

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2021 MTWCC 15

WCC No. 2021-5624

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JOE LAEMMLE/RIVERSIDE DRYWALL, INC.

Petitioner

vs.

ERIC PETTIT AND UNINSURED EMPLOYERS' FUND

Respondents.

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**ORDER DENYING RESPONDENT UNINSURED EMPLOYERS' FUND'S  
SUMMARY JUDGMENT MOTION**

**Summary:** Respondent UEF asserts that Petitioner, an alleged uninsured employer, did not timely appeal its determination to accept liability for a claim under § 39-71-520(1), MCA, which states, "A dispute concerning uninsured employers' fund benefits must be appealed to mediation within 90 days from the date of the determination by the department or the determination is considered final." Petitioner did not request mediation within 90 days of the date of the UEF's determination but contends that the UEF did not give him notice of its determination.

**Held:** This Court denied the UEF's motion. The UEF did not establish that there are no issues of material fact on the factual issue of whether it gave Petitioner notice of its determination. Although the UEF argues that it sent its determination letter to the address Petitioner identified as his "current address" in his recorded interview, Petitioner's answer to the question of his "current address" indicated that he was no longer living at that address.

¶ 1 Respondent Uninsured Employers' Fund (UEF) filed a motion to dismiss Petitioner Joe Laemmle/Riverside Drywall, Inc.'s (Laemmle) appeal, which this Court subsequently converted to a motion for summary judgment pursuant to M.R.Civ.P. 12(d).<sup>1</sup> The UEF

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<sup>1</sup> M.R.Civ.P. 12(d) provides, "If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion."

argues that Laemmle’s appeal is time-barred because he petitioned for mediation beyond the 90-day statute of limitations in § 39-71-520(1), MCA. The UEF asserts that it notified Laemmle of its October 1, 2020, determination to accept liability for Respondent Eric Pettit’s claim by mailing a letter to him at the address he identified as his “current address” when it interviewed him on July 20, 2020. Therefore, the UEF asserts that its determination is final and unreviewable.

¶ 2 Laemmle opposes the UEF’s motion, arguing that his appeal is not time-barred because he did not receive notice of the UEF’s determination to accept liability for Pettit’s claim. Laemmle attests that he had moved out of the house to which the UEF mailed its determination letter and, therefore, that the UEF did not notify him of its determination. He asserts that his Petition for Mediation was timely because it was filed within 90 days of when he was notified of the UEF’s determination.

¶ 3 Neither party requested a hearing.

¶ 4 For the following reasons, this Court denies the UEF’s summary judgment motion.

#### FACTS

¶ 5 Laemmle used to run a sheetrock business. He also owns rental houses.

¶ 6 Pettit alleges that on or about March 10, 2020, he suffered an injury in the course of his employment with Laemmle while working on a roofing project.

¶ 7 Laemmle did not have workers’ compensation insurance at the time of Pettit’s alleged injury. Therefore, Pettit’s claim was submitted to the UEF.

¶ 8 In June 2020, Laemmle was in the middle of an acrimonious divorce and, consequently, moved out of the house he had shared with his spouse at 1915 Three Bars Trail in Billings. He moved into one of his rental houses, which has the address of 1578 Nahmis Avenue in Huntley.

¶ 9 On July 20, 2020, Bryce Peltomaa — an investigator for the Department of Labor & Industry — interviewed Laemmle on a recorded line. In response to Peltomaa’s question as to Laemmle’s “current address,” Laemmle responded, “Well, I’m kind of going through a divorce right now, so it **was** 1915 Three Bars Trail.”<sup>2</sup> In response to a question as to whether Pettit was an independent contractor, Laemmle stated, in relevant part, “And, actually, he was just working on **my own personal house**, on a roof, and so I was just paying him under the . . . I was just, no, he don’t work for me, he was just working helping me out.”<sup>3</sup> However, later in the interview, in response to Peltomaa’s question as to whether Pettit was injured at Laemmle’s “personal address,” Laemmle said, “it’s one of

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<sup>2</sup> Emphasis added.

<sup>3</sup> Emphasis added.

my rental houses.” Laemmle stated that the address of that rental house is 1578 Nahmis Avenue in Huntley.

¶ 10 On October 1, 2020, the UEF accepted liability for Pettit’s claim. The UEF mailed Laemmle a letter informing him that it had accepted liability for Pettit’s claim and that, pursuant to § 39-71-504, MCA, Laemmle would be required to reimburse it for all benefits it paid under Pettit’s claim. The UEF mailed the letter to the 1915 Three Bars Trail address.

¶ 11 In the last week of May 2021, Laemmle’s attorney obtained a copy of the UEF’s claim file.

¶ 12 On June 10, 2021, Laemmle petitioned for mediation, asserting that the UEF erred in its determination that Pettit “was an employee and entitled to benefits.”

### LAW AND ANALYSIS

¶ 13 This Court grants summary judgment when the moving party demonstrates an absence of a genuine issue of material fact and entitlement to judgment as a matter of law.<sup>4</sup>

¶ 14 Section 39-71-520(1), MCA, states, “A dispute concerning uninsured employers’ fund benefits must be appealed to mediation within 90 days from the date of the determination by the department or the determination is considered final.”

