

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

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|-----------------------------------|-----------------------|
| IN THE MATTER OF THE WAGE CLAIM) | Case No. 240-2017 |
| OF DENNIS M. PARKER,) | |
|) | |
| Claimant,) | |
|) | |
| vs.) | FINAL AGENCY DECISION |
|) | |
| JILL MEYER AND PHIL MATHER,) | |
| individually,) | |
|) | |
| Respondent.) | |

* * * * *

I. INTRODUCTION

In this matter, Jill Meyer and Phil Mather appealed a determination by the Wage and Hour Unit finding they owed the claimant, Dennis M. Parker, additional wages. Hearing Officer David A. Scrimm convened a telephonic contested case hearing in this matter on July 14, 2017. Parker appeared and represented himself. W. Wayne Harper, attorney at law, represented Meyer and Mather. Documents 1 through 27 and Respondent's A, B, D, E, and F were admitted into evidence. Parker, Rod Norman, Linda Sommer, Meyer, and Mather testified under oath.

The Hearing Officer reopened the record to take additional evidence because the record at that time did not supply sufficient evidence to make a decision. The reopened hearing took place at the Butte Job Service at 10:00 a.m. on October 24, 2017. Prior to the hearing, the Hearing Officer was informed that Mr. Parker had an emergency and had to go to Seattle to see a dying relative. At hearing, the Hearing Officer learned that Parker had been incarcerated in Flathead County. The Hearing Officer later confirmed that Parker was indeed in jail and not on his way to Seattle to visit with an ailing relative. A call to Mr. Eisentrager's last known phone number did not answer and no message could be left. Accordingly, neither Parker nor Eisentrager participated in the hearing. Linda Sommer, Jay Grant, Jill Meyer, and Phil Mather presented sworn testimony. Meyer and Mather were represented by Wayne Harper, attorney at law. Documents 103 through 123 were admitted.

Based on the evidence, exhibits, and arguments presented at the hearing, the Hearing Officer makes the following findings of fact, conclusions of law, and final order.

II. ISSUE

Is Parker due additional wages as alleged in his complaint?

III. FINDINGS OF FACT

1. On August 5, 2016, the claimant, Dennis M. Parker, filed a claim for wages alleging that Jill Meyer and Phil Mather had failed to pay him \$1,900.00 in unpaid regular wages.

2. Meyer and Mather (homeowners) are the owners of a home located at 536 W. Mercury Street in Butte, Montana (hereinafter "home"). In June 2016, Parker and Heath Eisentrager were working for Silver Bow Property Management on a property across the street and the homeowners inquired as to whether Dennis Parker and Heath Eisentrager might be available to paint their home. Subsequently, the homeowners engaged Parker and Eisentrager to paint their home. The parties agreed the homeowners would pay Parker and Eisentrager each \$100.00 per day for their painting and minor home repair work.

3. Parker was a resident of the Butte Pre-Release Center (BPRC) run by Community, Counseling, and Correction Services, Inc. (CCCS). As a resident of BPRC, he was not allowed to independently contract for work. Both Parker and Eisentrager worked through Silver Bow Property Management (SBPM) to do other work in the area. Residents of the facility were required to deposit all funds earned into an account managed by the facility. Linda Sommer was a case manager employed by BPRC who worked with Parker to develop a budget for his expenses.

4. Mather paid Parker and Eisentrager \$100.00 per day in cash. Doc. 19, Mather testimony. There is no evidence that Parker deposited the funds he was paid into his account at BPRC. His testimony that he gave the money to SBPM so it would be later disbursed to him is not credible, as none of his paychecks during that time reflect anything other than payment for hours worked for SBPM. Parker's testimony that after "the problem" with receiving cash he was expecting to be paid at the end of the job is therefore not credible. Parker's testimony that he received three payments of \$100.00 from Mather also undermines his credibility because he earlier asserted he was paid nothing for his work at the home by the homeowners. Thus, Parker's testimony that he gave money to someone at SBPM, even if untruthful, is

nonetheless an admission that he received money from Mather and supports the homeowners' defense that they paid Parker in full.

