

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2022 MTWCC 13

WCC No. 2022-6000

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GUIDETIME, INC.

Petitioner

vs.

JOSEPH CLINCH

Respondent.

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ORDER DISMISSING APPEAL FOR LACK OF JURISDICTION

**Supreme Court Appeal No. DA-22 0705**  
**Appeal Dismissed by Voluntary Request of the Parties**

**Summary:** Pursuant to § 39-71-415(2)(c), MCA, which gives this Court jurisdiction to decide appeals of employment status determinations from the DLI's Independent Contractor Central Unit, Petitioner asserts that this Court has jurisdiction to review the DLI's Wage and Hour Unit's determination that Respondent was its employee for purposes of Respondent's wage claim.

**Held:** This Court dismissed Petitioner's appeal for lack of jurisdiction because the DLI's Wage and Hour Unit, and not the Independent Contractor Central Unit, decided Petitioner's and Respondent's employment status dispute. Jurisdiction pursuant to § 39-71-415(2)(c), MCA, does not vest in this Court unless and until such dispute is decided by the Independent Contractor Central Unit. The DLI's rules state that if there is an employment status dispute in a wage claim, the Wage and Hour Unit must forward the dispute to the Independent Contractor Central Unit for a decision and then incorporate the Independent Contractor Central Unit's decision. The DLI must follow its own rules and does not have the authority to declare that a decision of the Wage and Hour Unit constitutes a decision of the Independent Contractor Central Unit.

¶ 1 During a Zoom videoconference on September 6, 2022, this Court sua sponte raised the issue of whether the Workers' Compensation Court (WCC) has subject matter jurisdiction over Petitioner GuideTime, Inc.'s (GuideTime) appeal of Respondent Joseph Clinch's employment status for purposes of his wage claim. This Court ordered the

parties to brief the issue and specify the statutes that confer subject matter jurisdiction.<sup>1</sup> The parties submitted briefs in accordance with this Court's Order.

¶ 2 On October 4, 2022, this Court issued an Order in which it invited the Montana Department of Labor & Industry (DLI) to file a brief explaining its position as to whether the Independent Contractor Central Unit (ICCU) decided GuideTime's and Clinch's dispute over whether Clinch was an employee. The DLI filed a short brief.

¶ 3 The matter of whether this Court has subject matter jurisdiction over GuideTime's appeal is now ripe for decision.

### FACTUAL BACKGROUND

¶ 4 On September 7, 2021, Clinch filed a wage claim against GuideTime with the DLI's Employment Relations Division (ERD).<sup>2</sup>

¶ 5 GuideTime responded, denying that Clinch was its employee and contending that the parties had a handshake agreement that Clinch would be paid for his time in equity after the business they were working on was established and funded, i.e., that he was or would become an owner in its business.

¶ 6 An Investigator for the ERD's Wage and Hour Unit investigated Clinch's wage claim under the Wage Protection Act.<sup>3</sup> Although GuideTime denied that it had employed Clinch, the Investigator did **not** forward the employment status dispute to the ERD's ICCU under ARM 24.16.7520(1), which states, "Only disputes regarding the employment status of an individual for wage claim purposes, including whether that individual is acting as an independent contractor, shall be forwarded by the department to the Independent Contractor Central Unit (ICCU) for a decision pursuant to ARM Title 24, chapter 35, subchapters 2 and 3."

¶ 7 On January 31, 2022, the Investigator issued a Wage Claim Investigation & Determination (Determination). With respect to the dispute over the employment relationship, the Investigator determined that Clinch was an employee of GuideTime. The Investigator explained that any party disputing the decision of employment status could request mediation within 15 days in accordance with ARM 24.35.206.<sup>4</sup> In that event, he wrote, a decision would "not [be] binding until the mediation process [wa]s completed or all appeal rights [we]re exhausted and a final decision on the employment status [wa]s issued by the Workers' Compensation Court or the Montana Supreme Court."

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<sup>1</sup> Order Incorporating Minute Entry, Docket Item No. 21.

<sup>2</sup> The ERD is now the Employment Standards Division.

<sup>3</sup> §§ 39-3-101 et seq., MCA.

<sup>4</sup> ARM 24.35.206 provides: "(1) A party receiving an adverse ICCU decision may request mediation within 15 days of the date the decision was sent. The mediation request is effective upon department receipt."

¶ 8 On February 14, 2022, GuideTime requested mediation.

¶ 9 On April 22, 2022, the DLI Mediator reported that the parties had not been successful in resolving their dispute as to Clinch's employment status. The Mediator's Report states, in relevant part:

If the employment relationship is appealed to the Workers' Compensation Court, the contested case hearing of the wage claim will be stayed until the Workers' Compensation Court rules on the employment status. If the ICCU decision is not appealed within the required 30 days, the ICCU decision becomes final and the parties will be contacted to mediate the wage claim and or schedule the hearing.

¶ 10 On May 23, 2022, GuideTime filed a Notice of Appeal with this Court, challenging the determination of the Wage and Hour Unit Investigator that Clinch was its employee.

