

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

2000 MTWCC 37

WCC No. 9908-8298

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EVE ART,

Petitioner,

vs.

INDEPENDENT CONTRACTOR CENTRAL UNIT,

ex rel. PATRICIA MASON,

Respondent.

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

**Summary:** Patricia Mason was hired as a personal care attendant for Eve Art's elderly mother. Art agreed to pay Mason an hourly wage; Mason agreed she would be responsible for her own taxes. Mason did not have an independent contractor exemption on file with the DOL. After the death of Art's mother, Mason filed for unemployment insurance benefits. Art claimed Mason was an independent contractor. The case was referred to the Independent Contractor Unit (ICCU) of the DOL, which investigated and issued an initial determination that Mason was an employee. Mason requested a hearing, which was held in the DOL under then-existing procedures. After the hearing officer agreed Mason was an employee, Art appealed to District Court. The District Court reversed the hearing officer's decisions on procedural grounds. Meanwhile, the Montana Legislature enacted House Bill 592, which amended the workers' compensation, unemployment insurance, and wage and hour statutes. In light of those amendments, the DOL transferred this case to the WCC for further proceedings.

**Held:** While statements of legislative intent indicate HB 592 was intended to place jurisdiction over independent contractor issues in the WCC whether those issues arose in workers' compensation, unemployment insurance, or wage and hour disputes, the statutory enactments transferred IC jurisdiction to this Court only in workers' compensation and unemployment insurance matters. For purposes of workers' compensation, Mason is an employee, not an independent contractor, where she did not have an IC exemption on file. For purposes of unemployment insurance, the IC exemption is not required, but the AB test for determining IC status is not met where claimant was not engaged in an occupation, trade or business, but worked only for the employer at issue.

## Topics:

### **Constitutions, Statutes, Regulations and Rules: 39-71-120, MCA**

(1995) Under 39-71-120, MCA (1995), worker is employee for purposes of the Workers' Compensation Act unless all three statutory criteria are met, including existence of exemption granted under 39-71-401(3). Where worker had not obtained exemption, inquiry is over and employee status proven for purposes of the workers' compensation act. For purposes of unemployment insurance law (39-51-201(14), MCA (1995), the IC exemption is not required, but the AB test for determining IC status was not met where claimant was not engaged in an occupation, trade or business, but worked only for employer at issue.

**Independent Contractor: Jurisdiction** While HB 592, enacted by 1999 Montana Legislature, intended to place jurisdiction over the determination of IC status in the WCC for workers' compensation, unemployment insurance, and wage and hour matters, the actual statutory amendments failed to transfer jurisdiction over the IC issue in wage and hour claims. Thus, WCC has jurisdiction over the IC issue in WC and UI cases, but not in wage and hour disputes.

**Independent Contractor: Independent Contractor Exemption** Under 39-71-120, MCA (1995), worker is employee for purposes of the Workers' Compensation Act unless all three statutory criteria are met, including existence of exemption granted under 39-71-401(3). Where worker had not obtained exemption, inquiry is over and employee status proven for purposes of the workers' compensation act. For purposes of unemployment insurance law (39-51-201(14), MCA (1995), the IC exemption is not required, but the AB test for determining IC status was not met where claimant was not engaged in an occupation, trade or business, but worked only for employer at issue.

**Independent Contractor: Elements** Under 39-71-120, MCA (1995), worker is employee for purposes of the Workers' Compensation Act unless all three statutory criteria are met, including existence of exemption granted under 39-71-401(3). Where worker had not obtained exemption, inquiry is over and employee status proven for purposes of the workers' compensation act. For purposes of unemployment insurance law (39-51-201(14), MCA (1995), the IC exemption is not required, but the AB test for determining IC status was not met where claimant was not engaged in an occupation, trade or business, but worked only for employer at issue.

**Jurisdiction: Original Jurisdiction** While HB 592, enacted by 1999 Montana Legislature, intended to place jurisdiction over the determination of IC status in the WCC for workers' compensation, unemployment insurance, and wage and hour matters, the actual statutory amendments failed to transfer jurisdiction over the IC issue in wage and hour claims. Thus, WCC has jurisdiction over the IC issue in WC and UI cases, but not in wage and hour disputes.

