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

IN THE MATTER OF THE WAGE CLAIM OF MICHELE MOWRER, Claimant, vs. SUMMIT MOUNTAIN LODGE, d/b/a ANGRY BEAR LODGE, LLC, Respondent.	)	Case No. 129-2027 **ORDER ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

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I. INTRODUCTION

On November 17, 2025, Claimant Michele Mowrer (Mowrer) filed a wage claim alleging Respondent Summit Mountain Lodge d/b/a Angry Bear Lodge, LLC (Angry Bear) owed her $1,650.00 in tips. An investigation into Mowrer's claim ensued and thereafter, on June 2, 2026, the investigator found that Angry Bear owed Mowrer $21.10 in additional wages and no additional tips. Before the Wage and Hour Unit determined the additional wages owing, Angry Bear discovered it owed Mowrer for two additional hours and paid her for those hours on January 2, 2026. After unsuccessful mandatory mediation, on August 3, 2026, Mowrer requested a contested case hearing. The case was transferred to the Office of Administrative Hearings (OAH) on August 6, 2026.

On August 7, 2026, OAH assigned Hearing Officer Joslyn Hunt to the case and set a scheduling conference for August 17, 2026. On that date, the Hearing Officer held a Zoom audio scheduling conference, and thereafter a Scheduling Order setting dates and deadlines was issued on August 20, 2026.

On September 14, 2026, Angry Bear filed a motion for summary judgment, seeking an order granting summary judgment in its favor. Angry Bear based its motion on the undisputed facts showing that Angry Bear already paid Mowrer for her non-cash tips earned during her employment. On September 16, 2026, OAH issued a Notice of Angry Bear's motion for summary judgment on Mowrer. On September 25, 2026, Mowrer responded to Angry Bear's motion for summary judgment, arguing that genuine disputes of material fact exist regarding whether Angry Bear's point of sale (POS) records accurately and completely reflect the tips left for Mowrer. On October 5, 2026, Angry Bear replied.

On October 8, 2026, Mowrer filed a motion for leave to file a supplemental response to Angry Bear's reply, to which Angry Bear objected. In particular, Mowrer argues that a response is necessary so Mowrer may address factual and evidentiary arguments that Mowrer could not have addressed fully when she filed her response. According to Mowrer, these arguments include: (1) that Mowrer desires to clarify factual discrepancies underlying her wage claim; (2) that Mowrer has tried to obtain records and why Angry Bear's records are incomplete; (3) that Mowrer recalls serving no fewer than 84 tables and receiving $102.00 in tips on her first shift; (4) that Mowrer has experienced financial hardship and cannot obtain records; and (5) that notions of fairness to be able to respond again apply.

The Hearing Officer denies Mowrer's request to submit a response to Angry Bear's reply given that Mowrer had an opportunity to address the arguments she outlined in her request for an additional response. The Hearing Officer disagrees with Mowrer that she did not have opportunity to address Angry Bear's assertions, because Mowrer already provided arguments in response about her asserted factual discrepancies, Angry Bear's records, Mowrer's recollections, and notions of fairness.

Neither party having requested oral argument, this matter is ripe for disposition.

II. ISSUE

Whether undisputed facts exist entitling Angry Bear to judgment as a matter of law where Angry Bear paid Mowrer for all non-cash tips earned during her employment.

III. UNDISPUTED FACTS

1. Angry Bear is a steakhouse and fine dining restaurant in Essex, Montana.

2. Mowrer was employed as a server at Angry Bear from August 14, 2025, through August 23, 2025.

3. Angry Bear paid Mowrer $10.55 per hour plus tips.

4. Angry Bear's dining service operates each Tuesday through Sunday, from 5:00 p.m. to 9:00 p.m.

5. Angry Bear's host and front of house staff seated customers and assigned tables to the servers who were on shift.

6. Each table and the corresponding checks were assigned in the POS system to the server's profile responsible for that table.

7. For debit and credit card transactions, customers manually entered the amount they wished to tip the server at the end of the meal.

