

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2008 MTWCC 44

WCC No. 2007-1984

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EMERGENCY PREPAREDNESS SYSTEMS, LLC

Petitioner

vs.

WILLIAM C. SCOBIE

Respondent.

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ORDER DENYING RESPONDENT'S MOTION TO DISMISS

**Summary:** Respondent moved to dismiss Petitioner's petition arguing that Petitioner failed to timely request mediation of the Independent Contractor Central Unit's employment status determination as prescribed by § 39-71-415, MCA. The crux of Respondent's argument is that Petitioner's September 12, 2007, letter – which unambiguously identified itself as an appeal of both the ICCU's Determination and the Wage and Hour Unit's Determination, and which went on for five pages to detail the manner in which Respondent disagreed with both Determinations – was not sufficient to constitute a request for mediation of the ICCU's Determination because Petitioner did not employ the precise verbiage necessary to request mediation and Petitioner did not address his letter to the correct individual at the Department of Labor and Industry. Respondent also argued that the petition should be dismissed because Petitioner failed to secure replacement counsel in a timely manner.

**Held:** Respondent's motion is denied. Petitioner's detailed letter satisfies the mediation request requirements set forth in § 39-71-415, MCA. Petitioner's letter clearly expressed his disagreement with the ICCU Determination and was timely submitted to the Department of Labor and Industry. To accept Respondent's argument would be to exalt form over substance – an argument that this Court rejected in *Howe v. UEF*. Regarding Respondent's argument that the petition should be dismissed for Petitioner's failure to secure replacement counsel in a timely manner, Respondent fails to cite to any authority in support of this argument. Accordingly, Respondent's argument on this ground is not well-taken.

## Topics:

**Constitutions, Statutes, Regulations, and Rules: Montana Code Annotated: 39-71-415.** Where Petitioner's letter unambiguously identified itself as an appeal of both the Independent Contractor Centra Unit's determination and the Wage and Hour Unit's determination, and which went on for five pages to detail the manner in which Respondent disagreed with both determinations, the Court concludes that the letter satisfies the requirements for requesting mediation pursuant to § 39-71-415, MCA.

**Independent Contractor: Independent Contractor Central Unit.** Where Petitioner's letter unambiguously identified itself as an appeal of both the Independent Contractor Centra Unit's determination and the Wage and Hour Unit's determination, and which went on for five pages to detail the manner in which Respondent disagreed with both determinations, the Court concludes that the letter satisfies the requirements for requesting mediation pursuant to § 39-71-415, MCA.

**Mediation: Generally.** Where Petitioner's letter unambiguously identified itself as an appeal of both the Independent Contractor Centra Unit's determination and the Wage and Hour Unit's determination, and which went on for five pages to detail the manner in which Respondent disagreed with both determinations, the Court concludes that the letter satisfies the requirements for requesting mediation pursuant to § 39-71-415, MCA.

¶ 1 Respondent William C. Scobie moves to dismiss the petition in this matter. Respondent bases his motion upon the following grounds: (1) Respondent contends that Petitioner failed to timely request mediation of the Independent Contractor Central Unit's (ICCU) determination of Respondent's employment status as prescribed by § 39-71-415, MCA; and (2) Respondent contends that Petitioner failed to secure replacement counsel in a timely manner after his initial attorney withdrew from the case.

### **Issue One: Whether Petitioner's request for mediation of the ICCU's Determination was timely.**

¶ 2 For purposes of determining whether Petitioner's request for mediation of the ICCU's Determination was timely, I set forth the following chronology of pertinent events.

