

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

IN RE: OFFICE OF ADMINISTRATIVE HEARINGS CASE NO. 471-2021:

KIMBERLY YADAO,	)	
	)	
Charging Party,	)	<b>ORDER DISMISSING</b>
	)	<b>COMPLAINT AND NOTICE</b>
vs.	)	<b>OF DISMISSAL OF COMPLAINT</b>
	)	
IMPERIAL INVESTORS GROUP D/B/A	)	
RED LION INN & SUITES,	)	
	)	
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 unusual set of circumstances, this order will first explain why discretionary dismissal is appropriate.

Mont. Code Ann. § 49-2-512(2)(b) provides that, in addition to dismissal of complaints from the administrative process if the Department determines 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 Human Rights Commission has held a hearing pursuant to section 49-2-505 or an informal hearing pursuant to section 49-2-511 of the Montana Code.

This particular situation is thus governed by statute. If more than 12 months have elapsed since the filing of the original complaint (filed in this case on January 30, 2020), 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, notwithstanding the foregoing, 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 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, it means 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, 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 (i.e., “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, Charging Party asserts the unique circumstances of her case warrant dismissal. Specifically, she has filed numerous claims in district court against the Respondent and other individuals that arise from the same facts as her claim here but which, by nature of its limited jurisdiction, cannot be addressed in this forum. Thus, she wishes to consolidate her claims and “present the entire story to one fact finder.”

Charging Party makes a credible argument that she must be able to cover all matters related to her claims in a single, consolidated proceeding, which is simply impossible in this forum. If matters proceed in two forums, it could lead to jurisdictional arguments and arguments regarding risk of prejudice if matters outside the scope of the present complaint are addressed in the proceedings. Furthermore, 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 another case in district court.

In light of the foregoing, and under these very unique circumstances that create problems with different cases going forward in different forums at the same time, OAH’s discretion should and is being exercised in favor of the dismissal sought by both parties. This decision is unique to this case, and should not be taken as 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. In this case, however, it is appropriate to dismiss, and therefore IT IS HEREBY ORDERED that the complaint of Kimberly Yadao 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 may commence a civil action for appropriate relief on the merits of this case in the district court in the district in which the alleged violation occurred. If Charging Party 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 7th day of May, 2021.

A handwritten signature in black ink, appearing to read 'Chad R. Vanisko', with a stylized flourish at the end.

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Chad R. Vanisko, Hearing Officer  
Office of Administrative Hearings  
Montana Department of Labor and Industry

\* \* \* \* \*

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, and addressed as follows:

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LARRY HENKE  
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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, ATTORNEY  
HUMAN RIGHTS BUREAU

Signed this 7th day of May, 2021.



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Legal Secretary,  
Office of Administrative Hearings  
Montana Department of Labor and Industry