

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

BEAL LAW FIRM, PLLC,)	Case No. 1569-2017
)	
Appellant,)	
)	ORDER GRANTING
vs.)	RESPONDENT'S MOTION FOR
)	SUMMARY JUDGMENT
UNEMPLOYMENT INSURANCE DIVISION,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

On January 29, 2016 and on February 24, 2016, the appellant Beal Law Firm (Beal) filed a notice of appeal of the Unemployment Insurance Division's (UID) department determination that indicated Beal's unemployment insurance contribution rate would be 0.62%. After further communications with Beal, UID's Contributions Bureau transmitted the appeal to the Office of Administrative Hearings (OAH) on March 31, 2017. On that same date, UID filed its Motion for Summary Judgment.

On April 3, 2017, OAH issued a Notice of Hearing and Telephone Conference setting a scheduling conference in the matter for April 14, 2017. At the conference, the parties waived the 20-day notice requirement. The parties further agreed to postpone scheduling any further proceedings pending resolution of UID's Motion for Summary Judgment.

On May 5, 2017, Beal filed and served its response opposing UID's motion. Beal does not directly (or even indirectly) challenge UID's recitation of material facts. Rather, Beal contends summary judgment is inappropriate because the actions undertaken by UID when establishing its 2016 tax rate and the governing statutes it relied upon when doing so are both unconstitutional. UID filed and served its reply in support of its motion on May 19, 2017.

Neither party requested oral argument on the motion. As more fully described below, the Hearing Officer issues the following order granting UID's motion after considering all arguments, exhibits, and statements supplied by the parties.

II. UNDISPUTED MATERIAL FACTS:

1. Beal is an experience rated Montana employer that has been required to file Form UI-5 Montana Employer's Unemployment Insurance Quarterly Wage Reports (UI-5 Report) on a quarterly basis.
2. Jon Beal signed and submitted UI-5 Reports on behalf of Beal for the 2013, 2014, 2015 fiscal years. UID Exhibits 2, 3, 4.
3. In order to discern Beal's Rate Class for 2016, UID first averaged Beal's taxable payroll for the three fiscal years preceding 2016. For fiscal years 2013-2015, UID used the taxable payroll amounts Beal reported on its Quarterly UI-5 Report and which were:

2013: \$258,023.93 (UID Exhibit 2; 2-1; 2-3; 2-5; 2-7).
2014: \$276,278.73 (UID Exhibit 3; 3-1; 3-3; 3-5; 3-7)
2015: \$250,357.05 (UID Exhibit 4; 4-1; 4-3; 4-5; 4-7)
4. After averaging the above-figures, UID determined Beal's average taxable payroll to be \$261,553.00. UID Exhibit 6.
5. Next, UID calculated Beal's reserve. UID did so by subtracting the amount of contributions charged to Beal's account since October 1, 1981 (\$131.22), from the totality of Beal's contributions made between October 1, 1981 and October 1, 2015 (\$34,756.15). UID Exhibit 6. Accordingly, Beal's reserve for 2016 was \$34,444.93. UID Exhibit 6.
6. After calculating Beal's reserve, UID then determined Beal's reserve ratio (or, experience factor) by dividing Beal's reserve (\$34,444.93) by its average taxable payroll (\$261,553.00). For 2016, Beal's reserve ratio was 0.131694. UID Exhibit 6.
7. Beal's reserve ratio of 0.131694 resulted in its placement into Rate Class Eligible 6, having a corresponding contribution rate of 0.62%. UID Exhibit 5. For eligible employers like Beal having a contribution rate above 0.00% (rate classes Eligible 3 through Eligible10), the applicable Administrative Fund Tax

of .18% was added to Beal's contribution rate. Id; UID Exhibit 6. Beal's total tax rate for 2016 was .80%. Id.

8. Beal's contribution rate decreased approximately from 1.22% in 2015 to .62% for 2016. Beal Exhibit 3.
9. On or about December 15, 2015, UID provided Beal with its "Notice of Unemployment Insurance Tax Rates for 2016" ("Notice"). UID Exhibit 6. Among other things, the Notice identified Beal's 2016: (1) Contribution rate; (2) Administrative Fund Tax rate; (3) Total UI Tax rate; (4) Average Taxable Payroll; (5) Reserve; (6) Reserve Ratio; and (7) its Rate Class. Additionally, the Notice explained how many of the foregoing figures were calculated, and how Beal could seek a redetermination of its 2016 contribution rate.
10. Beal submitted a written request for redetermination on January 13, 2016. Beal Exhibit 2. Beal's correspondence requested additional information from UID, and listed (9) separate points of inquiry. Beal's request for redetermination did not, however, explain why or if it believed the assigned contribution rate was incorrect.
11. UID responded to Beal's inquiry on January 20, 2016. Beal Exhibit 3.
12. Beal submitted what it styled a "Written Notice of Appeal and Request for Additional Information" on January 29, 2016. Beal Exhibit 4. Beal offered 39 separate questions/information requests to UID. Similar to its January 13, 2016 correspondence, Beal did not articulate whether it disagreed with its 2016 contribution rate, nor did it identify the root cause of any such disagreement.
13. On February 10, 2016, UID wrote Beal and asked for clarification about what exactly it was challenging. In this correspondence, UID informed Beal that the applicable statute governing appeals of contribution rates (§ 39-51-1206(3), MCA) had been amended during the 2015 Legislative session. On February 19, 2016, Beal responded with additional questions concerning the legislative change to Mont. Code Ann. § 39-51-1206, but did not clarify his appeal further. Beal Exhibit 5.
14. Beal subsequently sent UID a number of additional requests for information (Beal Exhibit 7), none of which explained, to any degree, the basis of any dispute it had with UID over its 2016 classification/rate of contribution.

