

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM)	Case No. 1366-2013
OF KYLE L. SPEARSON,)	
)	
Claimant,)	
)	
vs.)	FINAL AGENCY DECISION
)	
J. R.'S ROOFING AND SIDING LLC,)	
a Montana limited liability company,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

On March 21, 2013, Kyle L. Spearson filed a claim with the Wage and Hour Unit of the Department of Labor and Industry alleging the respondent, J.R.'s Roofing and Siding, LLC (J.R.'s Roofing) owed him \$700.00 in unpaid wages. J.R.'s Roofing timely responded and argued Spearson was never an employee of J.R.'s Roofing.

On June 11, 2013, the Wage and Hour Unit determined Spearson was an employee of J.R.'s Roofing and was owed \$280.00 in unpaid wages. J.R.'s Roofing filed a timely request for a contested case hearing.

Following mediation efforts, the Wage and Hour Unit transferred the case to the Department's Hearings Bureau on August 28, 2013. On September 5, 2013, the Hearings Bureau mailed the Notice of Hearing and Telephone Conference to both parties at the addresses of record. Neither mailing was returned as undeliverable.

On September 19, 2013, the Hearing Officer was unable to reach either party for the scheduling conference. The scheduling conference was then reset to October 9, 2013, after Carl Jensen, attorney for J.R.'s Roofing, contacted the Hearings Bureau and indicated he was involved in another hearing at the time of the scheduling conference. Spearson had no contact with the Hearings Bureau.

On October 9, 2013, the Hearing Officer was unable to reach Spearson at the telephone number of record. The scheduling conference proceeded with only Jensen

appearing on behalf of the respondent. Jensen indicated he would be ready to proceed to hearing on November 19, 2013. A Scheduling Order was mailed to both parties. Neither mailing was returned as undeliverable.

On November 15, 2013, the Hearing Officer was unable to reach Spearson for the final pre-hearing conference. Jensen confirmed he was ready to proceed to hearing on November 19, 2013. Jensen agreed to proceed by telephone.

Hearing Officer Caroline A. Holien convened a contested case hearing in this matter on November 19, 2013. Jensen and his client, Juan Rodriguez, appeared by telephone and announced the respondent was ready to proceed. The Hearing Officer was unable to reach Spearson at the telephone number of record. The Hearing Officer waited approximately 15 minutes but was not able to reach Spearson. Spearson had no contact with the Hearings Bureau during the course of the hearing. As a result of Spearson's failure to appear, the hearing proceeded in his absence. The respondent declined to file a post-hearing brief. The case was deemed submitted at the end of the administrative hearing.

II. ISSUE

Whether J.R.'s Roofing and Siding, LLC, a Montana limited liability company, owes wages for work performed, as alleged in the complaint filed by Kyle L. Spearson, and owes penalties or liquidated damages.

III. FINDINGS OF FACT

1. J.R.'s Roofing and Siding, LLC (J.R.'s Roofing) is a sole proprietorship owned and operated by Juan Rodriguez. J.R.'s Roofing has been in business since 2010. Rodriguez currently has no employees.

2. Travis Friede is a sub-contractor of J.R.'s Roofing. J.R.'s Roofing uses different independent contractors who are licensed and/or registered with the State of Montana on various projects. Rodriguez has no control over workers employed by Friede or other independent contractors working on his projects.

3. Rodriguez knows Kyle Spearson only casually. Rodriguez has never spoken directly to Spearson. Spearson has never performed work for Rodriguez.

4. Rodriguez does not owe Spearson any unpaid wages for work performed.

IV. DISCUSSION¹

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. Turenne*, 2001 MT 127, ¶¶13, 14, 305 Mont. 419, 422, 28 P.3d 494, 495 (holding that the lower court properly concluded that the plaintiff’s wage claim failed because she 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 v. Keegan*, *supra*, 359 Mich. at 576, 103 N.W. 2d at 497.

The Hearing Officer was unable to reach Spearson at the telephone number of record. Consequently, the hearing proceeded with only the benefit of Rodriguez’s testimony.

Spearson contended in his claim that he performed 70 hours of work for J.R.’s Roofing at two projects in Great Falls, Montana, and one project in Cascade, Montana, during the period from February 3, 2013 through February 10, 2013. Spearson contended he was owed a total of \$700.00 in unpaid wages for work performed during that period. Spearson reported to the Department during the course of its investigation that he had previously worked for Rodriguez and had been “paid under the table.” Theresa Sroczyk, Compliance Specialist, spoke with Friede on May 22, 2013. Friede denied Spearson was ever his employee.

Rodriguez contended during the hearing, as well as during the Department’s investigation, that Spearson had never been employed by J.R.’s Roofing. Rodriguez

¹ Statements 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.

testified he knew Spearson only casually and had never spoken directly to Spearson. Rodriguez denied Spearson ever worked for him on the three jobs listed by Spearson in his wage and hour claim.

Rodriguez's testimony was clear, direct, and adamant that he had never employed Spearson during the period claimed or at any other time. There was no direct and credible evidence submitted by Spearson during the Department's investigation or for hearing that would controvert Rodriguez's sworn testimony. As such, Rodriguez's testimony that Spearson was never employed by J.R.'s Roofing is deemed credible.

The claimant has not shown by a "matter of just and reasonable inference" that he is owed wages from J.R.'s Roofing. *Garsjo*, 172 Mont. *at* 189, 562 P.2d *at* 477, *quoting Purcell v. Keegan, supra*, 359 Mich. *at* 576, 103 N.W. 2d *at* 497. Therefore, it is determined that J.R.'s Roofing does not owe any unpaid wages to Spearson.

V. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint under Mont. Code Ann. § 39-3-201 et seq. *State v. Holman Aviation* (1978), 176 Mont. 31, 575 P.2d 925.

2. Spearson has not shown that he is owed additional wages for work performed in Montana from February 3, 2013 through February 10, 2013.

VI. ORDER

Based upon the foregoing, the claim of Kyle L. Spearson for additional wages for work performed from February 3, 2013 through February 10, 2013 is dismissed.

DATED this 21st day of November, 2013.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ CAROLINE A. HOLIEN
CAROLINE A. HOLIEN
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 the date of mailing of the hearing officer's decision. See also Mont. Code Ann. § 2-4-702.