

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

IN THE MATTER OF THE WAGE CLAIM
OF BRENT STEIN,

Claimant,

vs.

WHITE DRUG ENTERPRISES, INC.
d/b/a/ SIDNEY THRIFTY WHITE
DRUG,

Respondent.

Case No. 584-2025

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

I. INTRODUCTION

On May 16, 2023, Claimant, Brent Stein (Stein), filed a wage claim alleging Sidney Thrifty White Drug (STWD) owed him a total of \$10,000.00 in wages for a sign-on bonus during his employment period of April 5, 2022 through July 22, 2022. Following an investigation, the Wage and Hour Division determined that Stein did not file his wage claim against STWD within the statute of limitations prescribed by Mont. Code Ann. § 39-3-207(1), and, therefore, found that it lacked jurisdiction to consider his claim. Stein appealed and this matter was transferred to the Office of Administrative Hearings on March 20, 2025.

On May 7, 2025, STWD moved for summary judgment on the basis that Stein's wage claim is barred by the applicable statute of limitation. More specifically, STWD alleged that Stein was terminated on July 27, 2022 and it paid Stein his final wages on August 19, 2022. Stein filed his wage claim on May 16, 2023, which was 270 days after his wage claim allegedly accrued. As such, STWD argues, Stein's wage claim is statutorily barred because Mont. Code Ann. § 39-3-207(1) requires a claimant to file a wage claim within 180 days of the claim's accrual.

Stein filed a response which focused exclusively on the circumstances of his separation from STWD, including an affidavit from a former co-worker and a public relations consultant, and he requested a "hearing" on the motion, which the hearing officer interpreted as a request for oral argument. STWD filed its reply brief. Oral argument was not granted as discussed below. This matter having been fully briefed is now ripe for disposition.

II. UNDISPUTED FACTS

1. Stein was hired by STWD as its pharmacy manager in March, 2022.
2. Stein and STWD negotiated for a \$10,000.00 retention signing bonus that Stein was to receive upon starting his employment with STWD.
3. The parties reduced the bonus agreement to writing that was executed by the parties on April 1, 2022.
4. According to the terms of the Written Retention Bonus Agreement (Agreement), if Stein resigned or was terminated for cause within the first 24 months of his employment, he was obligated to pay back the full amount of the bonus.
5. Under the terms of the Agreement, STWD reserved the right to withhold any amount of Stein's wages to recoup the retention bonus.
6. STWD paid Stein the full amount of the retention bonus in two separate installments.
7. STWD discharged Stein on July 27, 2022 and claimed that his discharge was for cause.
8. STWD paid Stein's final wages on August 19, 2022 but withheld \$8,204.33 from Stein's final paycheck as partial recoupment of the retention bonus.
9. Stein filed his wage claim with the Department on May 16, 2023.

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); *LaTray v. City of Havre*, 2000 MT 119, ¶ 14, 299 Mont. 449, 999 P.2d 1010, 1014. The party seeking summary judgment bears the initial burden of establishing a complete absence of genuine issues of material fact. *LaTray*, ¶ 14. 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).

In determining whether genuine issues of material fact exist, all evidence must be viewed in the light most favorable to the non-moving party. *LaTray*, ¶ 15. Therefore, all reasonable inferences that may be drawn from the evidence must be drawn in favor of the party opposing summary judgment. *LaTray*,

¶ 15. 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.

If 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

A. Whether Stein Timely Filed His Wage Claim

The pertinent issue presented by STWD's motion is whether a genuine fact issue exists as to whether Stein timely filed his claim within the applicable statute of limitations. Mont. Code Ann. § 39-3-206(1) provides that "[a]n employer who fails to pay an employee as provided in this part or who violates any other provision of this part is guilty of a misdemeanor. A penalty must also be assessed against and paid by the employer to the employee in an amount not to exceed 110% of the wages due and unpaid." *Id.* With respect to the period in which an employee may recover owed wages, Mont. Code Ann. § 39-3-207(1) states, "[a]n employee may recover all wages and penalties provided for the violation of 39-3-206 by filing a complaint within 180 days of default or delay in the payment of wages." *Id.* "[T]he established rule is that a wage claim under § 39-3-207, MCA, accrues when the employer's duty to pay the employee matures and the employer fails to pay the employee." *See Craver v. Waste Mgt. Partners of Bozeman*, 265 Mont. 37, 44, 874 P.2d 1, 2 (1994), *overruled in part on other grounds, In re Estate of Lande*, 1999 MT 179, ¶ 15, 295 Mont. 277, 983 P.2d 316.

Here, the undisputed facts establish that STWD discharged Stein on July 27, 2022 and withheld his wages, as recoupment for the retention bonus, on August 19, 2022. Thus, Stein's claim accrued, at the very latest, on August 19, 2022. Upon the accrual of his claim, Stein had 180 days in which to file his wage claim per Mont. Code Ann. § 39-3-207(1). Given this 180-day statute of limitations, Stein had until February 16, 2023 to file his wage claim for it to be timely. However, Stein did not file his wage claim with the Department until May 16, 2023, or three months after the statute of limitations had run on his claim.

