

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

JOSH TIMOCK, M.D.,
Charging Party,

HRB CASE NO. 0200073

-v-

REMAND ORDER

BENEFIS MEDICAL GROUP AND BENEFIS
HEALTH SYSTEM,
Respondents.

Charging Party Josh Timock, M.D. (Timock) filed a complaint with the Department of Labor and Industry (Department) alleging unlawful discrimination in employment on the basis of harassment and retaliation. Following an informal investigation, the Department determined that a preponderance of the evidence did not support Timock’s allegations that Respondents, Benefis Medical Group and Benefis Health System, unlawfully discriminated against Timock. The Department issued a Notice of Dismissal. Timock filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on May 22, 2020. Philip A. Hohenlohe, attorney, appeared and argued on behalf of Charging Party Timock. Dave McLean, attorney, appeared and argued on behalf of Respondents, Benefis Medical Group and Benefis Health System.

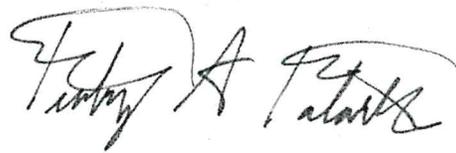
The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. Mont. Code Ann. § 49-2-511(2). After careful consideration, the Commission concludes the determination of the Department to dismiss the complaint in this case was an abuse of discretion. The Department did not notify Timock that his July 2, 2019 complaint did “not allege facts sufficient to constitute a short and plain statement of the claim that [he was] entitled to relief under Title 49, chapters 2 and 3, MCA” and that it would not be investigated. Admin. R. Mont. 24.8.203(4). Later, the Department treated Timock’s initial letter

as the operative Complaint. The Department, then, did not serve notice on the parties acknowledging the filing of the complaint and stating the date the complaint was filed pursuant to 24.8.207(1) until December 9, 2019. The Commission sustains the objection and the case is hereby remanded for hearing to the Office of Administrative Hearings pursuant to Mont. Code Ann. § 49-2-505.

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 pursuant to Mont. Code Ann. § 49-2-504(2)(b).

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

DATED this 10th day of June 2020.

A handwritten signature in black ink, appearing to read "Timothy A. Tatarka". The signature is written in a cursive style with a large initial "T" and "A".

Timothy A. Tatarka, 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 11th day of June 2020.

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