

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

IN THE MATTER OF THE WAGE CLAIM	)	Case No. 231-2024
OF TREVOR MYERS,	)	
	)	
Claimant,	)	<b>ORDER ON RESPONDENT'S</b>
	)	<b>MOTION FOR SUMMARY</b>
vs.	)	<b>JUDGMENT AND MOTION FOR</b>
	)	<b>SANCTIONS</b>
ANDERSON TOWING, LLC,	)	
	)	
Respondent.	)	

\* \* \* \* \*

**I. INTRODUCTION**

On November 23, 2022, Claimant Trevor Myers (Myers) filed a wage claim alleging Respondent Anderson Towing, LLC (Anderson Towing) owed him an undetermined amount of unpaid commissions for work performed. On December 1, 2022, the undetermined amount was clarified to be \$4,000 owing for work performed between August 1, 2022, through November 23, 2022. An investigation into Myers' claim ensued and thereafter, on June 1, 2023, the investigator found Anderson Towing owed Myers \$8,666.56 in wages and \$1,299.98 in penalties. After unsuccessful mandatory mediation, on October 3, 2023, Anderson Towing requested an appeal. The case was transferred to the Office of Administrative Hearings (OAH) on October 5, 2023.

On October 11, 2023, OAH assigned Hearing Officer Joslyn Hunt to the case and set a scheduling conference for October 23, 2023. On that date, the Hearing Officer held a Zoom audio scheduling conference, and thereafter a Scheduling Order setting dates and deadlines was issued on October 24, 2023. In pertinent part, the parties were to complete discovery by January 16, 2024. Anderson Towing served discovery requests on Myers on December 15, 2023, including requests for admissions.

On January 22, 2024, Anderson Towing filed a motion for summary judgment, seeking an order granting summary judgment in its favor on the issue of wages owed to Myers. Anderson Towing based its motion on admitted facts derived from Myers' failure to respond to requests for admissions propounded by Anderson Towing. On January 24, 2024, OAH issued a Notice of Anderson Towing's motion for summary judgment on Myers. In that Notice, the Hearing Officer gave notice that upon Myers' failure to respond to the

summary judgment motion, the Hearing Officer may accept the facts in the motion as true and enter judgment in favor of Anderson Towing.

Also on January 22, 2024, Anderson Towing filed a motion for sanctions against Myers pursuant to Mont. R. Civ. P. 37. Anderson Towing argued that because Myers had been unresponsive to its discovery requests which Myers acknowledged receipt of, sanctions were appropriate. Anderson Towing also argued that default judgment should be taken against Myers for his non-responsiveness and because the facts requested admitted by Anderson Towing should be deemed admitted.

Myers failed to respond to Anderson Towing's motion for summary judgment or motion for sanctions, nor did he seek an extension of time in which to do so. Anderson Towing filed a Notice of Motion Deemed Well Taken on February 6, 2024, arguing that the Hearing Officer should deem its motion for summary judgment well taken given Myers' failure to respond. No party requested oral argument. As such, this matter is ripe for disposition.

## **II. ISSUE**

Whether undisputed facts exist entitling Anderson Towing to judgment as a matter of law where Myers, by operation of law, admits to having received full payment of wages from Anderson Towing for work performed.

## **III. UNDISPUTED FACTS**

As a preliminary matter, Anderson Towing asserts the facts in this matter are undisputed because its requests for admissions should be deemed admitted. Myers failed to respond within his 30-day timeframe to the following requests for admissions in pertinent part:

REQUEST FOR ADMISSION NO. 1: Please admit that the \$6,000 guaranteed net pay offered to you by Anderson Towing, LLC was predicated on your agreement not to turn down any towing calls.

REQUEST FOR ADMISSION NO. 2: Admit that you voluntarily turned down at least one towing call during your employment with Anderson Towing, LLC less than 1 year following your initial hiring.

REQUEST FOR ADMISSION NO. 3: Admit you voluntarily declined to take tow calls for Anderson Towing, LLC while employed by Anderson Towing, LLC during your employment.

REQUEST FOR ADMISSION NO. 4: Based on your employment agreement, admit Anderson Towing, LLC has paid all wages and

dues owed to you during and after your employment with Anderson Towing, LLC.

REQUEST FOR ADMISSION NO. 5: Admit that Exhibit 1 represents a copy of your signature of the agreement you made with Anderson Towing, LLC.

Montana Rule of Civil Procedure 36(a) provides “A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters . . . relating to facts, the application of law to fact, or opinions about either, and the genuineness of any described documents.” Mont. R. Civ. P. 36(a)(1)(A)-(B). “Each matter must be separately stated.” Mont. R. Civ. P. 36(2). “A matter is admitted unless, within 30 days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter.” Mont. R. Civ. P. 36(3). A matter is deemed admitted if the request for admissions is not answered within 30 days after service of the request. *See Morast v. Auble*, 164 Mont. 100, 105, 519 P.2d 157, 160 (1974). “[A]dmissions obtained by use of [Mont. R. Civ. P.] Rule 36 may show that there is no genuine issue as to any material fact and justify the entry of a summary judgment under [Mont. R. Civ. P.] Rule 56.” *Id.* Because the Hearing Officer concludes Myers did not respond to Anderson Towing’s discovery requests within 30 days, the Hearing Officer further concludes by operation of law the factual statements contained within Anderson Towing’s requests for admissions are admitted.

Based on concluding Myers has admitted pertinent facts, the undisputed facts in this case include the following:

1. Myers, a tow truck operator for Anderson Towing from March 23, 2022, to November 22, 2022, signed an agreement with Anderson Towing that stated as follows:

Anderson Towing LLC will abide by the guarantee that Trevor Myers will have net pay of \$6,000.00 per month providing Trevor Meyers does not turn down any calls, while on duty from Anderson Towing LLC dispatch, management, and vendors. If it is determined by management, that a call has been turned down by said employee then the guarantee is [sic] longer in place and the agreement is terminated.

