

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

IN THE MATTER OF THE WAGE CLAIM) Case No. 1523-2022
OF CLARK E. HENDRICKSON,)
)
Claimant,)
) **ORDER ON RESPONDENT'S**
vs.) **REQUEST OF DISMISSAL and**
) **FINAL AGENCY DECISION**
TALEN MONTANA, LLC,)
)
Respondent.)

* * * * *

I. INTRODUCTION

Respondent Talen Montana, LLC (Talen) filed an opening brief in this matter requesting dismissal of the case. Claimant Clark E. Hendrickson (Hendrickson) countered and Talen replied. No party requested oral argument. As such, the matter is ripe for disposition. For the reasons stated below, Talen's motion is granted.

II. ISSUE PRESENTED

Whether Hendrickson's wage claim is barred by separate bankruptcy proceedings.

III. FINDINGS OF FACT

1. On October 28, 2021, Hendrickson filed a wage claim with the Montana Department of Labor and Industry, Employment Relations Division, using an address in Colstrip, Montana.
2. On December 15, 2021, Hendrickson sent documentation to the Employment Relations Division regarding his wage claim from an address in Sheridan, Wyoming. After that date, the Employment Relations Division sent all correspondence to Hendrickson at the Sheridan address.
3. On May 9, 2022, Talen Energy Supply, LLC and its debtor affiliates, including Talen, filed a Chapter 11 bankruptcy proceeding in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, Case No. 22-90054 (MI).
4. On May 10, 2022, Talen filed in this case a Notice of Suggestion of Bankruptcy, serving Hendrickson with the same. This Notice of Suggestion

indicated that Talen’s bankruptcy filing operated as a stay regarding an administrative proceeding that was or could have been commenced before the bankruptcy proceeding, or regarding an attempt to recover a claim against Talen before the commencement of the bankruptcy proceeding, and “any act to obtain possession of property of the estate.”

5. The Notice of Suggestion also indicated that any action to obtain possession of property against Talen without obtaining relief from the automatic stay from the Bankruptcy Court is void from the beginning. The notice encouraged parties to contact individuals listed on the Notice of Suggestion with any questions.

6. On May 16, 2022, the Hearing Officer previously assigned to this case held a telephone conference regarding Talen’s Notice of Suggestion of Bankruptcy filing.

7. On May 18, 2022, the Bankruptcy Court entered an order that (i) established an August 1, 2022 deadline for all non-governmental units to file proofs of claim against Talen and that (ii) approved the form of Notice of Commencement of the Chapter 11 cases. In particular, the Notice of Commencement indicated that “Confirmation of a chapter 11 plan may result in a discharge of debt. A creditor who wants to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk’s office within the deadline specified in this notice.”

8. The Notice of Commencement also indicated that “If your claim is not scheduled or if your claim is designated disputed, contingent, or unliquidated, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled.” It further indicated “A discharge means that creditors may never try to collect the debt from the debtor except as provided in the plan.”

9. On June 10, 2022, the Hearing Officer previously assigned to this case ordered the case stayed given Talen’s bankruptcy filing. The Hearing Officer indicated the bankruptcy filing imposed an automatic stay on continuation of Hendrickson’s proceeding, ordering the parties to notify OAH “upon either termination of the automatic stay or relief being granted from said stay, whichever should occur first.”

10. On June 28, 2022, the Bankruptcy Court entered another order, known as the Bar Date Procedures Order, establishing a procedure for creditors to file proofs of claim on or before the August 1, 2022 deadline. The Bar Date Procedures Order indicated “Any person or entity that is required to timely file a Proof of Claim in the form and manner specified by this Order and who fails to do so on or before the Bar Date [August 1, 2022] associated with such claim (i) shall be forever barred, estopped, and enjoined from asserting such claim against the Debtors or thereafter filing a Proof of Claim with respect thereto in the chapter 11 cases; (ii) shall not, with respect to such claim, be treated as a creditor of the Debtors for the purpose of voting on any plan in the

chapter 11 cases; and (iii) shall not receive or be entitled to receive any payment or distribution of property from the Debtors or their successors or assigns with respect to such claim in the chapter 11 cases.”

