STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM OF DEBBIE A. ROBINSON, Claimant, vs. HOLIDAY INN EXPRESS, a/k/a PHOENIX VENTURES INN, Respondent.	)	Case No. 312-2006 **FINAL AGENCY DECISION GRANTING SUMMARY JUDGMENT AND DISMISSING CLAIM**

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I. INTRODUCTION

Respondent Holiday Inn Express (Holiday) has moved for summary judgment in this matter asserting that Claimant Debbie Robinson failed to file her wage claim within 180 days of the accrual of the claim as required by Montana Code Annotated §39-3-207. Robinson opposes the motion, arguing that her claim did not accrue under the facts of this case until after a related criminal prosecution against her had concluded. Having considered the parties arguments and the uncontested facts in this case, the hearings examiner finds that the motion is well taken and for the reasons that follow grants the motion for summary judgment.

II. FACTS THAT ARE NOT IN DISPUTE

1. Holiday employed Robinson as its general manager beginning in 2000. On July 9, 2004, Holiday discharged Robinson after discovering that she had embezzled more than $62,000.00 from Holiday during her last two years of employment.

2. On July 12, 2004, Holiday reported the theft to the Great Falls Police Department. It was not until September 20, 2004, following an investigation, however, that the Cascade County Attorney filed an information in Montana District Court charging Robinson with three counts of theft as a result of the embezzlement.

3. Robinson pled guilty to the charges and was sentenced by the district court on February 28, 2005. As part of her sentencing, Robinson was ordered to pay approximately $62,000.00 in restitution to Holiday no later than March 1, 2006. Robinson paid restitution to Holiday on July 5, 2005.

4. Robinson filed the instant wage claim on August 16, 2005 seeking $1,815.00 in unpaid wages allegedly earned between July 1 and July 9, 2004. She also seeks unpaid vacation from May, 2004.

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 Robinson's claim is time barred. As there is no dispute of fact, the only question here is one of the application of the applicable statute to the facts.

B. *Robinson's Claim Is Untimely*

Holiday contends that Robinson's claim is barred by the 180-day time limit of Mont. Code Ann § 39-3-207. Robinson contends that her claim was timely filed because the district court had jurisdiction of the wage claim until the time of her sentencing on February 28, 2005. The problem with Robinson's argument, however, is that her claim accrued no later than July 27, 2004 (15 days after Holiday reported the theft which lead to the filing of the criminal information in district court). Because she did not file her claim until almost one year after the accrual date, her claim is time barred.

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.

Mont. Code Ann § 39-3-205 (3) provides in pertinent part:

> (3) When an employee is discharged by reason of an allegation of theft of property or funds connected to the employee's work, the employer may withhold from the employee's final paycheck an amount sufficient to cover the value of the theft if:
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> (a) the employee agrees in writing to the withholding ; or
>
> (b) the employer files a report of the theft with the local law enforcement agency within 7 days of the separation from employment , subject to the following conditions:
>
> > (I) if no charges are filed in a court of competent jurisdiction against the employee for the alleged theft within 15 days of the filing of the report with a local law enforcement agency, wages are due and payable upon the expiration of the 15-day period.
> >
> > (ii) if charges are filed against the employee for theft, the court may order the withheld wages to be offset by the value of the theft. If the employee is found not guilty or if the employer withholds an amount in excess of the value of the theft, the court may order the employer to pay the employee the withheld amount plus interest.

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.

The plain language of Mont. Code Ann. § 39-3-207(1) demonstrates that the legislature imposed a 180-day statute of limitations on recovery of a wage claim before the Department of Labor and Industry. 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).[1]

Robinson asserts that the above interpretation of Montana Code Annotated § 39-3-207 is incorrect, contending that the language of Montana Code Annotated § 39-3-207 applies only to criminal actions brought under Mont. Code Ann. § 39-3-206. Robinson's Brief in Opposition to Summary Judgment, pages 3-4. She offers no authority or anything other than mere assertion in support of her position. Contrary to Robinson's position, however, the statutory language of § 39-3-207 clearly requires a claimant to file her claim within 180 days of the accrual of the claim or the claim will become time barred.