1 The trial in this matter was held on February 24, 2000, in Butte, Montana. Petitioner, Eve Art (Art), was present and represented by Mr. Michael J. San Souci. Respondent, which is the Independent Contractor Central Unit of the Department of Labor and Industry (Department), was represented by Ms. Julia W. Swingley. Ms. Patricia Mason, who was Art's putative employee, was also present. Post-trial briefs were submitted by the parties and the matter was deemed submitted on April 19, 2000.

2 Exhibits: Exhibits 1 through 29, and 31 through 36 were admitted without objection. Exhibit 30 was admitted as evidence of procedural facts only.

3 Witnesses and Depositions: Eve Art, Larry Dominick, Cynde Swandal, and Patricia Mason were sworn and testified.

4 Issue: The Court restates the issue as follows:

Whether Patricia Mason was an independent contractor or an employee during the time period that she worked as a personal care attendant for Irene Schmolka, the mother of Eve Art.

#### Procedural History and Limits of Jurisdiction

5 This case is before the Workers' Compensation Court following a district court decision reversing a Department decision which found that Patricia Mason (Mason) was an employee of Eve Art.

6 The case began on January 5, 1997, when Mason filed a claim for Unemployment Insurance Benefits with the Department. (Ex. 5.) On January 21, 1997, Mason filed a second claim for overtime pay in the amount of \$7,872. (Ex. 6.) Art denied that Mason was her employee, replying that she was an independent contractor. (Ex. 8.) The case was assigned to the Independent Contractor Central Unit (ICCU) of the Department, as provided in the Department's administrative regulations, ARM 24.35.201 through 24.35.203.

7 ARM 24.35.201(6) defines "Independent contractor central unit" or "ICCU" as "the unit located within the department which is responsible for making employment status determinations for the entire department, and any other agency which elects to participate in the ICCU." ARM 24.35.302(3) provides that "[d]eterminations regarding employment status will generally be issued by the department's independent contractor central unit (ICCU)." Those determinations are made after investigation, see ARM 24.35.302(1), and without hearing. They are final and binding on the parties unless a hearing is requested. ARM 24.35.205 to 24.35.212.

8 The ICCU investigated the matter and issued an initial determination that Mason was an employee of Art. (Ex. 30.) Art then requested a hearing and the matter was referred to the hearings unit of the Department, which at that time had jurisdiction to hold hearings in independent contractor disputes. 39-3-216, MCA (1997) (overtime and minimum wage claims); 39-51-2403, MCA (1997) (independent contractor issues involving unemployment benefits); and 39-71-415(1), MCA (1997) (independent

contractor issues involving workers' compensation insurance); ARM 24.35.207 and 24.35.210.<sup>(1)</sup>

9 Art requested a hearing and a hearing was held before a hearing officer of the Department. The hearing officer agreed that Mason was an employee, not an independent contractor.

10 Art then sought judicial review in the Montana Sixth District Court, Park County. On May 26, 1999, Judge Roy C. Rodeghiero reversed the Department's decision on procedural grounds, holding that the hearing process was flawed because Mason was permitted to testify by phone. *Eve Art v. Montana Department of Labor & Industry ex rel. Patricia Mason*, No. DV 98-58, memorandum of decision and order (attached as Exhibit A to petitioner's trial brief). The matter was remanded to the Department for further proceedings.

11 Meanwhile, the 1999 Montana legislature enacted HB 592, which amended workers' compensation, unemployment insurance, and wage and hour statutes. 1999 Mont. Laws, ch. 442. The legislative history and title of HB 592 clearly show that the legislature intended to give the Workers' Compensation Court original jurisdiction to determine all employment status disputes arising under wage and hour, unemployment insurance, and workers' compensation statutes. A report of the committee empaneled pursuant to House Joint Resolution 10 of the 1997 legislature specifically recommended the jurisdictional change. Moreover, the title of HB 592 provides in relevant part:

AN ACT IMPLEMENTING HOUSE JOINT RESOLUTION NO. 10 TO REVISE THE PROCESSES FOR RESOLVING EMPLOYMENT-RELATED DISPUTES; . . . TRANSFERRING FROM THE DEPARTMENT OF LABOR AND INDUSTRY TO THE WORKERS' COMPENSATION COURT EXCLUSIVE JURISDICTION OVER . . . THE APPLICATION OF INDEPENDENT CONTRACTOR STATUS . . .