8. The server collected the completed receipt from the server's table and delivered it to the host. The host entered the information from the customer's receipt into the POS system and processed the transaction so the table could be closed in the POS system.

9. If a table's transaction was not closed in the POS system, a new transaction could not be opened for that table.

10. Once the host completed entering the information from the receipt into the POS system, the receipt was placed in the cash register by the host and verified during closing.

11. The POS system does not allow Angry Bear to close a business day and generate a daily report until every receipt for every table is entered.

12. Angry Bear had to close the business day in the POS system before midnight to avoid problems with the system.

13. For each table served, the bill summary shows the table's bill total and the table's payment total.

14. The difference between the table's payment total and the table's bill total is the amount of tip earned by the server.

15. If there is no difference, then the table either tipped the server in cash or did not tip the server.

16. Angry Bear has a tip report that groups each server's transactions by customer payment method.

17. The tip report identifies the total tips earned for each server for each payment method except cash. The tip report does not track a server's cash tips, so the tip report shows $0.00 for each server's cash tips.

18. August 14, 2025, was Mowrer's first shift. She did not serve tables during that shift. She earned an hourly wage and no tips for that day.

19. On August 15, 2025, Mowrer waited on one table and received a $27.00 non-cash tip.

20. On August 16, 2025, Mowrer waited on nine tables and received $101.79 in non-cash tips.

21. On August 17, 2025, Mowrer waited on six tables and received $126.37 in non-cash tips.

22. Angry Bear was closed on August 18, 2025, so Mowrer did not wait on tables that day.

23. On August 19, 2025, Mowrer waited on five tables and received $55.00 in non-cash tips.

24. On August 20, 2025, Mowrer waited on two tables and received $50.00 in non-cash tips.

25. On August 21, 2025, Mowrer waited on eight tables and received $68.00 in non-cash tips.

26. Angry Bear recorded that Mowrer worked a total of 30 hours and 44 minutes at $10.55 per hour.

27. Mower estimated that she waited on 12 to 18 tables each day during those days.

28. Mowrer estimated that she worked a total of 33.5 hours, arguing later that she worked eight hours each day during that pay period.

29. Mowrer earned $428.16 in non-cash tips between August 10, 2025, through August 23, 2025, which was Mowrer's only pay period.

30. On August 23, 2025, Angry Bear paid Mowrer $428.16 in tips and $324.24 in wages.

IV. DISCUSSION

A. 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).

B. The Parties' Arguments

Angry Bear argues that no record exists that it owes Mowrer non-cash tips beyond what Angry Bear already paid to Mowrer. Angry Bear asserts it is undisputed that it paid Mowrer for all reported non-cash tips, so Mowrer's wage claim fails as a matter of law and must be dismissed. Angry Bear continues that pursuant to *Garsjo v. Department of Labor and Industry*, 172 Mont. 182, 562 P.2d 473 (1977), Mowrer bears the burden of proving she performed work for which she was not paid. Angry Bear contends that Mowrer cannot meet her burden because she has not shown "the extent and amount of work as a matter of just and reasonable inference," citing to *Garsjo*, 172 Mont. at 189. Angry Bear also asserts that the basis for Mowrer's appeal is unclear. Regardless, Angry Bear contends that if she is seeking wages or tips, she cannot meet her burden of proof because she has identified no record of any unpaid wage or tip. Rather, according to Angry Bear, the undisputed evidence shows that Angry Bear paid Mowrer her hourly wages and all recorded non-cash tips. Angry Bear continues that the bill summary and tip report show that Mowrer earned $428.16 in non-cash tips, which her paycheck reflected. Angry Bear contends that while Mowrer asserts she should have received more tips overall, she does not identify specific transactions that are missing nor is there a reasonable basis to assert Angry Bear's records are inaccurate or inadequate.

