

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM)	Case No. 559-2017
OF JAMES B. EVANS,)	
)	
Claimant,)	
)	
vs.)	FINAL AGENCY DECISION
)	
ERIC HOGAN, individually, and/or d/b/a)	
HOGAN LOCKSMITH a/k/a HOGAN)	
PROPERTY SOLUTIONS,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

On June 1, 2017, Eric Hogan, individually, and/or d/b/a Hogan Locksmith a/k/a Hogan Property Solutions (employer) appealed a redetermination dated May 12, 2017, issued by the Wage and Hour Unit of the Department of Labor and Industry (Wage & Hour Unit). The redetermination concluded the employer had not paid James Evans \$2,807.13 in wages. The redetermination also assessed the employer a penalty of \$421.07.

On July 25, 2017, the Wage & Hour Unit transferred this matter to the Office of Administrative Hearings for a contested case hearing. Since the information in the administrative record compiled by the Wage & Hour Unit raised an issue of whether the employer filed a timely appeal from the redetermination, a telephone conference hearing was scheduled on this issue, with notice to the employer. The first hearing was scheduled on August 10, 2017. Eric Hogan was called for the hearing but was not available. A voice mail message was left for him. He called the following day and stated that he had not received the notice of the hearing or the administrative record documents. He agreed that the hearing could be rescheduled for August 22, 2017. The administrative file Documents 1 through 167 were sent to Hogan by email.

On August 22, 2017, Hearing Officer Steven Wise held a hearing in this matter on the timeliness of the employer's appeal.¹ Eric Hogan participated in the hearing. Hogan agreed to proceed by telephone. Hogan acknowledged receiving the administrative record compiled by the Wage & Hour Unit.

Documents 2 through 20 from the administrative record were admitted into evidence without objection. Based on the evidence and argument presented at hearing, the hearing officer makes the following findings of fact, conclusions of law, and final agency decision.

II. ISSUE

Whether the employer filed a timely appeal of a redetermination by the Wage & Hour Unit dated May 12, 2017.

III. FINDINGS OF FACT

1. A redetermination was mailed to the employer by the Wage and Hour Unit of the Department of Labor and Industry (Wage & Hour Unit) on May 12, 2017. The redetermination concluded the employer had not paid James Evans \$2,807.13 in wages and assessed a penalty of \$421.07 (Documents 8-11). The redetermination was mailed to Eric Hogan, the sole proprietor of the business, at his correct address of 607 East Clark Street, Livingston, Montana 59047.

2. The redetermination stated that "The Claimant may request a redetermination or either party can appeal to a contested case hearing before the Office of Administrative Hearings. The request must be postmarked by, received, or filed no later than 5-30-2017." The redetermination stated that the "request must be in writing to the attention of: Amy Smith, Supervisor, Department of Labor & Industry, Wage & Hour Unit, PO Box 201503, Helena, MT 59620-1503" (Document 10).

3. Hogan received the redetermination in the mail during the week of May 15, 2017. He felt he needed to get information from a closed Wells Fargo account to show that the two claimants who had filed wage claims against him, James Evans and Devin Landucci, had used his credit card for nonbusiness purposes and include that information with his appeal. He had not obtained that information by May 30.

¹ The case was consolidated for hearing with Case No. 560-2017, involving another claimant, Devin Landucci.

4. On May 30, 2017, at 4:05 p.m., Hogan called Amy Smith, but she was not available so he left a message. The message said he was requesting a redetermination of the wage claims of James Evans and Devin Landucci and explained he was waiting for information from Wells Fargo. He stated that “today is the appeal date and will be mailing information as soon as possible” (Document 7).

5. Smith called Hogan at 7:26 a.m. on May 31, 2017, but he was not available so she left a message. In the message, she explained that the department could not accept verbal requests and any request or appeal had to be in writing postmarked by the date provided (Document 7).

