

BEFORE THE MONTANA DEPARTMENT
OF LABOR AND INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE WAGE)	Case No. 141-2018
CLAIM OF JUNE JENSEN,)	
)	
Claimant,)	ORDER DENYING CLAIMANT’S
)	MOTION TO COMPEL AND
v.)	GRANTING RESPONDENT’S
)	MOTION FOR SUMMARY
FORT PECK MARINA AND BAR, INC.,)	JUDGMENT
a Montana corporation,)	
)	
Respondent.)	
)	

* * * * *

I. INTRODUCTION

On January 23, 2018, Respondent Fort Peck Marina and Bar, Inc. (Fort Peck Marina) filed a Motion for Summary Judgment on the grounds that Claimant June Jensen (Jensen) failed to timely file her wage claim within the 180-day period required by Mont. Code Ann. § 39-3-207. On February 7, 2018 (received February 20, 2018), Jensen untimely filed what this tribunal would deem a Motion to Compel Discovery. Fort Peck Marina’s Motion for Summary Judgment is granted for the reasons stated below. Jensen’s Motion to Compel is denied as moot in light of the granting of summary judgment in favor of Fort Peck Marina.

II. UNDISPUTED FACTS

1. For the present claim, Jensen worked at Fort Peck Marina from August 13, 2016, through, at the latest, December 21, 2016.
2. Jensen returned to work at Fort Peck Marina from approximately May 15, 2017, through June 4, 2017, but was paid for her work during that time.
3. On July 28, 2017, Jensen filed a Wage Claim Form.

4. In her response to questions from Department of Labor Compliance Specialist Mitch Leslie, Jensen confirmed that her last day of work was December 21, 2016, and stated that she delayed filing the claim because “Shannon [Larsen (Larsen), Fort Peck Marina’s manager,] was a personal friend of mine and I trusted that she would be honest and pay me my wages.”

5. Prior to bringing the present claim, the last time that Jensen approached Larsen about unpaid wages was October of 2016.

6. In her objection to the Motion for Summary Judgment, Jensen stated, “The reason I was late filing a claim was because until a friend from Job Service told me I could go to the Labor Board to seek my wages, I didn’t know I could. And due to my husband’s declining health we were forced to move back to Billings and it took awhile to get settled and for our mail to catch up to us.”

III. DISCUSSION

A. Standards for Summary Judgment

Summary judgment is an appropriate method of dispute resolution in administrative proceedings where the requisites for summary judgment otherwise exist. *Matter of Peila*, 249 Mont. 272, 280-81, 815 P.2d 139, 144-45 (1991). “The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Rule 56(c), Mont. R. Civ. P.

The moving party “must show a complete absence of any genuine issue as to all facts shown to be material in light of the substantive principle that entitles that party to a judgment as a matter of law.” *Bonilla v. University of Montana*, 2005 MT 183, ¶ 11, 328 Mont. 41, 116 P.3d 823. A “material” fact is one capable of affecting the substantive outcome of the litigation. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “Material issues of fact are identified by looking to the substantive law which governs the claim.” *Glacier Tennis Club at the Summit v. Treweek Constr. Co.*, 2004 MT 70, ¶ 21, 320 Mont. 351, 87 P.3d 431 (overruled in part on other grounds by *Johnson v. Costco Wholesale*, 2007 MT 43, ¶ 21, 336 Mont. 105, 152 P.3d 727; quoting *Babcock Place P’ship v. Berg, Lilly, Andriolo & Tollefsen, P.C.*, 2003 MT 111, ¶ 15, 315 Mont. 364, 69 P.3d 1145); see also *Anderson*, 477 U.S. 242 at 248; *Bonilla*, ¶¶ 11, 14. A dispute is “genuine” if there is enough evidence for a reasonable trier of fact to return a verdict for the non-movant. See *Scott v. Harris*, 550 U.S. 372, 380 (2007). The inquiry is, essentially, “. . . whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so

one-sided that one party must prevail as a matter of law.” *Anderson*, 477 U.S. at 251-52.

“The party opposing summary judgment must come forward with evidence of a substantial nature; mere denial, speculation, or conclusory statements are not sufficient.” *McGinnis v. Hand*, 1999 MT 9, ¶ 18, 293 Mont. 72, 972 P.2d 1126 (citing *Klock v. Town of Cascade*, 284 Mont. 167, 174, 943 P.2d 1262 (1997)). The “party opposing summary judgment must direct [the court’s] attention to specific, triable facts.” *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 889 (9th Cir. 2003). A court is “not required to comb through the record to find some reason to deny a motion for summary judgment. . . .” *Carmen v. San Francisco Unified Sch. Dist.*, 237 F.3d 1026, 1029 (9th Cir. 2001) (quoting *Forsberg v. Pac. Nw. Bell Tel. Co.*, 840 F.2d 1409, 1418 (9th Cir. 1988)). A tribunal reviews the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party’s favor and without making findings of fact, weighing the evidence, choosing one disputed fact over another, or assessing the credibility of witnesses. *Fasch v. M.K. Weeden Const., Inc.*, 2011 MT 258, ¶¶ 16-17, 362 Mont. 256, 262 P.3d 1117.

