

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE WAGE CLAIM	)	Case No. 1304-2017
OF BRIAN L. MILLER,	)	
	)	
Claimant,	)	
	)	
vs.	)	<b>FINAL AGENCY DECISION</b>
	)	
DAVIS TRANSPORT, INC., a Montana	)	
corporation,	)	
	)	
Respondent.	)	

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**I. INTRODUCTION AND FINDINGS OF FACT**

1. On February 23, 2017, Brian L. Miller filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit) alleging the Respondent, Davis Transport, Inc., owed him \$2,687.50 in unpaid wages.

2. On March 16, 2017, the Wage and Hour Unit, after hearing no response from the Respondent, issued a Determination finding Miller was owed the wages he sought plus a 110% penalty amounting to \$2,956.25 for a total owing of \$5,643.75. The Determination informed the Respondent that it had until March 31, 2017 to file an appeal.

3. On April 5, 2017, the Wage and Hour Unit received an appeal from the Respondent that was dated March 31, 2017 but was postmarked April 3, 2017.

4. On April 6, 2017, the Wage and Hour Unit sent a letter to the Respondent confirming its appeal would be the only issue for hearing.

5. On May 12, 2017, the Wage and Hour Unit transferred the case to the Office of Administrative Hearings (OAH) after attempts at mediation were unsuccessful. On May 31, 2017, Hearing Officer David A. Scrimm held a scheduling conference during which the Respondent did not appear. A June 8, 2017 hearing was scheduled on the timeliness issue.

6. The Hearing Officer conducted a hearing on the issue. Davis Transport, Inc. was present with Jason Matheny as a witness. The Hearing Officer took sworn testimony from Matheny. Documents 1 through 15 were admitted into the record.

7. The Department's Determination provided the following notice to the Respondent concerning the implications of its decision:

The Respondent or the Claimant may request either a redetermination or an appeal to a contested case hearing before the Office of Administrative Hearings. **The request must be postmarked by, or received, or filed no later than 3-31-2017** in accordance with Administrative Rules of Montana (ARM), 24-16-7534 & ARM, 24.16.7517.

...

If an appeal or a request for redetermination is not filed, the Dismissal will be final to the Wage and Hour Unit.

*Id.*, p. 3 (emphasis added).

8. Respondent's request for appeal was due to the Department no later than March 31, 2017.

9. Matheny placed the appeal letter in Davis Transport's outgoing mail bin where it was normally picked up by a postal carrier before 2:00 p.m.

10. The Wage and Hour Unit's Determination became final on April 1, 2017.

11. Respondent's request for appeal was postmarked April 3, 2017.

12. Respondent filed its request for appeal on April 5, 2017, which was when the Wage and Hour Unit received the appeal. Doc. 4.

## II. DISCUSSION<sup>1</sup>

"[A]n item sent to the department is timely if it is either postmarked or received by the department by not later than the last day of the time period."

Admin. R. Mont. 24.16.7514(2).

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<sup>1</sup> 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.

Respondent's appeal letter, though dated March 31, 2017, was not postmarked until April 3, 2017 and was not received by the Department until April 5, 2017, five days after the 15-day appeal period had expired. Respondent's appeal request would, under the rule, be considered received on April 3, 2017 based on the date of the postmark.

Requests for hearings must be filed within 15 days of the date of the determination. Admin. R. Mont. 24.16.7537. The plain language of this rule contains no good cause exception. It is undisputed that Respondent filed its request for redetermination on April 3, 2017, three days after the time for appeal had passed. Moreover, the Department's decision identified the specific date a request for hearing was due. The Department's March 16, 2017 determination and the applicable administrative rules are clear and unambiguous—a request for hearing must be filed within 15 days and Respondent allowed that deadline to pass. Matheny could not say what happened after he put the letter in his company's outgoing mail bin but the fact remains that it was postmarked April 3, 2017.

The consistent application of procedural time limits serves important policy considerations. *BNSF Ry. Co. v. Cringle*, 2010 MT 290, ¶ 18, 359 Mont. 20, 247 P.3d 707; *Weidow v. Uninsured Employers' Fund*, 2010 MT 292, ¶ 28, 359 Mont. 77, 246 P.3d 704. It is true that these policy considerations should be weighed against equitable principles. *Id.* Here, however, Respondent failed to respond to Miller's claim and then waited until the last day to try to appeal the Wage and Hour Unit's Determination.

In light of Respondent's failure to respond and the absence of other pertinent facts in the record, the Hearing Officer finds no basis to apply equitable principles to address a "garden variety claim of excusable neglect." *Weidow v. Uninsured Employers' Fund*, 2010 MT 292, ¶ 28; citing *Irwin v. Dept. of Veterans Affairs*, 498 U.S. 89, 96, 111 S.Ct. 453, 458, 112 L.Ed. 2d 435 (1990).

### III. 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. Respondent, Davis Transport, Inc., filed an untimely appeal of the Department's March 16, 2017 Determination. Admin. R. Mont. 24.16.7517.

3. The Department's Determination became final on April 1, 2017. Admin. R. Mont. 24.16.7541.

4. This is the final agency decision in this matter.

**IV. ORDER**

**IT IS THEREFORE ORDERED THAT:**

1. Respondent's appeal is DISMISSED.
2. The Wage and Hour Unit's March 16, 2017 Determination is final.

DATED this 13th day of June, 2017.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

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 the date of mailing of the hearing officer's decision. See also Mont. Code Ann. § 2-4-702. Please send a copy of your filing with the district court to:

Department of Labor & Industry  
Wage & Hour Unit  
P.O. Box 201503  
Helena, MT 59624-1503

If there is no appeal filed and no payment is made pursuant to this Order, the Commissioner of the Department of Labor and Industry will apply to the District Court for a judgment to enforce this Order pursuant to Mont. Code Ann. § 39-3-212. Such an application is not a review of the validity of this Order.