

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

IN THE MATTER OF THE WAGE CLAIM )	Case No. 249-2015
OF KENNETH O. SCHULTZ, )	
)	
Claimant, )	
)	
vs. )	<b>FINAL AGENCY DECISION</b>
)	
PARADISE AMUSEMENTS, INC., )	
a Washington corporation registered with the )	
Montana Secretary of State, )	
)	
Respondent. )	

\* \* \* \* \*

**I. INTRODUCTION**

1. On August 19, 2014, Kenneth O. Schultz filed a claim with the Wage and Hour Unit of the Department of Labor and Industry contending Paradise Amusements, Inc. (Paradise) owed him \$7,271.40 in wages for work performed during the period of April 2013 through October 4, 2013. Schultz's claim did not include unpaid overtime wages.

2. On September 3, 2014, the Wage and Hour Unit dismissed Schultz's initial claim pursuant to Mont. Code Ann. § 39-3-207(1) because Schultz filed his claim more than 180 days after the last date upon which the unpaid wages owed by Paradise should have been paid.

3. On September 11, 2014, Schultz timely requested a redetermination with the Wage and Hour Unit.

4. On September 16, 2014, the Wage and Hour Unit requested information from Paradise with respect to Schultz's claim. Paradise filed its response to the claim on October 7, 2014.

5. On November 24, 2014, the Wage and Hour Unit issued a redetermination finding Schultz's claim timely because he and Paradise were involved in interstate

commerce and therefore his wage claim was covered by the Fair Labor Standards Act (FLSA). The redetermination also found that Paradise owed Schultz \$6,845.60 in unpaid wages and imposed a 15% penalty (under Montana law) of \$1,026.84 for a total of \$7,872.44. The 15% penalty was incorrect because the Wage and Hour Unit should have imposed the 100% liquidated damages provided for under the FLSA.

6. On December 9, 2014, Paradise timely mailed a request for redetermination of the November 24, 2014 decision. In its request for redetermination, Paradise requested that jurisdiction of the claim be transferred to Washington State where Paradise is incorporated. Paradise also stated the majority of Schultz's wages were not earned in Montana and Schultz's work did not begin or end in Montana.

7. On February 4, 2015, the Wage and Hour Unit issued a second redetermination finding Paradise owed Schultz \$6,330.75 in unpaid wages and imposed a 15% penalty of \$949.62 for a total of \$7,280.37.

8. On February 23, 2015, Paradise timely filed a Notice of Appeal and Request for Contested Hearing. At that time Paradise appeared through its attorney, Robert Terrazas.

9. Following unsuccessful mediation efforts, the Wage and Hour Unit transferred the case to the Office of Administrative Hearings on April 28, 2015.

10. On December 15, 2015, Hearing Officer David A. Scrimm held a contested case hearing in this matter in Helena, Montana. Schultz appeared personally and testified under oath. Sherry McKay and Kelsey McKay were allowed to listen in on the hearing but because Paradise was not represented, Paradise failed to appear.

11. Schultz called no additional witnesses. Schultz had no objection to the admission of the administrative record compiled by the Wage and Hour Unit (Documents 1 through 156). Schultz also offered new documentary evidence in the form of Exhibits 200 through 255 that were admitted into evidence. However, the Hearing Officer ruled that, to the extent the Exhibits 200 through 255 were duplicative, only the documents that were not duplicative would be admitted. The Hearing Officer now rules that Schultz's Exhibits 201, 202, 204, 205, and 240-247 are not admitted as they are duplicates of documents already in the record.

12. Upon the request of Schultz, Paradise Exhibits 1 through 99 dated September 17, 2015 and received by the Office of Administrative Hearings on September 18, 2015 were also admitted. These documents were titled, "Stipulated Facts, Final Contentions, Witnesses, Exhibits, Request for Subpoena, and Requests for Relief," and were sent to the Office of Administrative Hearings by Paradise's former attorney, Robert Terrazas.

13. The Hearing Officer also admitted the Exhibits contained in an October 16, 2015 letter from Terrazas to the Office of Administrative Hearings upon the request of Schultz. The Hearing Officer ruled that, to the extent the Exhibits contained in the October 16, 2015 letter were not duplicative, they would be admitted. The Hearing Officer now admits all of the documents because they are clean copies of documents found in 1-156. Many of these duplicates have notes apparently written by Schultz. Terrazas's affidavit supporting his Motion to Withdraw remains sealed.