¶ 2a **July 24, 2007:** ICCU compliance specialist Tracy A. Gonzalez issued a Determination of Respondent's employment status ("the employment status determination"). The employment status determination is forwarded to Dale

Gamble of the Wage and Hour Unit for a determination of the amount of wages owed to Respondent.<sup>1</sup>

- ¶ 2b **August 24, 2007:** Gamble issued the Wage and Hour Unit's Determination ("the wage determination") of the amount of wages owed to Respondent. The wage determination is mailed to Petitioner and Respondent. The wage determination states: "A portion of this case involves whether or not there was an employment relationship between William C. Scobie and Emergency Preparedness Systems, L.L.C. (EPS). 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>2</sup>

The wage determination further advised the parties of their appeal rights. Specifically, it stated that an appeal of the wage determination must be made in writing to the attention of Tonya McCormack, Bureau Chief, Labor Standards Bureau, Employment Relations Division, and postmarked by September 14, 2007. Additionally, the wage determination advised the parties that the mailing of the wage determination constituted the mailing of the employment status determination. The parties were advised that the employment status determination would be final unless either party made a written request for mediation to the attention of Joe Maronick, Employment Law Mediator, Employment Relations Division, and postmarked by September 14, 2007.<sup>3</sup>

- ¶ 2c **September 12, 2007:** Tom Roberts, acting on behalf of Petitioner *pro sé*, wrote to Tonya McCormack stating his objections to both the employment status determination and the wage determination. Roberts began his letter with: "Please consider this a Notice of Appeal of Mr. Gamble's determination of case no 1589-2007 and the Employment Status finding of Tracy A Gonzalez ICCU No 07070 WH concerning William Scobie." Robert's five-and-a-half page letter went on to allege, in great detail, the errors he

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<sup>1</sup> Emergency Preparedness Systems, LLC.'s Response to Motion to Dismiss and Request for Hearing, Exhibit C.

<sup>2</sup> Emergency Preparedness Systems, LLC.'s Response to Motion to Dismiss and Request for Hearing, Exhibit E at 1.

<sup>3</sup> Emergency Preparedness Systems, LLC.'s Response to Motion to Dismiss and Request for Hearing, Exhibit E at 4.

perceived in both the employment status determination and the wage determination.<sup>4</sup>

¶ 2d **September 19, 2007:** Tonya McCormack sent a letter to Petitioner confirming receipt of Petitioner's appeal. In her letter, McCormack identified the two issues in dispute as being the employment status determination and whether wages are owed to Respondent. McCormack further advised that she was transferring the case to Joe Maronick for mediation.<sup>5</sup>

¶ 2e **September 20, 2007:** Maronick sent a letter to both parties advising that he was appointed to mediate the dispute.<sup>6</sup>

¶ 2f **October 4, 2007:** Maronick sent a letter to both parties confirming that mediation was unsuccessful.<sup>7</sup>

¶ 3 Respondent argues that Petitioner failed to timely request mediation of the employment status determination as required by § 39-71-415, MCA, which reads, in pertinent part:

**Procedure for resolving disputes regarding independent contractor status.**

(1) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether the claimant is an independent contractor or employee, either party may, after mediation pursuant to department rules, petition the workers' compensation judge for resolution of the dispute in accordance with 39-71-2905.

(2) (a) A dispute involving an employer, a worker, or the department and involving the issue of whether a worker is an independent contractor or an employee, but not involving workers' compensation benefits, must be brought before the independent contractor central unit of the department for resolution.

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F. <sup>4</sup> Emergency Preparedness Systems, LLC.'s Response to Motion to Dismiss and Request for Hearing, Exhibit

G. <sup>5</sup> Emergency Preparedness Systems, LLC.'s Response to Motion to Dismiss and Request for Hearing, Exhibit

H. <sup>6</sup> Emergency Preparedness Systems, LLC.'s Response to Motion to Dismiss and Request for Hearing, Exhibit

I. <sup>7</sup> Emergency Preparedness Systems, LLC.'s Response to Motion to Dismiss and Request for Hearing, Exhibit

(b) (i) A decision of the independent contractor central unit is final unless a party dissatisfied with the decision requests mediation pursuant to department rules within 15 days of the mailing of the decision by the independent contractor central unit.

