

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

CHAD JACKSON,
Charging Party/Appellant,

HRB CASE NO.0160187

-v-

FINAL AGENCY DECISION

COSTCO WHOLESALE CORPORATION,
Respondent/Appellee.

Charging Party, Chad Jackson, filed a complaint with the Department of Labor & Industry (Department), which alleged unlawful discrimination in employment on the basis of disability and reasonable accommodation. Following an informal investigation, the Department determined that reasonable cause supported Jackson's allegations. The case went before the Office of Administrative Hearings of the Department of Labor & Industry, pursuant to Mont. Code Ann. § 49-2-505. Following discovery, the hearing officer issued a Decision on March 3, 2017, granting the motion of Costco Wholesale Corporation for summary judgment. The hearing officer entered judgment in favor of Costco Wholesale Corporation, 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 July 18, 2017. Torrance L. Coburn, attorney, appeared and presented oral argument on behalf of Jackson. John G. Crist, attorney, appeared and presented oral argument on behalf of Costco Wholesale Corporation.

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, Charging Party, argues that the basis for termination was pretextual and related to his disability. Jackson further argues that termination arising from conduct relating to a disability does not constitute a separate basis for termination than termination directly because of the disability. Finally, Jackson argues that Costco was aware of his disability prior to its decision to terminate. For these reasons, Jackson alleges the termination violated the Human Rights Act and the matter should be remanded for hearing.

Before the Commission, Respondent argues that it was unaware of Jackson’s disability at the time the decision to terminate was made, and that Jackson’s notification of disability at the time of termination was insufficient to implicate its duty to accommodate.

After careful consideration of the complete record and the argument presented by the parties, the Commission determines that the findings of fact, taken in the light most favorable to Jackson, support the conclusion that discrimination did not occur. As such, the order of the hearing officer should be affirmed.

ORDER

IT IS HEREBY ORDERED, that the hearing officer decision is AFFIRMED IN ITS ENTIRETY, and the Order Granting Costco's Motion for Summary Judgment is adopted as a part of this Final Agency Decision.

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 14th day of August, 2017.



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 14th day of August, 2017.

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