

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

IN THE MATTER OF THE WAGE CLAIM)	Case No. 958-2014
OF RYAN A. CISLO,)	
)	
Claimant,)	
)	
vs.)	FINAL AGENCY DECISION
)	
CHERYL MORGAN, an individual d/b/a)	
CARING HANDS LAWN SERVICE)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

Claimant Ryan A. Cislo filed a late appeal of a determination issued by the Wage and Hour Unit of the Department of Labor and Industry finding he had not filed his claim within the 180-day statutory limit required under Mont. Code Ann. § 39-3-207(1) and dismissing the matter.

On May 14, 2014, a telephone scheduling conference was held with Cislo and Cheryl Morgan. The parties were advised that there were two jurisdictional issues that needed to be addressed prior to the Hearing Officer being able to conduct a hearing on the merits of the claim. Those jurisdictional issues were identified for the parties as being the timeliness of the claim and the timeliness of the appeal. The parties were given the opportunity to submit written arguments as to how they felt the Hearing Officer should rule. The Hearing Officer advised the parties that she would be considering those written arguments, as well as the administrative record sent to the parties with the Notice of Hearing and Telephone Conference. The parties agreed they would be able to submit those written arguments to the Hearing Officer no later than June 2, 2014.

On May 29, 2014, the respondent submitted its written argument, as well as a copy of a determination of the Unemployment Insurance Division regarding Cislo's disqualification from receiving benefits and a time line of events for the period

beginning January 12, 2011 through April 3, 2014. On June 3, 2014, Cislo submitted a brief written argument, as well as weekly time records and daily work logs for the period beginning March 16, 2012 through July 1, 2013.

Based upon the evidence, including the administrative record compiled at the Wage and Hour Unit (Documents 1 through 43), and the written arguments presented by the parties, the Hearing Officer makes the following findings of fact, conclusions of law, and final agency decision.

II. ISSUES

Whether the claim filed by Ryan A. Cislo with the Wage and Hour Unit of the Montana Department of Labor and Industry was timely filed pursuant to Mont. Code Ann. § 39-3-207(1).

Whether Ryan A. Cislo filed a timely appeal of the Wage and Hour Unit's dismissal of his claim dated December 24, 2013 pursuant to Admin. R. Mont. 24.16.7514 and Admin. R. Mont. 24.16.7517.

III. FINDINGS OF FACT

1. Ryan A. Cislo performed work as a landscape foreman for Cheryl Morgan, an individual d/b/a as Caring Hands Lawn Service (Caring Hands) beginning in 2010. Cislo quit this employment either on May 3, 2013 or May 10, 2013.

2. Cislo was incarcerated during the month of June 2013; the month of August 2013; and the majority of September 2013. From September 30, 2013 through mid-October 2013, Cislo was in a treatment program. Administrative Record (AR) Document 4.

3. On December 2, 2013, Cislo filed a claim for unpaid wages with the Wage and Hour Unit of the Department of Labor and Industry, which was approximately 207 days after the latest date he estimated to be his last day of employment. AR Documents 22 and 23.

4. On December 24, 2013, Randy Siemers, Compliance Specialist, issued a determination dismissing Cislo's claim as being untimely. The determination stated under Appeal Rights, "The Request for a Redetermination or an Appeal (hearing), whichever is requested, must be postmarked by or received no later than January 8, 2014 in accordance with Administrative Rules of Montana (ARM) 24.16.7514 and

ARM 24.16.7517. Electronic submissions are not a currently authorized method.” AR Documents 14 and 15.

5. On January 8, 2014 at approximately 10:39 p.m., Cislo’s significant other, Lorinda Brown, sent Siemers an email advising him that she had the power of attorney for Cislo and that she wished to appeal the dismissal on his behalf. Brown reported Cislo was unavailable as he was in treatment at the Rimrock Foundation. AR Document 6.

6. On January 9, 2014, Amy Smith, Supervisor with the Wage and Hour Unit, sent Brown an email advising her that electronic submissions were “not a currently recognized method to either request a redetermination or appeal a decision.” Smith advised Brown that the appeal was not timely made and Cislo would have to submit a faxed or written request. Smith also advised Brown that “the matter of the timeliness of [the] appeal will have to be addressed prior to any discussion regarding the merits of the appeal.” AR Document 5.

7. On January 21, 2014, the Wage and Hour Unit received a written request for appeal prepared by Brown based upon notes taken from a meeting she had with Cislo. In Cislo’s appeal, it was argued that the 180-day time line was not expired at the time he filed his claim, because he was incarcerated for the month of June; Morgan laid him off on July 11, 2013; he was incarcerated again during August 2013 and most of September 2013; and that he went to treatment on September 30, 2013, and was released from treatment in the middle of October 2013. Cislo went on to argue that he was in Rimrock for treatment in January 2014 and would not be able to use the phone until January 28, 2014, when he requested someone from the Wage and Hour Unit contact him regarding his claim. AR Documents 4 and 5.