#### DISCUSSION

¶ 11 As the Montana Supreme Court stated in *Thompson v. State of Montana*:

Jurisdiction involves the fundamental power and authority of a court to determine and hear an issue. Accordingly, subject-matter jurisdiction can never be forfeited or waived. Additionally, subject-matter jurisdiction cannot be conferred by the consent of a party. Therefore, the issue of subject matter jurisdiction may be raised by a party, or by the court itself, at any stage of a judicial proceeding.<sup>5</sup>

¶ 12 GuideTime argues that the WCC has subject matter jurisdiction pursuant to § 39-71-415(2)(c), MCA, which states:

If after mediation the parties have not resolved their dispute concerning a worker's status as an independent contractor or an employee, a party may appeal the decision of the independent contractor central unit by filing a petition with the workers' compensation court within 30 days of the mailing of the mediator's report.

GuideTime cites *Smith v. Tyad, Inc.*, for the proposition that § 39-71-415(2)(c), MCA, "unequivocally grants jurisdiction to the WCC to review [a party's] dissatisfaction with ICCU's ruling."<sup>6</sup> GuideTime also cites *State Compensation Ins. Fund v. Sky Country, Inc.*,

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<sup>5</sup> 2007 MT 185, ¶ 28, 338 Mont. 511, 167 P.3d 867 (internal citations and internal quotation marks omitted).

<sup>6</sup> Petitioner's Brief Re: Subject Matter Jurisdiction (Petitioner's Brief), Docket Item No. 22, at 4 (citing *Smith*, 2009 MT 180, ¶ 43, 351 Mont. 12, 209 P.3d 228).

for the proposition that the Montana Supreme Court found the procedure set forth in § 39-71-415, MCA, to be the appropriate one to follow in determining status questions.<sup>7</sup>

¶ 13 GuideTime contends that the Investigator’s Determination that Clinch was its employee constituted a Decision of the ICCU. In support of its contention, GuideTime points out that the Investigator’s Determination states, “The mailing of this determination constitutes the mailing of the employment status decision by the Independent Contractor Central Unit (ICCU),”<sup>8</sup> and that the Mediator’s Report states, “*Pursuant to Section 39-71-415, MCA*, an appeal of the worker relationship determination may be filed with the Workers’ Compensation Court within 30 days of this Mediator’s Report.”<sup>9</sup>

¶ 14 The DLI confirms that, as part of the Investigator’s Determination in the wage dispute in this matter, he “conducted an analysis of Clinch’s employment status, ultimately determining that Clinch was an employee and not an independent contractor.”<sup>10</sup> Like GuideTime, the DLI explains that the Determination “notified the parties that the employment status determination constituted an employment status decision by the ICCU,” and asserts its position that, “[the Investigator’s] employment status determination constitutes a decision by the ICCU for purposes of establishing the Court’s subject matter jurisdiction under Mont. Code Ann. § 39-71-415(2)(c).”<sup>11</sup>

¶ 15 Clinch argues that the WCC does not have subject matter jurisdiction under § 39-71-415(2)(c), MCA, because the employment status decision from which GuideTime appeals was made by the Wage and Hour Unit, not the ICCU.

¶ 16 This Court agrees with Clinch that the WCC does not have subject matter jurisdiction under § 39-71-415(2)(c), MCA, because the ICCU did not decide that Clinch was an employee of GuideTime. Although *Smith* does, in fact, affirm the appropriateness of appealing to the WCC for review of employment status decisions of the ICCU,<sup>12</sup> for jurisdiction to vest in this Court under the plain language of § 39-71-415(2)(c), MCA, the employment status decision must actually have been made **by** the ICCU. Here, Clinch’s employment status decision was not made by the ICCU. Rather, it is evident that the Wage and Hour Unit Investigator made the decision. The DLI acknowledged that the Investigator — not the ICCU — decided Clinch’s employment status: “[A]n Investigator for the Compliance and Investigations Bureau of the ERD . . . conducted an analysis of

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<sup>7</sup> Petitioner’s Brief at 3 (citing *Sky Country, Inc.*, 239 Mont. 376, 780 P.2d 1135 (1989)).

<sup>8</sup> Petitioner’s Brief at 2 (citation omitted) (internal quotation marks omitted).

<sup>9</sup> Petitioner’s Brief at 3 (emphasis in original) (citation omitted) (internal quotation marks omitted).

<sup>10</sup> Montana Department of Labor and Industry’s Response to Court Order Re: Whether the ICCU Made a Decision (DLI’s Brief), Docket Item No. 26, at 2.

<sup>11</sup> DLI’s Brief at 2.

<sup>12</sup> *Smith*, ¶ 43. *Sky Country, Inc.*, on the other hand, was decided before an appeal procedure to the WCC was even set forth in § 39-71-415, MCA. Thus, references to the statute in that case are not helpful here.

