## STATE OF MONTANA DEPARTMENT OF LABOR AND INDUSTRY HEARINGS BUREAU

IN THE MATTER OF THE	WAGE CLAIM	) Cas	e No. 1828-2008
OF DENNIS D. DOYLE,		)	
	Claimant,	)	
		)	ORDER GRANTING
vs.		)	SUMMARY JUDGMENT AND
		)	DISMISSING, WITH
TOTAL RENTAL, INC.,		)	NOTICE OF RIGHT TO
a Montana corporation,		)	SEEK JUDICIAL REVIEW
		)	
	Respondent.	)	
	* * * * *	* * * * *	*

Total Rental, Inc., moved for summary judgment because the deemed admissions imposed upon claimant Dennis Doyle, due to his failure timely to respond to requests for admissions, established that his wage claim is without merit. The reasons for the Hearing Officer's refusal to permit late responses to the requests appear in the July 20, 2009, order denying leave to file untimely discovery responses, as amended by the July 24, 2009, order.

Summary judgment is a harsh sanction to impose upon a litigant his counsel characterizes as "unrepresented, unsophisticated [and] ignorant-of-the-law." Doyle's decision (for reasons apparently unrelated to this case) to live in Mexico for a prolonged period of time may have caused his communication problems and his failure to obtain counsel sooner, which he offers as the reason why, out of ignorance of the consequences, he did not timely respond. As stated in the July 20 order, if simply being without a lawyer was enough, no self-represented litigant would ever have to comply with any procedural requirements.

While we typically provide wide latitude to *pro se* litigants in their attempts to comply with the technicalities of pleadings, we have repeatedly stated that all litigants, including those acting *pro se*, must adhere to our procedural rules.

In re P.D.L., ¶13, 2004 MT 346, 324 Mont. 327, 102 P.3d 1225.

The party moving for summary judgment has the initial burden of establishing both the absence of genuine issues of material fact and the entitlement to judgment as matter of law. If the party moving for summary judgment meets this initial burden, the opponent must present evidence raising a genuine issue of material fact. *Bowen v. McDonald* (1996), 276 Mont. 193, 196, 915 P.2d 201, 204; Rule 56(c), M.R.Civ.P; *see also* Kestrell v. Heritage Health Care Corp. (1993), 259 Mont. 518, 528, 858 P.2d 3, *quoting* Cecil v. Cardinal Drilling Co. (1990), 244 Mont. 405, 410, 797 P.2d 232.

The requests deemed admitted establish that Doyle is owed no wages (Req. for Admission No. 10), that he did not work the overtime hours he claimed and that he has no proof that he did (Req. for Admission Nos. 7 and 8). There are no genuine issue of material fact, given the facts deemed admitted. The Hearing Officer grants Total Rental's motion and dismisses Doyle's complaint, for which he is entitled to no recovery. This is a final agency decision subject to judicial review.

DATED this <u>9th</u> day of September, 2009.

DEPARTMENT OF LABOR AND INDUSTRY

By: <u>/s/ TERRY SPEAR</u> Terry Spear, 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.

Doyle Order Granting Summary Judgment