¶ 4 The crux of Respondent’s argument is that Petitioner’s September 12, 2007, letter – which unambiguously identified itself as an appeal of both the employment status determination and the wage determination, and which went on for five pages to detail the manner in which Respondent disagreed with both Determinations – was not sufficient to constitute a request for mediation of the employment status determination because Petitioner did not employ the precise verbiage necessary to request mediation and Petitioner did not address his letter to the correct individual at the Department of Labor and Industry. However, it is clear from the record that the Department had no trouble discerning Petitioner’s letter as a request for mediation since the letter was immediately forwarded to Joe Maronick for mediation of “both issues.”<sup>8</sup> Moreover, it does not appear as though Respondent had any difficulty discerning Petitioner’s letter as a request for mediation since Respondent participated in the mediation of both issues and only raised this issue for the first time some five months after mediation had been completed.

¶ 5 In *Howe v. UEF*<sup>9</sup> I addressed a similar situation in which an employer mailed a letter requesting mediation of a determination by the Uninsured Employer’s Fund (“UEF”), but addressed it to the incorrect division at the Department of Labor and Industry. I noted in that case that the employer was acting *pro sé*, and that he had timely written a letter to the Department of Labor and Industry. I therefore denied the UEF’s motion to dismiss. In doing so, I noted that “the fundamental policy behind a statute of limitations is, at its roots, one of basic fairness.”<sup>10</sup> I held that the employer’s letter disputing the UEF’s determination constituted a valid appeal because, “[t]o hold otherwise would be to exalt form over substance and to countervail the ‘basic fairness’ that a statute of limitations is designed to foster.”<sup>11</sup>

¶ 6 Similarly, in this case Petitioner, acting *pro sé*, wrote a detailed letter to Tonya McCormack at the Department of Labor and Industry which began with the words: “Please consider this a Notice of Appeal of Mr. Gamble’s determination of case no. 1589-2007 **and**

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<sup>8</sup> Emergency Preparedness Systems, LLC.’s Response to Motion to Dismiss and Request for Hearing, Exhibit G.

<sup>9</sup> *Howe v. UEF*, 2005 MTWCC 59.

<sup>10</sup> *Howe v. UEF*, 2005 MTWCC 59, ¶ 7. Citing, *Gomez v. State*, 1999 MT 67, ¶ 25, 293 Mont. 531, 975 P.2d 1258. (Internal quotation marks omitted.)

<sup>11</sup> *Id.*, ¶ 9.

***the Employment Status finding of Tracy A Gonzalez ICCU No 07070 WH*** concerning William Scobie.”<sup>12</sup> Petitioner’s letter went on to rebut, point by point, the analysis used by the ICCU in determining Respondent’s employment status. It is beyond dispute that Petitioner was contesting the findings of both the ICCU and the Wage and Hour Unit. If I were to hold that Petitioner’s letter did not constitute a valid appeal to mediation merely because the letter was not addressed specifically to Joe Maronick and did not employ what Respondent contends are the correct words, I would be exalting form over substance – an argument I rejected in *Howe*. Therefore, I find that Petitioner’s September 12, 2007, letter satisfies the requirements for requesting mediation pursuant to § 39-71-415, MCA.

**Issue Two: Whether Petitioner’s petition should be dismissed for allegedly failing to secure replacement counsel in a timely manner after his initial attorney withdrew from the case.**

¶ 7 Respondent argues that “[t]he Court should also dismiss the petition with prejudice because EPS has failed to prosecute its appeal and failed to timely appoint counsel.”<sup>13</sup> Respondent fails to cite to any legal authority in support of his argument. He merely offers his opinion that Petitioner had ample time to secure replacement counsel without doing so and, therefore, his petition should be dismissed. In the absence of any substantive legal argument or citation to authority, I find Respondent’s argument to be without merit.

ORDER

¶ 8 Respondent’s motion to dismiss is **DENIED**.

DATED in Helena, Montana, this 3rd day of September, 2008.

(SEAL)

/s/ JAMES JEREMIAH SHEA  
JUDGE

c: Oliver H. Goe  
Jason B. Jewett  
Geoffrey C. Angel  
Mark Cadwallader (Courtesy Copy)  
Submitted: March 25, 2008

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<sup>12</sup> Emergency Preparedness Systems, LLC.’s Response to Motion to Dismiss and Request for Hearing, Exhibit F (emphasis added).

<sup>13</sup> Motion to Dismiss and Brief in Support at 5.