11. On July 1, 2022, the Notice of Commencement and a customized Proof of Claim was mailed to Hendrickson to his “address on file,” which Talen admits was Hendrickson’s address in Colstrip, not Sheridan.

12. On December 15, 2022, the Bankruptcy Court entered a Confirmation Order, confirming Talen’s Chapter 11 Plan, which was dated December 14, 2022. The Plan indicated, in pertinent part, that contingent, disputed, or unliquidated claims for which no proof of claim was filed are disallowed. The Plan defined disallowed as “any Claim, or any portion thereof, that . . . is scheduled at zero or as contingent, disputed, or unliquidated on the Schedules and as to which a Bar Date has been established but no Proof of Claim has been timely Filed.”

13. On May 17, 2023, Talen emerged from bankruptcy.

14. On July 6, 2023, the Hearing Office held a Status Conference pursuant to Hendrickson’s request to schedule his wage claim back on the Office of Administrative Hearings (OAH) calendar since Talen’s bankruptcy matter had concluded. At that Status Conference, Talen’s counsel advised that briefing on whether Hendrickson’s wage claim could proceed before OAH was necessary. The Hearing Officer issued an Order to that effect.

IV. STANDARD OF REVIEW

Contrary to a district court’s jurisdiction, jurisdiction in an administrative hearing is limited by statute. *Auto Parts of Bozeman v. Employment Rels. Div. Uninsured Employers’ Fund*, 2001 MT 72, ¶ 38, 305 Mont. 40, 23 P.3d 193. “It is a basic rule of law that . . . an administrative agency, has only those powers specifically conferred upon it by the legislature[.]” *Polson v. Public Service Comm’n*, 155 Mont. 464, 469, 473 P.2d 508, 511 (1970); *Gwynn v. Eureka*, 178 Mont. 191, 193, 582 P.2d 1262, 1263 (1978). Without express delegation by the Legislature, an administrative agency may not assume jurisdiction. *Billings v. Public Service Comm’n*, 193 Mont. 358, 369, 631 P.2d 1295, 1303 (1981).

Montana Rule of Civil Procedure 12(b)(6) indicates a party may seek dismissal of a claim for “failure to state a claim upon which relief can be granted.” A complaint is not dismissed for failure to state a claim “unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *C. Haydon Ltd. v. Montana Mining Properties*, 262 Mont. 321, 325, 864 P.2d 1253, 1255 (1993) (citation omitted).

V. DISCUSSION

A. Montana Wage Payment Act Requirements and Bankruptcy Requirements

“[E]very employer of labor in the state of Montana shall pay to each employee the wages earned by the employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value of the checks, and a person for whom labor has been performed may not withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the wages are due and payable[.]” Mont. Code Ann. § 39-3-204(1). “Wages” includes “any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly, and includes bonus, piecework, and all tips and gratuities[.]” Mont. Code Ann. § 39-3-201(6)(a). “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).

The confirmation of a Chapter 11 bankruptcy plan “discharges the debtor from any debt that arose before the date of such confirmation.” 11 U.S.C. § 1141(d)(1)(A). Discharge “operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived.” 11 U.S.C. § 524(a)(2). The United States Supreme Court has indicated a bankruptcy discharge “extinguishes” an action against the debtor *in personam* [as a personal liability] as a means of enforcing a claim. *Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991). Federal Rules of Bankruptcy Procedure 3003(c)(2) provides that “[a]ny creditor . . . whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed . . . any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.”