¶ 15 The Montana Supreme Court has explained, “Failure to request mediation within ninety days prevents a party from seeking review of a UEF determination by the Workers’ Compensation Court.”<sup>5</sup>

¶ 16 The parties tacitly agree that, under principles of due process, this statute of limitations does not begin running unless the UEF gives notice of its determination.<sup>6</sup> Their dispute is whether the UEF gave Laemmle notice of its October 1, 2020, determination by mailing the letter to the house on Three Bars Trail in Billings.

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<sup>4</sup> ARM 24.5.329(2); *Farmers Union Mut. Ins. Co. v. Horton*, 2003 MT 79, ¶ 10, 315 Mont. 43, 67 P.3d 285 (citation omitted).

<sup>5</sup> *Flynn v. Uninsured Employers’ Fund*, 2005 MT 269, ¶ 13, 329 Mont. 122, 122 P.3d 1216, *overruled on other grounds recognized in Weidow v. Uninsured Employers’ Fund*, 2010 MT 292, ¶ 23, 359 Mont. 77, 246 P.3d 704.

<sup>6</sup> See, e.g., *Labair v. Carey*, 2017 MT 286, ¶ 20, 389 Mont. 366, 405 P.3d 1284 (recognizing notice and opportunity to be heard as “the hallmarks of due process” and noting that “[n]otice must be reasonably calculated to inform parties of proceedings which may directly and adversely affect their legally protected interests”) (citations and internal quotations omitted); *Dorwart v. Caraway*, 1998 MT 191, ¶ 93, 290 Mont. 196, 966 P.2d 1121, *overruled on other grounds by Tr. of Ind. Univ. v. Buxbaum*, 2003 MT 97, 315 Mont. 210, 69 P.3d 663 (stating, “[i]n general, due process requires notice which, under the circumstances, is reasonably calculated to inform interested parties of the action and afford them an opportunity to present objections” (citations omitted)).

¶ 17 The UEF argues that it gave notice to Laemmle of its October 1, 2020, determination by mailing its letter to the house on Three Bars Trail because Laemmle unequivocally said that was his “current address” when it interviewed him on July 20, 2020, and because he did not thereafter notify it that he had moved. Because Laemmle did not petition for mediation within 90 days of its determination, the UEF asserts that its determination is final and unreviewable under the statute of limitations in § 39-71-520(1), MCA.

¶ 18 Laemmle argues that the UEF did not give him notice of its determination because the UEF did not mail its determination to the correct address. Laemmle acknowledges that § 26-1-602(24), MCA, establishes a disputable presumption that “[a] letter duly directed and mailed was received in the regular course of the mail.” However, Laemmle argues that the UEF did not “duly direct” its letter because, as he attests, he was in the middle of a divorce and, in June 2020, he moved out of the house on Three Bars Trail in Billings and into his rental house on Nahmis Avenue in Huntley. Thus, he asserts that the statute of limitations in § 39-71-520(1), MCA, did not start running until he was notified of the UEF’s determination.

¶ 19 Here, when drawing all reasonable inferences from the evidence in Laemmle’s favor, as this Court is required to do when deciding whether the UEF is entitled to summary judgment,<sup>7</sup> the UEF has not met its burden of establishing that there are no issues of material fact on the factual issue of whether it gave Laemmle notice of its determination. There is no merit to the UEF’s position that Laemmle unequivocally identified the house on Three Bars Trail as his “current address” during his interview. Instead, Laemmle told Peltomaa that he was going through a divorce “so it **was** 1915 Three Bars Trail.”<sup>8</sup> A reasonable inference to draw from Laemmle’s answer is that he had moved out of the house on Three Bars Trail, a fact to which Laemmle attests in his affidavit. Furthermore, there is no merit to the UEF’s position that Laemmle’s statement that Pettit was injured at “one of my rental houses” is an admission that Laemmle was still living at the house on Three Bars Trail. At another part of the recording, Laemmle stated that Pettit was working on “my own personal house.” A reasonable inference to be drawn from Laemmle’s answers is that he had moved out of what had been his residence and was temporarily living in one of the houses that he usually rented to others. At several points in the interview, Peltomaa should have asked Laemmle the obvious follow-up questions of where he was living at that time and where he was receiving his mail. Although the UEF blames Laemmle for not telling Peltomaa that he had moved and argues that Laemmle’s “neglect does not entitle him to relief from the 90-day deadline to

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<sup>7</sup> See *Lorang v. Fortis Ins. Co.*, 2008 MT 252, ¶ 38, 345 Mont. 12, 192 P.3d 186 (stating, “In determining whether genuine issues of material fact exist, we must view all evidence in the light most favorable to the non-moving party. Therefore, all reasonable inferences that may be drawn from the evidence must be drawn in favor of the party opposing summary judgment.” (citations omitted)).

<sup>8</sup> Emphasis added.

request mediation,” the UEF has not established that Laemmle was intentionally evasive during his interview.

¶ 20 Because Peltomaa did not get an unequivocal answer as to where Laemmle was living and where he was receiving mail, and because Laemmle has attested that he was not living at the house on Three Bars Trail in October 2020, when the UEF mailed its determination letter, the UEF did not meet its burden of proving that there are no issues of material fact on the factual issue of whether it notified Laemmle of its determination. Therefore, this Court now enters the following:

ORDER

¶ 21 This Court **denies** the UEF’s summary judgment motion.

DATED this 3<sup>rd</sup> day of September, 2021.

(SEAL)

/s/ DAVID M. SANDLER  
JUDGE

c: Joe C. Maynard  
Lindsey R. Simon  
Paul Toennis

Submitted: August 20, 2021