

**STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU**

IN THE MATTER OF THE WAGE CLAIM) Case No. 1046-2002
OF JUSTIN E. TODD,)

IN THE MATTER OF THE WAGE CLAIM) Case No. 1120-2002
OF SCOTT M. NICHOLS,)

Claimants,)

vs.)

**FINDINGS OF FACT;
CONCLUSIONS OF LAW;
AND ORDER**

RANDY HIGGINS and JENNIFER HIGGINS,)
d/b/a MUSSELSHELL OUTFITTERS,)
Respondents.)

* * * * *

On December 19, 2001 and January 2, 2002, Justin E. Todd and Scott M. Nichols filed claims with the Department of Labor and Industry seeking wages for work performed for Musselshell Outfitters. The Wage and Hour Unit determined that they were in fact owed wages, and the Respondent appealed. The cases were then transferred to the Department's Hearings Bureau for hearing.

Hearing officer Anne L. MacIntyre held a contested case hearing in this matter on September 17, 2002. The claimants were present and testified. The respondents were represented at the hearing by Randy Higgins, one of the owners of Musselshell Outfitters. Randy Higgins also presented testimony. Tammie Todd and Jean Johnson also testified in the case. David Dalthorp, attorney at law, who had represented the respondent in the prehearing and motion procedures, notified the hearing officer on September 11, 2002, that the respondent would appear pro se at the hearing.

Exhibits Joint-1, Claimants-1, Claimants-12, Claimants-14, Claimants-15, Claimants-17, Claimants-18, Claimants-19, Claimants-20, Nichols-2, Nichols-3, Nichols-4, Nichols-5, Todd-2, Todd-4, and Todd-20 were admitted on the stipulation of the parties. Claimants-21 was admitted over respondent's relevance objection and Claimants-26 was admitted as a rebuttal exhibit over respondent's objection that it was not authentic. The claimants were able to adequately account for its authenticity. The hearing officer overruled the claimants' objection that the respondent had failed to timely disclose his proposed exhibits as required by the scheduling order with reference to Respondent-A. The hearing officer determined that the claimants were not prejudiced by the respondent's failure. Respondent-B, Respondent-D, Respondent-E, Respondent-F, Respondent-G, Respondent-H, Respondent-I, and Respondent-J were admitted without objection.

Respondent-M, Respondent-N, Respondent-O, Respondent P, and Respondent-Q were admitted over claimants' relevance objection on the ground that the hearing officer would be able to adequately determine the relevance of the documents. Todd-10, Todd- 12, Claimants-6, Claimants-7, Claimants-8, Claimants-9, Claimants-10, Claimants-11, Claimants-22, Claimants-23, Claimants-24, Claimants-25, Respondent-K, and Respondent-L were excluded on hearsay grounds. Claimants-13 and Claimant-15 were withdrawn.

Based upon the testimony and exhibits in the case, the hearing officer makes the following:

I. FINDINGS OF FACT

1. Randy Higgins is a licensed outfitter doing business in the Roundup, Montana area. He and his wife, Jennifer Higgins are co-owners of the business, Musselshell Outfitters. Randy Higgins is the only licensed outfitter. Jennifer Higgins does not perform outfitting work but performs tasks such as cooking and administrative work. The Higginses also sometimes use the name Musselshell River Outfitters when referring to the "guide school" part of their operation.

2. Almost all of the clients of Musselshell Outfitters are from states other than Montana. Musselshell Outfitters obtains clients by advertising in national hunting magazines, attending hunting shows all over the country, maintaining an internet website, using travel agents, and obtaining the recommendations of clients to new clients. Clients pay for their hunts with cash, checks, and credit cards. Clients generally fly into area airports, where Higgins or one of his employees meet them and transport them to the hunting camp near Roundup.

3. On August 12, 2001, Musselshell Outfitters ran a help wanted classified advertisement in the Quincy, Illinois Herald-Whig newspaper seeking hunting guides and camp cooks. Scott Nichols and Justin Todd responded to the advertisement. They were 21 years old and wanted to be hunting guides.

4. Nichols made the first contact with Musselshell Outfitters. He spoke to Randy Higgins by telephone. Higgins told him that he needed a guide. He reviewed the essentials of the position with him. He told him that he would be working long hours and stuck out in a tent. He told him that he would pay him \$3,000.00 at the end of the season. He told him he would fax him a list of what he would need to bring.