B. The Parties’ Arguments

Talen argues that Hendrickson’s wage claim against Talen should be dismissed with prejudice because the “Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and the Plan and the Bar Date Procedures Order, all unequivocally bar Hendrickson’s wage claim.” According to Talen, Hendrickson received notice of his obligation to file a claim in Talen’s bankruptcy proceeding, and the “Bar Date Procedures Order” made clear that Hendrickson was required to file a proof of claim. Hendrickson failed to timely file a proof of claim, according to Talen, and therefore he cannot be treated as a creditor for purposes of distribution of the bankruptcy proceeding since his wage claim “unambiguously falls within the Plan’s definition of Disallowed claims.” Talen contends that “the Plan has been confirmed,” that “any debt of Talen to

Hendrickson has been discharged,” and that “the Bankruptcy Court has enjoined further pursuit of” Hendrickson’s wage claim matter.

Hendrickson makes several arguments in response. He asserts he did not receive “the letter requiring me to file an official claim to the bankruptcy court.” He argues that he believes such a letter should have been sent to OAH “and thereby sent on to me at my proper address.” Hendrickson continues that “Joshua Kirkpatrick [Talen’s attorney] used [Hendrickson’s] old address in Colstrip Montana which was no longer forwarding my mail since the time limit for that service had expired.” Hendrickson continues that his initial claim has validity and Talen is asking that the case be dismissed “on a technicality.” In addition, Hendrickson argues that Joshua Kirkpatrick (Kirkpatrick) did not mention to him at the telephone hearing held on May 16, 2022, of Hendrickson’s “requirement to file the claim with the bankruptcy court,” and Hendrickson “would have expected him to mention that in our meeting [hearing].” According to Hendrickson he was not “privy to any of the information from May 10, 2022 to August 1, 2022” and “had no idea” that he was “required to file the claim with the bankruptcy court.” Hendrickson argues the bankruptcy action should not have been taking place without OAH’s “knowledge or involvement,” and that Hendrickson was taking his “cues” from the Hearing Officer and OAH’s assistant because he was concerned “to do otherwise could be construed as undermining The State of Montana’s efforts to help me with my wage claim.” Finally, Hendrickson contends Kirkpatrick did not receive acknowledgment from him that Hendrickson actually received the bankruptcy documents, given that his correct address is in Sheridan, Wyoming.

Talen replies that recourse for Hendrickson based on his claim he did not receive “certain communications,” “is with the bankruptcy court in Texas, and he and the Office of Administrative Hearings remain enjoined from proceeding with this administrative hearing.” Talen continues that a notice was sent to Hendrickson based on the same address as what appears on Hendrickson’s wage claim form, and that Hendrickson never served on Talen a change of address notice. In addition, Talen contends Kirkpatrick “is not bankruptcy counsel for Talen and had no knowledge in May of 2022 when notice would issue,” nor is he “authorized by the Bankruptcy Court to provide official notices relating to bankruptcy; instead, the court-approved notices were mailed by Kroll Restructuring Administration LLC.” Finally, Talen argues that “the law remains clear,” Hendrickson is “barred from pursuing this action.”

C. Analysis

Hendrickson’s arguments, in large part, focus on a claimed failure on Talen’s part to provide him notice. Hendrickson asserts that he was not privy to filings by Talen between May 10, 2022 and August 1, 2022, and that Talen sent mailings to an incorrect address. Montana law presumes that when a letter is mailed in the ordinary course of business, that it has been received. Mont. Code Ann. § 26-1-602(20), (24). “A party alleging untimely or non-receipt of notice of a claim, determination, or hearing has the burden of proving

