Stewart's claims to be substantiated. The investigation also determined that Griswold's co-workers had complained about his behavior to the unit sergeant, who failed to discipline or to report Griswold up the chain of command or to MSP Human Resources. Ex. 59 at p. 13.

36. On March 6, 2018, MSP suspended Griswold. Ex. 82.

37. On March 7, 2018, Stewart filed an informal regarding MSP's failure to investigate his PREA complaint. Sheehan responded to the informal by noting, "This is already being investigated." Ex. 32.

38. On March 27, 2018, Stewart filed a formal grievance regarding MSP's failure to refer him for a mental health evaluation in relation to the Griswold Incident and as required by PREA. Regina Dees-Sheffield, Grievance Coordinator, responded, "Granted - an investigation has been completed and policy and procedure will be followed." Ex. 33.

39. On April 23, 2018, Dees-Sheffield followed up on Stewart's complaint after he clarified he was protesting the failure to provide him with mental health services in relation to his PREA complaint. Ex. 34, p.1.

40. On April 26, 2018, Graham responded to Dees-Sheffield:

On 2/22/2018 When Interviewing Inmate Stewart. I let him know that I was there to ask him about the grievance he had sent in pertaining to a PREA claim with a Staff member, I let him know that what he told me was in confidence, I asked him if he needed to speak with mental health or if he felt he needed medical, I stated that he needed to be honest about his answers and as accurate as possible. I notified him that if he felt he was being retaliated against, he needed to either send an emergency kite or call the PREA hotline immediately. If he started to have issues later on he needed to kite me or the appropriate department

for help. Inmate Stewart stated he didn't feel he needed mental health or medical.

Ex. 34, p. 2.

41. On April 1, 2018, Stewart filed a mental health request form (mental health kite) reporting that his "patience/stability is gone . . .". Stewart reported he tried killing someone before he was physically stopped. Stewart would not name the intended victim. Stewart also reported he had thoughts about killing his cell mates, which he noted as not being normal thoughts. Ex. 29.

42. Stewart was subsequently notified that his information would be forwarded to the unit manager due to safety concerns. Ex. 29.

43. In late March or early April 2018, Reich was called to HSU-1 to meet with Stewart. Reich noticed Stewart had a black eye, and he would not tell her how he got the black eye. Stewart told Reich that he did not want to live with the general population in HSU-1 and felt like he wanted to hurt someone. Reich and Stewart also talked about a write up he had received regarding his conduct that had ultimately been dismissed. *See* Ex. 49.

44. Fode had received a report from a correctional officer that Stewart had a misunderstanding with another inmate, which resulted in him receiving the black eye. Fode understood the matter had been "taken care of," and there was no further investigation into the matter.

45. Approximately one week after Reich spoke with Stewart, Kristy Cobban, MSP Technical Correctional Services Bureau Chief, and other MSP staff met with Stewart. Stewart indicated he was not comfortable living in the general population and complained that many of the other inmates got on his nerves. Cobban tried to elicit more information from Stewart about the state of his mental health, but Stewart was not forthcoming.

46. Stewart requested to be assigned to a single cell, which is the maximum level of custody at MSP. MSP's policy requires an inmate be placed in the least stringent housing unit as possible. As such, Stewart was ultimately assigned to Locked Unit 2, which is a secure unit.

47. MSP mental health personnel conducted regular rounds on Locked Unit 2. *See* Ex. 102, p. 38, 39. Stewart chose not to talk to the mental health

professional performing rounds regarding issues related to his PREA complaint because it could have been overheard by other inmates and MSP staff.

48. Stewart had previously requested a single cell in a mental health kite submitted on March 3, 2018. Ex. 102, p. 36. Stewart repeated his request in a mental health kite filed on May 3, 2018. *Id.* at p. 32.

49. On April 11, 2018, Lisa Pesanti, LCPC, completed an Emergency Interview Questionnaire with Stewart after he had announced he was on a food and water strike. Pesanti noted Stewart appeared stable. Ex. 102, pp. 40-44.

50. Stewart was subsequently transferred to “max” custody due to his refusal to return to HSU-1 and HSU-2 on or about May 31, 2018. *See* Exs. 51-53.

