

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

<b>IN THE MATTER OF THE WAGE CLAIM</b>	)	<b>Case No. 464-2002</b>
<b>OF CHAD LENHARDT,</b>	)	
<b>Claimant,</b>	)	<b>FINDINGS OF FACT;</b>
<b>vs.</b>	)	<b>CONCLUSIONS OF LAW;</b>
<b>CONTE DEVELOPMENT CORPORATION,</b>	)	<b>AND ORDER</b>
<b>Respondent.</b>	)	

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**I. INTRODUCTION**

Chad D. Lenhardt filed a wage claim on July 21, 2001, alleging that Conte Development Corporation owed him unpaid overtime wages in the amount of \$1,351.77 for work performed from May 1, 2000 to December 24, 2000. On September 14, 2001, the Wage and Hour Unit of the Department of Labor and Industry issued a determination dismissing the claim after finding that Lenhardt had failed to file the claim within 180 days of the default or delay in payment of the wages, as required by § 39-3-207, MCA. Lenhardt appealed. On February 1, 2002, Bernadine Warren, Hearing Officer for the Department of Labor and Industry, conducted a telephonic hearing in this matter. James Lenhardt, Chad's father who has power of attorney, testified on Chad's behalf. Stephen Conte, president represented the company and testified on its behalf.

Exhibits 1 through 5, proposed by James Lenhardt, were admitted into the record without objection. File documents 43 and 44, proposed by the Hearing Officer, were admitted into the record without objection. The respondent proposed no exhibits.

**II. ISSUE**

Whether Chad D. Lenhardt filed his wage claim within the time period allowed for such action.

**III. FINDINGS OF FACT**

1. Conte Development Corporation (Conte) hired Chad Lenhardt to perform construction work in May 2000. Lenhardt ceased working for Conte in late December 2000. Conte paid Lenhardt his final paycheck on January 3, 2001.
2. In early January 2001, Lenhardt filed a claim for unemployment insurance benefits. About the same time, Conte, a Nevada corporation, was in contact with the state of Montana regarding whether Lenhardt was an employee or an independent contractor, and whether the company owed Montana taxes and workers' compensation premiums for work performed by Lenhardt. Conte believed Lenhardt to be an independent contractor, while Lenhardt believed he was an

employee.

3. The Montana Department of Labor and Industry (Department) conducted an investigation of the employment status of Lenhardt with Conte. On May 30, 2001, the Department issued a determination finding Lenhardt to be an employee rather than an independent contractor. Similarly, the Internal Revenue Service determined that Lenhardt was an employee for federal income tax purposes. Conte worked with the State of Montana to pay workers' compensation premiums and state taxes owed on wages earned by Lenhardt and others similarly misclassified.

4. On July 21, 2001, Lenhardt completed, and had notarized, a claim form from the Montana Wage and Hour Unit contending that Conte owed him unpaid overtime wages for work performed from May 1, 2000 through December 24, 2000. The Wage and Hour Unit received the claim form for unpaid overtime wages on July 23, 2001.

5. On September 14, 2001, the Wage and Hour Unit issued a dismissal of Lenhardt's claim finding that Lenhardt had failed to file his complaint within 180 days of the default or delay in the payment of wages.

#### IV. DISCUSSION

Montana law requires that employers pay employees wages when due, pursuant to §39-3-204, MCA. An employee may recover all wages and penalties provided for under the law by filing a complaint within 180 days of default or delay in the payment of wages, pursuant to § 39-3-207, MCA. Claims for failure to pay overtime wages are pursued as a wage claim action in this manner. § 39-3-407, MCA.

Lenhardt contends that he could not file a claim for unpaid wages until his employment status had been determined and appeal times exhausted. However, nothing in the law requires a wage claimant to delay filing a wage claim until the Department determines a worker's employment status and any subsequent appeals are exhausted.

In Abbott v. United States, 144 F.3d 1 (1st Cir. 1998), certain employees at the Portsmouth Naval Shipyard failed to join in a union grievance, and thus, failed to recover past overtime pay. Employees who joined in the union grievance recovered past overtime pay. The employees who failed to join the union grievance filed suit against both the United States and the union. The First Circuit dismissed the case against the United States on statute of limitations grounds. The claim was filed under the Fair Labor Standards Act (FLSA), which requires claims to be filed within two years after the cause of action accrued, or three years if the cause arose out of a wilful violation. The employees contended that the statute of limitations was suspended while they exhausted the grievance process. The court held, however, that the FLSA's statute of limitations was not subject to tolling on the basis of pending administrative procedures. Although the case involved the FLSA rather than Montana Wage and Hour statutes, the outcome for Lenhardt is similar. Nothing in Montana law tolls wage claim filing time requirements while other administrative processes are pending. In Roper v. Plummer, Cause No. BDV 95-697, 2001 ML 2480, (Montana 1st Judicial District, July 2001), Plummer moved to vacate a judgment against her partly on the basis that Roper had failed to file her wage claim within the statutory time frames. Judge Sherlock ruled that Roper filed her claim 12 months from the time she last performed work, thereby meeting the, then, 18 month statute of limitations for filing a claim. The Legislature amended the law in 1999 to set a 180 day statute of limitations on wage claims.

Under §§ 39-3-204 and 39-3-205, MCA, any unpaid wages and overtime wages become due upon separation from employment, or on the next regular payday. According to his wage claim, Lenhardt last worked for Conte on December 24, 2000. Conte gave Lenhardt his final paycheck on January 3, 2001. To be most lenient toward Lenhardt by using the January 3, 2001 date to calculate filing times, any claim for unpaid wages, including overtime wages, had to have been filed on or before July 2, 2001, 180 days from January 3, 2001. Lenhardt's wage claim was subscribed and sworn before a notary public on July 21, 2001, 19 days past the 180 day limit, and filed with the Wage and Hour Unit on July 23, 2001, 21 days past the 180 day limit. In this case, the statute of limitations on filing a wage claim is not tolled due to the pending administrative employment status claim.

#### V. CONCLUSIONS OF LAW

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

2. **Lenhardt failed to file his claim for unpaid overtime wages within 180 days of default.**

#### VI. ORDER

The claim for unpaid overtime wages filed by Chad D. Lenhardt is hereby DISMISSED.

DATED this 7th day of February, 2002.

DEPARTMENT OF LABOR AND INDUSTRY  
HEARINGS BUREAU

By: /s/Bernadine E. Warren  
Bernadine E. Warren  
Hearing Officer

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.