5. After their conversation, Musselshell Outfitters faxed Nichols a packet of information, including a list of items to bring to Montana and a contract to sign. The packet included a cover letter from Jennifer Higgins dated August 15, 2001, which stated, in part:

Following are 10 pages of information. If you want to, you can fax back the questions and the contract. Please ignore the parts that refer to costs you have to pay us in regards to schooling. Same way about 60 or 30 days of schooling. The 2 weeks you are here before the hunters is considered a "school" you just don't have any fees.

6. Nichols' parents drove him to Montana and he arrived in the Roundup area on August 17, 2001. When he arrived, he filled out a form entitled Musselshell River Outfitters "60 Day School Application." He also signed a form entitled "60 Day School Enrollment Contract." The contract provided that he agreed:

[T]o all the circumstances and conditions stated in Musselshell River Outfitters (3) three page Form GS3398. I have fully read and fully understand the (3) three page form GS3398. I understand that Form GS3398 is a written contract between me and Musselshell River Outfitters. . . . I wish to make the commitment to enroll in Musselshell River Outfitters 60 Day Guide School and I am enclosing my \$200 deposit. . . . I will pay \$250 to Musselshell River Outfitters on August 29 and I agree to work off the balance of \$500 by working for Musselshell River Outfitters after the School is finished. I agree that I will be credited \$30 for each day that I work until my final \$500 is paid off. I understand that if I do not fulfill this agreement that I will be responsible for all court costs involved with collecting my final payment.

Nichols did not pay the \$200.00 deposit referenced in the agreement.

7. Nichols began working for Musselshell Outfitters the day after he arrived in camp. The camp was in a rural, remote area. He slept in a tent at the camp and Musselshell Outfitters provided his food. He was there for two weeks before any hunters arrived in camp. The work included tending the camp, scouting the areas where game could be found, and, after hunters began arriving on September 1, 2001, guiding their hunts and assisting them to care for their game. He applied for his 2001 hunting guide license as an employee of Randy Higgins on August 20, 2001; he received a temporary guide's license on September 1, 2001 and his guide's license on September 6, 2001. He did not attend a guide school; rather he was an on-the-job trainee. Randy Higgins had him take a "guide school test" on August 25, 2001, and provided instruction on a few topics, such as first aid and calling game, in a classroom-like setting. Otherwise, all instruction was on the job, provided either by Randy Higgins or another guide.

8. Todd first contacted Musselshell Outfitters about the same time as Nichols. Randy Higgins told him the guide position was filled but that they needed a cook. Todd did not want to work as a cook. During the first week of September 2001, Jennifer Higgins called Todd and told him that they needed a guide. She told him that they would pay him \$3,000.00 at the end of the season. He accepted the job.

9. Todd left Quincy, Illinois on September 5, 2001 and traveled to Roundup by bus. He arrived in Roundup on September 7, 2001. Nichols and two other employees picked him up in town and took him to the camp. He arrived in the early evening. The Higginses explained what he would be doing and how things would work in the camp. Although he may have signed a school application or contract like Nichols, Musselshell Outfitters has been unable to produce the document.

10. Todd began working for Musselshell Outfitters on the evening he arrived. Hunters had been in the camp prior to his arrival, but had left early due to a tent fire in the tent where they

had stayed. Todd had an initial orientation with Randy and Jennifer Higgins, then worked about 1.5 hours to help clean up the mess from the fire. The next morning he went scouting with one of the other guides. The work he performed included tending the camp, scouting, guiding hunters, and helping them care for game. He slept in the tent and Musselshell Outfitters provided his food. He applied for his 2001 guide license as an employee of Randy Higgins on September 9, 2001 and received it on October 1, 2001. He was an on-the-job trainee, not a student in a school.

11. Musselshell Outfitters reported to the Board of Outfitters having the following hunting clients during the 2001 hunting season:

August 31 to September 9	6 hunters
September 14 to September 21	1 hunter
September 14 to September 23	7 hunters
September 24 to October 3	2 hunters
September 24 to October 5	3 hunters
October 4 to October 15	3 hunters
October 6 to October 10	1 hunter
October 7 to October 11	1 hunter
October 16 to October 20	8 hunters
October 20 to October 24	2 hunters
October 20 to October 26	6 hunters
October 28 to November 3	7 hunters
November 4 to November 10	2 hunters

The hunters who were reported as being Musselshell Outfitters' clients from August 31 to September 9 actually left on September 6 because of the tent fire. Thus, there were no hunters in camp from August 18, when Nichols began working, to August 30 (13 days), September 7 to September 13 (7 days), and October 27.