51. Stewart had been seen by Dr. James Nielsen, a psychiatrist, via audio video teleconferencing on December 19, 2017. Ex. 41, Ex. 102, p. 7. There is no mention of the Griswold Incident in Dr. Nielsen’s notes, which state, in pertinent part:

No significant changes since last appointment. Remains in decent spirits though does anticipate slight anxiety over holiday season - keeping busy is primary coping mechanism. Spends time reading and beading. No peer or staff conflicts. Good compliance with medication. No side effects reported. No mood, anxiety, or vegetative symptoms.

The report makes no reference to suicidal or homicidal ideation. *Id.*

52. Stewart met with Dr. Nielsen on at least five occasions between the date of the Griswold Incident and the date of hearing. Dr. Nielsen’s reports include no mention of complaints by Stewart regarding emotional distress resulting from the incident. Exs. 37-41; Ex. 102, pp. 1-7.

53. Dr. Nielsen’s January 18, 2019 report noted that Stewart “volunteered that he continues to ‘pretty much focus on legal stuff.’” Dr. Nielsen noted “no somatic complaints.” Ex 37, Ex. 102, p.1.

54. Stewart did not request mental health care, or submit a “mental health kite,” until April 1, 2018, which was approximately five months after the Griswold Incident. Ex. 102, p. 34. Stewart was aware of his right to submit “mental health kites,” as he had done on several previous occasions. *See* Ex. 102.

55. On June 11, 2018, Sheehan separated from his employment with MSP.

56. Sheehan's office was a locked office with only a few MSP officials having access to the keys to the office. Reich was required to sign a slip with the Command Post to have permission to be in the office. Cobban was authorized to have keys to Sheehan's office but could only access them upon Sheehan's termination from employment.

57. Reich and Cobban discovered Stewart's informal grievance in a pile of papers and files Sheehan had left in his office, which was clutter and unkempt. The informals were still in the interdepartmental envelope that reflected Fode had sent them to Sheehan on December 18, 2017. Ex. 101.

58. Sheehan was responsible for arranging for an Emergency Intervention Questionnaire to be completed and arranging a referral for mental health care for Stewart under PREA. Sheehan failed to perform his duties as the PREA coordinator for MSP in Stewart's case.

59. Sheehan's failure to adequately perform his duties as the PREA Coordinator was the direct cause of MSP's failure to adequately respond to Stewart's PREA grievance.

60. In June 2018, Cobban took over management of the PREA program.

61. Shortly after taking over management of the PREA program, Cobban ordered retaliation monitoring be performed regarding Stewart as it should have been done after he filed his PREA complaint. Retaliation monitoring was performed on July 11, 2018.

62. On September 13, 2018, Stewart submitted to a PREA Risk Assessment. A mental health referral was made in connection with the assessment. Ex. 47.

63. MSP Mental Health Counsel Lisa Choquette met with Stewart on September 18, 2018. Choquette noted Stewart reported being angry regarding MSP's mismanagement of its PREA policies and procedures. Choquette noted Stewart seemed focused on his legal issues. Ex. 46.

64. Stewart has suffered emotional distress as a result of Griswold's discriminatory conduct. Stewart has suffered anger, depression, anxiety, suicidal and homicidal thoughts, and physical symptoms of stomach aches, headaches, and sleep

disturbance and nightmares. Stewart's biggest emotions since the incident is anger and hopelessness, which is reasonable given that his life is effectively within the sole control of MSP and its staff.

65. Stewart was diagnosed with serious mental health issues at or near the time he was committed to the custody of the DOC and placed at MSP. Stewart's mental health issues are controlled through the use of medication and some therapeutic programming. There has been no change to Stewart's mental health diagnoses since the Griswold Incident; nor has there been any significant changes to the mental health treatment he receives at MSP. *See* Ex. 102.

66. Stewart did not receive an emergency medical evaluation following the Griswold Incident. PREA only requires a medical assessment if there is an indication of physical harm. In this case, Stewart suffered no personal injury as a result of Griswold's discriminatory conduct that could have been addressed by a medical health professional.

67. Stewart did not receive a referral for a mental health evaluation after the Griswold Incident until September 2018. The failure to provide him with a referral for a mental health evaluation caused Stewart considerable distress, as noted above.

