

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

IN THE MATTER OF THE WAGE CLAIM)	Case No. 241-2017
OF HEATH E. EISENTRAGER,)	
)	
Claimant,)	
)	
vs.)	FINAL AGENCY DECISION
)	
JILL MEYER AND PHIL MATHER,)	
individually,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

In this matter, Jill Meyer and Phil Mather appealed a determination by the Wage and Hour Unit finding they owed the claimant, Heath M. Eisentrager, additional wages. Hearing Officer David A. Scrimm convened a telephonic contested case hearing in this matter on July 14, 2017. Eisentrager appeared and represented himself. W. Wayne Harper, attorney at law, represented Meyer and Mather. Documents 1 through 37 and Respondent’s Exhibits A through C were admitted into evidence. Eisentrager, Meyer, and Mather testified under oath.

The Hearing Officer reopened the record to take additional evidence because the record at that time did not supply sufficient evidence to make a decision. The reopened hearing took place at the Butte Job Service at 10:00 a.m. on October 24, 2017. A call to Mr. Eisentrager’s last known phone number did not answer and no message could be left. Accordingly, Eisentrager did not participate in the reopened hearing. Linda Sommer, Jay Grant, Jill Meyer, and Phil Mather presented sworn testimony. Meyer and Mather were represented by Wayne Harper, attorney at law. Documents 103 through 123 were admitted.

Based on the evidence, exhibits, and arguments presented at the hearing, the Hearing Officer makes the following findings of fact, conclusions of law, and final order.

II. ISSUE

Is Eisentrager due additional wages as alleged in his complaint?

III. FINDINGS OF FACT

1. On August 5, 2016, the claimant, Heath M. Eisentrager, filed a claim for wages with the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit) alleging Jill Meyer and Phil Mather had failed to pay him \$1,900.00 in unpaid regular wages.

2. Meyer and Mather (homeowners) are the owners of a home located at 536 W. Mercury Street in Butte, Montana (hereinafter "home"). In June 2016, Parker and Eisentrager were working for Silver Bow Property Management (SBPM) on a property across the street and the homeowners inquired as to whether Eisentrager and Dennis Parker might be available to paint their home. Eisentrager asked his supervisor at SBPM for time off to complete the homeowners' project. Subsequently, the homeowners engaged Parker and Eisentrager to paint their home. The parties agreed the homeowners would pay Parker and Eisentrager \$100.00 per day for their painting and minor home repair work.

3. Eisentrager worked for Silver Bow Property Management (SBPM) on various property improvement projects in the area. From May 21 to June 5, 2016, Eisentrager worked 55.12 hours for SBPM. Ex. 116. He was fully paid for those hours. Ex. 119. From June 6 to June 22, Eisentrager reported no hours working for SBPM. Ex. 116. From June 23, 2016 to July 5, 2016, Eisentrager worked 24.69 hours for SBPM. Ex. 116. SBPM paid Eisentrager for those hours worked. Ex. 120. Eisentrager reported hours working for SBPM during the time period he worked on the home. He reported the following hours on the following dates: June 23 (7.6); June 24 (4.07); June 27 (5.3); June 30 (3.85), and July 5 (3.87). See Addendum A. The hours he worked for SBPM did not prevent him from working on the home.

4. Mather paid Eisentrager \$100.00 per day in cash. Doc. 19, Mather testimony.

5. On or about July 5, 2016, Parker and Eisentrager went by the home in an SBPM truck and Eisentrager engaged Meyer in a heated argument where he swore at Meyer repeatedly about the homeowners owing them money - \$600.00 or \$700.00 -

not \$1,900.00 or \$3,800.00. Eisentrager relied solely on Meyer's calendar to show the days he worked for the homeowners.

