BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

DAVID OGDEN,
Charging Party,

-v-
CAPITAL ELECTRIC CONSTRUCTION COMPANY,
Respondents.

Case No.: 0051011379

ORDER AFFIRMING AGENCY DECISION

David Ogden (Ogden) filed a complaint with the Department of Labor and Industry asserting that Capital Electric Construction Company (Capital Electric) unlawfully discriminated against him on the basis of his disability when it refused to pay for the additional preemployment medical testing required by Deaconess Billings Clinic (Deaconess). The Hearings Bureau (Bureau) held a contested case hearing pursuant to § 49-2-505, MCA. Following the hearing, the Bureau issued a decision that determined Capital Electric did not discriminate against Ogden. Capital Electric filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on May 7, 2008. Thomas Towe appeared and argued on behalf of Ogden. Jason Ritchie appeared and argued on behalf of Capital Electric.

After careful and due consideration, the Commission concludes the Bureau's decision in this matter is supported by competent substantial evidence and the conclusions of law are correct. The Commission affirms the Bureau's decision and hereby adopts and incorporates the decision in its entirety.

A person who has exhausted all administrative remedies available within an agency and who is aggrieved by a final agency decision in a contested case is entitled
to file a petition for judicial review within 30 days after service of the final agency
decision. Mont. Code Ann. § 2-4-702. The petition must be filed in the district where the
petitioner resides or has the petitioner’s principal place of business, or where the
agency maintains its principal office.

DATED this ____ day of May, 2008.

________________________
Ryan Rusche, Chair
Human Rights Commission
CERTIFICATE OF SERVICE

The undersigned employee of the Human Rights Bureau certifies that a true copy of the foregoing Human Rights Commission ORDER was served on the following persons by U.S. mail, postage prepaid, on May _____, 2008.

SHANE COLEMAN
JASON RITCHIE
HOLLAND & HART LLP
PO BOX 639
BILLINGS MT 59103-0639

THOMAS TOWE
TOWE BALL ENRIGHT MACKEY & SOMMERFELD PLLP
PO BOX 30457
BILLINGS MT 59107-0457

Montana Human Rights Bureau