6. Hogan mailed a written appeal at the United States Post Office in Livingston, Montana. He likely mailed it on May 31, 2017, but it was not postmarked at the Livingston post office. Instead, it was postmarked by the mail processing center in Billings on June 1, 2017 (Document 6).

7. The letter of appeal was received in the mail by the Wage & Hour Unit on June 5, 2017 (Document 5).

IV. DISCUSSION

Montana law provides that the department shall mail a wage and hour determination to parties at their last-known addresses, and if a party appeals within 15 days after the determination was mailed, a hearing must be held. Mont. Code Ann. § 39-3-216(3). The statute further states that the department shall by rule provide relief for a person who does not receive the determination by mail. *Id.*

Likewise, the rules for wage claims require a party who has received an adverse decision from a compliance specialist to request a formal hearing within 15 days of the date that the final determination or redetermination was mailed or served upon the party. Admin. R. Mont. 24.16.7537(1). The rules further mandate that the request for a formal hearing be in writing and mailed as specified in the decision. Admin. R. Mont. 24.16.7537(2). Finally, the rules provide that an item sent to the department is timely if it is postmarked or received by the department no later than the last day of the time period. Admin. R. Mont. 24.16.7514(2).

Other than the relief provided for a party that has not received a redetermination, the statute and rules do not provide for any exceptions to the 15-day deadline for requesting a formal hearing. Hogan did not allege that he did not receive the redetermination in a timely fashion. He received the redetermination, and based on the message he left for Amy Smith at 4:05 p.m. on May 30, he knew it

was the last day to file an appeal. Consistent with the rule, the redetermination stated the appeal had to be in writing and postmarked by May 30, 2017.

As a result, Hogan knew that for his appeal to be timely, it had to be in writing and postmarked or received by May 30. Hogan testified that he thought he had put it in the mail in Livingston on May 30, 2017, but he admitted it could have been after May 30. He acknowledged that he had no excuse for not mailing it earlier. The preponderance of the evidence supports May 31 as the date that he mailed the appeal since it was postmarked in Billings on June 1, 2017.

In *BNSF Ry. Co. v. Cringle*, 2012 MT 143, 365 Mont. 304, 281 P.3d 203, the Montana Supreme Court decided a case with very similar facts that involved the Montana Human Rights Commission. A hearing officer mailed a decision to the parties concluding the employer had discriminated against Cringle. The decision stated it was final if it was not appealed to the commission within 14 days. The decision was received by the employer's attorney but was misplaced and not found by a legal secretary until six days after the deadline for appealing. The employer appealed that day, but the Human Rights Commission dismissed the appeal as untimely.

The Montana Supreme Court ruled that because the statutory time limit provided an "inflexible rule of finality," cause for extending the time limit required "circumstances beyond the party's reasonable control that prevented the party from timely filing its notice of appeal." *BNSF Ry. Co.*, ¶15. The court further ruled that the misplacement of the decision was a mistake on the part of the employer's attorney, it was not due to anything outside the attorney's control, and the employer did not show cause to extend the time for appealing. *BNSF Ry. Co.*, ¶23.

In this case, Hogan's late filing of the appeal was not due to circumstances outside of his control that prevented him from filing his appeal on time. If he was waiting to get information from Wells Fargo, he could have filed the request for an appeal and submitted that information later. As a result, the redetermination became final because his appeal was postmarked two days after the deadline and was received six days after the deadline. The employer has failed to file a timely appeal in this case.

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. The employer failed to file a timely appeal as required under Mont. Code Ann. § 39-3-216(3).

3. The employer's June 1, 2017 appeal is dismissed. The redetermination dated May 12, 2017 became final on May 30, 2017.

VI. ORDER

The appeal of the employer, Eric Hogan, individually, and/or d/b/a Hogan Locksmith a/k/a Hogan Property Solutions, is dismissed.

DATED this 6th day of September, 2017.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ STEVEN A. WISE
STEVEN A. WISE
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