15. To date, Beal has never identified, even in general terms, any mathematical or computational error UID committed when it determined its 2016 UI tax rate.

III. DISCUSSION

The purpose of summary judgment is to eliminate the burden and expense of unnecessary trials. *Klock v. City of Cascade*, (1997), 284 Mont. 167, 173, 943 P.2d 1262, 1266. “Due process does not require development of facts through an evidentiary hearing when there are no material factual issues in dispute.” *Dowell v. Mont. Dept. of Pub. HHS*, 2006 MT 55, para 21, 331 Mont. 305, 132 P.3d 520. In cases where the relevant statutes governing an appeal are silent about summary disposition, such a result remains appropriate if “no purpose would be served by conducting an evidentiary hearing where there is an absence of disputed material facts, as testimony is unnecessary.” *Anaconda Pub. Schools v. Whealon*, 2012 MT 13, para. 16; 363 Mont. 344; 268 P.3d 1258. Thus, summary judgment is allowed in administrative proceedings where the requisites for summary judgment otherwise exist. *Matter of Peila* (1991), 249 Mont. 272, 281, 815 P.2d 139, 144.

Summary judgment is proper only when the moving party establishes that there are no genuine issues of material fact and an entitlement to judgment as a matter of law. Rule 56(c) Mont. R. Civ. P.; *Knucklehead Land Co. v. Accutitle*, 2007 MT 301, ¶ 10, 340 Mont. 62, 172 P.3d 116. The initial burden is on the moving party to meet the above burden. Once it is satisfied, the non-moving party must then prove beyond mere speculation and denial that a genuine issue of material fact remains. *Id.*

- a. There are no genuine issues of material fact.

Beal does not identify any genuine issues of material fact that are in dispute. Beal first confuses the process by which courts adjudicate motions for summary judgment by erroneously criticizing UID for “mak[ing] no effort to ascertain facts relevant to the Firm’s appeal...” Petitioner’s Response, p. 8. Contrary to Beal’s allegation, UID supported the accuracy of its calculation of Beal’s 2016 rate with a number of factual contentions that it buttressed with an affidavit and several exhibits.

In that regard, it is important to note that Beal failed to advance any discernable argument about the nature of its dispute with its 2016 rate before UID filed its motion. Beyond improperly attempting to shift the burden to UID, Beal does not explain how UID could be expected to “ascertain facts relevant to [Beal’s] appeal” when Beal never articulated what it was appealing in the first place.

At this point, Beal-- not UID-- was required to demonstrate the existence of a disputed issue of material fact. All that Beal musters is vague speculation about the correctness of UID's calculation ("Even if the UI's allegation regarding the calculation were correct..." Response Brief, p. 9). Beal advances absolutely no contrary facts illuminating how or why UID's corrections might be incorrect. As a result, Beal's passing remark does not suffice for purposes of raising a genuine issue of material fact.

b. UID is entitled to judgment as a matter of law.

Because there are no disputed material facts, the next question is whether UID is entitled to judgment as a matter of law. UID demonstrated that it determined Beal's 2016 rate in accordance with applicable Montana law. On the other hand, Beal does not confront UID's analysis. Rather, Beal contends that UID's motion should be denied because UID's actions and certain statutes enacted by the Montana legislature are constitutionally infirm.

