

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM)	Case No. 2084-2008
OF BETTY A. SCHADEGG-BELSHE,)	
)	
Claimant,)	
)	FINAL AGENCY DECISION
)	GRANTING
vs.)	SUMMARY JUDGMENT
)	
RAY BEAN d/b/a MY HOUSE, an Assumed)	
Business Name registered in Montana, and)	
Secured Delivery Service, a business name)	
not registered with the Montana Secretary of)	
State,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

Respondent Ray Bean (Bean) 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 Betty A. Schadegg-Belshe's claim.

Hearing Officer David A. Scrimm held a telephone conference on Tuesday, November 25, 2008, wherein he denied Belshe's unsubstantiated motion for default judgment and also denied Bean's application for a protective order finding it moot since summary judgment was granted. Bean's documents submitted to the hearing officer and for which he sought the protective order will simply be returned to his counsel with this decision. Neither party having requested oral argument on the summary judgment motion, the hearing officer, based on the parties' respective briefs, 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. Belshe last worked for Bean on June 30, 2007.
2. Belshe filed her wage claim on June 27, 2008, alleging that Bean owed her \$43,675.24 in unpaid wages.
3. Belshe seeks unpaid wages between May 2005 and June 30, 2007.

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 a party moving for summary judgment has met the initial burden of establishing the absence of a genuine issue of material fact and entitlement to judgment as a matter of law, the burden shifts to the nonmoving party to establish with substantial evidence, as opposed to mere denial, speculation, or conclusory assertions, that a genuine issue of material fact does exist or that the moving party is not entitled to judgment as a matter of law. *Meloy v. Speedy Auto Glass, Inc.*, 2008 MT 122, P18 (citing *Phelps v. Frampton*, 2007 MT 263, ¶16, 339 Mont. 330, ¶16, 170 P.3d 474, ¶ P16);

B. *Belshe’s Claim Is Untimely*

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.

Reading the plain language of the statute compels the hearing officer to conclude that the legislature imposed a 180-day statute of limitations on recovery of a wage claim. Belshe last worked for Bean on June 30, 2007 and filed her claim on July 27, 2008.

In this matter, the parties do not dispute any material facts necessary to determine whether Belshe’s claim is time barred. Belshe claims wages which were not paid to her between May 2005 and June 30, 2007. She did not file her wage claim until June 27, 2008, 362 days

after she left work. June 30, 2007 was the last day of work for which Belshe could have been unpaid. Even allowing 30 days for those wages to become due and payable, Belshe's claim would have been filed more than five months later than the statute allows. Accordingly, her claim is time barred and must be dismissed, unless she can demonstrate that Bean has waived the defense or that equitable tolling is justified.

C. Respondent Has Not Waived The Affirmative Defense

While Belshe's brief is unclear on the matter of waiver of the statute of limitations defense she seems to assert that because neither she nor Bean knew of the 180-day limitation period it was waived. 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. Moreover, Belshe's assertions of waiver are just that, mere assertions that are unsubstantiated by material fact. Accordingly, the hearing officer finds that Bean has not waived his ability to question the timeliness of the filing of the complaint.

D. Equitable tolling is inapplicable here.

Belshe also asserts some sort of equitable tolling argument. The doctrine of equitable tolling of a statute of limitations can occur only where a claimant "possessing several legal remedies . . . reasonably and in good faith, pursues one designated to lessen the extent of his injuries or damage." *Erickson v. Croft*, (1988) 233 Mont. 146, 151, 760 P.2d 706, 708. In *Erickson*, the court identified three requirements which a party seeking to avoid the consequences of a statute of limitations must meet to invoke the doctrine of equitable tolling:

- 1) timely notice to the defendant [within the applicable statute of limitations] in filing the first claim;
- (2) lack of prejudice to defendant in gathering evidence to defend against the second claim; and
- (3) good faith and reasonable conduct by the plaintiff in filing the second claim.

Id.

These criteria make clear that the application of equitable tolling would be inappropriate in this matter. Belshe did not have several legal remedies, one of which she timely pursued, only to find that she had filed the claim in the wrong forum. She had one legal remedy: filing a wage claim under the Montana Wage and Hour Act. She took no action to pursue her claim until almost one year had elapsed, long after the 180 day limitation had expired. Thus, no tolling of the limitation period for filing Belshe's wage claim is merited.

IV. ORDER

Belshe's claim is time barred and Bean has timely raised the issue in his motion for summary judgment. Accordingly, Bean's motion for summary judgment is granted and this matter is dismissed.

DATED this 12th day of December, 2008.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ DAVID A. SCRIMM
DAVID A. SCRIMM
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.

Schadegg-Belshe Final Agency Decision Granting Summary Judgment