5. Parker testified that Eisentrager was the contractor on the home and that he worked for him. Parker (01) at 33:41.

6. Parker worked on the home June 6, 2016 to July 1, 2016. During that same time, Parker indicated on his "Client Leave Report" that he left BPRC to work for SBPM. Ex. A. The Client Leave Report indicates Parker signed out to go to the home on only one day - June 20, 2016. Id. During the time Parker was working on the home, his pay records show he also worked for SBPM. Ex. 110. From May 21, 2016 to June 5, 2016, Parker worked 83.22 hours for SBPM and was paid for those hours. Ex. 110, Ex. 113. Between June 6 and June 20, Parker worked 2.53 hours for SBPM. Ex. 110. There is nothing in the record that shows he was paid for those hours by SBPM. Between June 21 and July 5, 2016, Parker worked 43.04 hours for SBPM and was paid for that work on July 8, 2016. Ex. 114. His paychecks were deposited into his account at BPRC. Ex. F.

7. There are only six days when Parker worked on the home and reported hours for SBPM: June 16, June 23, June 24, June 27, June 28, and June 30, 2016. See Addendum A. Neither Meyer nor Mather reported any specific hours for Parker on these days. Parker reported the following hours for SBPM: June 23 (7.6), June 24 (7.75), June 27 (5.5), June 28 (0.65), and June 30 (5.87). Id. Parker was signed out from the BPRC for the following dates and times: June 15 (11.0), June 23 (9.0), June 24 (9.0), June 27 (10.5), June 28 (10.5), and June 30 (10.0). Id.

8. On or about July 5, 2016, Parker and Eisentrager went by the home in an SBPM truck and Eisentrager engaged Meyer in an argument about the homeowners owing them money - \$600.00.

9. Parker did the work he claims at the home and was fully paid for that work.

IV. DISCUSSION¹

Montana law requires that employers pay wages when due, in conformity with the employment agreement. Mont. Code Ann. § 39-3-204. Except to set a minimum wage, the law does not set the amount of wages to be paid. That determination is left to the agreement between the parties. Parker bears the burden of persuading the trier of fact that he is entitled to the wages he claims he is due. *Berry v. KRTV*

¹Statements of fact in this discussion are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

Communications (1993), 262 Mont. 415, 426, 865 P.2d 1104, 1112. See also, *Marias Health Care Services v. Turenne*, 2001 MT 127, ¶¶13, 14, 305 Mont. 419, 422, 28 P.3d 494, 495 (holding that lower court properly concluded that the plaintiff's wage claim failed because the plaintiff failed to meet her burden of proof to show that she was not compensated in accordance with her employment contract).

Parker was released from BPRC to work for SBPM a certain number of hours during the time he was painting the home. Most of the days Parker worked on the home he did not also report hours for SBPM. On those six days he worked for both Meyer at the home and reported hours for SBPM time, he was released for a sufficient enough time for him to do both, especially since Meyer did not record any specific time for these days on her calendar.

Parker has not proven he is owed anything from the homeowners. His testimony that he was paid three payments of \$100.00 supports the homeowners' testimony that they paid him \$100.00 in cash for every day he worked. Parker testified he gave the money he received from Mather to someone at SBPM so that it would appear on his paycheck, however, there is no reference on his pay stubs from SBPM that it received any money from him. While there is no evidence that the arrangement Parker testified to actually occurred, if it did, it would bolster the homeowners' claim that they paid Parker in full - they paid him, he gave the money to SBPM, and SBPM issued him a check for the time spent working on the home.

Parker also testified that Eisentrager was the contractor on the home painting job and that he worked for Eisentrager. If that was, in fact, the case, the homeowners would not owe anything to Parker and any claim for unpaid wages should properly be sought from Eisentrager as his employer. There was no evidence offered to suggest Parker would be paid by SBPM and the homeowners to paint the home. The evidence fails to prove Parker was owed \$1,900.00 by the homeowners; that he was owed \$1,600.00 by the homeowners; or that he was owed half of the \$600.00 Eisentrager demanded on July 5, 2016. Parker's inconsistent accounts of how he was paid or he was supposed to be paid undermine his credibility to the point where he has failed to prove he is owed any wages in this matter.

