

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

IN THE MATTER OF THE WAGE CLAIM )	Case No. 1624-2021
OF ASHLEY G. FANYAK, )	
)	
Claimant, )	
)	
vs. )	<b>FINAL AGENCY DECISION</b>
)	
MORGAN 1 ENTERPRISES, LLC, )	
d/b/a SHOOTERS BAR AND CASINO, )	
)	
Respondent. )	

\* \* \* \* \*

**I. INTRODUCTION**

On March 8, 2021, Claimant Ashley Fanyak (Fanyak) filed a wage claim with the Department of Labor and Industry alleging Respondent Morgan 1 Enterprises, LLC, d/b/a Shooters Bar and Casino (Shooters) owed her \$1,377.75 in wages for her employment between March 16, 2020, and July 11, 2020. The Department determined Fanyak’s claim was not timely filed. Fanyak appealed and the matter was received by the Office of Administrative Hearings (OAH) on May 14, 2021.

A hearing was held by telephone on December 6, 2021. Fanyak represented herself. Shooters was represented by Paula Saye. Fanyak and Mike Morgan (Morgan), representative of Shooters, appeared as witnesses. Documents 1-24 from the administrative record were admitted with no objection. The parties both referred to additional documents during the hearing, but neither party disclosed those documents to the other or to OAH before the hearing. Based on the failure to follow the evidentiary disclosure deadlines required by the scheduling order, the Hearing Officer ruled that neither party would be allowed to submit late evidence.

At the end of the hearing, Shooters made an oral motion to dismiss Fanyak’s claim, asserting her claim was time barred by statute. Fanyak responded and Shooters replied. Because the Hearing Officer concludes Fanyak’s claim is time barred based on facts from the hearing, Fanyak’s claim is dismissed as discussed below.

## II. ISSUE

Whether Fanyak's claim was timely filed pursuant to § 39-3-207, MCA.

## III. FINDINGS OF FACT

1. Fanyak started working at Shooters on approximately July 18, 2015, as a bartender and casino attendant.
2. Morgan purchased Shooters in 2018.
3. From the time Morgan purchased Shooters, Fanyak worked part time, ranging from 20 hours per week to 30 hours per week, and very rarely 40 hours per week.
4. Shooters dispersed paychecks by leaving the checks in a folder in the area behind the casino. Employees typically picked up their checks from that folder.
5. On March 16, 2020, Shooters temporarily closed due to the COVID-19 pandemic. Fanyak worked that day before Shooters closed.
6. Fanyak was issued a paycheck for \$65 during the temporary closure. That check was never deposited or drawn on Shooters' bank account. Fanyak and Morgan communicated at some point about reissuing that check so that Fanyak could pick it up and deposit it. Fanyak never obtained that check.
7. Fanyak worked on July 4 for 8.82 hours, July 5 for 7.87 hours, July 7 for 7.5 hours, and July 11 for 7.5 hours at a rate of \$8.30 per hour. These hours fell in the pay period July 1 to 15 that would have been paid on July 18.
8. Fanyak's employment ended on July 11, 2020. Fanyak was issued a check on July 18. Fanyak went in to pick up the check soon after July 18, but was unable to locate it.
9. Fanyak contacted Morgan in August by text three times and did not receive a response.
10. Fanyak contacted Morgan in September by text. She indicated her last paycheck and the check from March that was to be reissued were never mailed to her and were not there during any visit she made to pick them up. Morgan responded that the checks were originally disbursed to her through the normal paycheck process and that it was her responsibility to pick them up. Morgan also asked what hours

she believed she worked. Fanyak indicated to Morgan she would go in to Shooters again and look for her checks.

11. Fanyak did not receive her final paycheck or the check that was never cashed from the temporary closure during the pandemic, either through the mail or by picking up the checks.

12. Fanyak at some point filed an unemployment insurance claim. She was told during the unemployment insurance claim process in October 2020 how to file a wage claim with the Department.

13. Fanyak filed her wage claim on March 8, 2021. In addition to the paychecks she did not receive and other hours Fanyak claimed she was not compensated for, Fanyak also claimed Families First Coronavirus Response Act (FFCRA) full time wages for a period of two weeks in May 2020 that she did not work. Fanyak did not contract COVID-19, but asserted she was due FFCRA wages because she was subject to a quarantine for two weeks. Fanyak did not submit proof of quarantine.