Mowrer responded, arguing that Angry Bear's motion treats the accuracy of its own records as an undisputed fact, which is incorrect. Mowrer indicates that she has personal knowledge of customer receipts and tips she observed before surrendering those receipts to staff. Because staff then entered them into the system, a material factual dispute exists according to Mowrer since Mowrer did not enter the information into the POS. Mowrer contends that she

has firsthand evidence contradicting Angry Bear's proposition that the POS total reflects all tips received. In particular, Mowrer argues that during her first shift, she served four tables and observed for three of those tables approximately $102.00 in tips. Mowrer continues that she recalls the restaurant being packed every night, except Tuesday, and serving between 12 to 18 tables.

Mowrer also argues that Angry Bear's own records have already shown to contain one compensation error, which suggests that Angry Bear's compensation records are inaccurate. Mowrer raises concerns about Angry Bear's time clock records, which do not match her recollection and she requests the records to determine what was entered or adjusted. Mowrer continues that she does not deny that Angry Bear paid her $428.16 in tips. Mowrer argues that such payment does not represent all non-cash tips left for her, which is her dispute. Mowrer also argues that where she would testify to specific tips she personally observed and disputes the POS records, the Hearing Officer must assess the competing evidence and credibility at a contested case hearing.

Mowrer continues that *Garsjo* does not require a claimant to produce the employer's own records, because her opposition is based on her firsthand observations and the manner in which Angry Bear entered the tips. Mowrer argues that she should not be denied a hearing merely because she did not retain documents that through Angry Bear's own procedure she was required to surrender. Mowrer argues that she did not control the processing and distribution of the tips, and she requests records of a tip pool. Finally, Mowrer requests that if additional evidence is needed, she be permitted a fair opportunity to examine Angry Bear's information.

Angry Bear replied, arguing that Mowrer's response relies on her inadequate recollection of the tips she allegedly did not receive and speculation of Angry Bear's recordkeeping. Angry Bear contends that Mowrer's evidence does not defeat its motion for summary judgment, because no genuine issue of material fact exists. According to Angry Bear, Mowrer's burden is to establish a genuine factual dispute, which she has not done with her denials and speculation. Angry Bear continues that Mowrer's personal recollections are insufficient to meet the standard established in *Garsjo*, because she must produce sufficient evidence to show the amount and extent of work as a matter of just and reasonable inference. Angry Bear contends that Mowrer has not presented evidence showing the hostess incorrectly entered information about the server's receipts into the system. In addition, Angry Bear identified the hostess who primarily entered information into the POS, recovering 29 of 31 receipts attributable to Mowrer. According to Angry Bear, the receipts align with 29 of the 31 entries attributed to Mowrer on the bill summary report which show Mowrer's non-cash tips were accurately entered. Angry Bear argues that Mowrer offers no observations or recollections that contradict

Angry Bear's records of her shifts, which through the bill summary and receipts establish that she did not earn any non-cash tips during her first shift.

Angry Bear also argues that Mowrer raises for the first time in her response brief that she was not paid for all hours worked on August 14, 2025, disputing the accuracy of the time clock and alleging Angry Bear altered time entries. Angry Bear argues that basic notions of due process prohibit Mowrer from changing the nature of her allegations, arguing as well that her newly asserted argument must be disregarded. Even if her allegation is considered, however, Angry Bear argues that Mowrer failed to establish a genuine issue of material fact, because she speculates that an unidentified Angry Bear employee must have altered her time. Angry Bear asserts that the time clock shows Mowrer clocked in at 3:39 p.m. on August 14, 2025, which was her first day of work. In addition, Angry Bear argues that time clock entries do not bear on whether Angry Bear paid all of her non-cash tips earned, because servers earned tips from the tables they served and did not participate in a tip pool. To the extent Angry Bear inadvertently failed to pay Mowrer for two hours, Angry Bear argues that it discovered the error and corrected the error. Such error, according to Angry Bear, does not mean that Angry Bear made other errors or altered time entries.

Angry Bear argues that regarding Cali Chen's (Chen) assertions about working with Mowrer, Chen's recollections do not contradict Angry Bear's POS records and, regardless, Chen's assertions as they concern Mowrer's departure are improper to raise. Finally, Angry Bear argues that Mowrer's request for additional discovery is improper, because Angry Bear already provided documents, because time records are immaterial to Mowrer's claim for unpaid tips, and because Mowrer had an opportunity to request materials through timely discovery and chose not to do so.

