

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

IN THE MATTER OF THE WAGE
CLAIM OF MICHELE HOLCOMB,

Claimant,

vs.

CICCONE OPERATIONS, LLC D/B/A
KAIJU BAR & GRILL,

Respondent.

Case No. 247-2025

**ORDER ON RESPONDENT'S
MOTION FOR SUMMARY
JUDGMENT AND FINAL AGENCY
DECISION**

I. INTRODUCTION

Claimant Michele Holcomb (Holcomb) filed a wage claim with the Montana Department of Labor and Industry (Department) on November 29, 2022, alleging Respondent, Ciccone Operations, LLC d/b/a Kaiju Bar & Grill (Kaiju), owed her a total of \$12,883.30 in wages for work performed during the period of April 16, 2022 through September 15, 2022. During the Department's investigation of Holcomb's wage claim, she indicated that she was foregoing any claim of wages associated with Kaiju's tip pool, and reduced her claim amount to \$11,326.80. Following an investigation, wherein the parties submitted approximately 200 documents, the Department issued its determination that Holcomb was not owed any additional wages by Kaiju. On February 21, 2024, the same day in which the Department issued its determination, Holcomb filed her appeal. After an unsuccessful mediation, this matter was transferred to the Office of Administrative Hearings (OAH) on October 15, 2024.

On January 17, 2025, Kaiju filed a motion for summary judgment arguing that summary judgment is appropriate because no genuine issue of material fact exists that Holcomb cannot meet her burden of proving that she is owed the wages as she claims. On January 21, 2025, the Office of Administrative Hearings (OAH) served a notice on Holcomb notifying her that Kaiju had moved for summary judgment against her and advising her of her obligation in responding to Kaiju's motion. On January 27, 2025, Holcomb timely filed her response brief. Therefore, this matter is now fully briefed and ripe for disposition.

II. UNDISPUTED FACTS

1. Kaiju consists of a bar and grill in Libby, Montana, which is owned and operated by Ciccone Operations, LLC and its owner Frank Ciccone (Ciccone).
2. Holcomb began working for Kaiju in the Spring of 2022.
3. Kaiju hired Holcomb to conduct its bookkeeping, and paid her \$15.00 per hour and \$22.50 for any overtime.
4. Holcomb was hired prior to Kaiju's opening and was responsible for setting up a lot of its operations.
5. In mid-August 2022, Holcomb sent a text message to Ciccone requesting payment for hours that she worked in assisting the start-up of Kaiju. Kaiju had not paid Holcomb contemporaneously because it had not opened.
6. In her text message, Holcomb claimed that she worked a total of 171 hours during the period from April 19 through May 30, 2022.
7. A canceled check provided by Kaiju shows that it paid Holcomb for all the hours she claimed during this time period.
8. Holcomb claims that she requested payment for these hours so as to obtain a down payment for a vehicle.
9. In late-August 2022, the working relationship between Ciccone and Holcomb began to deteriorate following a disagreement on a particular business decision.
10. After Ciccone overruled Holcomb, Ciccone observed her become more flippant with her responsibilities and continue to overreach her authority.
11. For instance, Holcomb attempted to manage the Kaiju's bar employees instead of focusing on her duties as bookkeeper.
12. Holcomb also started coming in late, and also took nearly a month of work off.

13. In September, 2022, Ciccone started watching Holcomb's timecard to catch any discrepancies between the hours she claimed and the time she actually worked.

14. On or about September 15, 2022, Ciccone discovered that Holcomb was adding time that she did not work to her timecard when he matched her timecard with surveillance video showing when she arrived and left work.

15. Shortly thereafter, Kaiju terminated Holcomb's employment.

16. On October 13, 2022, following her termination, Holcomb submitted an invoice to Kaiju, in the amount of \$11,715.00, for wages that she was allegedly owed (October Invoice).

17. Her October Invoice covered a period from April 19 – June 30, 2022, even though Kaiju had already paid her for the hours she worked during this period.

18. Her October Invoice broke down her work for each week and provided a detailed description of the work that she supposedly performed.

19. In her October Invoice, Holcomb claimed to have worked 119 hours in one week.

20. Then, on November 20, 2022, she submitted another invoice alleging that she was owed \$12,883.30 (November Invoice).

21. The November Invoice contained generic categories of work without a breakdown of when she supposedly performed this work.

22. The November Invoice contained claims for regular hours, overtime, and monies from the tip pool.

23. The November Invoice purports to total all the hours that Holcomb worked for Kaiju and contains more overtime hours than the regular time hours.

24. Kaiju did not pay Holcomb's invoices and Holcomb subsequently filed a wage claim on November 29, 2022, alleging Kaiju owed a total of \$12,883.30 in wages for work performed during the period of April 16, 2022 through September 15, 2022.

III. SUMMARY JUDGMENT LEGAL 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 summary 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, 299 Mont. 449, 999 P.2d 1010. To satisfy this burden, the moving party must “exclude any real doubt 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, Inc.*, 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, ¶ 14, 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).

IV. DISCUSSION

Here, Kaiju has carried its burden of proof of establishing that no genuine issue of material fact exists that Holcomb cannot make out a *prima facie* case with respect to her wage claim. Through its affidavit and the authenticated documentation contained within the investigative file, it is clear that Holcomb was paid all the wages that she was owed.