B. Jensen Was Required to File Her Wage Claim Within the Time Limits Prescribed by Montana Law But Failed to Do So

Wage and hour claims are limited in duration by statute. The Montana Code provides that an employee may recover all wages and penalties provided for the violation of Mont. Code Ann. § 39-3-206 by filing a complaint within 180 days of default or delay in the payment of wages. Mont. Code Ann. § 39-3-207(1).

Contrary to Fort Peck Marina’s argument that there were multiple accrual dates based on each pay period at issue, a claim does not accrue—and the 180-day clock does not begin to run—until the *last* date on which the employer fails to pay. *Harrell v. Farmers Educ. Coop. Union*, 2013 MT 367, ¶ 29, 373 Mont. 92, 314 P.3d 920 (citing *Jensen v. State*, 2009 MT 246, ¶ 11, 351 Mont. 443, 214 P.3d 1227); *see also* Mont. Code Ann. § 39-3-205(1) (regarding wages due upon an employment separation). Fort Peck Marina does not argue that Jensen separated from employment with it multiple times prior to December 20, 2016, thus triggering separate accrual dates, but rather argues that because Jensen has asserted it continually failed to pay wages, separate accrual dates should apply. A continual, repeated failure to pay wages is relevant for penalties, but is not relevant for determining accrual dates. *See* Mont. Code Ann. § 39-3-207(3). Hence, whether Jensen’s claim concerns her August 2016, wages or her December 2016, wages is irrelevant except insofar as whether or not those dates fall within two years of filing her claim. Mont. Code Ann. § 39-3-207(2).

Notwithstanding the foregoing, the record is clear that, regardless of the accrual date, Jensen did not file her wage claim within 180 days as required by statute. Assuming Jensen's final day of work was December 21, 2016, assuming her claim did not accrue until 15 days thereafter pursuant to Mont. Code Ann. § 39-3-205(2) (Jensen stated that the 15th and 1st of every month would have been a payday, but based on her claim, she had no pay dates), and given the 180-day time limit in which to file a claim pursuant to Mont. Code Ann. § 39-3-207(1), Jensen had until July 5, 2017, to file her wage claim. *See* M.R. Civ. Proc. 6(a)(1)(c). Using a pay date of January 1, 2017, she had until only June 30, 2017. Jensen filed her claim on July 28, 2017, at least *23 days after the latest possible deadline*.

No factors exist which would alleviate Jensen of the duty to file her claim within 180 days. The 180-day time limit is not permissive, and there is no good cause standard for waiving the requirement. *See* Mont. Code Ann. § 39-3-207(1). Jensen has not asserted any circumstances which would justify staying the time limit. *See* Mont. Code Ann. §§ 27-2-401 *et seq.* Although Larsen may have been Jensen's friend, the last time Jensen approached her about unpaid wages and received any kind of affirmative response was October of 2016. Furthermore, ignorance of the law concerning Jensen's potential remedies is not a defense to filing an untimely claim. Fort Peck Marina has met its burden of showing that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law.

C. Jensen's Motion to Compel Discovery is Moot

Notwithstanding that it appears Jensen both untimely propounded discovery upon Fort Peck Marina and submitted an untimely Motion to Compel, this tribunal declines to rule on the merits of Jensen's Motion to Compel, as the granting of summary judgment in favor of Fort Peck Marina renders the issue of discovery moot by dismissing the case in its entirety. Furthermore, there is nothing Jensen could have gleaned from her discovery that would have affected either the timeliness of her claim or her arguments related thereto.

IV. CONCLUSIONS OF LAW¹

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint under Mont. Code Ann. §§ 39-3-201 *et seq.* *State v. Holman Aviation*, 176 Mont. 31, 575 P.2d 925 (1978).

¹Statements of fact in the conclusions of law are incorporated by reference to supplement the findings of fact. *Coffman v. Niece*, 110 Mont. 541, 105 P.2d 661 (1940).

2. Jensen failed to timely file a wage and hour claim within the 180-day period provided for under Mont. Code Ann. § 39-3-207.

3. There is no genuine issue as to any material fact and Fort Peck Marina is entitled to judgment as a matter of law

4. Jensen's Motion to Compel Discovery is moot.

5. Due process does not require development of facts through an evidentiary hearing when there are no material factual issues in dispute. *See In the Matter of Peila*, 249 Mont. 272, 280-281, 815 P.2d, 144 (1991).

V. ORDER

IT IS THEREFORE ORDERED THAT:

1. Fort Peck Marina's Motion for Summary Judgment is GRANTED.

2. Jensen's Motion to Compel Discovery is DENIED.

3. Jensen's appeal is DISMISSED.

DATED this 27th day of February, 2018.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ CHAD R. VANISKO

CHAD R. VANISKO

Hearing Officer

NOTICE: You are entitled to judicial review of this final agency decision in accordance with Mont. Code Ann. § 39-3-216(4), by filing a petition for judicial review in an appropriate district court within 30 days of the date of mailing of the hearing officer's decision. *See also* Mont. Code Ann. § 2-4-702.