

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN RIGHTS

Sharon Groves,

Charging Party,

v.

Fingerhut Corporation,

Respondent.

**ORDER DENYING
AMENDED MOTION
FOR RECONSIDERATION**

The above-entitled matter is before Administrative Law Judge Steve M. Mihalchick on Charging Party's Amended Motion for Reconsideration of the Findings of Fact, Conclusions of Law and Order issued on December 17, 1996.

Sharon L. Groves, 2925 349th Avenue N.E., Cambridge, Minnesota 55008-7809, appeared on her own behalf without benefit of counsel. Thomas J. Conley, Leonard, Street and Deinard, Suite 2300, 150 South Fifth Street, Minneapolis, Minnesota 55402, appeared on behalf of Respondent Fingerhut Corporation.

Based upon the submissions of the parties, and for the reasons set forth in the following Memorandum, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED that Charging Party's Amended Motion for Reconsideration is DENIED.

Dated this 29th day of January 1997.

STEVE M. MIHALCHICK
Administrative Law Judge

MEMORANDUM

On January 17, 1997, Charging Party filed a Motion for Reconsideration in this matter. On January 22, 1997, Charging Party filed an Amended Motion for

Reconsideration which made several clerical corrections to the Motion for Reconsideration, as well as some additions. On January 24, 1997, Respondent's counsel filed a short letter with the Administrative Law Judge (ALJ) simply stating that they had received the Motion for Reconsideration on January 22, 1997, and opposed the motion because the factors justifying reconsideration set forth in Minn. R. 1400.8300 did not exist. No argument was held.

Minn. R. 1400.8300 governs motions for reconsideration in this matter. It provides, in relevant part:

1400.8300 RECONSIDERATION OR REHEARING.

. . .

Where the judge's decision is binding on the agency, a petition for reconsideration or rehearing shall be filed with the judge. The petition must be filed within a reasonable time but not after an appeal is taken nor more than one year after the decision was issued. Pursuant to Minnesota Statutes, section 14.64, a petition for reconsideration must be filed within ten days after the decision in order to toll the time for appeal to the court of appeals. . . .

In ruling on a motion for reconsideration or rehearing in cases where the judge's decision is binding on the agency, the judge shall grant reconsideration or rehearing if it appears that to deny it would be inconsistent with substantial justice and any one of the following has occurred:

- A. irregularity in the proceedings whereby the moving party was deprived of a fair hearing;
- B. accident or surprise that could not have been prevented by ordinary prudence;
- C. material evidence newly discovered that with reasonable diligence could not have been found and produced at hearing;
- D. fraud upon the hearing process;
- E. mistake, inadvertence, or excusable neglect; or
- F. the decision is not justified by the evidence, or is contrary to law . . .

Charging Party's motion argues at length that the ALJ's decision in this case was not justified by the evidence. She argues that the technical details of her job were not understood and attempts to clarify those matters. She argues that witnesses lied.

The Judge has reviewed Charging Party's motion in detail. In large part, Charging Party has restated evidence that was presented at the hearing and has added her own interpretations of that evidence. Clearly, Charging Party interprets the things

that happened to her at Fingerhut differently from the ALJ. Charging Party sees what happened to her as disparate treatment based on sex and sexual harassment; the Administrative Law Judge does not. There are no doubt instances in which Charging Party was correct about something related to her job or knew more about it than others around her. But the fact that her supervisors and managers chose somebody else for a position or task, or followed somebody else's suggestion, does not mean that they were discriminating against her on the basis of her sex. They simply reached a different conclusion. At most, it means they may have made a poor business judgment. But poor business judgment is not illegal unless it is based on sex or other prohibited factor.

Similarly, there were instances of jokes and pranks with sexual connotation in the workplace around Charging Party. But again, Charging Party has distorted those events completely out of proportion. For example, she believes that being called Sharon Stone was an accusation that she was a lesbian. It is true that Al Huff and others told a number of sexual jokes in Charging Party's presence, but she rarely complained to management. More importantly, when she did, the supervisors immediately dealt with the problem and took appropriate steps to attempt to eliminate it.

Unfortunately, Charging Party seems unable to accept the fact that she is thought of as a good and talented worker at Fingerhut. Instead, she feels bitterly rejected when any of her ideas and suggestions don't receive complete acceptance, when someone disagrees with her, and when she is not recognized or promoted. The ALJ has attempted to see the events at Fingerhut as Charging Party does, but is unable to do so.

In conclusion, the ALJ was at least generally aware of all the evidence reviewed and argument presented by Charging Party in her Amended Motion for Reconsideration at the time the decision was issued and still believes the decision that no illegal discrimination existed was correct. Therefore, the Amended Motion for Reconsideration will be denied.

S.M.M.