

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

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WILLIAM OUTLAND,  
Charging Party/Appellee,

HRB CASE NO.0170316

-v-

REMAND ORDER

MONTANA DEPARTMENT OF  
CORRECTIONS, MONTANA STATE  
PRISON,  
Respondent/Appellant.

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Charging Party, William Outland, filed a complaint with the Department of Labor & Industry (Department), which alleged unlawful discrimination in employment on the basis of disability. Following an informal investigation, the Department determined that reasonable cause supported Outland's allegations. The case went before the Office of Administrative Hearings of the Department of Labor & Industry which held a contested case hearing on August 17-18, 2018 in the courthouse in Deer Lodge, Montana pursuant to Mont. Code Ann. § 49-2-505, with the parties represented by counsel. On April 5, 2019, the hearing officer entered judgment in favor of Charging Party and determined that discrimination did occur. The matter was appealed to the Human Rights Commission which issued a remand order on October 25, 2019, remanding the matter to the Office of Administrative Hearings for a damage award determination in favor of Outland on the discrimination and retaliation claims due to the probation extension and termination.

On July 31, 2020, the Hearing Officer issued a Decision on Remand. The Hearing Officer determined that Outland was entitled to emotional distress damages in the amount of \$40,000 and compensatory damages for back pay and front pay as follows: Back pay from April 5, 2017 through July 31, 2020, plus fringe benefit damages, offset by wages earned by Outland after his termination, plus interest on the lost wages and benefits through the date of the decision

at the rate of 6.25% per annum, totaling \$106,682.55. Front pay for three years plus lost fringe benefits, totaling \$75,132.90. The present value of the front pay award was \$72,259.82.

Respondent filed an appeal with the Montana Human Rights Commission (Commission) solely contesting the award of back pay and front pay. Neither party contested the award for emotional distress. The Commission considered the matter on November 20, 2020. Elizabeth L. Griffing and Jill Gerdrum, attorney, appeared and presented oral argument on behalf of Appellee/Charging Party Outland. Ira Eakin, attorney, appeared and presented oral argument on behalf of Appellant/Respondent Montana Department of Corrections, Montana State Prison.

### **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/Respondent argued that the clearly erroneous standard under Admin. R. Mont. 24.9.123(4)(b) applied and that on the record before the Commission, the award of back pay and front pay was clearly erroneous. Appellant/Respondent argued that the

award should be reduced to three years, 13 days, offset by wages that Outland had earned after he was terminated.

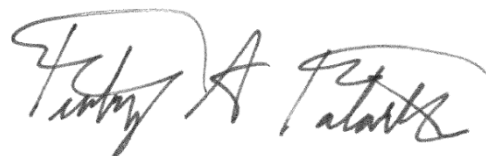
Before the Commission, Appellee/Charging Party argued that under *Blaine County v. Stricker*, 2017 MT 80, 387 Mont. 202, 394 P.3d 159 and Mont. Code Ann. § 2-4-621(3) the substantial evidence standard applied, not the clearly erroneous standard, but in any event, the clearly erroneous standard was satisfied in this case. The award should not be reduced.

After careful consideration of the complete record and the argument presented by the parties, the Commission determined that regardless of which standard was employed, the award of compensatory damages for back pay and front pay was not supported by the record. The Commission determined that compensatory damages should be reduced to conform to Outland's request at the Hearing, which was for 3 years, 13 days of lost wages (back pay and fringe benefits) offset by the wages he has earned since his termination, plus interest on the lost wages and benefits through the date of the decision at the rate of 6.25% per annum. The Commissioners did not find that the award of three years of front pay was supported by the record.

### **ORDER**

IT IS HEREBY ORDERED, that the Hearing Officer's Decision on Remand dated July 31, 2020 is MODIFIED TO REDUCE THE AWARD OF COMPENSATORY DAMAGES. Therefore, this matter is REMANDED to the Office of Administrative Hearings to re-calculate the amount of compensatory damages in accordance with this Order.

DATED this 20th day of November 2020.



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Timothy A. Tatarka, 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 15<sup>th</sup> day of December 2020.

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Annah Howard, Legal Secretary  
Montana Human Rights Bureau