2. Anderson Towing paid a 30 percent commission based on its drivers’ total base of tow calls, which is the rate billed for tows. If a driver did not meet the guaranteed net wages amount of \$6,000 and did not turn down any calls, Anderson Towing issued supplemental pay. Myers netted \$16,256.52 from Anderson Towing in wages.

3. Based on Myers' failure to properly respond to Request for Admission 4, "[b]ased on your employment agreement, admit Anderson Towing, LLC has paid all wages and dues owed to you during and after your employment with Anderson Towing, LLC," Myers admitted the wages paid as indicated above were the full wages he was due.

#### **IV. SUMMARY JUDGMENT STANDARD**

Summary judgment may be granted only when there is a complete absence of genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Mont. R. Civ. P. 56(c). The party seeking judgment bears the initial burden of establishing a complete absence of genuine issues of material fact. *LaTray v. City of Havre*, 2000 MT 119, ¶ 14, 229 Mont. 449, 999 P.2d 1010. To satisfy this burden, the moving party must "exclude any real doubts as to the existence of any genuine issue of material fact" by making a "clear showing as to what the truth is." *Toombs v. Getter Trucking*, 256 Mont. 282, 284, 846 P.2d 265, 266 (1993).

All evidence must be viewed in the light most favorable to the non-moving party, and all reasonable inferences that may be drawn from the evidence must be drawn in favor of the party opposing summary judgment. If there is any doubt as to whether a genuine issue of material fact exists, that doubt must be resolved in favor of the party opposing summary judgment. *Newbury v. State Farm Fire & Cas. Ins. Co.*, 2008 MT 156, ¶ 14, 343 Mont. 279, 184 P.3d 1021.

Once the moving party meets its burden of demonstrating a complete absence of genuine issues of material fact, the burden then shifts to the non-moving party to set forth specific facts, not merely denials, speculation, or conclusory statements, in order to establish that a genuine issue of material fact does indeed exist. Mont. R. Civ. P. 56(e); *LaTray*, ¶ 14. Finally, if no genuine issues of material fact exist, it must then be determined whether the facts actually entitle the moving party to judgment as a matter of law. Mont. R. Civ. P. 56(c).

While the failure to file a responsive brief is, generally, deemed an admission by the non-moving party that the motion is well-taken, that is not the case in motions for summary judgment. *Cole v. Flathead County*, 236 Mont. 412, 417, 771 P.2d 97, 100 (1989). In instances where summary judgment response briefs are filed by an opposing party, a determination is still required as to whether no genuine issues of material fact exist and whether the moving party is entitled to judgment as a matter of law. *Chapman v. Maxwell*, 2014 MT 35, ¶ 11, 374 Mont. 12, 322 P.3d 1029.

## V. DISCUSSION

The Montana Wage Protection Act governs payment of actual wages due an employee. Montana's wage and hour statutes obligate an employer to pay only those wages actually earned by the employee. Wages is defined to include "any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly." Mont. Code Ann. § 39-3-201(6)(a). "Except as provided in subsections (2) and (3), every employer of labor in the state of Montana shall pay to each employee the wages earned by the employee." Mont. Code Ann. § 39-3-204(1).

Here, Anderson Towing propounded discovery, including requests for admissions, upon Myers on December 15, 2023. Anderson Towing thereafter filed a motion for summary judgment, arguing in pertinent part that its requests for admission should be deemed admitted. Myers was provided Notice by the Hearing Officer that Myers' failure to respond to Anderson Towing's motion for summary may result in the Hearing Officer deeming the motion well taken and the facts admitted. Myers did not respond to Anderson Towing's motion for summary judgment.

On January 21, 2024, Myers sent an email to Anderson Towing indicating he could open the discovery requests and that Anderson Towing's tow book records show that he had not turned down any calls. The Hearing Officer concludes Myers' email does not equate to a proper response to Anderson Towing's discovery requests, including requests for admissions. While pro se litigants are given latitude in case proceedings, that latitude cannot be so great as to prejudice the other party. *Billings v. Heidema*, 219 Mont. 373, 376, 711 P.2d 1384, 1386 (1986). Pro se litigants are still required to adhere to procedural rules. *Id.* Myers sent the email to Anderson Towing after the 30-day deadline set by Mont. R. Civ. P. 36. Moreover, Myers' email does not "specifically deny" "or state in detail why" he "cannot truthfully admit or deny" any of the specific discovery requests or requests for admissions. A denial must "fairly respond to the substance of the matter[.]" Mont. R. Civ. P. 36(a)(4). For these reasons, as indicated in the Findings of Fact, the Hearing Officer deemed admitted the fact Anderson Towing has paid all wages and dues owed to Myers. The wage and hour statutes in Montana require an employer to pay wages earned by an employee. By operation of law, Myers admits that Anderson Towing has paid those wages. Hence, Myers has not produced facts evidencing a disputed issue regarding a claim for wages owing from Anderson Towing.

Because this Order on Anderson Towing's motion for summary judgment addresses all outstanding issues in this case and dismisses the case with prejudice, Anderson Towing's request for sanctions in this matter will not be further addressed.

**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. The undisputed facts of this case establish that no genuine issues of material fact exist as to whether Anderson Towing owes Myers wages for work performed.

3. Anderson Towing is entitled to judgment as a matter of law.

**VII. ORDER**

Anderson Towing’s motion for summary judgment is hereby GRANTED. The hearing in this case is vacated and Myers’ wage claim is dismissed with prejudice.

DATED this 20th day of February, 2024.

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