B. Sufficiency of Stein's Response

Once STWD met its burden of showing that no genuine issues of material facts were in dispute, the burden shifted to Stein to present evidence showing that material factual disputes existed. If 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. Stein failed to meet his burden in this respect.

Stein presented the affidavit of a former co-worker, Robyn Brannan, discussing the circumstances surrounding Stein's departure from STWD. Nothing therein confronts the central issue of whether Stein timely filed his wage claim. Rather, all the statements made therein pertain exclusively to the circumstances of Stein's separation from STWD. Similarly, Stein's submission of the affidavit of Jeanne Knapp, who is a public relations consultant, does not address the central issue. Rather, it addresses prior legal issues involving Stein, and analyzes a video that was taken by Stein during his meeting with STWD management, which occurred prior to the date that his wage claim arose.

Stein also submitted the video as part of his response. There are significant issues with the video, which raise questions as to the admissibility of Ms. Knapp's analysis thereof. Chief among these issues is the fact that there is nothing to indicate that the other participants in the meeting consented to the meeting being recorded. The surreptitious manner in which the video was recorded suggests that the meeting participants were unaware that they were being recorded. Montana requires all parties to a conversation to consent to the recording. Mont. Code Ann. § 45-8-213. If all parties do not consent, the recording is generally inadmissible. Without conclusive proof that the other participants to this conversation consented to Stein recording the meeting, it cannot be considered.

Aside from the admissibility issues with the video, it is uncontroverted that this meeting occurred prior to the date that Stein's wage claim arose. Since it occurred prior to the date that his wage claim arose, there is no utility in the recording because anything discussed therein would not assist in determining whether Stein timely filed his wage claim.

Based on the foregoing, Stein failed to carry his burden in responding to STWD's motion for summary judgment. Stein did not make the appropriate showing that genuine fact issues exist as to whether he timely filed his claim. Since Stein failed to prove that a genuine fact issue existed, and because STWD proved that Stein did not file his wage claim within the time limits imposed by Mont. Code Ann § 39-3-207, summary judgment must be granted in STWD's favor.

C. Stein's Request for Oral Argument

In his response brief, Stein requested oral argument pursuant to Mont. R. Civ. P. 56(c)(2)(A). The purpose of summary judgment hearings is to consider whether genuine issues of material fact exist as opposed to considering legal arguments. *Cole v. Flathead Cty.*, 236 Mont. 412, 418, 771 P.2d 97, 101 (1989). “[A] hearing may not be necessary in ‘extraordinary circumstances’ before an order granting summary judgment.” *Richards v. City of Missoula*, 2009 MT 453, ¶ 17, 354 Mont. 334, 223 P.3d 878 (citing *Linn v. City Cty. Health Dep’t*, 1999 MT 235 ¶ 8, 296 Mont. 145, 988 P.2d 302)). The Montana Supreme Court has recognized that there are circumstances when, under the law and facts presented, “the movant would be so clearly entitled as a matter of law to summary judgment that a district court might by order dispense with the necessity of a hearing.” *Cole*, 263 Mont. at 419, 771 P.2d at 101; *see also RN & DB, LLC v. Stewart*, 2015 MT 327, ¶ 44, 381 Mont. 429, 362 P.3d 61 (“[W]e will not put a district court in error for failing to hold a summary judgment hearing if the hearing testimony would not raise any issue of material fact.”); *Virginia City v. Olsen*, 2002 MT 176, ¶ 16, 310 Mont. 527, 52 P.3d 383 (quoting *Cole*, 236 Mont. at 419, 771 P.2d at 101) (“[W]e have recognized that ‘there may be an occasion when under the law and the facts adduced, the movant would be so clearly entitled as a matter of law to a summary judgment that a district court might by order dispense with the necessity of a hearing.’”).

Here, this case presents the extraordinary circumstance where oral argument would not be beneficial as the facts are clearly established through STWD’s affidavit and uncontested by Stein. Moreover, given the information submitted by Stein, his request for oral argument seemed to be geared towards presenting his grievances regarding the circumstances of his separation from STWD and not confronting his failure to timely file his wage claim. The materials submitted by Stein pertain exclusively to the circumstances of his separation and alleged working conditions. Since the purpose of oral argument would be to explore potential factual issues on the statute of limitations issue, and not explore legal arguments on the underlying claims, and because Stein has failed to present any evidence or argument on the pertinent issue, the hearing officer finds that oral argument would not assist in the resolution of this issue. Therefore, Stein’s request for oral argument is hereby denied as unnecessary.

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

3. As a matter of law, Stein failed to meet his burden to show that genuine fact issues existed as to whether he timely filed his claim.

4. No genuine issue of material fact exists that Stein failed to timely file his wage claim with the Department within 180 days of the date wages were allegedly due as required by Mont. Code Ann. § 39-3-207(1).

5. STWD is entitled to judgment as a matter of law.

VI. ORDER

Based on the foregoing, STWD's motion for summary judgment is hereby granted, and Stein's wage claim is dismissed with prejudice.

DATED this 11th day of June, 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