12. Nichols and Todd left the hunting camp on November 11, 2001, after deciding they were not satisfied with the work. On November 11, 2001, Randy Higgins wrote them each an angry note, complaining about them deciding to walk out on their jobs with Musselshell Outfitters. Nichols and Todd stayed in a motel in Roundup through November 16 and then returned to Illinois. Before they left, they tried without success to obtain payment of their wages for the time they worked.

13. Neither the claimants nor Musselshell Outfitters maintained contemporaneous records of the hours worked by Nichols and Todd. They worked an average of 7 hours per day on days when there were no hunters in the camp and 12 hours per day when there were hunters in the camp. Nichols also had two days off during the period August 18 through August 30. Nichols and Todd had one day off between September 7 and September 13, and were off on September 23, October 15, October 27, and November 10. They also had a partial day off on November 3,

and Todd was sick one day, October 3. Based upon these hours worked, Nichols worked 846 hours. Todd worked 669 hours.

14. Musselshell Outfitters did not pay Nichols and Todd any wages during their employment, or within the 15 days following their separation from employment.

15. After Nichols and Todd filed wage claims with the Department, the Wage and Hour Unit asked them to provide a list of the hours they worked for Musselshell Outfitters. They attempted to reconstruct a list of days and hours worked in April 2002. The lists they prepared were not an accurate reconstruction.

16. The Wage and Hour Unit determined Musselshell Outfitters owed Nichols \$1,236.00 in wages and Todd \$1,175.75 in wages. After appealing these determinations to hearing, Musselshell Outfitters tendered the amounts determined to be owing, less applicable withholding, plus 55% penalty to the Department in an effort to resolve the cases. The amount of penalty submitted was \$679.80 for Nichols and \$646.66 for Todd.

II. DISCUSSION AND ANALYSIS

A. Identification of Respondents

Todd filed his claim with the Department against Musselshell Outfitters, Randy and Jennifer Higgins owners. Nichols filed his against Musselshell Outfitters, Randy Higgins, owner. In its investigation, the Department styled the claims as having been filed against Randy Higgins d/b/a Musselshell Outfitters. The evidence presented at hearing established that, although Randy is the only outfitter, Randy and Jennifer Higgins are co-owners of Musselshell Outfitters. Thus, the caption of the case has been amended to reflect that the claims are filed against both Randy and Jennifer Higgins d/b/a Musselshell Outfitters.

B. Employment Status of Claimants

Musselshell Outfitters contends that Nichols and Todd were students in a guide school conducted by Randy Higgins. Respondents therefore assert that no wages are due the claimants, because they were not employees.

Musselshell Outfitters did not in fact operate a guide school. The testimony of Randy Higgins regarding the guide school operation was inherently incredible. At hearing, he maintained that he provided 277 hours of instruction to participants in the school over the course of 60 days. The classes apparently had no defined beginning or ending. Nichols joined a group already in progress in the "guide school" and he remained at the camp for 84 days, during which his status never changed. When Todd arrived, he did not start a course of instruction that differed in any way from that supposedly being provided to Nichols.

At least some of the instruction was supposed to have been provided in a classroom setting. However, the claimants credibly testified that there were only a few instances in which they

could recall anything akin to classroom instruction, the first aid class and elk calling. Higgins then maintained that some of the instruction took place when he was riding in vehicles with the claimants or simply sitting at day camp in the middle of the day. In addition, in all but 21 days of the time Nichols was in the camp, and all but 8 days of the time Todd was in the camp, Musselshell Outfitters had clients present in the camp, and Randy Higgins was guiding or assisting clients. On some of the days when there were no clients, the guides had a day off, went to Roundup to do laundry, and were not in camp. It is not credible that Randy Higgins provided 277 hours of instruction to Nichols and Todd, or even close to 277 hours. The instruction Randy Higgins did provide was on-the-job training.