14. At the close of hearing, Schultz offered an oral closing statement and the matter was deemed submitted for decision. Based on the evidence and argument presented at hearing, the following findings of fact, conclusions of law, and final order are made.

## **II. ISSUE**

Whether Paradise Amusements, Inc., a Washington Corporation, owes wages for work performed, as alleged in the complaint filed by Kenneth O. Schultz, and owes penalties and liquidated damages.

## **III. FINDINGS OF FACT**

1. On April 30, 2015, the Office of Administrative Hearings issued the Notice of Hearing, which informed Paradise that it must be represented by an attorney and that failure to appear could result in default.

2. A scheduling conference was held on May 18, 2015, with Schultz appearing pro se and Paradise appearing through its attorney, Robert Terrazas. On May 19, 2015, a Scheduling Order was issued setting the matter for hearing on September 29, 2015. The order indicated that failure to comply with the provisions of the order could result in default. The order set a September 18, 2015 deadline for exchanging lists of witnesses, exhibits, contentions, and proposed stipulated facts. Paradise complied with this requirement.

3. On July 10, 2015, the case was transferred to Administrative Law Judge Terry Spear of the Office of Administrative Hearings.

4. On September 11, 2015, Schultz was issued a subpoena, which he served on Paradise requesting numerous financial records. Paradise did not comply with this subpoena.

5. On September 21, 2015, Hearing Officer Spear conducted a telephone conference and subsequently issued an order postponing the hearing from September 29, 2015 to November 3, 2015.

6. On September 23, 2015, Hearing Officer Spear issued an order requiring Paradise to provide a number of documents to its attorney no later than October 14, 2015. Paradise's attorney was then required to send them to Schultz no later than October 16, 2015. Paradise did not comply with this order.

7. On October 16, 2015, Terrazas filed a Motion to Withdraw as Attorney of Record for Paradise. He submitted an affidavit which he requested and the Hearing Officer agreed to be sealed.

8. On October 22, 2015, Hearing Officer Spear issued an order setting an October 27, 2015 telephone conference where the Motion to Withdraw would be discussed. Terrazas had filed the motion because his client [Paradise] "has substantially failed to fulfill an obligation to him regarding his services to the client and further representation has been rendered unreasonably difficult by the client." The order also warned Paradise that failure to appear and participate in the telephone conference could result in its default. The order referred to Paradise's failure to fulfill its obligations to its attorney and to provide documents to him.

9. On October 27, 2015, Hearing Officer Spear convened a telephone conference on Terraza's Motion to Withdraw with counsel for Paradise and Schultz. Paradise was sent notice of that conference but could not be reached at either the telephone number of record (which simply rang unanswered with no voice mail option) or the number provided by its withdrawing counsel, which offered voice mail for Paradise. The Hearing Officer left a message asking Paradise to contact Sandy Duncan at 406-444-9583, noting the hearing scheduled on November 3, 2015, at 10:00 a.m., MST. The certificate of service on the motion indicated it was sent to Paradise at the address used in the Certificate of Mailing on this order.

10. On October 27, 2015, Sandy Duncan of the Office of Administrative Hearings received a call from Sherry McKay of Paradise, who represented to Duncan that she would contact her daughter and that a person with authority to speak for the respondent would “get back” to Duncan for the telephone status conference. As of 3:00 p.m. on October 28, 2015, no responsive call from McKay or anyone else on behalf of respondent was received.

11. On October 28, 2015, Hearing Officer Spear granted Terrazas’ Motion to Withdraw leaving Paradise unrepresented.

12. On November 2, 2015, Hearing Officer Spear convened a telephone status and scheduling conference on which the parties, in communication with the Office of Administrative Hearings, had agreed. Schultz participated on his own and Sherry McKay and Kelsey McKay participated on behalf of Paradise. Paradise was again informed that it needed an attorney and was given until November 27, 2015 to find another attorney to act on its behalf. The matter was set for hearing on December 15, 2015. Hearing Officer Spear recused himself due to scheduling conflicts, and Chief Administrative Law Judge David Scrimm was appointed to hear the case.

