STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM OF LAWRENCE J. YUHAS, Claimant, vs. MONTANA CORRECTIONAL ENTERPRISES DIVISION, a division of the MONTANA DEPARTMENT OF CORRECTIONS, a Montana State Government Department, Respondent.	)	Case No. 265-2005 *FINAL AGENCY DECISION GRANTING SUMMARY JUDGMENT AND DISMISSING CLAIM*

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I. INTRODUCTION

Respondent Montana Correctional Enterprises (MCE) seeks summary judgment in this matter, alleging that the limitation on filing a wage claim contained in Mont. Code Ann. § 39-3-207(1) prohibits Claimant Lawrence Yuhas' claim. Yuhas responds that the statute does not preclude the claim and that even if it did, the Respondent has waived the defense by failing to raise it earlier in the proceedings.

Hearing Examiner Gregory L. Hanchett held oral argument on the motion on April 11, 2005. Attorney Thomas Scott represented Yuhas. Attorney Colleen White represented MCE. Having considered the oral argument as well as the parties' respective briefs, the hearing examiner finds that summary judgment in favor of the Respondent is appropriate. The rationale for this decision follows.

II. FACTS THAT ARE NOT IN DISPUTE

1. MCE employed Yuhas at its correctional farm in Deer Lodge, Montana beginning in 1998. MCE discharged Yuhas on February 24, 2004.

2. Yuhas filed his wage complaint on August 11, 2004, alleging that MCE owes him $31,632.39 in unpaid overtime wages. The amount Yuhas claims to be owed was money that MCE deducted from his wages for the cost of providing Yuhas living quarters at the place of his employment. Yuhas contends that MCE's requirement that he live on the premises of the place of his employment and pay for his on-premise housing was unlawful.

3. Yuhas seeks unpaid overtime wages between 1998 and November 1, 2002. Beginning November 1, 2002, MCE no longer deducted the cost of Yuhas' housing from his pay. As of November 1, 2002, Yuhas believed that MCE's action of deducting for Yuhas' housing was unlawful.

4. Yuhas does not contend that MCE engaged in any conduct that might require the application of equitable tolling to this matter.

III. DISCUSSION

A. *Propriety of Summary Judgment in Administrative Proceedings*

Summary judgment is an appropriate method of dispute resolution in administrative proceedings where the requisites for summary judgment otherwise exist. *Matter of Peila* (1991), 249 Mont. 272, 815 P.2d 139. Summary judgment is appropriate where "the pleadings . . . and admissions on file . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), Mont. R. Civ. P.

The party seeking summary judgment has the initial burden of establishing the absence of any genuine issue of material fact and entitlement to judgment as a matter of law. Once the moving party meets this burden, the burden then shifts to the party opposing the motion to establish otherwise by more than mere denial or speculation. *Ravalli County Bank v. Gasvoda* (1992), 253 Mont. 399, 883 P.2d 1042. Reasonable inferences drawn from the proof must be drawn in favor of the party opposing summary judgment. *Sherrad v. Prewett* (2001), 306 Mont. 511, 36 P.3d 378.

In this matter, the parties do not dispute any facts necessary to determine whether Yuhas' claim is time barred. Yuhas claims wages which were not paid to him between 1998 and November 1, 2002. Yuhas continued to work for MCE until February 24, 2004, at which time he was discharged from employment. He did not file his wage claim until August 11, 2004, even though he believed as of November 1, 2002 that MCE's deductions for providing Yuhas living quarters was improper. As

there is no dispute of fact, the only question here is one of the application of the applicable statute to the facts.

B. *Yuhas' Claim Is Untimely*

Yuhas contends that Mont. Code Ann. § 39-3-207(1) is in conflict with Mont. Code Ann. § 39-3-207(2) and (3) and that the statute must be read to mean that the cause of action in this matter did not accrue until the date of Yuhas' discharge on February 24, 2004. Yuhas' interpretation ignores the plain language of the statute.

Mont. Code Ann § 39-3-207 provides:

> (1) An employee may recover all wages and penalties provided for the violation of 39-3-206 by filing a complaint within 180 days of default or delay in the payment of wages.
>
> (2) Except as provided in subsection (3), an employee may recover wages and penalties for a period of 2 years prior to the date on which the claim is filed if the employee is still employed by the employer or for a period of 2 years prior to the date of the employee's last date of employment.
>
> (3) If an employer has engaged in repeated violations, an employee may recover wages and penalties for a period of 3 years from the date on which a claim is filed if the employee is still employed by the employer or for a period of 3 years prior to the date of the employee's last date of employment.