6. Eisentrager did the work at the home and was fully paid for that work.

IV. DISCUSSION¹

Montana law requires that employers pay wages when due, in conformity with the employment agreement. Mont. Code Ann. § 39-3-204. Except to set a minimum wage, the law does not set the amount of wages to be paid. That determination is left to the agreement between the parties. Eisentrager bears the burden of persuading the trier of fact that he is entitled to the wages he claims he is due. *Berry v. KRTV Communications* (1993), 262 Mont. 415, 426, 865 P.2d 1104, 1112. See also, *Marias Health Care Services v. Turenne*, 2001 MT 127, ¶¶13, 14, 305 Mont. 419, 422, 28 P.3d 494, 495 (holding that lower court properly concluded that the plaintiff's wage claim failed because the plaintiff failed to meet her burden of proof to show that she was not compensated in accordance with her employment contract).

Eisentrager has not proven the homeowners owe him any additional wages. He did not rebut their testimony that he was fully paid by Mather. The homeowners' reliance on Documents 32, 33, and 37 to show the dates of work and the amount paid is reasonable in light of the fact that both Eisentrager and Parker relied on the same documents to show the hours they claimed to have worked. Eisentrager's continued work on the home when he claims he was not paid and his demand to be paid \$600.00 or \$700.00 on July 5, 2016 undermines the credibility of his assertions that he was not paid at all.

Eisentrager failed to produce any reliable evidence at hearing to prove that Meyer and Mather owe him any additional wages.

V. CONCLUSIONS OF LAW

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* (1978), 176 Mont. 31, 575 P.2d 925.

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

2. Eisentrager has failed to demonstrate by a preponderance of the evidence that he is due additional wages.

VI. ORDER

As Eisentrager has failed to demonstrate that he is due additional wages, his claim fails and must be dismissed.

DATED this 2nd day of November, 2017.

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

ADDENDUM A

Date	Hours for Meyer	Parker SBPM E. 110	Eisentrager SBPM Ex. 116	Parker hours out of BPRC
5/21/2016		4	0	
5/22/2016		0	0	
5/23/2016		4.42	4.12	
5/24/2016		3.55	0	
5/25/2016		8.67	8.32	
5/26/2016		8.28	8.15	
5/27/2016		7	6.63	
5/28/2016		0	0	
5/29/2016		0	0	
5/30/2016		8	5.5	
5/31/2016		4.63	0	
6/1/2016		7.82	4.85	
6/2/2016		6.77	0	
6/3/2016		8.9	8.5	
6/4/2016		6.78	7.28	
6/5/2016		4.4	1.77	
6/6/2016	8	0	55.12	Eisentrager paid for
6/7/2016	0	7 hours Ex. 113	0	55.12 hours Ex. 119
6/8/2016	7.5	0	0	
6/9/2016	8	0	0	
6/10/2016	7	0	0	
6/11/2016	0	0	0	
6/12/2016	8	0	0	
6/13/2016	7	0	0	
6/14/2016	8	0	0	
6/15/2016	unknown	2.53	0	11
6/16/2016	unknown	0	0	
6/17/2016	unknown	0	0	
6/18/2016	unknown	0	0	
6/19/2016	0	0	0	
6/20/2016	unknown	0	0	
6/21/2016	unknown	0	0	
6/22/2016	unknown	0	0	
6/23/2016	unknown	7.6	7.6	9
6/24/2016	unknown	7.75	4.07	9
6/25/2016	0	0	0	
6/26/2016	0	0	0	
6/27/2016	"Sketchy"	5.5	5.3	10.5
6/28/2016	"Sketchy"	0.65	0	10.5
6/29/2016	"Sketchy"	0	0	
6/30/2016	"Sketchy"	5.87	3.85	10
7/1/2016	"Sketchy"	8.42	0	
7/2/2016	0	0	0	
7/3/2016	0	0	0	
7/4/2016	0	0	0	
7/5/2016	0	7.25	3.87	
Parker paid for 43.04 hours		43.04	24.69	Eisentrager paid for
Ex. 114			24.68 hours Ex. 120	