68. MSP has reviewed its PREA policies and procedures during the period following the Griswold Incident and the date of hearing. MSP has recognized that the staffing issues in the mental health unit has affected its performance addressing issues that arise under the PREA. MSP has implemented new policies and procedures to ensure that its meeting its duties to the inmates. Exs. 11, 83, 103A-104B.

69. Stewart is entitled to an emotional distress damages award of \$3,000.00, which accounts for the approximate six months between his informal grievance filed on December 4, 2017 and MSP staff addressing his complaints in accordance with PREA. This award is sufficient to address Stewart's distress at experiencing Griswold's discriminatory conduct, as well as the failure of MSP staff to adequately ensure he was protected from similar conduct and/or retaliation.

70. Affirmative relief is also appropriate in this matter. MSP, as noted above, has continued to improve its PREA policies. It would be beneficial for MSP to confer with the HRB to ensure its policies and procedures adequately protect the health and safety of its inmates.

V. DISCUSSION

The Governmental Code of Fair Practices (GCFP) of the Montana Human Rights Act prohibits every state agency from discriminating in the provision of services on the basis of sex. Mont. Code Ann. § 49-3-205(1). The GCFP requires all state agencies to analyze all of its operations to ascertain possible instances of noncompliance with the GCFP and initiate comprehensive programs to remedy any defects found to exist. Mont. Code Ann. § 49-3-205(3).

MSP has conceded Griswold sexually harassed Stewart during the over-the-clothing pat search performed *en masse* on December 3, 2017 and Stewart's informal was not properly addressed by the individual who was then serving as the MSP PREA Coordinator. MSP readily admits Stewart did not receive a timely mental health referral and retaliation monitoring was not performed following Stewart's December 2017 informal. MSP disputes Stewart was actually harmed as a result of the Griswold Incident and subsequent errors in the handling of his grievance. Given MSP's concessions, the only issue remaining is what harm, if any, Stewart sustained as a result of the discrimination he experienced in violation of the GCFP.

Stewart seeks \$10,000.00 "in actual damages for the physical/bodily injury incurred as a result of sexual harassment . . .". Stewart also seeks \$20,000.00 "for embarrassment, humiliation and emotional injury, still ongoing, stemming from the sexual harassment on [December 3, 2017], and including, if applicable, the failures to follow policy to protect, treat, etc., that contributed." Stewart also seeks affirmative relief in the form of requiring MSP to enforce its zero tolerance policy regarding sexual harassment and he be provided proper mental health treatment¹. See *Final Prehearing Order* (07/01/2019).

The Hearing Officer understands Stewart's prayer for relief seeks \$30,000.00 in emotional distress damages given Stewart's admission he sustained no physical injury that required medical care as a result of the Griswold Incident. Stewart primarily focuses his argument on the allegation that Griswold's sexual harassment caused him to suffer from anger, hopelessness and embarrassment, all of which were exacerbated by MSP's failure to properly follow its PREA policy in the handling of his December 2017 informal.

¹Stewart demands the matter be forwarded to the proper authorities for criminal prosecution. The Hearing Officer lacks such authority and would note that it is within MSP policy for such action. MSP determined an investigation by its Human Resources department was sufficient to address the issues raised in Stewart's informal and formal grievances.

Emotional distress is compensable under the Montana Human Rights Act. *Vainio v. Brookshire* (1993), 258 Mont. 273, 852 P.2d 596. Montana law expressly recognizes the right of every person to be free from unlawful discrimination. Mont. Code Ann. § 49-1-101. Violation of that right is a *per se* invasion of a legally protected interest. Montana does not expect any reasonable person to endure harm, including emotional distress, due to violation of such a fundamental human right. *Johnson v. Hale* (9th Cir. 1994), 13 F.3d 1351; *Vainio*, p. 16, fn. 12; *Campbell v. Choteau Bar and Steak House* (3/9/93), HRC#8901003828. Medical evidence is not required to establish emotional distress damages, and such damages may be established by testimony or inferred from the circumstances. *Johnson v. Hale*, 940 F.2d 1192, 1193 (9th Cir. 1991). "[N]o evidence of economic loss or medical evidence of mental or physical symptoms stemming from the humiliation need be submitted." *Id.*