An employee seeking unpaid wages has the burden of proving work performed without proper compensation. *Anderson v. Mt. Clemens Pottery Co.* (1946), 328 U.S. 680; *Garsjo v. Dept. of Labor and Industry* (1977), 172 Mont. 182, 562 P.2d 473. To meet this burden, the employee must produce evidence to “show the extent and amount of work as a matter of just and reasonable inference.” *Garsjo* at 189, 562 P.2d at 476-77 (citations omitted); *see also Marias Health Care Srv. v Turenne*, 2001 MT 127, ¶¶ 13, 14, 305 Mont. 419, 422, 28 P.3d 494, 495 (holding that the lower court properly concluded that the plaintiff’s wage claim failed because

she failed to meet her burden of proof to show that she was not compensated in accordance with her employment contract). Holcomb, as the non-moving party, must come forward with specific facts, not merely speculation or conclusory statements, in order to establish that a genuine issue of material fact does indeed exist.

Holcomb cannot meet her burden, as a matter of law, because she has failed to show any uncompensated work she performed as a matter of just and reasonable inference. Critically she has failed to explain, with more than mere conclusory statements or speculation, the significant discrepancies between the hours she was contemporaneously claiming and her post-termination invoices. For the October Invoice, the undisputed facts establish that Holcomb made a claim for unpaid wages covering the period from April 19 through May 30, 2022 directly to Ciccone via a text message in August 2022. The documentation also establishes that Kaiju paid Holcomb for these hours via a check which was cashed by Holcomb. Despite there being clear evidence that she requested pay and was paid for all the time she claimed to have worked, Holcomb is now attempting to assert that she is entitled to substantially more wages for work she allegedly performed during the exact same time period. The following chart shows the discrepancies between her reported time in August 2022 and her October Invoice, for the time period of April and May 2022:

Week	August 2022 Text Hours	October Invoice Hours
April 19	8	
April 26	8	24
May 2	25	64
May 9	32	54
May 16	32	72
May 23	32	96
May 30	40	101

In total, Holcomb claimed, and was paid for, 171 hours for the work she performed from April 19 through May 30, 2022. However, her October Invoice indicates that she worked 411 over that same period, with no legitimate explanation for this sudden and significant increase in her hours. Holcomb's only attempted explanation was that she needed a down payment for a car and requested to be paid in August. Nowhere in Holcomb's response does she offer any evidence or explanation as to why she suddenly was claiming more hours worked after her termination than when she requested payment in August. Her position that she worked more hours than originally claimed is based on nothing but speculation and conclusory statements.

Similarly, there are significant, unexplained discrepancies between the hours that Holcomb contemporaneously recorded during the month of June and her post-termination claimed hours. For instance, her timesheet indicates that she worked, and was paid for, a total of 44.76 hours during the week of June 4, 2022. However, in her October Invoice, she claims to have worked a total of 101 hours during the same week. For the week of June 11, Holcomb claims to be owed for 96 hours even though her timesheet only lists her having worked 34.65 hours. As for the week of June 18, Holcomb claims that she worked 72 hours while only inputting 47.96 hours originally. Finally, for the week of June 24, Holcomb was paid for 33.95 hours but is now claiming to be owed for 83 hours.

Finally, the Hearing Officer places no weight or consideration on Holcomb's November Invoice. On its face, the invoice does not contain sufficient information to be deemed more than mere speculation and conclusory statements. It only contains generic descriptions of the work she supposedly performed and lists lump sum hours, without a breakdown of when these hours were supposedly worked. Given the speculative nature of this submission, the information contained therein cannot be authenticated or verified, and, thus, is not given any weight.

Holcomb has done nothing to explain the discrepancies between her contemporaneously recorded hours and the hours she now claims she is owed for. Her only discussion regarding her August text, wherein she requested payment for 171 hours, was that she needed a down payment for a vehicle. However, her need for a vehicle does not create a genuine issue of fact regarding why she only claimed 171 hours then, but is now alleging that she is owed for 411 hours. Further, no evidence explains why she would only request pay at a regular rate and ignore significant amounts of overtime, only to assert it later. Without any evidence or explanation from Holcomb as to these discrepancies, these exorbitant figures are simply speculation that does not in turn create a genuine issue of fact. If Holcomb had actually worked the significant hours that she now claims, there is no reason given for failing to report them contemporaneously when she was submitting her time. It stands to reason that if she worked these hours, she would have recorded them when she was filling out her timesheets or was requesting payment. Without evidence to support her claim for additional wages, it is undisputed Holcomb has failed to meet her burden to prove she worked any uncompensated time to establish that a genuine issue of material fact exists that her claim is legally insufficient. She lacks any evidence to "show the extent and amount of work as a matter of just and reasonable inference" that is more than a conclusory statement. As such, Holcomb cannot meet her burden of proof as a matter of law.

The undisputed evidence presented by Kaiju, in the form of authenticated timesheets, text messages, pay stubs, and cancelled checks, establishes that Holcomb was paid for the work she claimed at the time. Given Holcomb's failure to provide

any evidence to show she actually worked the post-termination claimed hours, no genuine issue of material fact exists to defeat summary judgment.

V. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint pursuant to Mont. Code Ann. § 39-3-201, et seq. *State v. Holman Aviation*, 176 Mont. 31, 575 P.2d 925 (1978).

2. Holcomb was an employee of Kaiju because Kaiju suffered and permitted Holcomb to work at Kaiju. Mont. Code Ann. § 39-3-201(3).

3. Holcomb timely filed a wage and hour claim within the 180-day period provided for under Mont. Code Ann. § 39-3-207(1).

4. As a matter of law, Holcomb failed to meet her burden to show that she performed work without proper compensation because she failed to present evidence that amounted to more than speculation or conclusory statements.

5. No genuine issue of material fact exists that Kaiju paid Holcomb for all the hours she actually worked.

VI. ORDER

Based on the foregoing, Kaiju's Motion for Summary Judgment is granted. Holcomb's wage claim is hereby dismissed.

DATED this 10th day of February, 2025.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ JEFFREY M. DOUD
JEFFREY M. DOUD
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