In support of his contention that Nichols and Todd were students, Randy Higgins makes much of the fact that they were not qualified to be hunting guides when they arrived from Illinois. The fact that he signed applications to the Board of Outfitters in which he certified that they met the requirements of the Board to be licensed as guides notwithstanding, employers regularly hire employees who require training to be able to perform the work for which they are hired. The time they spend in on-the-job training directly related to the employee's job is compensable as time worked in employment. ARM 24.16.1009. Nichols and Todd were employees of Musselshell Outfitters, and Randy Higgins was training them to be hunting guides. In this situation, Musselshell Outfitters was required to pay wages.

Respondents also point to the agreements Nichols and Todd signed as evidence that the claimants were attending a school rather than working as employees of Musselshell Outfitters. However, Jennifer Higgins told Nichols he could disregard the portions of the agreement related to the costs he would have to pay for schooling, and he in fact did not pay to attend the "school." Randy Higgins also recruited for employees, induced the claimants to travel to Montana by telling them that they would be employees, told them he would pay a wage, and referred to them as his employees on numerous occasions. Ultimately, however, it is the actions of the parties that determine how the relationship between them is to be characterized, not how they label it. Todd and Nichols worked for Musselshell Outfitters in the hunting camp as employees. They set up and tended camp, scouted for game, transported and guided hunters, and assisted them to handle their game. Although they may have required training to perform these tasks, they were nevertheless employees.

To the extent that the claimants signed agreements indicating that they were enrolled in a school, those agreements were made to evade or circumvent the requirements of law that Musselshell Outfitters pay wages to its employees. Such agreements are void under Montana law. § 39-3-208, MCA. Musselshell Outfitters employed Nichols and Todd and is subject to laws governing employee compensation.

C. Applicable Law

Montana law requires that, except for employers with gross sales of less than \$110,000.00 per year, employers must pay a minimum wage of \$5.15 per hour for all hours worked. § 39-3-404, MCA and ARM 24.16.1510(8). There is no evidence in the record as to Musselshell Outfitters gross sales, and respondents had the burden of proof on this issue.

Therefore, Musselshell Outfitters is required to pay its employees a minimum wage of \$5.15 per hour.

Although Musselshell Outfitters agreed to pay Nichols and Todd \$3,000.00 for the season, that wage would be less than the minimum wage, given the numbers of hours worked by the claimants. Therefore, their claims are for payment of the minimum wage.

Montana law also requires that employers pay an overtime premium of 1.5 times the hourly rate for hours worked over 40 per week. § 39-3-405, MCA. However, the statute contains an exception to the requirement for overtime premium pay for persons employed as guides by a licensed outfitter. § 39-3-406(2)(u), MCA. Nichols and Todd were guides working for a licensed outfitter, and are therefore not entitled to overtime premium pay. They are, nevertheless, entitled to the minimum wage for all hours worked.

D. Determination of Hours Worked and Wages Owed

In a wage claim case, the employer not only has the burden of proving that an individual is exempt and not subject to overtime coverage, but also the responsibility of keeping records to establish the number of hours worked. See Roan v. Rosebud County, 192 Mont. 252, 627 P.2d 1222 (1980). When an employer fails to keep time records on employees subject to the law, the employee need only prove the extent of overtime worked as a matter of just and reasonable inference. In Garsjo v. Department of Labor and Industry, 172 Mont. 182, 562 P.2d 473 (1977), the Montana court adopted the standard set forth first in Anderson v. Mt. Clemens Pottery, 328 U.S. 680 (1946) wherein the U.S. Supreme Court held:

[W]here the employer's records are inaccurate or inadequate and the employee cannot offer convincing substitutes, a more difficult problem arises. The solution, however, is not to penalize the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work. Such a result would place a premium on the employer's failure to keep proper records in conformity with his statutory duty; it would allow the employer to keep the benefits of an employee's labors without paying due compensation as contemplated by the Fair Labor Standards Act. In such a situation we hold that he has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and the extent of the work as a matter of just and reasonable inference

The Montana court then went on to set a procedure for determining how to address no records, or inadequate records, adopting the reasoning of the Michigan Supreme Court in Purcell v. Keegan, 359 Mich. 571, 103 N.W.2d 494 (1960):

When the employee shows, as he did here, that he did in fact perform overtime work for which he was not properly compensated and produces sufficient evidence to show the extent and amount of such work as a matter of just and reasonable

inference, the burden shifts to the employer to come forward with evidence of the precise amount of work performed or with evidence to negate the reasonableness of the inference to be drawn from the evidence of the employee. And if the employer fails to produce such evidence, it is the duty of the court to enter judgment for the employee, even though the amount be only a reasonable approximation.