the party should be granted relief. The party seeking relief must present a preponderance of evidence to rebut the statutory presumption in 26-1-602, MCA, that a letter duly directed and mailed was received in the regular course of the mail.” Admin. R. Mont. 24.16.4013(1). In *Crissey v. State Highway Comm’n*, 147 Mont. 374, 413 P.2d 308 (1966), the Montana Supreme Court held that an addressee’s denial of receipt does not nullify the statutory presumption that the mail has been received. Instead, it leaves the question for the determination of the jury or the court sitting without a jury, with such weight given to the presumption to which they think it is entitled. *Crissey*, 147 Mont. at 379, 413 P.2d at 310; *Renland v. First Nat’l Bank*, 90 Mont. 424, 4 P.2d 488 (1931). The statutory presumption is not conclusive, and it may be controverted by other evidence. Mont. Code Ann. § 26-1-602. For example, in *Billings v. Lindell*, 236 Mont. 519, 771 P.2d 134 (1989), the Montana Supreme Court indicated that the appellant presented “no additional evidence, apart from his own testimony, to prove the letter was not received.” *Lindell*, 236 Mont. at 522, 771 P.2d at 136. Again, “the determination of nonreceipt is left to the factfinder to give weight to the presumption he believes it is entitled.” *Id.*

Here, Talen mailed the Notice of Commencement and a customized Proof of Claim to Hendrickson on July 1, 2022. The affidavit indicates the mailings were sent to Hendrickson’s “address on file,” which Talen explains was Hendrickson’s Colstrip, Montana, address—the address Hendrickson used on his wage claim form. Hendrickson asserts he did not receive these filings, and he claims they were sent to an incorrect address because he no longer lived at that address. The Hearing Officer concludes a dispute exists over whether Hendrickson received the Notice of Commencement and Proof of Claim in this case. Talen is not entitled to the mailbox presumption of receipt where Hendrickson can demonstrate he did not live at the address at which the information was sent. See *Veloz v. Sears, Roebuck & Co.*, 2017 U.S. Dist. LEXIS 214636, at *4 (C.D. Cal. Jan. 10, 2017).

However, that said, the Hearing Officer concludes that any evidence regarding the issue of whether Talen sent the Notice of Commencement and Proof of Claim to the wrong address is a matter which only the Bankruptcy Court can properly address. That follows because the dispute over whether Hendrickson was on notice of the need to file a proof of claim must be heard before the Bankruptcy Court because that court has proper authority over the notice issue, due to the automatic stay provisions and the injunctions that remain in place when the bankruptcy proceeding ended.

Not reaching the issue of whether Hendrickson received proper notice in this case does not affect the Hearing Officer’s ability to address Talen’s argument for dismissal. At this stage, Hendrickson can prove no set of facts establishing that he has a wage claim, because the undisputed facts show an automatic stay and subsequent injunction against his claim exists, according to proper bankruptcy procedure. The Hearing Officer agrees with Talen that Hendrickson’s wage and hour claim is against the personal liability of Talen. Again, while Hendrickson argues he did not receive proper notice, that

argument is for the Bankruptcy Court to address if Hendrickson files a request to reopen in that court, because that court has proper authority over the matter. When Talen's bankruptcy plan was confirmed on December 15, 2022, claims for which no proof of claim was filed were discharged, and this includes an injunction against Hendrickson's wage claim against Talen. *See* 11 U.S.C. § 1141(d)(1)(A); 11 U.S.C. § 524(a)(2); Fed. R. Bankr. P. 3003(c)(2). As such, with no wage claim against Talen that can proceed outside the Bankruptcy Court, the Hearing Officer concludes Hendrickson fails to state a claim in this case and the case must be dismissed.

VI. 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 Co.*, 176 Mont. 31, 575 P.2d 923 (1978).
2. Hendrickson's argument that he did not receive the Notice of Commencement and Proof of Claim documents can only be challenged before the Bankruptcy Court.
3. Due to the automatic stay and injunction requirements of bankruptcy, no set of facts exist that support Hendrickson's wage claim proceeding in this forum unless so directed by the Bankruptcy Court.

VII. ORDER

Based on the foregoing, Talen's request to dismiss this matter is hereby GRANTED. This case is dismissed without prejudice.

DATED this 13th day of October, 2023.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ JOSLYN HUNT
JOSLYN HUNT
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