

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

IN THE MATTER OF THE WAGE CLAIM)	Case No. 1539-2016
OF RICHARD P. HACKETT,)	
)	
Claimant,)	
)	FINAL AGENCY DECISION
vs.)	DISMISSING CLAIM
)	
WHEATLAND MEMORIAL HEALTHCARE,)	
)	
Respondent.)	

* * * * *

On October 24, 2016, the Hearing Officer issued an Order Granting Partial Summary Judgment (Order). The Order explains the procedural history of this matter. The Order granted summary judgment on all but one issue, the penalty to be assessed on a late payment of wages that Wheatland made of Hackett's last three days of work. The Hearing Officer determined that the maximum penalty that could be assessed was \$138.46.

On November 4, 2016, Wheatland tendered a check in the amount of \$138.46 and requested that the matter be dismissed. Hackett did not initially respond to Wheatland's Notice of Payment. On November 16, 2016, the Hearing Order issued a Notice of Intent to Dismiss wherein he gave Hackett until November 21, 2016 to respond. The Notice also informed the parties that the Hearing Officer intended to dismiss the matter unless Hackett could show good cause for not doing so. The Notice also provided that at the previously scheduled final pre-hearing conference the parties would be able to argue whether good cause existed to not dismiss the matter. On November 21, 2016, Hackett responded, arguing he was entitled to \$25,000.00 in penalties because the time card Wheatland prepared after it suspended him was somehow fraudulent even though he admitted that the presence or absence of the time card would have no impact on the wages he was owed.

On November 22, 2016, the Hearing Officer held the show cause hearing. Hackett argued that because he did not have a copy of the time card it was somehow misleading and that under Admin. R. Mont. 24.11.7556(1)(b) he should be awarded the maximum penalty of \$25,000.00. When asked what the basis was for the \$25,000.00 amount, he could only vaguely describe somewhere on the Department's website. The Hearing Officer was unaware of any state or federal statute that would

provide for that specific amount and Hackett could provide no reference in either law. Counsel for Wheatland correctly provided that the only rule that governed the matter at this point was Admin. R. Mont. 24.16.7551 which provides that even if the employer is late providing an employee with their wages, so long as it pays them between the time of the claim filing and a determination, no penalties would be assessed.¹ Wheatland paid Hackett for his last three days of employment on March 3, 2016, four days before Hackett filed his claim with the Department. Wheatland's counsel agreed to give Hackett the incorrectly determined penalty nonetheless if the matter was dismissed.

Hackett did not show good cause for holding a Hearing on the penalty issue.

IT IS THEREFORE ORDERED THAT:

1. Richard P. Hackett's claim for unpaid wages and penalties is DISMISSED WITH PREJUDICE.
2. The Department's Wage & Hour Unit shall release Wheatland's payment of \$138.46 to Richard P. Hackett at its earliest reasonable opportunity.

DATED this 25th day of November, 2016.

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. A copy of the petition must be served upon the department at the following address:

Department of Labor & Industry
Wage & Hour Unit
P.O. Box 201503
Helena, MT 59620-1503

¹ The Hearing Officer had overlooked this provision in his Order on Partial Summary Judgment.