Vortex Fishing Syst. at ¶33, succinctly explains emotional distress awards:

For the most part, federal case law involving anti-discrimination statutes draws a distinction between emotional distress claims in tort versus those in discrimination complaints. Because of the "broad remunerative purpose of the civil rights laws," the tort standard for awarding damages should not be applied to civil rights actions. *Bolden v. Southeastern Penn. Transp. Auth.* (3d Cir.1994), 21 F.3d 29, 34; *see also Chatman v. Slagle* (6th Cir.1997), 107 F.3d 380, 384-85; *Walz v. Town of Smithtown* (2d Cir.1995), 46 F.3d 162, 170. As the Court said in *Bolden*, in many cases, "the interests protected by a particular constitutional right may not also be protected by an analogous branch of common law torts." 21 F.3d at 34 (*quoting Carey v. Piphus* (1978), 435 U.S. 247, 258, 98 S.Ct. 1042, 1049, 55 L.Ed.2d 252). Compensatory damages for human rights claims may be awarded for humiliation and emotional distress established by testimony or inferred from the circumstances. *Johnson v. Hale* (9th Cir.1991), 940 F.2d 1192, 1193. Furthermore, "the severity of the harm should govern the amount, not the availability, of recovery." *Chatman*, 107 F.3d at 385.

The severity of the harm governs the amount of recovery. *Vortex Fishing Systems v. Foss*, 2001 MT 312, ¶ 33, 308 Mont. 8, 38 P.2d 836. Where no harm is shown, damages proportionate to the harm should be awarded. *Chatman*, 107 F.3d at 385 (6th Cir. 1997).

In *Vainio*, the Montana Supreme Court found that an emotional distress award of \$20,000.00.00 was appropriate in a case where the plaintiff was subjected

to conduct that “included, among other things, brushing his body against her buttocks, putting his hand up her skirt, grabbing her breasts, and requesting [the plaintiff] to have sex with him.” *Id.* at 280-281.

The Montana Supreme Court affirmed a district court’s award of \$5,000.00 in emotional distress damages in *Beaver v. Mont. Dep’t of Natural Res. & Conservation*. In *Beaver*, the plaintiff was subjected to a single incident of sexual assault by her supervisor outside of work prior to receiving a less desirable position. The court noted that *Beaver* did not have any further contact with the supervisor after the incident; the employer did not take inappropriate action against her; and her therapist reported she was unlikely to need further therapy related to the sexual assault and required no medication and was able to return to work. *Id.* at ¶88. The court found “the award of compensatory damages. . . [was] not so grossly out of proportion to *Beaver*’s injury as to shock the conscience.” *Id.* at ¶94.

An award of \$10,000.00 in emotional distress damages was affirmed by the district court in *Anderson v. Martin*, 1997 Mont. Dist. LEXIS 567, ** 9-11 (Second Judicial District Court of Montana, Silver Bow County). In *Anderson*, the plaintiff showed she was subjected to unwanted kissing and other unwanted physical touching despite her protests. *Id.*

Stewart’s claim is based upon a single incident of sexual harassment. Stewart was not physically injured, but he clearly suffered from feelings of hopelessness and anger as a result of the incident. Stewart attempted to avail himself of the remedies available to him under the PREA but was thwarted by Sheehan’s failure to properly handle Stewart’s informal upon receiving it from Fode. As a result of Sheehan’s failure to properly implement MSP’s PREA policies and procedures, Stewart was denied a timely referral for mental health care and protection from any potential retaliation for his complaint. Sheehan’s failure to act subjected Stewart to several months of anger, depression, anxiety, suicidal and homicidal thoughts, and physical symptoms of stomach aches, headaches, and sleep disturbance and nightmares without any other recourse being available to him.