Robinson's reliance on Mont. Code Ann § 39-3-205 (3) to support her argument that the department had no jurisdiction over the claim in this case until the conclusion of Robinson's criminal case is misguided. First, as Holiday correctly points out, there is no language in Mont. Code Ann § 39-3-205 (3) that would toll the running of the time limit contained in Mont. Code Ann § 39-3-207. Mont. Code Ann § 39-3-205 (3) in all likelihood serves only to affect the remedy of the employer in those cases where an employee has stolen from the employer. It does not appear to impact in any way the jurisdiction of the Department of Labor and Industry to resolve wage claim disputes under Title 39.

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[1]While the plain language of the statute is all that is necessary to prove this point, it is nonetheless interesting to note that the legislative history of Montana Code Annotated § 39-3-207 confirms beyond question that the statute imposes a 180 day limitation on bringing a wage claim before the Department of Labor and Industry. Prior to 1999, there was no limitation on the filing of a wage claim and Mont. Code Ann. § 39-3-207 provided only for a limitation on the imposition of the statutory penalties (an 18-month limitation). In 1999, the legislature inserted a very specific limitation in Mont. Code Ann. § 39-3-207 on the right to seek the wages themselves, imposing the 180-day time limit. The minutes of the Senate Committee on Labor and Employment make it clear that "[w]hat this bill is doing is going from no statute of limitations for filing and no limit on recovery time, to a statute of limitations of 180 days for filing." Minutes of the Senate Committee on Labor and Employment, 56th Legislature, March 4, 1999, p. 20. The purpose of inserting a 180-day statute of limitations was to ensure that a wage claim filed under 39-3-205 would be subject to the same time limitations for filing unfair labor practice complaints or a human rights complaints because "[in] doing that, these cases will come together sooner so they are judicated [sic] all at one time." *Id*., p. 6.

Even if Mont. Code Ann § 39-3-205 (3) can be construed to toll the 180 day limitation, it can only do so where the criminal charge is filed in conformity with the language of Mont. Code Ann § 39-3-205 (3), i.e., if the charge is filed within 15 days of the filing of the police report. If a criminal charge is not filed within 15 days of the report, the employer must pay out the wages claimed or be in violation of Mont. Code Ann § 39-3-205 (3).

Robinson argues that Mont. Code Ann § 39-3-205 (3)(b)(ii) deprived the Department of Labor and Industry of the ability to adjudicate her claim even though no charge was filed against her within 15 days of the filing of the theft report as required by Mont. Code Ann § 39-3-205 (3)(b)(i). This argument flies in the face of the well settled tenet of statutory construction that statutes must be read as a whole and each part must be given effect. *Gaub, supra.* Under Robinson's argument, Mont. Code Ann § 39-3-205 (3)(b)(i) is rendered superfluous even though the language of that subpart quite obviously makes the filing of the charge within 15 days after the filing of the theft report the *sine qua non* of delaying the employer's obligation to timely pay wages. Her construction of the statute is untenable.

In this case, Holiday filed its report on July 12, 2004. Charges stemming from that report had to be filed within 15 days (by July 27, 2004), or Holiday would be in default of the wage payment under Mont. Code Ann § 39-3-205 (3). Charges were not filed until two months after Holiday filed its report. Holiday was required to pay wages to Robinson no later than July 27, 2004 and its failure to do so triggered the running of the time limitation in Mont. Code Ann § 39-3-207. Robinson had to file her claim no later than 180 days later (in January, 2005) or her claim would be time barred. She did not file her claim until August, 2005, over one year after her claim had accrued. Her claim is therefore untimely and must be dismissed.

IV. ORDER

Robinson' claim is time barred. Accordingly, Holiday'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 hereby vacated.

DATED this 9th day of June, 2006.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By:

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.

Robinson FAD ghp