

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM)	Case No. 504-2004
OF VINCENT M. JOHNS,))
))
Claimant,))
)	FINAL AGENCY ORDER
vs.)	GRANTING SUMMARY
)	JUDGMENT AND
TIMBERLAND CONSTRUCTION, L.L.C., a)	DISMISSING CLAIM
Montana limited liability company currently))
in receivership,))
))
Respondent.))

* * * * *

The respondent has filed a motion to dismiss this matter indicating that the claimant 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, the claimant has failed to respond to the motion. Accordingly, the hearing examiner now proceeds to rule on the motion in the absence of any response from the claimant.

I. FINDINGS OF FACT

1. On September 8, 2003, Johns filed a complaint with the Wage and Hour Unit of the Department of Labor and Industry alleging that the respondent owed him additional wages. Johns claimed that he was due a total of \$1,708.00 in additional wages between October, 2002 and April 13, 2003 for time spent in completing a boat ride to the Timberland Construction site in Flathead Lake.

2. On October 9, 2003, the Wage and Hour Unit issued an amended determination dismissing Johns's complaint after a finding that the complaint lacked merit. The Wage and Hour Unit determined that the time spent in the boat was not

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.

compensable time and dismissed the case. Documents 50 through 53. The determination further required the claimant to file an appeal or request a redetermination no later than October 27, 2003.

3. The Order of Dismissal was sent to Johns at the only address he had on file with the Wage and Hour Unit. Johns neither filed an appeal nor sought a redetermination of the October 9, 2003 Order of Dismissal.

4. There are no facts showing of any cause, much less good cause, for excusing the untimely appeal.

II. ISSUE

Is the appeal in this matter untimely?

III. DISCUSSION²

The respondent seeks dismissal of the instant claim on the basis that it was not timely appealed. In fact, the record shows that the appeal is untimely and no basis has been demonstrated to set aside the untimely appeal.

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 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.

²Statements 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.

In this matter, the claimant has not disputed any of the salient points of the respondent's motion. Indeed, despite this tribunal's admonition of the consequences of not responding to the respondent's motion, the claimant has failed to respond at all. The administrative file shows that the claimant filed a claim, the claim was dismissed for lack of merit, and the claimant failed to appeal that claim at all. Instead, he filed a new complaint identical to the original complaint. As there is no dispute of fact, the only question here is whether the moving party is entitled to judgment as a matter of law.

B. Johns's Appeal is Untimely.

Admin. R. Mont. 24.16.7537 (1) provides that a party who receives an adverse decision may request a formal hearing within 15 days of the date of the determination or redetermination. That request must be in writing. Admin. R. Mont. 24.16.7537 (2). Johns failed to comport with these requirements and has shown no cause, much less good cause, for excusing the requirement of timely filing. Accordingly, the October 14, 2003 determination must stand.

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. Johns's September 12, 2003 is untimely and no basis has been shown to permit an untimely appeal of that claim.

3. Because his September, 2003 claim is untimely, summary judgment in favor of the Respondent is appropriate.

4. Johns's 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 Johns's claim is dismissed. The previously set pre-hearing schedule, final pre-hearing date and hearing date are hereby vacated.

DATED this 3rd day of March, 2006.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Officer