Musselshell Outfitters kept no contemporaneous time records for Nichols and Todd. At hearing, respondents submitted a calendar which Randy Higgins claimed to have maintained while Nichols and Todd were at the hunting camp. The testimony of Randy Higgins that he maintained the calendar as a contemporaneous record was not credible for a number of reasons. First, he did not submit it to the department during the investigation of the claim. In addition, although he referred to it at hearing as "the school calendar," it contains no references to the other individuals who were supposedly attending the school at the time Nichols arrived at the camp. Even if it was a contemporaneous record, it contains no information about the number of hours worked by the claimants. Therefore, the hours worked by the claimants must be established as a matter of just and reasonable inference from their testimony.

The claimants attempted to reconstruct their hours worked in documents they submitted to the department in April of 2002, approximately six months after they separated their employment with Musselshell Outfitters. At hearing, however, they acknowledged that they were uncertain about the exact numbers of days and hours worked and about the accuracy of their reconstructions. They credibly testified that they worked long hours, starting most days between 3:00 and 4:00 a.m. and working until late morning. When there were hunters in the camp, after a mid-day break, they also worked in the afternoons and into the evenings. They had a few days off, particularly when a group of hunters was leaving.

Based upon the testimony at hearing, a reasonable approximation of the hours worked by Nichols and Todd is 12 hours on the days when there were hunters in the camp and 7 hours on the days there were not. It is also reasonable to approximate that Nichols had two days off during the period August 18 through August 30, that Nichols and Todd had one day off between September 7 and September 13, and that they were off on September 23, October 15, October 27, and November 10. They also had a partial day off on November 3, and Todd was sick one day, October 3. The testimony and evidence of Randy Higgins did not negate the reasonableness of the inference drawn here. A detailed list of the days and hours worked by the claimants, and a calculation of the wages due, is included in a spreadsheet as attachment A.

Scott Nichols worked a total of 846 hours for Musselshell Outfitters. At \$5.15 per hour, Musselshell Outfitters owes him \$4,356.90. When the \$1,236.00 tendered before hearing is subtracted from the total wages owing, Musselshell Outfitters owes Nichols an additional \$3,120.90.

Justin Todd worked a total of 669 hours for Musselshell Outfitters. At \$5.15 per hour, Musselshell Outfitters owes him \$3,445.35. When the \$1,175.75 tendered before hearing is subtracted from the total wages owing, Musselshell Outfitters owes Todd an additional \$2,269.60.

Todd's claim included a request for \$35.00 that Todd loaned to Randy Higgins for automobile parts Higgins purchased during a trip that Todd and Higgins took into Roundup. The \$35.00 is not compensation for work performed and is therefore not wages. It is therefore not recoverable under wage and hour statutes. Johnson v. K & T Manufacturing, Inc., 191 Mont. 458, 652 P.2d 66 (1981).

E. Lodging Credit

In its determination, the Wage and Hour Unit deducted 40% of the wages due Nichols and Todd as a lodging credit. The minimum wage statute provides:

The term "wage" includes the reasonable cost to the employer of furnishing the employee with lodging or any other facility if the lodging or other facility is customarily furnished by the employer to employees. However, the inclusion may not exceed an amount equal to 40% of the total wage paid by the employer to the employee.

(b) The term "wage" does not include the cost to the employer of providing meals or a meal allowance to the employee. . . .

§ 39-3-402(7), MCA.

Thus, the lodging credit is not an automatic 40% offset of the wages earned. In order to qualify for the lodging credit, the record must establish the reasonable cost of the lodging, not meals, provided. The cost of meals is specifically excluded from the lodging credit. The employer has the burden of proof of establishing the reasonable cost of the lodging.

Musselshell Outfitters provided no evidence of the reasonable cost of furnishing lodging to Nichols and Todd. The lodging actually consisted of a tent in the hunting camp. Thus it is likely that its cost was very nominal. Musselshell Outfitters is not entitled to an offset against the wages of Nichols and Todd as a lodging credit.

