

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

SHALAINE LAWSON,
Charging Party,

-v-

NORVAL ELECTRIC COOPERATIVE,
Respondent

HRB CASE NO. 0180070

REMAND ORDER

Charging Party, Shalaine Lawson (Lawson), filed a complaint with the Department of Labor and Industry (Department) alleging unlawful discrimination in employment on the basis of sex and retaliation. Following an informal investigation, the Department determined that a preponderance of the evidence did not support Lawson's allegations that Respondent, NorVal Electric Cooperative (NorVal), unlawfully discriminated against Lawson. The Department issued a Notice of Dismissal. Lawson filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on September 14, 2018. Todd Shea appeared and argued on behalf of Lawson. Maxon Davis appeared and argued on behalf of NorVal.

The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. Section 49-2-511(2), MCA. After careful consideration, the Commission concludes the determination of the Department to dismiss the complaint in this case is an abuse of discretion. NorVal's policy stated that a complaint of harassment should be reported to the supervisor. However, the alleged harasser was the supervisor and no alternative means of reporting harassment were provided. The investigator found Lawson had not met her evidentiary burden of proving harassment by a preponderance of the evidence, citing the lack of firsthand witnesses to the alleged harassment or other evidence. The investigator also identified many other individuals who were not interviewed because they lacked firsthand knowledge.

However, circumstantial evidence can be used to prove harassment cases, and harassment can occur without other persons being present. The lack of investigation into corroborating witnesses, in light of the identity of the alleged harasser and the failure of the policy to provide an alternative for reporting and addressing harassment, is an abuse of discretion. Therefore, the Commission sustains the objection and the case is hereby remanded for hearing to the Office of Administrative Hearings pursuant to § 49-2-505, MCA.

Nothing in this order precludes the parties from engaging in the mediation or other settlement negotiations that would normally occur if the Department's investigative report had found cause. See § 49-2-504(2)(b), MCA.

IT IS HEREBY ORDERED, that Shalaine Lawson's objection is **sustained**. The Commission reopens and remands the case to the Office of Administrative Hearings for hearing.

DATED this 12th day of October, 2018.



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 12th day of October, 2018.

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