Notwithstanding the clear legislative intent, as shown by legislative history, the actual amendments failed to carry out that intent with respect to wage and hour claims.

12 Section 39-71-415, MCA, was amended to transfer jurisdiction to the Workers' Compensation Court in independent contractor disputes arising under the Workers' Compensation Act. As amended, section 39-71-415, MCA (1999), provides:

**39-71-415. Procedure for resolving disputes regarding independent contractor status.** (1) If an individual, employer, or insurer has a dispute as to whether an individual is an independent contractor or an employee as defined in this chapter, any party may, after mediation pursuant to department rules, petition the workers' compensation court for resolution of the dispute.

(2) 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 as defined in this chapter, and after mediating pursuant to department rule, either party may petition the workers' compensation judge for resolution of the dispute in accordance with 39-71-2905.

(3) Notwithstanding the provisions of subsection (1), an individual may apply to the department for an exemption from the Workers' Compensation Act in accordance with 39-71-401.

Similarly, section 39-51-1109, MCA, was amended to give the Workers' Compensation Court jurisdiction over independent contractor disputes arising under unemployment insurance statutes. As amended, section 39-51-1109(1), MCA (1997), provides:

**39-51-1109. Tax appeals - procedure.** (1) A decision, determination, or redetermination of the department involving an employer-employee relationship or the charging of benefit payments to employers is final unless an interested party entitled to notification submits a written appeal of the decision, determination, or redetermination. <sup>(2)</sup> **The appeal must be in the same manner as provided in 39-71-415.** [Emphasis added.]

As provided in section 39-71-415, MCA (1999), in independent contractor disputes the Court's jurisdiction no longer extends just to claimants and insurers but as well to other "individuals." It thus encompasses the putative employer.

13 There is no corresponding amendment to the wage and hour provisions. Lacking such amendment, the Court is bound by the rule of statutory interpretation requiring it to apply the statutes as written: "In the construction of a statute, the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted." 1-2-101, MCA. The rule applies even where an examination of legislative history demonstrates that the legislature inadvertently omitted a provision it intended to adopt.

14 In light of the 1999 amendments, the Department's hearings unit transferred this case to the Court for further proceedings. The claims which give rise to the independent contractor issue are made under both unemployment insurance and wage and hour statutes. The Court has jurisdiction to determine the matter for purposes of unemployment insurance. If the legal standard for determining whether Mason was an independent contractor versus an employee are the same under the wage and hour statutes as under unemployment statutes, then my determination may well have preclusive effect with respect to Mason's overtime claim. However, since the Workers' Compensation Court has no jurisdiction to adjudicate any dispute under wage and hour statutes, I am unable to adjudicate (1) whether independent contractor analysis under wage and hour statutes are the same as the analysis under unemployment insurance and workers' compensation statutes; (2) whether the determination of employment status under unemployment insurance and workers' compensation statute has preclusive effect with respect to the wage and hour claim; and (3) whether Mason, if an employee for purposes of the wage and hour statutes, was an "exempt" employee under those statutes.

15 With those limitations in mind, this matter is ready for decision. Having considered the pretrial order, the testimony presented at trial, the demeanor and credibility of the witnesses, exhibits, and the arguments of the parties, the Court makes the following:

#### FINDINGS OF FACT

16 Conflicting testimony and credibility issues are resolved in accordance with the specific findings made hereafter. In general, I found Art to be more credible than Mason.

17 In January of 1996, Art hired Mason to provide personal care to her elderly mother, Irene Schmolka (Schmolka), in Schmolka's home. The home was located on property owned by Chico Hot Springs Resort (Chico) and was approximately two minutes away from Art's own home.

18 Art and her husband own and operate Chico, however, Mason was not hired by or through that business.

19 At the time of the hire, Mason had previously worked as a housekeeper for Chico during two summers. At some earlier time she provided day care to special needs children while living in Colorado, working as an independent contractor and contracting with social services agencies and individuals for her services. Approximately three years prior to caring for Schmolka, Mason cared for an elderly woman, filling in for the woman's regular caregiver. She worked for only three to four weeks and made less than \$600. This was her only prior experience in providing personal care.