F. Penalty

Montana law provides for a penalty to be assessed against an employer and paid to the employee in an amount not to exceed 110% of the wages due and unpaid. § 39-3-206(1), MCA. The rules of the department provide that for minimum wage violations, the full 110% penalty should be imposed for any amounts not paid within the time specified in the department determination. For amounts paid within the time specified in the determination, the penalty is 55%. ARM 24.16.7561.

This case is a minimum wage case, and the full 110% penalty is therefore applicable. However, Musselshell Outfitters tendered the wages found due in the determination, including the 55% penalty, to the department prior to the hearing. Tendering the partial wages suffices to meet the requirement of the rule so that only the 55% penalty is due on that portion of the wages. Therefore, Musselshell Outfitters owes a 110% penalty on only the portion of wages not previously tendered. Thus, Musselshell Outfitters owes Scott Nichols a penalty in the amount of \$3,432.99, in addition to the \$679.80 previously tendered to the Department. Musselshell

Outfitters owes Justin Todd a penalty of \$2,496.56 in addition to the \$646.66 tendered before hearing.

A calculation of the penalty and total amounts due to the claimants is included in attachment B to this decision.

III. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint under § 39-3-201 et seq. MCA. *State v. Holman Aviation*, 176 Mont. 31, 575 P.2d 925 (1978).

2. Scott M. Nichols was an employee of Randy and Jennifer Higgins, doing business as Musselshell Outfitters, between August 18, 2001 and November 10, 2001. As a matter of just and reasonable inference, Nichols worked 846 hours.

3. Justin E. Todd was an employee of Randy and Jennifer Higgins, doing business as Musselshell Outfitters, between September 7, 2001 and November 10, 2001. As a matter of just and reasonable inference, Todd worked 669 hours.

4. Randy and Jennifer Higgins, doing business as Musselshell Outfitters, violated § 39-3-404, MCA, by failing to pay a minimum wage to Scott M. Nichols and Justin E. Todd.

5. Randy and Jennifer Higgins, doing business as Musselshell Outfitters, owe Scott M. Nichols \$4,356.90 in wages (846 hours worked x \$5.15 per hour).

6. Randy and Jennifer Higgins, doing business as Musselshell Outfitters, owe Justin E. Todd \$3,445.35 in wages (669 hours worked x \$5.15 per hour).

7. Randy and Jennifer Higgins, doing business as Musselshell Outfitters, owe Scott M. Nichols \$4,112.79 in penalties pursuant to § 39-3-206, MCA. This represents \$679.80 previously tendered to the department and \$3,432.99 still due.

8. Randy and Jennifer Higgins, doing business as Musselshell Outfitters, owe Justin E. Todd \$3,143.22 in penalties pursuant to § 39-3-206, MCA. This represents \$646.66 previously tendered to the department and \$2,496.56 still due.

IV. ORDER

1. Randy and Jennifer Higgins, doing business as Musselshell Outfitters, ARE HEREBY ORDERED to tender a cashier's check or money order in the amount of \$6,553.89, representing \$3,120.90 in unpaid wages and \$3,432.99 in penalty, payable to the claimant, Scott M. Nichols, and delivered to the Employment Relations Division, P.O. Box 6518, Helena, Montana 59604-6518 no later than December 4, 2002.

2. Randy and Jennifer Higgins, doing business as Musselshell Outfitters, ARE HEREBY ORDERED to tender a cashier's check or money order in the amount of \$4,766.16, representing \$2,269.60 in unpaid wages and \$2,496.56 in penalty, payable to the claimant, Justin E. Todd, and delivered to the Employment Relations Division, P.O. Box 6518, Helena, Montana 59604-6518 no later than December 4, 2002.

3. In addition to the amounts ordered in paragraphs 1 and 2, the Employment Relations Division shall disburse the sums tendered to the department by Musselshell Outfitters prior to hearing.

DATED this 6th day of November, 2002.
DEPARTMENT OF LABOR AND INDUSTRY

By: /s/ ANNE L. MACINTYRE
Anne L. MacIntyre, Chief
Hearings Bureau

NOTICE: You are entitled to judicial review of this final agency decision in accordance with § 39-3-216(4), MCA, by filing a petition for judicial review in an appropriate district court within 30 days of service of the decision. See also § 2-4-702, MCA.

If there is no appeal filed and no payment is made pursuant to this Order, the Commissioner of the Department of Labor and Industry will apply to the District Court for a judgment to enforce this Order pursuant to § 39-3-212, MCA. Such an application is not a review of the validity of this Order.