#### IV. DISCUSSION

Under Mont. R. Civ. P. 12(b)(6) a claim “is subject to dismissal if, as pled, it is insufficient to state a cognizable claim entitling the claimant to relief.” *Anderson v. ReconTrust Co., N.A.*, 2017 MT 313, ¶ 8, 390 Mont. 12, 15, 407 P.3d 692, 696. A claim should be dismissed “if it either fails to state a cognizable legal theory for relief or states an otherwise valid legal claim but fails to state sufficient facts that, if true, would entitle the claimant to relief under that claim.” *Anderson*, ¶ 8 (citing cases); see also *Ryan v. City of Bozeman*, 928 P.2d 228, 230-32 (Mont. 1996).

Section 39-3-205(1), MCA requires that “when 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, either through the regular pay channels or by mail if requested by the employee.” Section 39-3-207, MCA, in turn requires that a wage claim must be filed “within 180 days of default or delay in the payment of wages.” Based on these statutes, the Montana Supreme Court has held that a wage claim accrues when “the employer’s duty to pay the employee matures and the employer fails to pay the employee.” *Watters v. City of Billings*, 2019 MT 255, ¶ 44, 397 Mont. 428, 443, 451 P.3d 60, 70.

The parties did not dispute that July 11, 2020 was Fanyak's last day of employment. Because Fanyak's employment ended on July 11, 2020, her final pay was due to be paid on the next regular payday, or July 18, 2020. July 18 was the "the next regular payday for the pay period during which the employee was separated from employment" and is the date that "occurr[ed] first" under the statute. Therefore, Shooters' duty to pay Fanyak matured on July 18, 2020. As a result, Fanyak was required to file her claim within 180 days of July 18, 2020. Therefore, Fanyak's claim was timely if filed by January 14, 2021.<sup>1</sup> Fanyak filed her claim on March 8, 2021.

Shooters asserted Fanyak did not timely file her wage claim because she filed after 180 days passed. Shooters also argued because the check was issued and left for her to pick up, it followed its regular pay channels. Shooters did not know why Fanyak was unable to locate the check.

Fanyak asserted her claim should be considered timely. Fanyak stated she went in to pick up the final paycheck and it was not there and further, that neither of the checks were there any other times she went in to pick them up. She argued because she made numerous requests to Morgan, that she properly pursued her claim. Fanyak also asserted her claim should be considered timely because Morgan promised to pay her. Finally, Fanyak asserted her late claim filing should be excused or tolled because she thought she would receive the checks due to Morgan's promises to pay her and because she did not understand how to file her claim until she was given assistance in her unemployment insurance claim.

The preponderance of the evidence in this matter shows that Fanyak's entire claim for wages, including the paychecks that she did not receive, the additional time she asserts she was not compensated for, and the FFCRA wages, was not timely filed. Fanyak had actual knowledge of being due wages as early as July 18. The fact that she continued to ask for payment and did not receive the wages does not toll the statutory timeframe because she was on notice the wages were due to her. Shooters' promise to pay or its subsequent failure to sufficiently respond to her does not change the date of the default or delay on which Fanyak's claim began to run. To toll the statute when the claimant was on actual notice of the wages due to be paid because of the employer's promise or insufficient response would defeat the point of the statute because the statute could be tolled indefinitely. Section 39-3-207, MCA, requires that an employee on notice of their wages due cannot recover wages on a claim filed after 180 days. See e.g. *Jensen v. State*, 2009 MT 246, ¶ 11-14, 351 Mont. 443, 445, 214 P.3d 1227, 1229.

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<sup>1</sup>Even assuming Shooters' duty to pay arose 15 days from the last date of Fanyak's employment, she would have been required to file her claim by January 23, 2021.

Further, Fanyak's ignorance regarding how to file a wage claim also does not toll the statute. Generally, ignorance of the law does not excuse following its requirements, as knowledge of the law is imputed to citizens. *Wiard v. Liberty Nw. Ins. Corp.*, 2003 MT 295, ¶ 32, 318 Mont. 132, 141, 79 P.3d 281, 287 ("If ignorance of the law were an excuse, laws would be applied willy-nilly depending upon the individual's legal knowledge; the result would be legal chaos and there would be no rule of law at all."); *Wolfe v. Flathead Elec. Coop., Inc.*, 2018 MT 276, ¶ 14, 393 Mont. 312, 317, 431 P.3d 327, 331. In this case, Fanyak was also on actual notice in October 2020 regarding how to claim the wages, yet she still did not file until March 2021. Because Fanyak was aware she had wages due her and did not file her claim until past January 14, 2021, Fanyak's claim is time barred and cannot proceed.

## 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. Fanyak did not timely file her wage claim, therefore her claim is barred by § 39-3-207, MCA.

## VI. ORDER

The motion to dismiss made by Morgan I Enterprises, LLC, d/b/a Shooters Bar and Casino is GRANTED. Fanyak's claim is dismissed with prejudice.

DATED this 8th day of February, 2023.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ JUDY BOVINGTON  
JUDY BOVINGTON  
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