20 At the time she was hired by Art, Mason was on social security disability and viewed her work caring for Schmolka as a "trial" work period. There is no evidence that Mason was actively seeking work of any kind at the time.

21 At the time Mason was hired, Schmolka had for some time been unable to care for herself and was already receiving home care from other individuals. By January 1996, she was sometimes incoherent and needed help with her daily living on a 24-hour basis. Art arranged for the care and paid caregivers from a special account consisting of her mother's funds. (Tr. Test. and Ex. 6 at 11-15.)

22 When one of Schmolka's caregivers quit in January 1996, Cynde Swandal (Swandal), who worked for Chico as a bookkeeper and was friends with Mason, recommended Mason to Art, who agreed to hire her. Swandal testified that she initially discussed the job with Mason in Art's absence and that Mason understood and agreed she would be responsible for her own taxes.

23 Art thereafter talked to Mason and agreed to pay her \$8 an hour without deductions. Mason agreed she would be responsible for her own taxes.

24 During the first week, Mason worked two 24-hour shifts. Starting the second week she worked three 24-hour shifts. Art left it to the caregivers, including Mason to work out a work schedule; her only requirement was that her mother have 24-hour care.

25 Sometime later, one of the other caregivers quit and Mason asked Art if she could take that shift. Art agreed and Mason thereafter worked four 24-hour shifts per week. Beginning in April she worked four straight 24-hour days and was then off three days. Mason continued working that schedule until Schmolka's death in November of 1996.

26 In March 1996, Schmolka's assets were spent down and she became eligible for Medicaid, which provides home healthcare assistance. Art contacted Home Care

Services (HCS), a Bozeman business providing home healthcare assistance and arranged for home health and personal care for her mother. HCS thereafter provided both personal care and, when needed, nursing care for Schmolka. A registered and a licensed practical nurse provided the nursing care and supervised personal care attendants.

27 At the time HCS began providing services for Schmolka, Mason was working as one of Schmolka's caregivers. (Caregiver is also referred to as a personal care attendant or PCA). Art told HCS she wished Mason to continue caring for her mother. HCS then hired Mason and provided her with brief training necessary to qualify her as a PCA so that HCS could employ her.

28 Mason was hired by HCS effective March 15, 1996. (Ex. 4.) HCS paid \$6 per hour and scheduled Mason to work 40 hours a week. (Ex. 2.) Art firmly believed that Mason should not have to take a pay cut, so she supplemented Mason's \$6 an hour pay by paying her an additional \$2 an hour.

29 Since Medicaid payments for PCAs were limited to 40 hours of care weekly, and Schmolka needed 24-hour care, Art and Mason agreed that Mason would continue to work an additional 56 hours weekly for which Art paid Mason directly. Art paid \$8 an hour for the additional hours.

30 Mason was not required to keep a time sheet for the hours she worked for Art. Art paid her promptly at the end of each shift.

31 HCS reported the wages it paid Mason to the Montana Unemployment Insurance Division, the Department of Revenue, and for workers' compensation purposes. Art did not report any of the wages paid to Mason to these entities, nor did she ever withhold any taxes.

32 The duties of Mason as a caregiver included such tasks as bathing, dressing and feeding Schmolka, providing basic hygiene, cooking, monitoring medications as directed by the health care providers, and moving Schmolka into and out of bed. Mason also cleaned the home and did laundry.

33 Instructions for Schmolka's care were developed and provided by a nutritionist, Schmolka's physician, and the nurses supervising her care. Their instructions were passed on to Mason for her to follow. Art did not countermand their prescriptions for care.

34 Art did not supervise Mason's daily work. Mason scheduled her own activities during the day. In her free time she was free to read, watch television, and sleep.

35 Art typically stopped by once a day and discussed her mother's care with Mason, however, she sometimes traveled and was gone for as much as ten or twelve days. Art told Mason about things her mother liked, for example classical music, and sometimes made suggestions as to activities her mother would like. She did not specifically direct Mason as to what to do or when to do it. Mason, however, generally implemented Art's

suggestions. Instructions that were relayed to Mason, for example with regard to food, were those given by healthcare providers.

36 Art authorized Mason to do what was necessary to meet her mother's needs. Mason was authorized to call Schmolka's nurses if needed.