C. Wage Claim Requirements

Montana's wage protection statutes govern 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. Montana Code Annotated § 39-3-201(6)(a) defines wages as "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 that are covered by section 3402(k) and service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for services rendered by them to patrons of premises or businesses licensed to provide food, beverage, or lodging." "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).

An employee seeking unpaid wages has the initial burden of proving work performed without proper compensation. *Garsjo*, 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." *Id.* at 189; *see also, Marias Health Care Srv. v. Turenne*, 2001 MT 127, ¶¶13, 14, 305 Mont. 419, 422, 28 P.3d 491, 495 (holding the lower court properly concluded 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).

Once an employee has shown as a matter of just and reasonable inference that she is owed wages, "'the burden shifts to the employer to come forward with evidence of the precise amount of the work performed or with evidence to negate the reasonableness of the inference to be drawn from the evidence of the employee, and if the employer fails to produce such evidence, it is the duty of the court to enter judgment for the employee, even though the amount be only a reasonable approximation' . . . ." *Garsjo*, 172 Mont. at 189. As the Montana Supreme Court has long recognized, it is the employer's duty to maintain accurate records of hours worked, not the employee's. *Smith v. Tyad, Inc.*, 2009 MT 180, ¶ 46, n.3, 351 Mont. 12, 209 P.3d 228.

D. Analysis

Here, Mowrer does not dispute that Angry Bear paid her $428.16 in non-cash tips. In her original wage claim, Mowrer asserted that she was owed a total of $1,650.00 in unpaid tips, based on her estimates. Mowrer does not have documentation of the unpaid tips she claims is owing, instead indicating that it is not her obligation to produce records that Angry Bear has. Mowrer also contends that she has firsthand knowledge about the tips owing and will testify about that knowledge at a contested case hearing. Asserting firsthand knowledge, however, does not meet Mowrer's burden. Rather, as it concerns Angry Bear's motion for summary judgment as is more fully discussed below, Mowrer has a burden to show a genuine issue of material fact exists regarding whether she is owed wages. Mowrer has failed to do so.

The Montana Supreme Court in *Garsjo* indicated that an employee has the initial burden of proving work performed without proper compensation, by producing evidence of work performed as a matter of just and reasonable inference. By alleging that she is owed $1,650.00 in additional unpaid tips for work performed between August 14, 2025, through August 23, 2025, the Hearing Officer finds that Mowrer met her burden under *Garsjo* because she submitted an estimate of the days and hours she worked and the tips she earned. That said, the next step in the analysis of Angry Bear's motion for summary judgment is to review its motion to determine whether it proved no genuine issues of material fact exist and that it is entitled to judgment as a matter of law. The evidence shows that on the days Mowrer worked between

August 14, 2025, through August 23, 2025, the POS system and bill summary show that Mowrer earned $428.16 in non-cash tips. The evidence also shows that Angry Bear paid Mowrer $428.16 in non-cash tips. Mowrer does not dispute this payment. Since Angry Bear proved no genuine issue of material fact existed with regard to its payment of non-cash tips to Mowrer, the burden shifts to Mowrer to establish that a genuine issue of material fact exists, under Mont. R. Civ. P. 56(e). Mowrer must do so with specific facts, not mere denials, speculation, or conclusory statements. *See* Mont. R. Civ. P. 56(e); *LaTray*, ¶ 14. Again, Mowrer asserts her firsthand knowledge about which she will testify defeats the summary judgment motion, given that the motion must be construed in the light most favorable to Mowrer.