The rules of statutory construction require that the language of a statute be construed according to its plain meaning. *Lovell v. St. Comp. Mut. Ins. Fund* (1993), 260 Mont. 279, 860 P.2d 95. Where the language is unambiguous, courts must look at the plain meaning of the statute and may not go further and apply other means of interpretation. *Tongue River Electric Co-op v. Montana Power Company* (1981), 195 Mont. 511, 636 P.2d 862. Furthermore, a court must find legislative intent from the plain meaning of the language by reasonably and logically interpreting the statute as a whole without omitting or inserting anything or determining intent from a reading of only a part of the statute. *Gaub v. Milbank Ins. Co*. (1986), 220 Mont. 424, 715 P.2d 443.

Reading the plain language of the statute compels the hearing examiner to conclude that the legislature imposed a 180 day statute of limitations on recovery of a wage claim. Subparts (2) and (3) of the statute do not change the 180 day limitation by permitting an employee to file a wage claim more than 180 days after the time the last cause of action accrues. Rather, these subparts serve only to define the remedy available provided that the employee files a cause of action within 180 days of the date the last cause of action accrues. If, however, more than 180 days elapses from the time that the last cause of action accrues, then the employee's complaint is barred by Mont. Code Ann. § 39-3-207(1).

Yuhas' suggestion that the limitation contained in Mont. Code Ann. § 39-3-207 did not begin to run until his discharge does not square with the plain language of the statute. Had the legislature intended the result Yuhas seeks, it would have utilized language in subpart 1 that would tie the overarching 180 day limitation to a triggering event such as the discharge of the employee. For example, the legislature could have said that the employee must file a wage claim within "180 days of default or delay in payment or within 180 days of the date the employee last worked." The legislature did not do so and the hearing examiner is not at liberty to insert such a notion in the statute when there is no language to support it.

If the plain language of the statute were not sufficient to show the legislature's intent to impose a 180 day limitation upon filing of claims, the evolution of the statute would nevertheless make this clear. Prior to 1997, there was no limitation on the filing of a wage claim. At that time, Mont. Code Ann. § 39-3-207 provided only for a limitation on the imposition of the statutory penalties. In 1997, the legislature inserted a very specific limitation in Mont. Code Ann. § 39-3-207 on the right to seek the wages themselves, imposing a 180 day time limit. The language and history of the statute make clear that the legislature intended to impose a 180 day time limit to seek wages from the time that the last cause of action accrued.

In this matter, Yuhas concedes that all factors necessary for accrual of the claim existed on November 1, 2002. Despite this, he waited more than 21 months to file his claim. His claim is time barred unless he can demonstrate that MCE has waived the defense.

C. *Respondent Has Not Waived The Affirmative Defense*

Citing *Marias Health Care v. Turenne*, 2001 MT 127, 305 Mont. 419, 28 P.3d 491, the claimant asserts that even if his claim is untimely, MCE has waived the affirmative defense of the statute of limitations. Assuming that the statute is an

affirmative defense (and not a limitation on the sovereign's jurisdiction to act), *Turenne* is inapposite. As MCE correctly points out, *Turenne* involved the pleading requirements of the rules of civil procedure in a district court case. Those rules do not apply to this administrative proceeding. *Wheelsmith Fabrication, Inc., v. Department of Labor and Industry*, 2000 MT 27, 298 187, 993 P.2d 713. Instead the Montana Administrative Procedures Act (MAPA) applies to this proceeding. Nothing in MAPA requires that a party raise an affirmative defense any earlier than has been done in this proceeding. Accordingly, the hearing examiner finds that MCE has not waived its ability to question the timeliness of the filing of the complaint.[1]

IV. ORDER

Yuhas' claim is time barred and MCE has timely raised the issue in this motion for summary judgment. Accordingly, MCE's motion for summary judgment is granted and this matter is dismissed pursuant to Admin. R. Mont. 24.16.7541 (3). The previously set pre-hearing schedule, final pre-hearing date and hearing date are vacated.

DATED this 18th day of April, 2005.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
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 service of the decision. See also Mont. Code Ann. § 2-4-702.

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[1]The fact that MAPA does not require that an affirmative defense be plead any earlier than it has in this case obviates the need to consider MCE's further argument that the statute of limitations acts as an absolute bar to the sovereign's exercise of jurisdiction rather than simply as an affirmative defense.