Constitutional questions may only be resolved by a judicial body, not an administrative one such as OAH, under the separation of powers principle. *Hoffman v. State*, 2014 MT 90, ¶ 9, 374 Mont. 405, 328 P.3d 604; quoting: *Jarussi v. Board of Trustees*, 204 Mont. 131, 135, 664 P.2d 316, 318 (1983). An analogous situation to the present dispute arose in *Francetich v. State Compensation Mut. Ins. Fund*, 252 Mont. 215, 217, 827 P.2d 1279, 1281 (1992). In that litigation, the claimant challenged the constitutionality of Mont. Code Ann. § 39-71-414, before the Department of Labor and Industry's hearings officer. The Montana Supreme Court concluded the hearing examiner "correctly declin[ed] to address the constitutional questions on the grounds that administrative agencies lack the necessary judicial power to decide such issues." *Id.*, 252 Mont. at 217; 827 P.2d at 1281; citing *Jarussi v. Board of Trustees*, 204 Mont. 131, 135-136, 664 P.2d 316, 318 (1983). As in *Francetich*, Beal's constitutional claims cannot be adjudicated in this forum and will not, therefore, be addressed.

The closest that Beal comes to raising a defense against UID's motion concerns its belief that "this statutory operation would deprive [Beal]...of any meaningful ability to challenge and/or change their UI tax rate each year..." Petitioner's Response, p. 9. A cursory review of the applicable statutes and administrative rule reveals that Beal's interpretation of Montana law is erroneous. The plain language of both Mont. Code Ann. § 39-51-1206 and Admin. R. Mont. 24.11.2201 allow employers to challenge various components of its rate. Although an employer may not contest the underlying methodology or rate schedules themselves, it can dispute the "inputs" UID makes when performing those particular tasks.

Upon receiving UID's notice in December 2015, Beal certainly could have disputed the various figures that UID utilized when calculating its 2016 rate. Rather than availing itself of that opportunity, Beal instead utilized the redetermination and subsequent appeal process to send lengthy information requests to UID. Even now, beyond its constitutional arguments, it is impossible to discern what, if anything, Beal finds objectionable about its 2016 rate.

Beal lodges no cogent argument (that the Hearings Officer has authority to adjudicate) with citations to relevant legal authority for the proposition that UID's calculations for 2016 were in any way erroneous. Because, "A party is responsible for developing legal analysis that supports its position..." (Wohl v. City of Missoula, 2013 MT 46, ¶ 48, 369 Mont. 108, 300 P.3d 1119), the Hearings Officer will not undertake that effort for Beal.

Ultimately, UID calculated Beal's reserve and employer reserve ratio in accordance with Mont. Code Ann § 39-51-1213. UID thereafter placed Beal into the appropriate rate class pursuant to Montana law. UID has demonstrated there are no genuine issues of material fact and its Motion for Summary Judgment is granted.

c. Beal is not aggrieved.

A threshold issue in determining whether a party may appeal a department determination is whether they are aggrieved by that determination. Admin. R. Mont 24.11.204 (4) defines "appeal" as meaning:

a request by an interested party aggrieved by a determination redetermination, or decision for a review of the determination, redetermination, or decision at the next higher level of review.

"Aggrieved refers to a substantial grievance, a denial of some personal, pecuniary or property right, or the imposition upon a party of a burden or obligation." Black's Law Dict. 6th Ed. 1990.

There is nothing in this record that indicates that Beal is aggrieved. Nor has Beal alleged it has been aggrieved by UID's calculation of his 2016 contribution rate.

In its January 29, 2016 Notice of Appeal, Beal states:

Thank you very much for your January 20th response, which we received on January 25th (attached) confirming our 51% tax rate decrease.

There is one question in Beal's February 24, 2017 letter to UID that suggests that he might be aggrieved, but it is based on incorrect facts:

Additionally, in the initial notice of tax rates for 2017 we received you said that our tax rate was 0.60% but in your February 15th [2017] correspondence you said that it is 0.62%. Please explain what changed to cause our rate to increase.

The Hearing Officer does not know what Beal's rate is for 2017, but the issue here is Beal's 2016 rate. If Beal's rate for 2017 is indeed 0.60% this would indicate another decrease not an increase from the 2016 rate. There is nothing in the record which indicates UID ever informed Beal that his 2016 rate was anything other than 0.62%.

Beal raised a number of questions about why his rate went down, but those questions do not support a conclusion that he is aggrieved. Accordingly, Beal's appeal is null and void.

IV. ORDER

IT IS THEREFORE ORDERED THAT:

1. UID's Motion for Summary Judgment is GRANTED.
2. Beal's appeal is dismissed.

DATED this 1st day of June, 2017.

By: /s/ DAVID A. SCRIMM
David A. Scrimm, Hearing Officer
Office of Administrative Hearings
Department of Labor and Industry

This decision is the final decision of the Montana Department of Labor and Industry in this case. You may appeal this decision to the Unemployment Insurance Appeals Board within 10 days after this decision was mailed to your last known address. The appeal must be received no later than June 12, 2017. The time for appeal may be extended for good cause. Your appeal must be filed with the Unemployment Insurance Appeals Board, P.O. Box 1728, Helena, Montana 59624; phone (406) 444-3311; fax (406) 444-9038; email: uiappealsboard@mt.gov.

BEAL LAW FIRM.OGRMFSJ