37 While employed by HCS, Mason kept a log of time spent on various activities. The log was required by HCS. Mason also kept a log of Schmolka's foods and liquids, and similar matters. These logs were requested by medical providers to assist in monitoring Schmolka's health.

38 Art provided food for both her mother and Mason. She also provided necessary household products, as well as lodging for Mason while working. Mason did not provide any tools or other materials.

39 Art acknowledged that if Mason had not provided satisfactory care to her mother, she would have terminated Mason. However, Mason provided excellent care and Art was satisfied with the care.

40 Since the death of Schmolka, Mason has been offered positions through HCS but has declined further work as a PCA.

41 Mason has never advertised herself as a PCA and she does not have an independent contractor exemption.

#### CONCLUSIONS OF LAW

42 The Workers' Compensation Court has jurisdiction over the present controversy under sections 39-51-1109 and 39-71-415, MCA (1999). As discussed earlier in this decision, it does not have jurisdiction to decide issues arising with respect to Mason's overtime wage claim. Thus, all determinations herein are with respect to unemployment insurance and workers' compensation.

43 Mason's services as a PCA occurred in 1996, thus the 1995 laws governing independent contractor status are controlling in this case. See *Buckman v. Montana Deaconess Hospital*, 224 Mont. 318, 321, 730 P.2d 380, 382 (1986).

44 Under the Montana Worker's Compensation Act, an independent contractor is defined by section 39-71-120, MCA (1995), which provides:

**Independent contractor defined.** (1) An independent contractor is one who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under the contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business; and

(c) has received an exemption granted under 39-71-401 (3).

(2) An individual performing services for remuneration is considered to be an employee under this chapter unless the requirements of subsection (1) are met.

Under the section all three criteria of subsection (1) must be met to qualify the worker as an independent contractor, otherwise, as a matter of law, she is an employee. In this case, Mason did not have an independent contractor exemption, which is one of the criteria, therefore she was Art's employee for purposes of the Workers' Compensation Act. *Smith v. Liberty Mutual Fire Ins. Co.*, No. 9612-7677, findings of fact, conclusions of law and judgment at 8 (November 19, 1997); *Z Works v. Gwen Barnaby and Uninsured Employers' Fund*, 1998 MTWCC 19.

45 Under statutes governing unemployment insurance, the definition of an independent contractor is the same, *except* for the requirement that the worker have an independent contractor exemption ("IC exemption"). Section 39-51-201(14) (1995), MCA, provides:

(14) "Independent Contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under the contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

Hence, for purposes of unemployment insurance, Mason's lack of an IC exemption is not conclusive and the Court must apply the two-part test of the section. That two-part test is commonly known as the "AB test." *American Agrijusters Co. v. Dept. of Labor & Industry*, 1999 MT 241, 19, 988 P.2d 782, 787.

46 Part B of the AB test requires that an independent contractor be "engaged in an independently established trade, occupation, profession, or business." The requirement was discussed in *Lundberg v. Liberty Northwest Ins. Co.*, 268 Mont. 499, 887 P.2d 156 (1994).

47 In *Lundberg* the putative independent contractor had been a long-time Forest Service employee involved in timber sales. After retiring from the Forest Service he set up a small logging operation, cutting timber, skidding it out, and hauling it to mills. *Lundberg v. Liberty Northwest Ins. Co.*, WCC. No. 9312-6965, findings of fact, conclusions of law and judgment (May 25, 1994), Finding 4 at 2. The logging company was operated as a sole proprietorship. Pyramid Mountain Lumber Company, which purchased timber, hired Lundberg to locate and purchase timber for its operations, designating him an independent contractor. The relationship between Pyramid and Lundberg was summarized by the Supreme Court, as follows:

Lundberg and Pyramid entered into a consultation agreement that declared that "[i]t is hereby understood that [Lundberg] is an independent consultant and not an agent or employee of Pyramid Mountain Lumber, Inc." The agreement stated

that Lundberg would "work full time for the first 4 months out of Lewistown to get established and then spend whatever time is necessary to achieve or exceed the [agreement's timber purchasing] goal." The agreement further established terms for the parties' respective duties, termination, compensation, and other contractual provisions.

