

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF:

THE SUSPENSION OF THE)	Case No. 1806-2013
CONTRACTOR REGISTRATION OF)	
HDC CONTRACTING, INC.)	FINAL AGENCY ORDER
)	
Contractor Registration No. 202386.)	
)	

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I. INTRODUCTION:

HDC Contracting, Inc., (HDC) appealed a decision by the Department of Labor and Industry's Construction Contractor Registration unit to suspend HDC's contractor license pending proof that HDC had obtained workers' compensation for employees. This matter was assigned to hearing officer Gregory L. Hanchett on June 3, 2013. The matter was set for a scheduling conference on June 14, 2013 but then continued to June 20, 2013 at the request of the parties. On June 20, 2013, the parties agreed to hold the hearing on July 22, 2013.

On July 22, 2013, the hearing officer conveyed the hearing in this matter. Leanore Coles, agency legal counsel, represented the Department of Labor and Industry. John Deneen represented HDC, Inc. The parties stipulated to the admission of DLI's Exhibits 1 through 3. Jennifer Juarez, compliance specialist with the Independent Contractor's Central Unit (ICCU), Deb Smith, UEF auditor, Tiffany Cox, ICCU investigator, Darren Thompsen, Silas Laycock, and John Deneen all testified under oath. Based on the testimony, exhibits and argument made at hearing, the hearing officer makes the following findings of fact, conclusions of law and final agency order.

II. ISSUE:

Was HDC's contractor's registration properly suspended?

III. FINDINGS OF FACT:

1. HDC is a Montana corporation that does business in Montana. As such, it is subject to Montana workers' compensation laws.

2. HDC applied for a certificate of contractor's registration through the Montana Department of Labor and Industry in order to do business in Montana. In its application, HDC verified that it would hire only exempt employees. Based on this verification, on April 2, 2013, the department issued HDC a certificate of contractor registration. Exhibit 1.

3. In early May 2013, the Department of Labor and Industry received a complaint indicating that HDC was employing non-exempt employees. As a result of the complaint, Jennifer Juarez, a compliance specialist with the ICCU, instituted and completed an investigation of HDC by talking to various persons who indicated that they had worked as employees for HDC.¹

4. Juarez interviewed various employees including Darren Thompsen and Silas Laycock. Both men informed Juarez that they had worked for HDC during the month of April 2013. Thompson worked for HDC during February, March, April, and May 2013. Laycock worked for HDC during April and part of May 2013. Neither person had an independent contractor's certificate during the time they were employed by HDC. Thompson never applied for one while he was working for HDC. Laycock had applied for one, but he began work without having been issued the certificate. He did not receive the certificate until the second week of May 2013, after he had stopped working for HDC. During Thompsen's and Laycock's employment with HDC, Deneen was aware that neither person had an independent contractors certificate.

¹ Shortly after the hearing in this matter had concluded, Mr. Deneen called the Hearings Bureau and spoke to the hearings officer's legal assistant and stated that he had spoken to Mike Libby, the person whom Juarez identified as filing the complaint which she investigated and which ultimately led to the suspension and the hearing in this matter. Mr. Deneen told the legal assistant that Mr. Libby had told him that he did not file the complaint. The hearing officer is not at liberty to consider this information for two reasons. First, doing so would result in the hearing officer engaging in an ex-parte communication with a party which the hearing officer is prohibited by law from doing. Second, it is not relevant to the resolution of the issue before this tribunal as to how the ICCU found out about the allegation that HDC was employing non-exempt workers. Once the ICCU found out, it had both the obligation and authority to complete an investigation as to whether or not HDC was employing non-exempt employees in its construction business.

5. Deneen was responsible for hiring both Thompson and Laycock. During their tenure with HDC, both were initially paid by checks issued by HDC. Subsequently, Deneen paid Thompson with a check issued by Deneen. Deneen paid Laycock with checks issued by Deneen.

