

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

IN THE MATTER OF THE WAGE CLAIM)	Case No. 2085-2021
OF COURTNEY D. MILLER,)	
)	
Claimant,)	
)	ORDER GRANTING
vs.)	SUMMARY JUDGMENT and
)	FINAL AGENCY DECISION
PF BILLINGS, LLC,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

Claimant Courtney D. Miller (Miller) filed a wage claim on January 8, 2021, initially alleging PF Billings, LLC (PF Billings) owed him a total of \$1,180.00. On January 20, 2021, Miller amended that amount down to \$745.00. On June 17, 2021, the Wage and Hour Unit concluded Miller’s claim was without merit. Miller appealed, and the matter was transferred to the Office of Administrative Hearings (OAH) on August 6, 2021. In the present matter, PF Billings filed a Motion for Summary Judgment on the grounds that Miller failed to timely file his wage claim within the 180-day period required by Mont. Code Ann. § 39-3-207, and also that he had failed to meet his burden of proof. Miller did not respond. PF Billings’ Motion for Summary Judgment is granted with regard to timeliness for the reasons stated below. Because PF Billings’ Motion for Summary Judgment is granted and is dispositive of the entire claim, this Order constitutes the Final Agency Decision.

II. UNDISPUTED FACTS

1. Miller worked for PF Billings (a.k.a. Planet Fitness) from October 25, 2019, through December 10, 2019.
2. Miller voluntarily resigned from his position with PF Billings, effective December 12, 2019, following his failure to work a scheduled shift on December 11, 2019.
3. Between October 25, 2019, and December 10, 2019 (the last shift Miller actually worked), Miller worked a total of 193.17 hours for PF Billings. Miller’s timecards for that period, however, reflect a total of 192.92 hours

worked because he failed to clock in and clock out for a 15-minute period during a shift on December 9, 2019.

4. Following the end of his employment with PF Billings, PF Billings issued Miller a final paycheck, check number 40029, on December 19, 2019, in the amount of \$514.05. This check reflected the hours Miller worked and the wages he earned during the pay period from December 2, 2019, to December 15, 2019.

5. The next regular payday for pay period December 2, 2019, through December 15, 2019, was December 20, 2019. Miller cashed check number 40029 on December 19, 2019, a day prior to the next regularly scheduled payday.

6. On December 19, 2019, after his employment ended, Miller notified his regional manager that his final paycheck was missing an additional 15 minutes, or .25 hours, for time worked on December 9, 2019, for which he did not clock in or clock out.

7. Following Miller's request, PF Billings made an immediate request to its payroll processor to have an additional check for the 15-minute period issued to Miller on the next regularly scheduled payday, December 20, 2019.

8. PF Billings issued an additional check to Miller, check number 40032, dated December 20, 2019, to Miller, in the amount of \$2.54, which represented an additional 15 minutes of work.

9. PF Billings issued and mailed check number 40032 to Miller via the United States Postal Service (USPS) to Miller's address as provided on his W-4 form. The check, however, was not cashed.

10. In 2020, as a matter of general bookkeeping practice, PF Billings notified its payroll provider of all prior year uncleared payroll transactions. All checks that remained outstanding were reissued in the current year and sent to the last known address of the employee on file.

11. As part of this process, PF Billings identified check number 40032 made out to Miller for \$2.54 as an outstanding check. Therefore, on December 2, 2020, PF Billings re-issued a check for \$2.54 to Miller, check number 40159, as a replacement for check number 40032.

12. The re-issued check, check number 40159, was cashed December 28, 2020.

13. Miller filed the instant wage claim on January 8, 2021, initially alleging PF Billings owed him a total of \$1,180.00 and contending that his

wages were not paid on time but were paid a year later. Miller later amended that amount to \$745.00 in an email dated January 20, 2021. In response, PF Billings denied that it delayed or failed to pay Miller any wages due and payable.

III. DISCUSSION

A. Standards for Summary Judgment

Summary judgment is an appropriate method of dispute resolution in administrative proceedings where the requisites for summary judgment otherwise exist. *Matter of Peila*, 249 Mont. 272, 280-81, 815 P.2d 139, 144-45 (1991). “The judgment sought should be rendered if the pleadings, the discovery and disclosure materials on file, and any affidavits show that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law.” Rule 56(c), Mont. R. Civ. P.

The moving party “must show a complete absence of any genuine issue as to all facts shown to be material in light of the substantive principle that entitles that party to a judgment as a matter of law.” *Bonilla v. University of Montana*, 2005 MT 183, ¶ 11, 328 Mont. 41, 116 P.3d 823. A “material” fact is one capable of affecting the substantive outcome of the litigation. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). “Material issues of fact are identified by looking to the substantive law which governs the claim.” *Glacier Tennis Club at the Summit v. Treweek Constr. Co.*, 2004 MT 70, ¶ 21, 320 Mont. 351, 87 P.3d 431 (overruled in part on other grounds by *Johnson v. Costco Wholesale*, 2007 MT 43, ¶ 21, 336 Mont. 105, 152 P.3d 727; quoting *Babcock Place P’ship v. Berg, Lilly, Andriolo & Tollefsen, P.C.*, 2003 MT 111, ¶ 15, 315 Mont. 364, 69 P.3d 1145); see also *Anderson*, 477 U.S. 242 at 248; *Bonilla*, ¶¶ 11, 14. A dispute is “genuine” if there is enough evidence for a reasonable trier of fact to return a verdict for the non-movant. See *Scott v. Harris*, 550 U.S. 372, 380 (2007). The inquiry is, essentially, “. . . whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.” *Anderson*, 477 U.S. at 251-52.