13. On December 4, 2015, Sherry McKay filed a written request for a continuance on the basis it was having trouble securing counsel. Hearing Officer Scrimm denied Paradise’s request for a continuance on the grounds that further delay would be prejudicial to Schultz. The December 4, 2015 order also stated that if Paradise failed to appear at the December 15, 2015 hearing, it would be defaulted and its appeal would be dismissed.

14. On December 14, 2015, the parties attempted mediation with the Office of Administrative Hearings. Paradise appeared with Idaho counsel in the mediation. This mediation was unsuccessful. At the end of the mediation, Paradise’s Idaho counsel made an oral motion to Hearing Officer Scrimm to continue the contested case hearing set for the next day. This motion was denied because it could not legally be made by an attorney not licensed to practice law in Montana and because it was prejudicial to Schultz.

15. Schultz is an over-the-road truck driver and certified diesel mechanic currently residing in Great Falls, Montana.

16. Paradise is a Washington Corporation, based in Post Falls, Idaho. Paradise performs work throughout the western United States, including Montana, Idaho, Washington, Oregon, California, and Nevada.

17. In April 2013, Schultz began working for Paradise. Schultz's employment period lasted from April 2013 through October 4, 2013, when he left the employ of Paradise due to left hip pain.

18. Schultz was a driver and mechanic for Paradise. Schultz lived in the truck Paradise provided for him and was responsible for hauling Paradise's equipment and rides to carnivals across the western United States. Paradise management personnel, including owner Sherry McKay and her daughter, Kelsey McKay, told Schultz what equipment to take and where to go.

19. On July 25, 2013, Schultz and Sherry McKay got into an argument in Caldwell, Idaho, and Schultz was going to quit. Kelsey McKay asked Schultz to stay and promised she would pay him a flat rate of .40 cents per mile going forward. Schultz was paid what he was owed in mileage at that point in time.

20. From July 26, 2013 through September 25, 2013, Schultz drove 13,416 miles for Paradise, hauling equipment and rides throughout the western United States. Schultz kept mileage logs in accordance with DOT standards, which showed the miles driven each day. Schultz drove a semi truck as well as a Dodge pickup truck.

21. Before he would set out on driving jobs for Paradise, Paradise would give Schultz cash for truck expenses such as fuel and minor maintenance issues. Claimant's Exhibit 254 shows Paradise paid Schultz \$10,050.00 in draws for such expenses. At the end of each job, Schultz was to turn in receipts for fuel and maintenance. If Schultz had any money left over from a job, Paradise would allow Schultz to apply these leftover funds to the next job. These advances were not wages.

22. Schultz also performed 147 hours of mechanic work for Paradise during the claim period.

23. After July 25, 2013, the only wages paid to Schultz by Paradise was \$500.00 in cash given to Schultz on September 16, 2013 by Kelsey McKay in Nampa, Idaho.

24. In August 2013, Schultz sold tickets for Paradise at a carnival held in Langley, Washington. These ticket sales took place over a four-day period and Schultz was to be paid \$200.00 Schultz was not paid these wages.

25. Schultz was paid no other wages by Paradise and left its employ on October 4, 2013.

26. In its initial response to Schultz's claim, Kelsey McKay stated, "There are still monies owed to Mr. Schultz, but not in the amount he is claiming." Doc. 119. On or about October 4, 2013, Kelsey McKay had a conversation with Schultz about his mileage. Kelsey McKay stated, "I personally explained to Mr. Schultz that I had to change my focus on preparing for the [DOT] audit and therefore needed time to prepare the final calculations for his mileage pay and deduction would have to be extended." Id. She informed Schultz that she "would try to have his calculations complete . . . by January 2014." Id. at 119-120. Kelsey McKay went on to state that the audit took place in late spring of 2014, more than six months after Schultz should have been paid. Id. Schultz relied on her continuing promises to pay.

