



Procedures Act, findings of fact must be based exclusively on the evidence and on matters officially noticed. Mont. Code Ann. § 2-4-623(2).

Summary judgment may only be rendered where “there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Rule 56, M.R. Civ. Pro. *See also, Sprunk v. First Bank Sys.*, 252 Mont. 463, 830 P.2d 103 (1992). Where the facts are disputed, summary judgment is not appropriate. *Id.*

In the summary judgment proceeding before this tribunal, it was unnecessary to determine whether any agreement existed as to the \$20,000.00. It was adequate to find that, for purposes of this litigation, the claimant was not seeking the \$20,000.00. It was inappropriate for the hearing officer to suggest or imply through finding of fact number 6 that FUA had entered into any agreement with Nedens regarding the \$20,000.00. Accordingly, the hearing officer agrees that entering a finding that “Nedens entered into an agreement with FUA” was beyond the power of this tribunal and amounted to an irregularity in the proceeding which must be corrected.

In light of the foregoing, the motion for rehearing is granted. Finding of Fact Paragraph 6 of the order granting Summary Judgment is modified *nunc pro tunc* to read as follows:

“Nedens agreed in writing to make a \$20,000.00 restitution payment to be taken out of his yearly bonus. Subtracting the \$20,000.00 amount, Nedens was due a net total of \$64,001.42 in bonus through December 31, 2007. Other than the \$20,000.00 amount, Nedens never agreed that FUA could withhold his bonus.”

In all other respects, the summary judgment order issued on October 1, 2010 is affirmed.

DATED this 2nd day of December, 2010.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

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