8. On January 23, 2014, Smith sent Cislo a letter advising him that his appeal was not timely and the only issue to be considered on appeal would be the timeliness of his appeal. The matter was then referred for mediation. After mediation efforts were unsuccessful, the matter was transferred to the Hearings Bureau (now known as the Office of Administrative Hearings) on April 29, 2014. AR Document 3.

IV. DISCUSSION

A. Cislo did not timely file his claim with the Wage and Hour Unit.

An employee may recover all wages and penalties provided for the violation of 39-3-2015 by filing a complaint within 180 days of default or delay in the payment of wages. Mont. Code Ann. § 39-3-207.

Cislo filed his claim for unpaid wages on December 2, 2013. Cislo initially informed the Wage and Hour Unit that he had quit his employment with Caring Hands on May 3 or May 10, 2013. In his subsequent attempt to request an appeal, Cislo stated he was still employed by Caring Hands in July 2013 when he was directed to bid on a project on behalf of Caring Hands. Cislo wrote, "I was laid off by Jon and Cheryl Morgan July 11th when I received 2 bids given to me by Jon to follow up on if I wanted to contract them out." Cislo submitted what appears to be a rate worksheet that includes a note that reads, "Is this stuff yours?" Cislo's name does not appear on the form. A written note that accompanied the submission states, in part, "This is dated 7/1/13 and a follow up for 7/11/14. This is when Jon Morgan gave Ryan and Lorinda these jobs to bid on if we wanted to get licensed. Because Jon decided to shut down so at that time Ryan no longer was employed with Caring Hands." The handwritten note suggests the request to bid on the projects was contingent upon Cislo and Brown wanting to get licensed. The note also indicates the business was shut down at that time, which suggests the business was no longer in operations and was not utilizing Cislo's services at that time. Further, within Cislo's voluminous submission, which included his time records for the period from March 16, 2012 through April 30, 2013, there are no time cards included that show Cislo worked past April 30, 2013. It seems unlikely Cislo continued working for Caring Hands after mid-May 2013, as he initially reported to the Wage and Hour Unit, given his failure to submit a time card for that period. Therefore, it is determined Cislo separated from Caring Hands on either May 3 or May 10, 2013.

Assuming May 10, 2013 was Cislo's last day of employment, the evidence shows the 180-day period for filing a claim would have passed on November 6, 2013. Given Cislo's references to various periods of incarceration, it appears Cislo's failure to file a timely claim was due, in part, to his frequent incarceration during the period following his separation from Caring Hands.

Based upon the documents submitted by the parties with their written arguments and the Administrative Record compiled at the Wage and Hour Unit, which includes Documents 1 through 43, the evidence shows Cislo's wage and hour

claim was filed after the 180-day period provided for by Mont. Code Ann. § 39-3-207. There is no evidence showing the time for appeal should be tolled. Therefore, it is determined Cislo's wage and hour claim was not timely filed and was properly dismissed by the Wage and Hour Unit.

B. Cislo's appeal of the Wage and Hour Determination was not timely.

Assuming for the sake of argument Cislo's claim was timely filed, the evidence shows Cislo's request for appeal was not timely made.

A party who has received an adverse determination from a compliance specialist must request a formal hearing within 15 days of the date that the final determination or redetermination was mailed to the party. Admin. R. Mont. 24.16.7537. An item 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). The time period for requesting a redetermination or an appeal is absolute. See Admin. R. Mont. 24.16.7534 and 24.16.7537.

Cislo has made no allegation that he did not receive the Wage and Hour Unit's dismissal of his claim prior to January 8, 2014, which was the final day allowed for appeal. Rather, based upon Brown's email that was sent at 10:39 p.m. on January 8, 2014, it appears the determination was properly delivered to Cislo at the address of record. Brown stated in her email that Cislo was in treatment and would not be available until January 22, 2014. Brown was advised electronic communication was not an acceptable manner of requesting an appeal and was directed to submit a written response via fax or by mail. On January 21, 2014, the Wage and Hour Unit received a written request for appeal on behalf of Cislo indicating Cislo was still in a treatment program and had been unable to access his mail or use the telephone since his admission on January 10, 2014.

Again, the time allowed for appeal is absolute. The evidence shows Cislo did not file an appeal in the appropriate manner until January 21, 2014, which was 13 days after the last day allowed for appeal. Cislo's appeal is determined to be untimely under Mont. Code. Ann. § 39-3-216(3).

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. Cislo failed to timely file his wage and hour claim within the 180-day period provided for under Mont. Code Ann. § 39-3-207.

3. Cislo failed to file a timely appeal as required under Mont. Code Ann. § 39-3-216(3). Therefore, the determination dismissing his claim properly became final on January 8, 2014, when the time for appeal had passed.

VI. ORDER

Ryan A. Cislo's appeal is dismissed.

DATED this 12th day of June, 2014.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ CAROLINE A. HOLIEN
CAROLINE A. HOLIEN
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.