

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

IN THE MATTER OF THE WAGE CLAIM)	Case No. 624-2017
OF ZACHARY S. SMITH,)	
)	
Claimant,)	
)	
vs.)	FINAL AGENCY DECISION
)	DISMISSING CLAIM
)	
THE UNIVERSITY OF MONTANA,)	
RESIDENCE LIFE,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

On October 21, 2016, Zachary S. Smith filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit) alleging the Respondent, The University of Montana, Residence Life, owed him \$18,264.80 in unpaid wages and \$6,233.33 in penalty on those wages.

On December 22, 2016, the Wage and Hour Unit dismissed Smith's claim finding he was not an employee entitled to the wages he claimed. Any appeal of that determination had to be received by the Wage and Hour Unit no later than January 6, 2017. On January 11, 2017, Smith filed a request for a contested case hearing.

On January 12, 2017, the Wage and Hour Unit sent a letter confirming receipt of the appeal but noted that it was untimely and that the timeliness of his appeal would be the only issue for hearing. On February 2, 2017, the Wage and Hour Unit transferred the case to the Office of Administrative Hearings (OAH) after attempts at mediation were unsuccessful. On February 21, 2017, Hearing Officer David A. Scrimm held a scheduling conference during which the parties agreed on deadlines for hearing preparation. Those agreed upon deadlines were set forth in a Scheduling Order issued on that same date.

On April 14, 2017, Respondent moved for summary judgment on the basis that there are no genuine issues of material fact concerning Smith's wage and hour claim. Because Smith's appeal of the Wage and Hour Unit's decision dated

December 22, 2016 failed to comply with Admin. R. Mont. 24.16.7534, Respondent avers that it is entitled to judgment as a matter of law. Respondent did not request oral argument.

Pursuant to the Scheduling Order, Smith had 14 days after the service of Respondent's motion to file a response brief. Scheduling Order, p. 2, ¶ 2. In no event was a response brief to be filed after April 28, 2017. *Id.* Smith has not filed any responsive pleading to Respondent's motion, and the time for doing so has long passed.

The Hearing Officer issues the following order granting Respondent's motion after considering all arguments, exhibits, and statements supplied by the parties.

II. UNDISPUTED MATERIAL FACTS

1. The Department's dismissal provided the following notice to Smith and the Respondent concerning the implications of its decision:

The Respondent or the Claimant may request either a redetermination or an appeal to a contested case hearing before the Office of Administrative Hearings. **The request must be postmarked by, or received, or filed no later than 1-6-2017** in accordance with Administrative Rules of Montana (ARM), 24-16-7534 & ARM, 24.16.7517.

...

If an appeal or a request for redetermination is not filed, the Dismissal will be final to the Wage and Hour Unit.

Id., p. 3.

2. Smith's request for redetermination was due to the Department no later than January 6, 2017.

3. Smith filed his request for redetermination on January 11, 2017. Letter from Amy Smith, Supervisor for State of Montana Department of Labor & Industry Wage & Hour Unit to Zachary Smith, re: Case No. 624-2017, January 12, 2017.

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 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 respond and prove beyond mere speculation and denial that a genuine issue of material fact remains. *Id.* “If the opposing party does not so respond, summary judgment should, if appropriate, be entered against that party.” Rule 56(e)(2), Mont. R. Civ. P.; see also, *Elk v. Healthy Mothers, Healthy Babies, Inc.*, 2003 MT 167, ¶ 15, 316 Mont. 320, 73 P.3d 795.

a. There are no genuine issues of material fact.

Respondent’s motion identified a number of facts that it claimed were both undisputed and material for purposes of adjudicating the timeliness of Smith’s request for redetermination. Respondent supported those facts with citations to the applicable record.

At this point, the burden shifted to Smith to demonstrate a genuine issue of material fact existed. Smith’s failure to respond to Respondent’s motion results in a determination that he did not meet his burden of demonstrating the existence of a genuine issue of material fact. “[A] party who ignores the judicial system and slumbers on his rights does so at his own peril.” *Payne v. Stratman*, 229 Mont. 377, 380, 747 P.2d 210, 212 (1987); citing *Bedford v. Jorden*, 215 Mont. 508, 698 P.2d 854, 856 (1985). When resolving whether Respondent is entitled to judgment as a matter of law, the material facts it presented the Hearing Officer are taken as true.

