

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM)	Case No. 1765-2006
OF JACKIE J. JOHNSON,)	
)
Claimant,)	
)
vs.)	FINDINGS OF FACT;
	CONCLUSIONS OF LAW;
	AND ORDER
)
LAFLESCH INCORPORATED d/b/a)	
MARVIN'S BAR AND GRILL,)	
)
Respondent.)	

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I. INTRODUCTION

In this matter, Claimant Jackie Johnson appeals from a determination of the Wage and Hour Unit of the Department of Labor and Industry dismissing her claim based on a lack of supporting evidence. Hearing Officer David A. Scrimm held a contested case hearing in this matter on October 4, 2006. Johnson represented herself. Respondent LaFlesch Incorporated, d/b/a Marvin's Bar and Grill, was represented by Ronald Bender, Esq.

Johnson, Crystal Friede-Leistiko and K.C. LaFlesch testified. Exhibits A-1 to A-347, B-1 and E-1 and E-2 were admitted into evidence. Exhibits C-1 to C-4 and D-1 to D-14 were excluded from evidence on relevance issues.

Based on the evidence and argument presented at the hearing, the hearing officer makes the following findings of fact, conclusions of law, and final agency decision.

II. ISSUE

Is Johnson due additional wages and penalty as provided by law?

III. FINDINGS OF FACT

1. LaFlesch Incorporated, d/b/a Marvin's Bar and Grill (Marvin's), employed Jackie J. Johnson as a bartender beginning in August 2004.

2. Marvin's paid Johnson an hourly wage and she earned tips of \$60.00 to \$100.00 per shift.

3. Marvin's verbal policy allowed its employees to take cash draws of approximately \$10.00 per shift. Marvin's also allowed its employees to charge cigarettes, food, drinks and other items. On occasion, LaFlesch, on behalf of Marvin's, would make out-of-pocket loans to the employees. Such loans and any charges an employee made were deducted from their net pay. Johnson knew and availed herself of the policy.

4. Marvin's properly deducted the draws, tabs, loans and other charges from Johnson's wages.

5. On March 1, 2006, Johnson filed her wage claim alleging additional wages were due to her.

6. On June 6, 2006, department compliance specialist, Renee Crawford, issued a determination dismissing Johnson's claim finding that the evidence submitted by the claimant was insufficient to support her claim.

7. On June 19, 2006, Johnson appealed the department's dismissal of her claim.

IV. DISCUSSION¹

Montana law requires employers to pay wages when due, and in no event later than 15 days following termination of employment. Mont. Code Ann. §§ 39-3-204 and 39-3-205. An employee seeking unpaid wages has the initial burden of proving work performed without proper compensation. *Anderson v. Mt. Clemens Pottery Co.* (1946), 328 U.S. 680, *Garsjo v. Department of Labor and Industry* (1977), 172 Mont. 182, 562 P.2d 473. To meet this burden, the employee must produce evidence to "show the extent and amount of work as a matter of just and reasonable inference." *Id.* at 189, 562 P.2d at 476-77, *citing Anderson*, 328 U.S. at 687, *and Purcell v. Keegan* (1960), 359 Mich. 571, 103 N.W. 2d 494, 497; *see also, Marias Health Care Srv. v.*

¹Statements of fact in this discussion are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

Turenne, 2001 MT 127, ¶¶13-14, 305 Mont. 419, 422, 28 P.3d 494, 495 (holding that lower court properly concluded that the plaintiff's wage claim failed because the plaintiff failed to meet her burden of proof to show that she was not compensated in accordance with her employment contract).

Once an employee has shown as a matter of just and reasonable inference that he or she is owed wages, "the burden shifts to the employer to come forward with evidence of the precise amount of the work performed or with evidence to negate the reasonableness of the inference to be drawn from the evidence of the employee. And if the employer fails to produce such evidence, it is the duty of the court to enter judgment for the employee, even though the amount be only a reasonable approximation." *Garsjo*, 172 Mont. at 189, 562 P.2d at 477, quoting *Purcell*, supra, 359 Mich. at 576, 103 N.W. 2d at 497.

At the hearing in this matter, Johnson failed to produce, despite repeated admonitions from the hearing officer, any substantial evidence to support her claim. Johnson made repeated allegations that certain deductions from her wages for cigarettes, draws and beverages "were not correct" or "I don't believe correct" or "this is wrong," but failed to affirmatively show how these deductions were incorrect or wrong.

Even if Johnson had met her burden, the testimony of LaFlesch and the employer's records show that the deductions made for cigarettes, drinks, draws and other items were proper. Johnson's gross pay was reflected in payroll check stubs prepared by the employer's accountant, Elmer Bender. Johnson did not challenge the accuracy of these statements. Johnson's net pay was calculated by subtracting the various charges she made during the pay period. The employer provided copies of its daily "green sheets" and "tabs" showing that Johnson had purchased the items deducted from her gross pay. While Johnson asserted that some of these records were somehow created after the fact, she provided no evidence to support her claims.

V. 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. LaFlesch does not owe Johnson additional wages.

VI. ORDER

Johnson's claim for unpaid wages is dismissed.

DATED this 2nd day of January, 2007.

DEPARTMENT OF LABOR AND INDUSTRY

By: /s/ DAVID A. SCRIMM
David A. Scrimm, Hearing Officer
Hearings Bureau

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.