

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

ERIC FEIT,

Charging Party,

-v-

BNSF RAILWAY,

Respondent.

Case No. 0091013577

**ORDER AFFIRMING
AGENCY DECISION**

Eric Feit (Feit), filed a complaint with the Human Rights Bureau, Department of Labor and Industry (Department) alleging that BNSF Railway discriminated against him in the area of employment. Following an informal investigation, the Department determined that a preponderance of the evidence supported Feit's allegations of unlawful discrimination. The Hearings Bureau (Bureau) held a contested case hearing pursuant to § 49-2-505, MCA. Following the hearing, the hearing officer determined that BNSF Railway unlawfully discriminated by denying Feit employment on the basis of a perceived disability (obesity). Therefore, the hearing officer found BNSF Railway liable and awarded damages for lost wages and benefits, prejudgment interest, and emotional distress. The Bureau's decision enjoined BNSF Railway from further discriminatory action and ordered affirmative relief.

BNSF Railway filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the appeal on November 16, 2010. Terry Trieweiler appeared and argued on behalf of Eric Feit. Ben Rechtfertig appeared and argued on behalf of BNSF Railway.

STANDARD OF REVIEW

The Commission may reject or modify the conclusions of law and interpretations of the administrative rules in the hearing officer's decision but it may not reject or modify

the findings of fact unless the Commission first reviews the complete record and states with particularity in the order the findings that were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. *Admin. R. Mont. 24.9.123(4)*.

The Commission's standard of review for conclusions of law is whether the hearing officer's interpretation and application of the law is correct. See *Denke v. Shoemaker*, 2008 MT 418, ¶ 39, 347 Mont. 322, ¶ 39, 198 P.3d 284, ¶ 39.

ORDER

After careful consideration of the complete record and the argument presented by the parties, the Commission determines that the findings of fact, conclusions of law and determination of damages issued by the hearing officer are based upon competent substantial evidence. The Commission affirms the Bureau's decision.

A party aggrieved by this Order is entitled to file a petition for judicial review within 30 days after service of this Order. *Sections 2-4-702 and 49-2-505(9), MCA.*

IT IS HEREBY ORDERED, that the appeal of BNSF Railway is **denied**.

The Commission **affirms** the Bureau's decision and hereby adopts and incorporates the decision in its entirety.

DATED this ____ day of November 2010.

Signed By:
Chair Ryan C. Rusche
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 _____ day of November 2010.

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