Parker failed to produce any evidence at hearing to prove that Meyer and Mather owe him any additional wages or even if they did, what amount of wages is owed.

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. Parker has failed to demonstrate by a preponderance of the evidence that he is due additional wages.

VI. ORDER

As Parker has failed to demonstrate that he is due additional wages, his claim fails and must be dismissed.

DATED this 2nd day of November, 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

ADDENDUM A

| Date | Hours for Meyer | Parker SBPM E. 110 | Eisentrager SBPM Ex. 116 | Parker hours out of BPRC |
|-----------------------------|-----------------|--------------------|--------------------------|--------------------------|
| 5/21/2016 | | 4 | 0 | |
| 5/22/2016 | | 0 | 0 | |
| 5/23/2016 | | 4.42 | 4.12 | |
| 5/24/2016 | | 3.55 | 0 | |
| 5/25/2016 | | 8.67 | 8.32 | |
| 5/26/2016 | | 8.28 | 8.15 | |
| 5/27/2016 | | 7 | 6.63 | |
| 5/28/2016 | | 0 | 0 | |
| 5/29/2016 | | 0 | 0 | |
| 5/30/2016 | | 8 | 5.5 | |
| 5/31/2016 | | 4.63 | 0 | |
| 6/1/2016 | | 7.82 | 4.85 | |
| 6/2/2016 | | 6.77 | 0 | |
| 6/3/2016 | | 8.9 | 8.5 | |
| 6/4/2016 | | 6.78 | 7.28 | |
| 6/5/2016 | | 4.4 | 1.77 | |
| 6/6/2016 | 8 | 0 | 55.12 | Eisentrager paid for |
| 6/7/2016 | 0 | 7 hours Ex. 113 | 0 | 55.12 hours Ex. 119 |
| 6/8/2016 | 7.5 | 0 | 0 | |
| 6/9/2016 | 8 | 0 | 0 | |
| 6/10/2016 | 7 | 0 | 0 | |
| 6/11/2016 | 0 | 0 | 0 | |
| 6/12/2016 | 8 | 0 | 0 | |
| 6/13/2016 | 7 | 0 | 0 | |
| 6/14/2016 | 8 | 0 | 0 | |
| 6/15/2016 | unknown | 2.53 | 0 | 11 |
| 6/16/2016 | unknown | 0 | 0 | |
| 6/17/2016 | unknown | 0 | 0 | |
| 6/18/2016 | unknown | 0 | 0 | |
| 6/19/2016 | 0 | 0 | 0 | |
| 6/20/2016 | unknown | 0 | 0 | |
| 6/21/2016 | unknown | 0 | 0 | |
| 6/22/2016 | unknown | 0 | 0 | |
| 6/23/2016 | unknown | 7.6 | 7.6 | 9 |
| 6/24/2016 | unknown | 7.75 | 4.07 | 9 |
| 6/25/2016 | 0 | 0 | 0 | |
| 6/26/2016 | 0 | 0 | 0 | |
| 6/27/2016 | "Sketchy" | 5.5 | 5.3 | 10.5 |
| 6/28/2016 | "Sketchy" | 0.65 | 0 | 10.5 |
| 6/29/2016 | "Sketchy" | 0 | 0 | |
| 6/30/2016 | "Sketchy" | 5.87 | 3.85 | 10 |
| 7/1/2016 | "Sketchy" | 8.42 | 0 | |
| 7/2/2016 | 0 | 0 | 0 | |
| 7/3/2016 | 0 | 0 | 0 | |
| 7/4/2016 | 0 | 0 | 0 | |
| 7/5/2016 | 0 | 7.25 | 3.87 | |
| Parker paid for 43.04 hours | | 43.04 | 24.69 | Eisentrager paid for |
| Ex. 114 | | | 24.68 hours Ex. 120 | |