Respondent notes in its motion that Smith’s letter, though dated January 4, 2017, was not received by the Department until January 11, 2017, five days after the 15-day appeal period had expired. “[A]n item sent to the department is timely if it is either postmarked or received by the department by not later than the last day of the time period.” Admin. R. Mont. 24.16.7514(2). There is no evidence in the record

demonstrating that Smith's request for redetermination was postmarked on or before January 6, 2017. Smith's request is "considered received as of the date it is date stamped by the department." Admin. R. Mont. 24.16.7514(3). Smith's request for redetermination was date stamped on January 11, 2017, and was thus "received" that day. Accordingly, Respondent has satisfactorily established that Smith filed his request for redetermination on January 11, 2017, five days after it was due.

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

The next question to resolve is whether Respondent is entitled to judgment as a matter of law. Although Smith failed to respond to Respondent's motion, an analysis of whether summary judgment in its favor is "appropriate" must still occur. Rule 56(e)(2), Mont. R. Civ. P. In other words, summary judgment may not be granted by default against a party simply for failing to file a responsive pleading. *Wells Fargo Bank v. Talmage*, 2007 MT 45, ¶ 21, 336 Mont. 125, 152 P.3d 1275; citing *Bradley v. Crow Tribe of Indians*, 2005 MT 309, ¶ 26, 329 Mont. 448, 124 P.3d 1143. In this matter, summary judgment in favor of Respondent is appropriate in light of the undisputed material facts contained in the record--not merely because of Smith's failure to file a response brief or otherwise submit materials such as affidavits or other sworn testimony to defeat Respondent's motion.

Requests for hearings must be filed within 15-days of the date of the determination. Admin. R. Mont. 24.16.7537. The plain language of this rule contains no good cause exception. It is undisputed that Smith filed his request for redetermination on January 11, 2017, five days after the time for appeal had passed. Moreover, the Department's decision identified the specific date a request for hearing was due. The Department's December 22nd decision and the applicable administrative rules are clear and unambiguous--a request for hearing must be filed within 15 days and Smith allowed that deadline to pass. Summary judgment in Respondent's favor is therefore proper because the undisputed material facts demonstrate that Smith did not timely file a request for redetermination pursuant to Admin. R. Mont. 24.16.7534.

The consistent application of procedural time limits serves important policy considerations. *BNSF Ry. Co. v. Cringle*, 2010 MT 290, ¶ 18, 359 Mont. 20, 247 P.3d 707; *Weidow v. Uninsured Employers' Fund*, 2010 MT 292, ¶ 28, 359 Mont. 77, 246 P.3d 704. It is true that these policy considerations should be weighed against equitable principles. *Id.* Here, however, that balancing test was impeded by Smith's failure to respond to Respondent's motion. "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), and the Hearing Officer will not undertake that effort for Smith.

There are no facts in the record justifying the application of equitable principles to toll the 15-day appeal period found in Admin. R. Mont. 24.16.7534. The relevant administrative rule contains no “good cause” exception. In light of Smith’s failure to respond and the absence of other pertinent facts in the record, the Hearing Officer finds no basis to apply equitable principles to address a “garden variety claim of excusable neglect.” *Weidow v. Uninsured Employers’ Fund*, 2010 MT 292, ¶ 28; citing *Irwin v. Dept. of Veterans Affairs*, 498 U.S. 89, 96, 111 S.Ct, 453, 458, 112 L.Ed. 2d 435 (1990).

Respondent has demonstrated there are no genuine issues of material fact and its Motion for Summary Judgment is granted. This is the final agency decision in this matter.

IV. ORDER

IT IS THEREFORE ORDERED THAT:

Respondent’s Motion for Summary Judgment is GRANTED. This matter is therefore dismissed.

DATED this 1st day of June, 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. 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