

Montana Department of
LABOR & INDUSTRY
Employment Relations Division

Steve Bullock, Governor
Pam Bucy, Commissioner

Human Rights Bureau
Marieke Beck, Bureau Chief

March 11, 2016

Missoula County Sheriff's Office
c/o Steven Carey Attorney at Law
P.O. Box 8659
Missoula, MT 59807

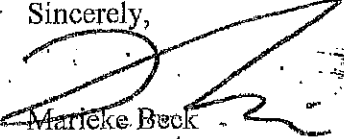
Subject: Paige Pavalone v Missoula County Sheriff's Office
Case No. 0151017741
Subject: Paige Pavalone v Terry McDermott
Case No. 0151017742

After investigation, the Human Rights Bureau has found no reasonable cause to believe that discrimination occurred in the above-referenced case. This determination is based upon the investigator's recommendation, which is enclosed.

Section 49-2-504(7), MCA requires the Human Rights Bureau to dismiss a complaint when it has made a no reasonable cause finding. This dismissal gives the charging party the opportunity to file an objection to the dismissal with the Montana Human Rights Commission or to pursue the complaint directly in district court. Pursuant to the statute, I have issued a Notice of Dismissal and Right to File Civil Action in District Court in this case. A copy of the notice to the charging party is enclosed and it should be self-explanatory.

Thank you very much for your cooperation. If you have any questions, please contact our office.

Sincerely,


Marieke Beck
Bureau Chief
Human Rights Bureau

Enclosures: Final Investigative Report, Notice of Dismissal

**MONTANA DEPARTMENT OF LABOR & INDUSTRY
EMPLOYMENT RELATIONS DIVISION
HUMAN RIGHTS BUREAU**

Paige Pavelone, Charging Party, vs. Missoula County Sheriff's Office et al, Respondent.	Final Investigative Report HRB Case Nos. 0151017741 and 0151017742 EEOC Case No. 32D-2015-00631C
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Recommendation: Based on my investigation, I find **no reasonable cause** to believe unlawful discrimination occurred as alleged in Charging Party's complaint.

I. ISSUE PRESENTED

A. Did Respondent discriminate against Paige Pavelone in the area of employment because of her sex and political belief in violation of the Montana Human Rights Act (Title 49, Chapter 2, MCA), the Governmental Code of Fair Practices (Title 49, Chapter 3, MCA), Title VII of the Civil Rights Act of 1964, as amended, when it terminated her employment?

II. SUMMARY OF THE INVESTIGATION

This report constitutes a summary of the investigation conducted in this case. Content of this report is limited to witnesses, documents and other evidence relevant to the analysis of the issue presented. The case file may contain additional evidence not included in this report.

A. Charging Party's Position Statement

In 2008, Pavelone began her employment with the Missoula County Sheriff's Office (MCSO) as a detention officer. In 2010, Pavelone became a deputy sheriff.

On November 7, 2014, T.J. McDermott was elected Missoula County Sheriff. McDermott began his administration as sheriff on January 1, 2015. Prior to McDermott's administration, Pavelone was facilitating the role of Public Information Officer (PIO). In January 2015, Pavelone was returned to patrol duties.

On April 13, 2015, McDermott terminated Pavelone's employment with the MCSO. Pavelone was provided a letter explaining the rationale for the termination decision. The letter stated the decision was based on findings from an internal investigation into Pavelone's conduct with regard to the arrest of a county detention officer (Angie Smith) on February 20, 2015. The letter continued, stating the investigation revealed Pavelone had violated

MCSO policies, had acted with dishonesty and deceit, and had taken actions to obstruct justice during Smith's incident.

Pavelone denies that she was dishonest, obstructed justice, or conducted herself in a manner prohibited by policy.

Pavelone believes she was terminated because of her political belief. Pavelone had been a supporter of McDermott's rival in the 2014 election (Josh Clark). Prior to McDermott taking office, Clark had served as the MCSO undersheriff. Pavelone believes McDermott terminated her employment because she supported Clark for sheriff in 2014.

Pavelone also believes she was terminated because of her sex. Pavelone contends that male employees of the MCSO who supported Clark were not terminated when McDermott took office.

B. Respondent's Position Statement

Pavelone was not terminated from her employment as a deputy sheriff because of her political belief or sex. Pavelone was terminated for behavior disclosed during an internal investigation into the DUI arrest of Smith on February 20, 2015.

The internal investigation showed Pavelone had been dishonest about her conduct on the date in question. It also showed Pavelone had violated both MCSO and Missoula County employment policies. Lastly, Pavelone's behavior amounted to potential criminal violations.

After reviewing the internal investigation materials, Missoula County Attorney Kirsten Pabst made an independent determination that Pavelone's dishonesty and lack of candor rendered her ineffective as a witness in the prosecution of criminal defendants. Accordingly, Pavelone was no longer capable of effectively serving in the capacity of a deputy sheriff. Consequently, McDermott terminated Pavelone's employment.

C. Witnesses

Paige Pavelone, the charging party.

Pavelone stated she was an exceptional employee during her tenure as a deputy sheriff. Pavelone denied engaging in the conduct alleged in her termination letter. Pavelone denied that she had acted inappropriately in any fashion regarding Smith's arrest, or that she had been dishonest when questioned during the internal investigation.

