

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

BJORNSON LAW OFFICES PLLC,)	Case No. 519-2015
)	
Appellant,)	
)	FINDINGS OF FACT,
vs.)	CONCLUSIONS OF LAW
)	AND DECISION
UNEMPLOYMENT INSURANCE DIVISION,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

On September 22, 2014, the appellant, Bjornson Law Offices, PLLC (Bjornson), appealed the department's determination that Bjornson had failed without good cause to timely a request a redetermination of a determination dated August 22, 2013 that had become final on September 1, 2013.

On October 1, 2014, the Office of Administrative Hearings (Hearings) received the department's request that a hearing be set regarding the timeliness of Bjornson's request for redetermination.

On October 3, 2014, Hearings issued a Notice of Hearing and Telephone Conference setting a scheduling conference in this matter for October 17, 2014. At the scheduling conference, the parties agreed to a date and time for hearing that was subsequently found to conflict with the Hearing Officer's schedule. The parties ultimately agreed to a different date and time for hearing.

The Hearing Officer conducted a hearing in this matter on November 14, 2014. The parties agreed to proceed with the department's representative appearing personally and the employer's representative appearing telephonically.

Annette Rinehart, Status and Rating Supervisor for the Contributions Bureau, and Craig Mungas, attorney at law, presented sworn testimony. The parties stipulated to the admission of Exhibits 1 through 5 sent with the Notice of Hearing and Telephone Conference. The parties also stipulated to the admission of Exhibit 6 submitted by the Department.

Having considered the evidence of record, the applicable legal authorities and the arguments of the parties, the Hearing Officer makes the following findings and conclusions and issues the following order. This is a final agency decision and is appealable to the Board of Labor Appeals in accordance with the notice included at the end of this decision.

II. FINDINGS OF FACT

1. In May 2013, Bjornson Law Offices, PLLC (Bjornson) was created as a new legal entity.

2. Bjornson receives all mail regarding unemployment insurance at its office. An administrative assistant reviews the mail and passes it on to either a managing member or to the bookkeeper, who is responsible for preparing payroll and addressing Unemployment Insurance [UI] issues.

3. On August 22, 2013, the department issued a decision informing Bjornson that the department had revised the “percent of the transferred experience rating record from 100% down to 27% from BjornsonI, PC (Account No. 031 5739) to [its] account, effective May 20, 2013.” The decision included an advisory at the end of the two-page document addressing Bjornson’s appeal rights. The appeal rights notice stated, “This decision will become final unless you file a written notice of appeal within ten (10) calendar day[s] of the date of this letter, with the [UI] Contributions Bureau of Montana, P.O. Box 6339, Helena, Montana 59624-6339.” This notice was mailed to Bjornson at its correct mailing address. Bjornson is presumed to have received the decision within the appeal period. Bjornson did not file a written notice of appeal within the 10-day appeal period.

4. On December 10, 2013, the department issued written Notice of Unemployment Insurance Tax Rates for 2014, which outlined Bjornson’s taxable wage base and its UI contribution rate for 2014. The notice stated, in part, “Your contribution rate is final unless you file a written request for a redetermination within 30 days from the date of this notice. The request must explain why you believe the assigned contribution rate is incorrect. Mail your request to the [UI] Contributions Bureau at the above address.” This notice was mailed to Bjornson at its correct mailing address. Bjornson is presumed to have received the notice within the appeal period. Bjornson did not file a written notice of appeal within the 30-day appeal period

5. On August 11, 2014, Bjornson submitted written notice of its intent to appeal the August 22, 2013 decision. The managing members of Bjornson did not

understand the August 22, 2013 decision addressed only its experience rating and not its contribution rate. No member of Bjornson attempted to contact the department prior to August 2014 to seek clarification or to request an appeal.

6. On September 11, 2014, the department sent written notice to Bjornson that its appeal was not timely and Bjornson had not shown good cause for extending the appeal period. This notice stated, in part, “This decision is final unless you file a written notice of appeal within ten (10) calendar days of the date of this letter, with the [UI] Contributions Bureau, P.O. Box 6339, Helena, MT 59624-6339.” Bjornson timely requested an appeal.

III. DISCUSSION¹

A decision, determination, or redetermination of the department involving contribution liability, contribution rate, application for refund, subject wages, the charging of benefit payments to employers, or other contribution-related issues must be issued by the department and is final unless an interested party entitled to notification submits a written appeal of the decision, determination, or redetermination. An appeal must be made in the same manner as provided in Mont. Code Ann. § 39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Mont. Code Ann. § 39-51-1109(2).

A determination or redetermination is final unless an interested party entitled to notice of the decision applies for reconsideration of the determination or appeals the decision within 10 days after then notification was mailed to the interested party’s last known address. The 10-day period may be extended for good cause. Mont. Code Ann. § 39-51-2402(3).

“Good cause” means reasonably compelling circumstances which did not result from any act or omission on the part of the person claiming good cause which could not be overcome by reasonable diligence on the part of the person. Admin. R. Mont. 24.11.204(18). “Compel” means forceful or convincing. Merriam-Webster’s Online Dictionary, 2009.

The employer’s representative, Craig Mungas, testified that he assumed Bjornson received the August 22, 2013 decision within the 10-day appeal period. Mungas testified he assumed Bjornson received the determination and forwarded it on to its bookkeeper as is the business’ standard practice. Mungas offered no

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

evidence showing Bjornson did not timely receive the August 22, 2013 decision. Therefore, it is presumed Bjornson timely received the August 22, 2013 decision.

Mungas argued the August 22, 2013 decision was unclear as to its impact on Bjornson. While the letter itself may have been poorly written, the fact remains that Mungas and his associates are trained attorneys who, at the very least, should have noted the provision regarding the business' appeal rights that was outlined at the bottom of the two-page document. If Mungas or any other member of his firm had questions as to the contents of the letter and its potential impact on Bjornson, the onus was on them to contact the department to seek clarification or to request an appeal.

Bjornson has not shown good cause for extending the appeal period that passed almost one year before it contacted the department to request an appeal. The decision issued on August 22, 2013 became final on September 3, 2013, taking into account that September 1, 2013 was a Sunday and was followed by the Labor Day holiday.

IV. CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction to hear the issue of the timeliness of Bjornson's appeal of a determination regarding its experience rating record dated August 22, 2013. Admin R. Mont. 24.11.328.

2. Bjornson has failed to show good cause for not timely requesting an appeal of the August 22, 2013 determination that became final on September 3, 2013.

V. ORDER

IT IS THEREFORE ORDERED THAT:

The department's determination is AFFIRMED.

DATED this 24th day of November, 2014.

By: /s/ CAROLINE A. HOLIEN
Caroline A. Holien
Office of Administrative Hearings
Department of Labor and Industry

This decision is the final decision of the Montana Department of Labor and Industry in this case. You may appeal this decision to the Board of Labor Appeals within 10 days after this decision was mailed to your last known address. The appeal must be received no later than December 4, 2014. The time for appeal may be extended for good cause. Your appeal must be filed with the Board of Labor Appeals (BOLA), P.O. Box 1728, Helena, Montana 59624; phone (406)444-3311; fax (406)444-9038; email: boardoflaborappeals@mt.gov.

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