27. On June 23, 2014, Schultz had an office consultation with attorney Scott Radford in Great Falls, Montana. Radford spoke to Sherry McKay by telephone that day and Sherry McKay admitted to him that Paradise owed Schultz wages. Sherry McKay did not dispute the amount owed. Radford was referred to Kelsey McKay and, despite phone calls and emails to Kelsey McKay, no payment was forthcoming. On August 21, 2014, Radford communicated his efforts to collect Schultz's unpaid wages to the Wage and Hour Unit. Doc. 143.

28. On August 29, 2014, the Wage and Hour Compliance Specialist sent Schultz a letter asking "In order to determine whether the time limit for filing a wage claim may be tolled in your particular case, please respond to the following questions." Doc. 156. The Compliance Specialist told Schultz that his response must be received by September 3, 2014. On September 2, 2014, the Compliance Specialist received Schultz's detailed response, which told of his efforts to obtain the unpaid wages from Paradise. On September 3, 2014, the Compliance Specialist dismissed Schultz's claim as untimely despite his and his attorney's efforts to demonstrate that the deadline should be tolled. Docs. 141-142. The Dismissal did not include any discussion of the reasons for not tolling the deadline. Id.

29. Schultz is owed unpaid wages in the amount of \$7,271.40 (\$5,366.40 in mileage, \$2,205.00 for mechanic work, and \$200.00 for ticket sales).

30. A penalty in the amount of \$3,999.27 is owed on the unpaid wages (0.55 x \$7,271.40).

#### IV. DISCUSSION AND ANALYSIS<sup>1</sup>

A. Paradise is in default because it failed to appear through counsel in accordance with Montana law.

This is a contested case proceeding subject to the Montana Administrative Procedures Act (MAPA) pursuant to Mont. Code Ann. § 2-4-601 et. seq and § 39-3-302. MAPA specifically provides that informal disposition may be made of any contested case by, among other things, a default unless such disposition is precluded by law. Mont. Code Ann. § 2-4-603(1)(a). Nothing in Title 39 or Title 2 prohibits imposition of a default where a party fails to comport with any facet of a scheduling order and then further fails to respond to a tribunal's direct order.

The Department has adopted the model rules proposed by the Montana Attorney General, which provide in pertinent part, “[I]n a contested case, if a party does not appear to contest an intended agency action, the agency may enter a default order. If a default is entered, pursuant to Mont. Code. Ann. § 2-4-623, the order must be in writing and include findings of fact and conclusions of law” (emphasis added). Admin. R. Mont. 1-3-213(1) and 24-2-101(1).

A corporation can only appear in a legal proceeding through a licensed attorney. *Audit Services, Inc. v. Frontier West, Inc.*, (1992), 252 Mont. 142, 148, 827 P.2d 1241, 1246. A corporation is a separate legal entity and cannot appear on its own behalf through an agent other than an attorney. *Weaver v. Graybill*, (1990), 246 Mont. 175, 178, 803 P.2d 1089, 1091, quoting Annotation, Propriety and Effect of Corporation's Appearance Pro Se, Through Agent Who is Not Attorney, 19 A.L.R. 3d 1073 (1968).

Here, Paradise has been on notice since at least April 30, 2015 that it needed an attorney licensed to practice in Montana to represent them in these proceedings. Paradise had an attorney for a short period of time in these proceedings but the attorney withdrew when Paradise failed to fulfill its obligations to him and to cooperate with him in his attempts to defend it. At the November 2, 2015 telephone conference, Paradise was given until November 27, 2015 to find an attorney. The

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

contested case hearing set for November 3, 2015 was moved to December 15, 2015 to allow Paradise time to secure counsel.

On December 4, 2015, the Hearing Officer denied Paradise's request for a continuance and informed Paradise that, unless they had counsel for the contested case hearing on December 15, 2015, they would be held in default and their appeal dismissed. Paradise failed to secure counsel in time for the December 15, 2015 hearing despite having nearly eight months to do so. Paradise failed to follow the orders issued by the Hearing Officer. Therefore, Paradise is found in default.

Even though Paradise is in default, the Hearing Officer also finds that it owes Schultz additional wages.