Pyramid provided Lundberg with living quarters in Lewistown, business cards similar to those given to Pyramid employees, reimbursed him for mileage, and maintained consultation between Lundberg and Pyramid employees and consultants to foster Lundberg's work. Lundberg provided his own materials and recorded the days he worked and miles traveled. Pyramid did not include Lundberg in its vacation, sick leave, or health care policies, did not withhold income taxes, and reported his earnings on IRS form 1099 rather than form W-2. Lundberg was not subject to Pyramid's personnel policies and was not issued a personnel handbook. He was not subjected to Pyramid's standard mandatory drug screening, pre-employment physical, or company orientation procedures.

Lundberg maintained his home in Lincoln but traveled to Lewistown during the week to work, where he stayed at Pyramid's trailer house. Lundberg set his own schedule and every month he submitted a list of days he worked, the number of miles he had driven each day, where he had travelled, and an itemization of his reimbursable expenses. Lundberg determined which days he worked and took days off without notifying Pyramid. During one week in October, 1992, his truck did not work and he completed a short job near Lincoln for a post cutter, not related to Pyramid. He took days off for bad weather, personal business, and because his mother had surgery. Pyramid interpreted the consultation agreement as permitting it to designate or change the area in which Lundberg worked. The person who succeeded Lundberg as Pyramid's timber buyer in Lewistown was a salaried Pyramid employee who determined his own daily work schedule but obtained approval for days off. Evidence was presented about a person under a contract similar to Lundberg's who charged a daily rate for his services and considered himself an independent contractor.

268 Mont. at 501-502, 887 P.2d at 157-158.

48 Even though Lundberg operated a logging business as a sole proprietor and the parties' agreement had designated him an independent contractor, and Lundberg had a great deal of freedom not typically afforded to employees, the Supreme Court held that Lundberg was not "engaged in an independently established trade, occupation, profession, or business." The Court found that Lundberg's work for Pyramid was not part of his logging business since that business involved actual logging rather than purchasing timber for third parties, and that he was not otherwise engaged in an independent business of purchasing timber. 268 Mont. at 504, 887 P.2d at 159. The Court found, "Lundberg's timber purchasing 'business' did not exist independently from his relationship with Pyramid." *Id.* Because Lundberg was not engaged in an independent business of buying timber for third parties, the Court held that he was an employee of Pyramid.

49 Applying the same analysis to the present case, the facts found by me fail to establish that Mason was independently engaged in an occupation, trade, or business of providing personal home-care. While Mason had provided personal care on one prior occasion to an elderly individual, that job was a temporary one of very short duration and only to fill-in for the regular caregiver. At the time Art hired her, Mason was not seeking personal care jobs or any other work. As in *Lundberg*, her job work as a caregiver did not exist independently of her work for Art.

50 Since both parts of the AB test must be satisfied to establish independent contractor status, it is unnecessary to consider Part A of the test. I conclude that Mason was not an independent contractor under either the Workers' Compensation Act or the Unemployment Insurance Act.

### JUDGMENT

51 1. Patricia Mason was an employee of Eve Art beginning in January 1996, until November 1996.

52 2. This JUDGMENT is certified as final for purposes of appeal pursuant to ARM 24.5.348.

53 3. Any party to this dispute may have 20 days in which to request an amendment or reconsideration of this decision.

DATED in Helena, Montana, this 23<sup>rd</sup> day of June, 2000.

(SEAL)

/s/ Mike McCarter  
JUDGE

c: Mr. Michael J. San Souci  
Ms. Julia W. Swingley  
Date Submitted: April 19, 2000

1. The provisions for resolving employee/independent contractor disputes were complex. Unemployment insurance and wage and hour cases were heard by a Department hearing officer. Appeals of disputes involving wage and overtime claims went to district court. 39-3-211, -212, -407, MCA (1997). Appeals in unemployment matters went to the Board of Labor Appeals, 39-51-2404, MCA (1997), then to district court. In workers' compensation cases, the Department had jurisdiction to hear the dispute unless there was also a benefits issue, in which case jurisdiction was posited in the Worker's Compensation Court. 39-71-415, MCA (1997).

2. As written, section 39-51-1109, MCA, gives the Workers' Compensation Court jurisdiction not only over independent contractor disputes but over Department decisions "charging benefit payments to employers."