6. Thompson was paid initially by turning in time cards to Deneen. He was later paid by keeping track of his time and turning his hours into Deneen for payment. Thompson considered Deneen his boss as he directed Thompson in his work.

7. Thompson and Laycock were both non-exempt workers at the time they were hired and while they worked for HDC. In order to employ non-exempt workers, HDC was required to obtain workers' compensation coverage. Mont. Code Ann. § 39-71-401.

8. At no time has HDC obtained workers' compensation insurance coverage.

IV. CONCLUSIONS OF LAW²

All Montana construction contractors are required to register with the Department of Labor and Industry. Mont. Code Ann. § 39-9-201(1). The purpose of Montana contractor registration is to ensure that all construction contractors are competing fairly and in compliance with state law. Mont. Code Ann. § 39-9-101. In order to comply with state law, a construction contractor who employs persons who are not independent contractors (such employees are hereinafter referred to as "non-exempt employees" because as noted, *infra*, an employer must maintain worker's compensation insurance in order to employ such persons) must, among other things, maintain workers' compensation insurance for such employees. Mont. Code Ann. § 39-71-401. A Montana construction contractor may not engage in contracting without being registered as required by Title 39, chapter 9. Mont. Code Ann. § 39-9-401(a). A contractor's registration certificate is valid for a period of two years from the date of its issuance. Mont. Code Ann. § 39-9-204(2).

In order to register and remain registered, a Montana contractor must show proof that the contractor has workers' compensation insurance or fits within a lawful exemption from the requirement to maintain such insurance. Admin. R. Mont. 24.33.131. If a construction contractor seeks registration without having workers'

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

compensation insurance, he must verify under oath that he is exempt from the requirement to maintain such insurance and must verify under oath the basis of his claimed exemption from the requirement to maintain such insurance. Admin. R. Mont. 24.33.131(1)(d).

A contractor registration certificate must state on the face of the certificate the status of the construction contractor's workers' compensation coverage. Admin. R. Mont. 24.33.151. A contractor's registration certificate for a construction contractor who obtains a registration by verifying that the contractor is exempt from workers' compensation coverage must state "NO EMPLOYEES, MAY HIRE EXEMPT WORKER'S ONLY." The Department of Labor and Industry may suspend a contractor's registration certificate when the contractor is not in compliance with its workers' compensation requirement status shown on the certificate or fails to notify the Department within 10 days of a change in that status. Admin. R. Mont. 24.33.142.

HDC obtained its present certificate by verifying under oath that it was exempt from maintaining workers' compensation coverage because it would be hiring only exempt employees. The application was made on April 2, 2013 and as a result of HDC's statement made under oath, the Department of Labor and Industry issued HDC a contractor's registration certificate showing HDC's workers' compensation status as "NO EMPLOYEES, MAY HIRE EXEMPT WORKER'S ONLY." HDC then proceeded, under the auspices of that registration certificate, to engage in construction projects while employing at least two non-exempt workers.³ Because HDC did not comport with the limitations of its certificate, the Department has proven by a preponderance of the evidence that it acted properly in suspending HDC's contractor registration.

³It appears from Juarez' investigative report that HDC employed several other non-exempt workers during the times material to this case. However, only two witnesses, Thompson and Laycock, testified about their employment with HDC. The hearing officer, in reaching his finding that HDC employed non-exempt workers, has chosen to rely on the testimony of these two witnesses in making that finding.

V. DECISION:

Based upon the foregoing, the hearing officer finds that the Department of Labor and Industry properly suspended HDC's contractor registration.

DATED this 26th day of July, 2013

By: /s/ GREGORY L. HANCHETT
Gregory L. Hanchett
Hearings Bureau
Department of Labor and Industry

NOTICE: You are entitled to judicial review of this final agency decision in accordance with Mont. Code Ann. § 2-4-702, by filing a petition for judicial review in an appropriate district court within 30 days of service of the decision.