B. Schultz's claim is timely.

Schultz testified his last day of work with Paradise was October 4, 2013. Schultz did not file his claim with the Montana Department of Labor and Industry Wage and Hour Unit until August 19, 2014. Under Mont. Code Ann. § 39-3-207, Schultz had until April 2, 2014 to file his claim. However, his claim is deemed timely because Paradise failed to raise the statute of limitations as an affirmative defense and because the statute is tolled due to Paradise's promises to pay.

I. Failure to raise affirmative defense.

Mont. Code Ann. § 39-3-207 provides:

Period within which employee may recover wages and penalties. (1) An employee may recover all wages and penalties provided for the violation of § 39-3-206 by filing a complaint within 180 days of default or delay in the payment of wages.

A statute of limitations defense is an affirmative defense that is waived if it is not raised in the answer to a claim. See Rule 8(c), M.R.Civ. P. See also *Estabrook v. Baden*, 284 Mont. 419, 423, 943 P.2d 1334, 1336 (Mont. 1997). Failure to raise the issue in original pleadings bars a party from subsequently raising it as a defense. *Marias Healthcare Servs. v. Turenne*, 2001 MT 127, P9 (Mont. 2001).

In the context of judicial proceedings, an affirmative defense must be pleaded in the answer to the claim or it is waived. Fed. R. Civ. P. 8(c). The purpose of requiring affirmative defenses to be pleaded is to give the opposing party notice of the

defense and a chance to argue why imposition of the defense would be inappropriate. *Thompson v. J.C. Billion, Inc.*, 2013 MT 20, 368 Mont. 299, 294 P.3d 397, 2013 Mont. LEXIS 20, 21 Wage & Hour Cas. 2d (BNA) 147, 163 Lab. Cas. (CCH) P30,321, 2013 WL 326381 (Mont. 2013).

At no point in these proceedings or during the Wage and Hour Unit investigation did Paradise raise the issue of the timeliness of Schultz's claim. While the Wage and Hour Unit in its September 3, 2014 Dismissal determined Schultz's claim was untimely, it failed to consider the effect of the employer's dilatory conduct. Schultz provided the Wage and Hour Unit with a letter from his then attorney, Scott Radford, that indicated Paradise had made numerous promises to pay. This letter was received by the Wage and Hour Unit on August 19, 2014. Schultz himself responded in detail to the Wage and Hour Unit's questions inquiring as to why he filed his claim after the 180-day time period. Yet, nowhere in the Wage and Hour Unit's Dismissal is there any discussion of the reasons Schultz offered for filing his claim past the 180-day time period.

## 2. Equitable tolling.

The doctrine of equitable tolling applies to procedural time requirements. Procedural time bars, such as § 39-71-520(2), MCA (2005), constitute affirmative defenses subject to equitable principles and constitutional review. *Weidow v. Uninsured Employers' Fund*, 2010 MT 292, P27 (Mont. 2010).

While there is no case directly on point in Montana, the Federal District Court in Idaho held:

"Plaintiff claims the equitable estoppel doctrine applies to toll the statute of limitations under the FLSA until the date Plaintiff could no longer reasonably rely on the employer's alleged promises of payment. The Court agrees."

*Long v. Idaho Rural Water Assoc.*, 2007 U.S. Dist. LEXIS 24005, 29-30 (D. Idaho Mar. 29, 2007).

Similarly here, McKay repeatedly promised Schultz she would pay him. At first the delay was to be a few weeks, then McKay postponed payment until January 2014 and then to late spring of that year. Ultimately, under the threat of legal action, Kelsey McKay told Schultz's lawyer that he would be paid in late June of 2014. When that did not happen, Schultz filed his claim with the Department. The Hearing Officer finds Paradise's dilatory tactics induced Schultz to delay filing his

claim and for that reason the 180-day time period for filing his claim should be extended. Schultz's claim was timely filed.

C. Paradise owes Schultz wages.

Montana law allows employees owed wages, including wages due under the FLSA, to file a claim with the Department of Labor and Industry to recover wages due. Mont. Code Ann. § 39-3-207; *Hoehne v. Sherrodd, Inc.* (1983), 205 Mont. 365, 668 P.2d 232. Schultz has never claimed he is owed overtime so neither the FLSA or Montana's Minimum Wage and Overtime Compensation Act is applicable.