“The party opposing summary judgment must come forward with evidence of a substantial nature; mere denial, speculation, or conclusory statements are not sufficient.” *McGinnis v. Hand*, 1999 MT 9, ¶ 18, 293 Mont. 72, 972 P.2d 1126 (citing *Klock v. Town of Cascade*, 284 Mont. 167, 174, 943 P.2d 1262 (1997)). The “party opposing summary judgment must direct [the court’s] attention to specific, triable facts.” *S. Cal. Gas Co. v. City of Santa Ana*, 336 F.3d 885, 889 (9th Cir. 2003). A court is “not required to comb through the record to find some reason to deny a motion for summary judgment. . . .” *Carmen v. San Francisco Unified Sch. Dist.*, 237 F.3d 1026, 1029 (9th Cir. 2001) (quoting *Forsberg v. Pac. Nw. Bell Tel. Co.*, 840 F.2d 1409,

1418 (9th Cir. 1988)). A tribunal reviews the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences in that party's favor and without making findings of fact, weighing the evidence, choosing one disputed fact over another, or assessing the credibility of witnesses. *Fasch v. M.K. Weeden Const., Inc.*, 2011 MT 258, ¶¶ 16-17, 362 Mont. 256, 262 P.3d 1117.

B. Miller Was Required to File His Wage Claim Within the Time Limits Prescribed by Montana Law But Failed to Do So

PF Billings argues Miller's claim is time-barred and PF Billings is entitled to judgment in its favor as a matter of law. Although PF Billings denies it delayed or failed to pay Miller any wages, it argues that even if it had done so, more than 180 days elapsed between the time Miller filed the wage claim at issue in this action and the accrual of his wage claim. Miller offers no argument in response.

The timeframe for making wage and hour claims is limited by statute. The Montana Code provides that an employee may recover all wages and penalties provided for the violation of Mont. Code Ann. § 39-3-206 by filing a complaint within 180 days of default or delay in the payment of wages. Mont. Code Ann. § 39-3-207(1). A claim does not accrue—and the 180-day clock does not begin to run—until the *last* date on which the employer fails to pay. *Harrell v. Farmers Educ. Coop. Union*, 2013 MT 367, ¶ 29, 373 Mont. 92, 314 P.3d 920 (citing *Miller v. State*, 2009 MT 246, ¶ 11, 351 Mont. 443, 214 P.3d 1227). Where an “employee separates from the employ of any employer, all the unpaid wages of the employee are due and payable on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from employment, whichever occurs first.” Mont. Code Ann. § 39-3-205(1). The 180-day time limit is not permissive, and there is no good cause standard for waiving the requirement. See Mont. Code Ann. § 39-3-207(1).

Miller separated from employment with PF Billings effective December 12, 2019. PF Billings treated Miller's separation as a voluntary resignation because he failed to appear for a scheduled shift. Therefore, under Mont. Code Ann. § 39-3-205(1), Miller's unpaid wages became payable on the earlier of either the next regular payday for the pay period during which Miller was separated, or 15 days from the date of separation from employment. Mont. Code Ann. § 39-3-205(1). The pay period during which Miller was separated from his employment with PF Billings ran from December 2, 2019, through December 15, 2019. The next regular payday applicable to that pay period was December 20, 2019. Fifteen days from December 12, 2019, was December 27, 2019. Miller's unpaid wages therefore became due and payable on December 20, 2019, the earlier of those two dates. Even though PF Billings had to re-issue a check because Miller failed to cash the original, it does not

change the fact that Miller's wage claim accrued when his wages became due and payable on December 20, 2019.

Any wage claim related to PF Billings' alleged failure to pay Miller following his separation from employment would have accrued when PF Billings' duty to pay him matured and it allegedly failed to pay him—*i.e.*, December 20, 2019. Although PF Billings denies it failed to pay Miller any wages that were due and payable, a wage claim related to any alleged unpaid wages accrued on December 20, 2019, and the 180-day limitations period expired on June 17, 2020. Miller did not file his wage claim in this matter until January 8, 2021. Miller's wage claim is therefore time-barred under Mont. Code Ann. § 39-3-207(1).

No factors exist which would alleviate Miller of the duty to file his claim within 180 days. As stated above, the 180-day time limit is not permissive, and there is no good cause standard for waiving the requirement. See Mont. Code Ann. § 39-3-207(1). Miller has not responded to any of PF Billings' arguments, let alone asserted any circumstances which would justify staying the time limit. See Mont. Code Ann. §§ 27-2-401 *et seq.* PF Billings has met its burden of showing that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law.

Separately, PF Billings also argues Miller's wage claim fails as a matter of law because he has not shown he is entitled to any unpaid wages. Because the issue of timeliness is dispositive, the issue of whether he met his burden of proof is moot.

IV. 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*, 176 Mont. 31, 575 P.2d 925 (1978).

2. Miller failed to timely file a wage and hour claim within the 180-day period provided for under Mont. Code Ann. § 39-3-207.

3. There is no genuine issue as to any material fact and PF Billings is entitled to judgment as a matter of law.

4. Due process does not require development of facts through an evidentiary hearing when there are no material factual issues in dispute. See *In the Matter of Peila*, 249 Mont. 272, 280-281, 815 P.2d, 144 (1991).

V. ORDER

IT IS THEREFORE ORDERED THAT PF Billings' Motion for Summary Judgment is GRANTED and Miller's appeal of his wage and hour claim is DISMISSED in its entirety.

DATED this 11th day of February, 2022.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ CHAD R. VANISKO
CHAD R. VANISKO
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 59620-1503