STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM OF THOMAS WAYNE HARTMAN, a/k/a THOMAS W. HARTMAN a/k/a T. WAYNE HARTMAN,	)	Case No. 447-2004
Claimant,	)	**FINAL AGENCY ORDER GRANTING SUMMARY JUDGMENT AND DISMISSING CLAIM**
vs.	)	
TIMBERLAND CONSTRUCTION, L.L.C., a Montana limited liability company currently in receivership,	)	
Respondent.	)	

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Respondent Timberland Construction, L.L.C., (respondent) has filed a motion to dismiss this matter indicating that Thomas Hartman failed timely to appeal the determination of the Wage and Hour Unit as prescribed by Admin. R. Mont. 24.16.7534.[1] Though directed to do so, Hartman has failed to respond to the motion. Accordingly, the hearing officer now proceeds to rule on the motion in the absence of any response from the claimant.

I. FINDINGS OF FACT

1. On September 2, 2003, Hartman filed a complaint with the Wage and Hour Unit of the Department of Labor and Industry alleging that the respondent owed him additional wages.

2. On October 9, 2003, the Wage and Hour Unit issued a determination dismissing Hartman's complaint after a finding that the complaint lacked merit.

[1] Although the respondent has styled this motion as a motion to dismiss, it is more properly treated as a motion for summary judgment, since resort to facts outside the "four corners" of the wage complaint is necessary in order to resolve the motion . *See Xin Xu v. McLaughlin Research Institute*, 2005 MT 209, 328 Mont. 232, 119 P.3d 100.

Hartman claimed that he was due a total of $5,768.00 in additional wages between September 2001 and August 15, 2003 for time spent in completing a boat ride to the Timberland Construction site in Flathead Lake. The Wage and Hour Unit determined that the time spent in the boat was not compensable time and dismissed the case. Document 17. The determination further required Hartman to file an appeal or request a redetermination no later than October 27, 2003.

3. Hartman neither filed an appeal nor sought a redetermination of the October 27, 2003 Order of Dismissal. Instead, on December 8, 2003, he filed a new claim against the respondent, asserting as a basis for his new complaint the same facts as he had previously alleged in his September 2, 2003 claim, with the exception that he now sought more money.

4. On February 6, 2004, the Wage and Hour Unit dismissed Hartman's December 8, 2003 claim on the basis that the Wage and Hour Unit had earlier adjudicated the same claim and no appeal had been taken from that earlier claim.

5. Hartman timely appealed the February 6, 2004 determination.

II. ISSUE

Is the claim in this case barred by principles of *res judicata*?

III. DISCUSSION[2]

The respondent seeks dismissal of the instant claim on two separate grounds. The first ground alleges that this claim is identical to Hartman's earlier claim which he lost and, therefore, principals of *res judicata* apply to preclude this claim. The second is that Hartman was in fact an independent contractor and the protections of the wage and hour statutes do not apply to him. As discussed below, the respondent is correct on the first issue, which resolves this case. Thus, the second issue is moot.

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

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

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 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, there is no factual dispute regarding the salient points. The administrative file shows that Hartman filed a claim, the claim was dismissed for lack of merit, and Hartman failed to appeal that claim. Instead, he filed a new claim which is identical to the original claim. As there is no dispute of fact, the only question here is whether the respondent is entitled to judgment as a matter of law.

B. *The Claim in This Case is Precluded Under Principles of Res Judicata.*

The doctrine of *res judicata* "bars a party from relitigating a matter that the party has already had an opportunity to litigate." *Xin Xu v. McLaughlin Res. Inst.*, 2005 MT 209, ¶33, 328 Mont. 232, ¶33, 119 P.3d 100, ¶33. *Res judicata* applies if the following four elements have been satisfied: 1) the parties or their privies are the same; 2) the subject matter of the present and past actions is the same; 3) the issues are the same and relate to the same subject matter; and 4) the capacities of the persons are the same in reference to the subject matter and to the issues between them. *Id*.

In the *Xin Xu* case, the plaintiff filed a complaint against the respondent seeking damages for wrongful termination. The district court ultimately dismissed that complaint as a sanction against the claimant for discovery violations. The claimant then filed a second complaint against the same respondent alleging the same factual and legal basis of the wrongful termination. The district court dismissed the second complaint on the basis that its was barred on principles of *res judicata* as the first complaint had been adjudicated on the merits. The Montana Supreme Court affirmed the district court's dismissal of the second complaint, finding that both principals of *res judicata* and collateral estoppel applied to preclude the second suit. *Xin Xu*, ¶35.

Applying these principles to this claim demonstrates that the subject matter of this complaint is *res judicata*. Hartman's first claim identified the same party (Timberland Construction) and the same issue and same subject matter (a claim of wages due to him between September 2001 and August 2003 for time spent on the boat ride to and from the construction site) as found in the second claim. The capacity of the parties in each of the claims is identical (Hartman is the employee and Timberland is the employer). Hartman lost on the merits in the first claim and did not appeal from that decision. Instead, he filed the new claim which is at issue in this case. Because all four elements of *res judicata* exist in this matter, application of the doctrine is appropriate here and Hartman's second claim is barred and must be dismissed.

IV. CONCLUSIONS OF LAW

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

2. Hartman's claim in this case is barred by principles of *res judicata*.

3. Because Hartman's claim is barred, summary judgement in favor of the Respondent is appropriate.

4. This claim must be dismissed. Admin. R. Mont. 24.16.7541(3).

V. ORDER

Summary judgment in favor of respondent Timberland Construction, Inc., is granted and Thomas Hartman's claim is dismissed. The previously set pre-hearing schedule, final pre-hearing date and hearing date are hereby vacated.

DATED this 24th day of February, 2006.

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.