Mowrer's firsthand knowledge, as she asserts, is a recollection of the restaurant being packed most days with her serving between 12 to 18 tables each day. The Hearing Officer does not find these recollections evidence of a disputed fact. These recollections do not meet Mowrer's burden in raising a genuine issue of material fact. Rather, these assertions are mere denials and speculation, which are insufficient to counter a summary judgment motion. "A suspicion, regardless of how particularized it may be, is not sufficient to sustain an action or to defeat a motion for summary judgment. Unsupported conclusory or speculative statements do not raise a genuine issue of material fact. The . . . court has no duty to anticipate possible proof." *Benson v. Diehl*, 228 Mont. 199, 203, 745 P.2d 315 (1987).

Mowrer speculates that she received approximately $102.00 in tips on her first shift. Angry Bear's records show that Mowrer did not wait tables during her first shift. Mowrer speculates that she waited on more tables than reported by Angry Bear during her employment, including between 12 to 18 tables each shift. On August 15, 2025, Mowrer estimates that she made $250.00 in non-cash tips and waited on at least 12 tables. However, the POS records from Angry Bear show that Mowrer made $27.00 in non-cash tips from one table, and that Mowrer was not the server for any other tables that shift. For busier nights, Mowrer estimates that on August 16, 2025, she made between $250.00 to $350.00 in tips and served up to 18 tables. However, the POS records from Angry Bear show that Mowrer made $101.79 in non-cash tips from ten tables served, and that Mowrer was not the server for any other tables that shift. Further, regarding the total number of tables, Angry Bear's records show that Mowrer waited on a total of 31 tables. When a new customer went to a table for dining, the host through the POS system assigned a server for that customer. The POS system required an open transaction to be completed and closed for that server which required determining the tips, thereby ensuring that the system tracked each server's tables. Angry Bear's receipts align with what Angry Bear paid to Mowrer for her non-cash tips owing. Angry Bear's records show that Mowrer earned $428.16 in non-cash tips between August 10, 2025, through August 23, 2025, and that Angry Bear paid Mowrer $428.16 in tips and $324.24 in wages (based on 30 hours and

44 minutes of work at $10.55 per hour). Mowrer does not contest payment of $428.16 but, again, asserts she is owed more non-cash tips than that amount. Therefore, although Mowrer met her initial burden of establishing that she worked for Angry Bear, Angry Bear then met its duty to maintain accurate records of non-cash tips paid by producing its records. The Hearing Officer finds that Mowrer failed to provide material and substantial evidence or specific facts to establish that she waited on more tables and is owed more non-cash tips than what Angry Bear paid or that Angry Bear's records are inaccurate. Mowrer, instead, relies on speculative and conclusory statements that are insufficient to defeat a motion for summary judgment under Mont. R. Civ. P. 56(e).

To the extent Mowrer raises that she was not paid the correct amount of actual wages, the Hearing Officer finds that Mowrer asserted a just and reasonable inference that she was due compensation based on her estimates of the hours she worked. However, for purposes of summary judgment, Angry Bear again established there is no genuine material dispute that Mowrer was paid for hours worked and Angry Bear is entitled to judgment as a matter of law. Mowrer's estimates of her time present only speculation that she worked additional hours. For example, on August 14, 2025, Mowrer estimates she worked seven hours. However, the timeclock records from Angry Bear show she started at 15:39 and ended at 21:32 for a total of 5 hours 52 minutes. Therefore, although Mowrer met her initial burden of establishing that she worked for Angry Bear on August 14, 2025, Angry Bear then met its duty to maintain accurate records of hours worked by producing its records. Mowrer did not then overcome the undisputed facts regarding her hours worked with anything more than speculation. Therefore, Mowrer failed to show a genuine dispute exists regarding the hours she worked.

The undisputed facts in this case establish that no genuine issues of material facts exist. Angry Bear is entitled to judgment as a matter of law.

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 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 Angry Bear owes Mowrer unpaid tips.

3. Angry Bear is entitled to judgment as a matter of law.

VI. ORDER

Angry Bear's motion for summary judgment is hereby GRANTED. The hearing in this case is vacated and Mowrer's wage claim is dismissed with prejudice.

DATED this 29th day of October, 2026.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ JOSLYN HUNT
JOSLYN HUNT
Hearing Officer