Clinch's employment status, ultimately determining that Clinch was an employee and not an independent contractor."<sup>13</sup>

¶ 17 Indeed, by making the determination that Clinch was an employee, the Investigator did not follow the DLI's own administrative rules. When the DLI's Wage and Hour Unit gets a wage claim that involves an employment status dispute, the DLI's rules state that it must forward that dispute to the ICCU for decision,<sup>14</sup> and then incorporate the ICCU's decision in its determination on wages.<sup>15</sup>

¶ 18 It is this Court's experience that, in appeals from decisions of the ICCU, the parties provide a copy of the ICCU's written Decision.<sup>16</sup> And those Decisions clearly hail from the ICCU.<sup>17</sup> They contain an ICCU header and an ICCU Number. The Decisions explain how the employment status issue came before the ICCU, what the parties' positions are, and what information it reviewed before issuing the Decisions. The Decisions conclude with, "The ICCU finds . . ." and are signed by a Compliance Specialist from the ICCU. It is also this Court's experience that when the Wage and Hour Unit issues Determinations on wages, they typically say something to the effect that:

A portion of this case involves whether or not there was an employment relationship between the Claimant and the Respondent. To determine the relationship of the parties, this case was sent to the Independent Contractor Central Unit (ICCU) for a determination on status. That determination is attached to this determination and incorporated herein.<sup>18</sup>

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<sup>13</sup> DLI's Brief at 2.

<sup>14</sup> ARM 24.16.7520(1) ("Only disputes regarding the employment status of an individual for wage claim purposes, including whether that individual is acting as an independent contractor, shall be forwarded by the department to the Independent Contractor Central Unit (ICCU) for a decision pursuant to ARM Title 24, chapter 35, subchapters 2 and 3.").

<sup>15</sup> ARM 24.16.4010(2) ("The determination will incorporate any decision of the department's independent contractor central unit regarding the employment status.").

<sup>16</sup> *E.g.*, *Utah Transp. Grp., LC v. Indep. Contractor Cent. Unit*, WCC No. 2016-3766, Docket Item No. 8, Ex. A; *Herman/Soap Creek Express v. Indep. Contractor Cent. Unit/Swensen*, WCC No. 2014-3355, attached to Docket Item No. 1; *MCR, LLC v. Indep. Contractor Cent. Unit*, WCC No. 2013-3230, Docket Item No. 3, Ex. A; *Hallquist dba P & M Transmission v. Indep. Contractor Cent. Unit*, WCC No. 2009-2266, attached to Docket Item No. 1; *David Simpson Constr., LLC v. Indep. Contractor Cent. Unit*, WCC No. 2008-2180, attached to Docket Item No. 1; *Larson d/b/a Cliff Larson Contracting v. Indep. Contractor Cent. Unit*, WCC No. 2008-2054, attached to Docket Item No. 1; *Trail Stop Enter., Inc. v. Indep. Contractor Cent. Unit*, WCC No. 2007-1825, attached to Docket Item No. 1.

<sup>17</sup> *See, e.g.*, *Wright and Maciel d/b/a Cent. Mont. Bail Bonds v. In the Matter of the Wage Claim of Michelle R. Riley*, WCC No. 2013-3102, Docket Item No. 1, Exhibit A.

<sup>18</sup> *Wright and Maciel d/b/a Cent. Mont. Bail Bonds v. In the Matter of the Wage Claim of Michelle R. Riley*, WCC No. 2013-3102, Docket Item No. 3, Ex. A, at 1-2; *see also Boe v. Indep. Contractor Cent. Unit/Barnhart*, WCC No. 2009-2425, attached to Docket Item No. 1 (nearly identical); *Emergency Preparedness Sys., LLC v. Indep. Contractor Cent. Unit/Scobie*, WCC No. 2007-1984, Docket Item No. 16, Exs. C and D (noting that, in a wage claim, the Wage and Hour Unit sent the dispute over the relationship of the parties to the ICCU for its determination and that the ICCU then issued a written decision, which the Wage and Hour Unit incorporated into its decision).

Here, because the Investigator decided the dispute over Clinch's employment status himself, his Determination includes no such explanation or attachment.

¶ 19 Finally, there is no authority supporting GuideTime's and the DLI's position that the Investigator can simply declare his Determination to be a Decision of the ICCU. In short, the Investigator must follow the DLI's rules.

¶ 20 For all of the foregoing reasons, it is clear that the ICCU did not make a Decision and that this Court does not have jurisdiction under § 39-71-415(2)(c), MCA. Therefore, it enters the following:

ORDER

¶ 21 Petitioner's Notice of Appeal is **dismissed for lack of subject matter jurisdiction without prejudice**.

¶ 22 Pursuant to ARM 24.5.348(2), this Judgment is certified as final and, for purposes of appeal, shall be considered as a notice of entry of judgment.

DATED this 14<sup>th</sup> day of November, 2022.

(SEAL)

/s/ DAVID M. SANDLER  
JUDGE

c: J.R. Casillas  
Thane P. Johnson  
Quinlan L. O'Connor and Eric Strauss

Submitted: November 10, 2022