An employee seeking unpaid wages has the initial burden of proving work performed without proper compensation. *Anderson v. Mt. Clemens Pottery Co.* (1946), 328 U.S. 680; *Garsjo v. Department of Labor and Industry* (1977), 172 Mont. 182, 562 P.2d 473. To meet this burden, the employee must produce evidence to "show the extent and amount of work as a matter of just and reasonable inference." *Id.* at 189, 562 P.2d at 476-77, citing *Anderson*, 328 U.S. at 687, and *Purcell v. Keegan* (1960), 359 Mich. 571, 103 N.W. 2d 494, 497; see also, *Marias Health Care Srv. v. Turenne*, 2001 MT 127, ¶¶13, 14, 305 Mont. 419, 422, 28 P.3d 494, 495 (holding that the lower court properly concluded that the plaintiff's wage claim failed because she failed to meet her burden of proof to show that she was not compensated in accordance with her employment contract).

Once an employee has shown as a matter of just and reasonable inference that he or she is owed wages, "the burden shifts to the employer to come forward with evidence of the precise amount of the work performed or with evidence to negate the reasonableness of the inference to be drawn from the evidence of the employee, and if the employer fails to produce such evidence, it is the duty of the court to enter judgment for the employee, even though the amount be only a reasonable approximation' . . ." *Garsjo*, 172 Mont. at 189, 562 P.2d at 477, quoting *Purcell v. Keegan*, supra, 359 Mich. at 576, 103 N.W. 2d at 497.

In this matter, Schultz's un rebutted testimony, his documentary evidence, and McKay's admissions proves that he is owed unpaid wages.

The record shows Schultz drove 13,416 miles while employed by Paradise. This mileage is supported by the logs Schultz was required to keep for DOT. Schultz and Kelsey McKay agreed to a flat rate of .40 cents a mile. Schultz also worked 147 hours as a mechanic for Paradise. There was no written or oral agreement about

Schultz's hourly rate while acting as a mechanic. Schultz is a certified diesel mechanic and a \$15.00 an hour rate while acting as such is reasonable. Further, Schultz's testimony with respect to earning the \$200.00 for selling tickets in Langley, Washington, is also supported by the record and un rebutted.

Paradise, through the documents that were made part of the record, did not meet its burden-shifting responsibility. The documents presented by Paradise are confusing and unauthenticated due to Paradise's failure to appear at hearing.

Schultz has proven he is owed regular wages in the amount of \$7,271.40.

D. Paradise must pay a 55% penalty on the amount found owed to Schultz.

Montana law assesses a penalty when an employer fails to pay wages when they are due. Mont. Code Ann. § 39-3-206. Imposition of the penalty is mandatory. Id. For claims not involving minimum wage or overtime, a 55% penalty must be imposed. Admin. R. Mont. 24.16.7566.

The evidence shows Paradise failed to pay Schultz the wages owed to him when they were due. Therefore, a 55% penalty must be imposed for a penalty in the amount of \$3,999.27 ( $\$7,271.40 \times 55\%$ ).

## 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.

2. From April 23, 2013 through October 4, 2013, Kenneth O. Schultz performed work for Paradise Amusements, Inc. for which he has not been paid. Paradise Amusements, Inc. owes Schultz \$7,271.40 in unpaid wages and a penalty of \$3,999.27 on the unpaid wages.

3. The Respondent failed to pursue its appeal, to comply with the orders of this tribunal, or to obtain counsel to properly represent it. Therefore, the Respondent is found in Default.

**VI. ORDER**

Paradise Amusements, Inc. is hereby ORDERED to tender a cashier's check or money order in the amount of \$11,270.67 representing \$7,271.40 in wages and \$3,999.27 in penalty, made payable to Kenneth O. Schultz, and mailed to the Employment Relations Division, P.O. Box 201503, Helena, Montana 59620-1503, no later than 30 days after service of this decision. Respondent may deduct applicable payroll taxes from the wages due but not from the penalty.

DATED this 22nd day of January, 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.

If there is no appeal filed and no payment is made pursuant to this Order, the Commissioner of the Department of Labor and Industry will apply to the District Court for a judgment to enforce this Order pursuant to Mont. Code Ann. § 39-3-212. Such an application is not a review of the validity of this Order.