When asked to describe why she felt discriminated against based on her political belief, Pavelone answered, "I was a known supporter of Clark." Pavelone stated the fact that she was subjected to an internal investigation only months after McDermott took office was the proof he was hostile towards her for supporting Clark.

When asked to describe why she felt discriminated against because she is female, Pavelone stated, "Because of all the known Clark supporters, I was the only one to be terminated ... the other supporters were male."

T.J. McDermott, sheriff.

In February 2015, Pavelone obstructed a DUI investigation involving her friend, Smith. Further, when she was questioned by Captain Anthony Rio during the internal investigation, Rio found Pavelone to be dishonest and deceitful.

Once Pabst reviewed the internal investigation report, she determined Pavelone would need to be placed on a Giglio/Brady list, which would affect Pavelone's ability, or inability, to testify at trial. Consequently, after consulting with Pabst and HR, McDermott made the decision to terminate Pavelone's employment.

D. Documents

- Internal investigative report (Investigation Number 2015-00002634); 39 pages total.
- Montana Department of Justice Investigative Report (Case Number MC15-01-01); 64 pages total.
- Letter to the Missoula County Attorney's Office from Brant Light (Prosecution Services Bureau Chief for the Montana Department of Justice), dated May 14, 2015: "... In reviewing the investigation involving Ms. Pavelone's actions in reference to Angela Smith on February 20, 2015 ... Ms. Pavelone was not candid or honest with law enforcement as to her actions involving Ms. Smith ... her lack of credibility is telling ..."
- Pavelone's termination letter.
- Pabst letter to McDermott regarding internal investigation, dated, April 1, 2015.

F. Omissions

After receiving redacted copies of both the internal and DCI investigation reports, the Investigator made several attempts to speak with Pavelone again. Neither Pavelone nor her attorney responded to the Investigator.¹

III. ANALYSIS & CONCLUSION

Sex and Political Belief Discrimination

Pavelone alleges Respondent unlawfully discriminated against her in the area of employment because of her sex and political belief. Pavelone establishes she filed a timely complaint. The Montana Human Rights Bureau has jurisdiction over the complaint.

Pavelone alleges disparate treatment. To establish a prima facie case, Pavelone must show:

- 1) She is a member of a protected class;
- 2) She was qualified for the position;

¹ A failure to cooperate in the Bureau's process may raise an argument of failure to exhaust the Montana Human Rights Act's exclusive remedy provision. See *O'Connor v. Dep't of Labor and Indus. et al*, Cause No. DV-06-1358 (Feb. 2007).

- 3) Respondent subjected her to an adverse act; and
- 4) Circumstances raising a reasonable inference that she was treated differently based on her protected class status.

It's undisputed that Pavelone is a member of both the protected classes of political belief and sex, or that Pavelone was qualified for her position. Respondent terminated Pavelone's employment approximately three months after McDermott assumed the office of sheriff.

Based on the above-cited information, Pavelone successfully establishes a prima facie case of political belief and/or sex discrimination.

Once Pavelone establishes a prima facie case, the burden of production shifts to Respondent to articulate a legitimate, nondiscriminatory reason for terminating Pavelone's employment.

Pavelone had interfered with and obstructed an official law enforcement investigation. When she was later questioned as part of an internal investigation about her behavior during Smith's arrest on February 20, 2015, Pavelone was dishonest and deceitful. Pavelone's behavior during Smith's arrest - and during the subsequent investigation - violated the Law Enforcement Code of Ethics, various polices, and potentially criminal statute.

Based on the above-cited information, Respondent successfully articulates a legitimate, nondiscriminatory reason for terminating Pavelone's employment.

Once Respondent articulates a legitimate, nondiscriminatory reason for terminating Pavelone's employment, Pavelone may prevail by proving by a preponderance of the evidence that the reason offered was not the true reason for her termination; rather, it was a pretext for discrimination. Pretext may be proven by evidence that a discriminatory motive was the reason for Respondent's actions or that Respondent's explanations are not credible and unworthy of belief.

Here, Pavelone did not offer any evidence of pretext. Pavelone simply denied that she had engaged in the alleged behaviors that McDermott cited in her termination letter. The Investigator reviewed the internal and DCI investigative reports. The Investigator found the reports to be detailed and compelling, demonstrating that Pavelone had engaged in the conduct cited in her termination letter.

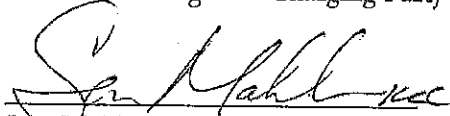
The Prosecution Services Bureau, an agency independent from MCSO, found Pavelone dishonest and not credible.

Pavelone alleged her assignment to patrol from the PIO in January 2015 was discriminatory. This allegation is not timely for consideration. Pavelone's complaint was received by the Bureau on September 17, 2015. A complaint must be filed within 180 days after the alleged act of discrimination occurred or was discovered. *Admin. R. Mont. 24.8.201(2)*.

I find Respondent's reasons for terminating Pavelone's employment to be credible and worthy of belief. Pavelone fails to prove by a preponderance of the evidence that the reasons offered by Respondent for terminating her employment were a pretext for discrimination based on political belief and sex.

Conclusion

Based on my investigation, I find **no reasonable cause** to believe unlawful discrimination occurred as alleged in Charging Party's complaint.



Sami Mahlum
Montana Human Rights Bureau

3-10-16

Date