MSP argues Stewart’s previously diagnosed mental health issues did not change after the Griswold Incident. The Hearing Officer is in no position to evaluate the state of Stewart’s mental health during the period in question based upon a review of notes prepared by individuals employed by or contracted by MSP. However, it is clear the Griswold Incident did not trigger any new issues for Stewart, and he did not require any intensive mental health treatment, which is consistent with his testimony at hearing. The Hearing Officer will not dismiss Stewart’s

testimony regarding his personal feelings of anger and hopelessness due to the reasons for his incarceration or his demonstrated antipathy to law enforcement. As held by the court in *Johnson v. Hale*, compensatory damages for humiliation and emotional distress may be established by testimony or inferred from the circumstances. *Id.* at 1193.

The substantial and credible evidence of record shows Stewart suffered emotional distress as a result of Griswold's discriminatory conduct and MSP's failures to act pursuant to PREA in the weeks and months that followed. MSP only truly began to address the issues raised in Stewart's informal after he was forced to file a formal grievance in January 2018. It then took MSP several months to act in accordance with PREA in performing an Emergency Intervention Questionnaire; referring Stewart for a mental health evaluation; and implementing retaliation monitoring. Reich and Cobban should be applauded for their diligence and demonstrated commitment to ensuring the PREA was followed once it was recognized that the system in place had failed Stewart.

An award of \$3,000.00 in emotional distress damages would justly compensate Stewart for the harm he experienced as a result of the Griswold Incident and the errors and omissions of MSP staff in handling his PREA grievance. Affirmative relief is also appropriate in this case. Such affirmative relief enjoins the Respondent from engaging in any further discriminatory acts and may further prescribe any appropriate conditions on the Respondent's future conduct relevant to the type of discrimination found. Mont. Code Ann. § 49-2-506(1)(a). The circumstances of the discrimination in this case mandate imposition of particularized affirmative relief to eliminate the risk of any further violations of the Human Rights Act. Mont. Code Ann. § 49-2-506(1). This relief should include HRB assisting MSP in reviewing its policies and procedures to ensure the appropriate safeguards are in place to ensure inmates such as Stewart are unharmed under similar circumstances while housed at MSP.

VI. CONCLUSIONS OF LAW

1. The Department of Labor and Industry has jurisdiction over this case. Mont. Code Ann. § 49-2-512(1).

2. Montana Department of Corrections, Montana State Prison, illegally discriminated against Laurence Stewart #3011990 by subjecting him to discrimination based upon sex during the provision of governmental services in violation of the Governmental Code of Fair Practices.

3. Laurence Stewart #3011990 is entitled to an award of \$3,000.00 for the emotional distress he suffered as a result of the illegal discrimination. Stewart is entitled to post judgment interest on all of these amounts.

4. The circumstances of the discrimination in this case mandate the imposition of affirmative relief in order to eliminate the risk of future violations of the Montana Human Rights Act. Mont. Code Ann. § 49-2-506(1).

5. For purposes of Mont. Code Ann. § 49-2-505(8), Laurence Stewart #3011990 is the prevailing party.

VII. ORDER

1. Judgment is granted in favor of Laurence Stewart #3011990 and against Montana Department of Corrections, Montana State Prison as it discriminated against him on the basis of sex in the provision of governmental services in violation of the Governmental Code of Fair Practices and the Montana Human Rights Act.

2. Within 30 days of the date of this decision, Montana Department of Corrections, Montana State Prison, shall pay to Laurence Stewart #3011990 the sum of \$3,000.00 in emotional distress damages.

3. The department permanently enjoins Montana Department of Corrections, Montana State Prison, from discriminating against any person on the basis of sex.

4. Counsel for the Montana Department of Corrections, Montana State Prison must consult with the Montana Human Rights Bureau to ensure its policies and procedures are sufficient to identify, investigate and resolve inmate complaints of discrimination. This review should also include training for its employees to ensure they act according to the PREA and other applicable rules and statutes. In addition, the Montana Department of Corrections, Montana State Prison shall comply with all conditions of affirmative relief mandated by the Montana Human Rights Bureau.

DATED: this 27th day of November, 2019.

/s/ 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: Laurence Stewart #3011990, Charging Party; and Montana Department of Corrections, Montana State Prison, Respondent, and its attorney, Ira Eakin.

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) and (4).

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 ONE DIGITAL COPY, with:

Human Rights Commission
c/o Annah Howard
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 ONE DIGITAL COPY 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 at (406) 444-4356 immediately to arrange for transcription of the record.

STEWART.HOD.CHP