

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE WAGE CLAIM )	Case No. 15-2018
OF JEFFREY S. RAPP, )	
	)
Claimant, )	
	)
vs. )	<b>FINAL AGENCY DECISION</b>
	)
	<b>DISMISSING CLAIM</b>
	)
TANGE FAMILY, LLC, a Montana limited )	
liability company d/b/a HAMPTON INN, )	
	)
Respondent. )	

\* \* \* \* \*

**I. INTRODUCTION AND PROCEDURAL HISTORY**

On April 16, 2018, Tange Family, LLC (Tange Family) moved for summary judgment on the basis that there are no genuine issues of material fact concerning Rapp’s wage and hour claim.<sup>1</sup> Because Rapp failed to respond to Tange Family’s Request for Admissions, under the Rules of Civil Procedure which govern this proceeding, those requests were established as fact. Based on those established facts, Tange Family argues it is entitled to judgment as a matter of law. Respondent did not request oral argument.

Pursuant to the Scheduling Order, Rapp had 14 days after the service of Respondent’s motion to file a response brief. *Scheduling Order*, p. 2, ¶ 2. In no event was a response brief to be filed after April 28, 2018. *Id.* Rapp has not filed any responsive pleading to Respondent’s motion, and the time for doing so has passed.

On May 21, 2018, the Hearing Officer issued his Notice of Intent to Dismiss and Order Vacating Hearing. The Notice gave the parties until June 1, 2018 to file responses to the Notice of Intent to Dismiss, which was based on the Hearing Officer’s review of jurisdiction that found Rapp’s claim was untimely filed and the Hearing Officer therefore had no jurisdiction to consider the claim or the motion.

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<sup>1</sup> By separate order Tange Family’s motion was determined timely filed.

On May 31, 2018, Tange Family filed its response. Rapp has not filed a response as of the date of this decision.

## II. FINDINGS OF FACT AS TO JURISDICTION

1. Rapp filed his claim for unpaid wages on June 23, 2017.
2. Rapp's last day of employment for Tange Family was October 17, 2016. Docs. 112, 132. The subsequent owners employed Rapp until April 4, 2017. Doc. 132.
3. Any wages due Rapp were required to be paid within 15 days of his separation from his employment with Tange Family. Mont. Code Ann. § 39-3-205. Fifteen days after October 17, 2016 is November 1, 2016.
4. An employee may recover unpaid wages by filing a claim with the department within 180 days of default or delay in payment. Mont. Code Ann. § 39-3-207.
5. Rapp filed his claim at least 234 days after the last day wages were due (November 1, 2016).
6. Rapp's claim is untimely.

## III. DISCUSSION

### A. The Department Lacks Jurisdiction Over Rapp's Claim

Rapp last worked for the Tange Family on October 17, 2016. Doc. 112. He had 180 days from November 1, 2016 to file his claim, which would have been April 30, 2017. Rapp filed his claim on June 23, 2017, which is 234 days after the last day his wages were due and approximately 54 days after the time for filing had passed.

The Wage & Hour Unit incorrectly applied the two-year limitation period allowed under the Fair Labor Standards Act (FLSA). Under Mont. Code Ann. § 39-3-207, a person may file a claim with the department but must do so within the 180-day period or the department loses jurisdiction over the claim. That is true whether the claim is filed under the Montana Wage Payment Act or it is a FLSA claim. Montana law provides that a party may opt to file his claim with the district

court, but if the claim is filed with the department, regardless of whether it's a state claim or a FLSA claim, it must be done within the 180-day time period. Mont. Code Ann. § 39-3-207. *Boegli v. Glacier Mountain Cheese*, 238 Mont. 426, 777 P. 2d. 1303 (1989) (“We conclude that a wage claimant pursuant to Title 39, Chapter 3, Part 2, may either seek administrative remedies through the Department of Labor and Industry or file his or her claim directly in district court.”); *Stanley v. Holms*, 267 Mont. 316, 322, 883 P.2d 837, 840 (1994).

B. The Hearing Officer Lacks Jurisdiction to Address Respondent’s Motion for Summary Judgment

Tange Family requested the Hearing Officer also rule on its summary judgment motion even if Rapp’s claim was dismissed for lack of jurisdiction. The Hearing Officer has only the power to decide whether a wage claim is valid if the claim is filed within 180 days of when payment should have been made. “It is a basic rule of law that . . . an administrative agency has only those powers specifically conferred upon it by the legislature . . . .” *Auto Parts of Bozeman v. Employment Rels. Div. Uninsured Employers’ Fund*, 2001 MT 72, P38, 50, 23 P.3d 193, 200 (2001) (quoting *City of Polson v. Public Service Com’n* (1970), 155 Mont. 464, 469, 473 P.2d 508, 511; *Gwynn v. Town of Eureka* (1978), 178 Mont. 191, 193, 582 P.2d 1262, 1263). After that time period had passed, the Department has no power or jurisdiction to determine the validity of the claim.

Courts and administrative agencies have:

an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party. Jurisdiction involves the fundamental power and authority of a court or an administrative agency to determine and hear a case or issue.

*Confederated Salish & Kootenai Tribes v. Clinch*, 2007 MT 63, P76, 158 P.3d 377, 396-397, 2007 (internal citations omitted).

If the Hearing Officer were to decide the motion for summary judgment, that decision would be void. *Id.* at P77, 336 Mont. 302, 334, 158 P.3d 377, 397. Once the Hearing Officer determines he has no jurisdiction, he has no ability to rule on any other issue related to this case. *State ex rel. New York Sheep Co. v. Eighth Judicial Dist. Court*, 14 Mont. 577, 602, 37 P. 969, 973, 1894 Mont. LEXIS 82, \*4. Therefore, the Hearing Officer will not rule on the motion for summary judgment as he lacks the authority to do so.

#### IV. CONCLUSIONS OF LAW

A. Jeffrey Rapp filed his claim for unpaid wages beyond the 180-day time limit for administrative review. Mont. Code Ann. § 39-3-207.

B. The Department lacks jurisdiction to consider Rapp's appeal. *Id. Auto Parts of Bozeman v. Employment Rels. Div. Uninsured Employers' Fund, supra.*

#### V. ORDER

IT IS THEREFORE ORDERED that the claim for unpaid wages filed by Jeffrey Rapp vs. Tange Family, LLC (Case No. 15-2018) is dismissed with prejudice.

DATED this 5th day of June, 2018.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ DAVID A. SCRIMM  
DAVID A. SCRIMM  
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. Please send a copy of your filing with the district court to:

Department of Labor & Industry  
Wage & Hour Unit  
P.O. Box 201503  
Helena, MT 59624-1503