

Aleea Sharp
Jeff Sealey
Agency Counsel
DEPARTMENT OF LABOR AND INDUSTRY
Office of Legal Services
1315 Lockey Avenue
P.O. Box 1728
Helena, MT 59624-1728
Telephone: (406) 444-5466
E-mail: laborlegal@mt.gov

IN THE SUPREME COURT OF THE STATE OF MONTANA
No. DA 24-0120

BOBBY F. LOWRY,

Petitioner and Appellant.

vs.

DEPARTMENT OF LABOR AND INDUSTRY,
MONTANA STATE ELECTRICAL BOARD,

Respondent and Appellee.

MOTION TO DISMISS APPEAL

Appellee Montana Department of Labor and Industry (Department) appears now to move to dismiss this appeal as procedurally improper. Appellant, Bobby F. Lowry, appeals a proposed order entering default and proposed sanctions from an administrative contested case proceeding before the Montana State Electrical

Board (Board), which is administratively attached to the Department. The contested case is assigned case number 478-2023, and the proposed order Lowry attempts to have reviewed was issued by a hearing examiner in the Department's Office of Administrative Hearings. The hearing examiner's proposed order is currently under consideration by the Board and is not a final agency decision. *See* Exhibit 1.

Administrative contested cases may be judicially reviewed pursuant to the Montana Administrative Procedure Act. *See* Mont. Code Ann. §§ 2-4-701, 2-4-702, 2-4-711. Section 2-4-701 authorizes review of interlocutory agency decisions in certain circumstances. However, a party must follow the process outlined in § 2-4-702. *Stenstrom v. Child Support Enforcement Div.*, 280 Mont. 321, 328, 930 P.2d 650, 654 (1996) (“[W]e find, for future reference, that the procedural requirements of § 2-4-702, MCA, should be followed when seeking immediate review of agency action under § 2-4-701, MCA.”). Under § 2-4-702(2)(a), a party must file petitions for judicial review *in district court*. Further, § 2-4-711 only authorizes appeals to this Court of “final judgment[s] *of a district court*.” (Emphasis added). There is no final agency decision or final judgment of a district court in this case.

Appellant has not cited any legal authority to support his request to file directly in this Court, and the Department is not aware of any basis that would support his request. In fact, Lowry appealed a procedurally similar interlocutory order in this case in *Lowry v. Mont. Dep't. of Labor & Indus., et al.*, DA 23-0577. This Court dismissed Lowry's appeal on November 7, 2023, because Lowry "[did] not appeal a final judgment or other order from a District Court that is subject to appeal"

For the above reasons, Appellees request this matter be dismissed. Appellees have submitted a proposed order along with this motion.

Undersigned counsel sent a letter to Lowry to determine his position, but as of the date of this filing, Lowry has not responded. Undersigned counsel assumes Lowry objects to this motion.

Respectfully submitted this 3rd day of April 2024.



Jeff Sealey

**BEFORE THE STATE ELECTRICAL BOARD
STATE OF MONTANA**

In the Matter of

BOB FRANCIS LOWRY,

Unlicensed Practice of Electrician Work

Case Nos. 2020-ELE-195; 2020-ELE-311;
2020-ELE-448

OAH Case No. 478-2023

**SCHEDULING ORDER FOR HEARING
ON EXCEPTIONS**

This matter was heard by the Office of Administrative Hearings (OAH). The OAH issued its Proposed Findings of Fact, Conclusions of Law, and Recommended Order. Pursuant to Mont. Code Ann. § 2-4-621, the parties are afforded an opportunity to file exceptions and briefs and make oral argument. The parties shall conform to the following schedule, and no time will be added for mailing:

January 26, 2024	The parties must notify the Adjudication Panel of any disputes regarding the administrative record. Any proposed additions or deletions must be filed at this time. Proposed redactions or sealing of the record must be filed at this time with a proposed redacted version of any applicable documents.
March 1, 2024	The parties must file and serve any exceptions and briefs in support. Any party requesting oral argument must request it concurrently with the filing of their exceptions.
March 22, 2024	The parties must file and serve response briefs.
April 5, 2024	The parties must file and serve reply briefs.

The schedule shall not be modified except on motion; any motion requires certification from the moving party that the other party has been contacted, and the position of that party as to the motion. **Failure timely to file exceptions or briefs waives the party's right to do so.**

The Adjudication Panel will meet to consider exceptions and, if requested, oral argument after briefing is concluded.

FILINGS

All filings must be e-mailed to thunt@mt.gov. Filings must be in portable document format (.pdf) and attached to the e-mail. Attachments larger than eight megabytes cannot be accepted. Filings may be submitted in multiple attachments if necessary.

If e-mail filing is an impossibility, the filing party must contact T.J. Hunt at 406-841-2020 to arrange alternative filing methods.

Copies of all exceptions, briefs, and requests for oral argument must be served concurrently upon the opposing party by e-mail and hard copy, and a certificate of service must appear on the original indicating that proper service was made.

DATED this 29 day of December 2023.



T.J. Hunt, Compliance Supervisor
Montana Department of Labor and Industry,
Business Standards Division

CERTIFICATE OF SERVICE

I hereby certify that I served a true and accurate copy of the foregoing by in person service and/or electronic mail to the following:

Bob Francis Lowry
221 Breckenridge
Helena, MT 59601

Aleea K. Sharp
Jeff Sealey
Department of Labor & Industry
E-mail: laborlegal@mt.gov

DATED this 29 day of December 2023.



Montana Department of Labor and Industry

CERTIFICATE OF SERVICE

I certify I served a true and accurate copy of the foregoing Motion to
Dismiss Appeal by United States Postal Service, postage prepaid, on the following:

Bob Francis Lowry
c/o Missoula Detention Facility
2340 Mullan Road
Missoula, MT 59808

Respectfully submitted this 3rd day of April 2024.



Department of Labor & Industry

CERTIFICATE OF SERVICE

I, Jeffrey Todd Sealey, hereby certify that I have served true and accurate copies of the foregoing Motion - Dismiss to the following on 04-03-2024:

Austin Miles Knudsen (Govt Attorney)

215 N. Sanders

Helena MT 59620

Representing: State of Montana, Labor and Industry, Montana Department of

Service Method: eService

David Kim Wilson (Mediator)

401 N. Last Chance Gulch

P.O. Box 557

Helena MT 59624-0557

Service Method: Conventional

Quinlan L. O'Connor (Attorney)

1315 Lockey Ave

P.O. Box 1728

Helena MT 59624-1728

Representing: Labor and Industry, Montana Department of

Service Method: E-mail Delivery

Bob Francis Lowry

C/O Missoula Detention Facility

2340 Mullan Road

Missoula MT 59808

Service Method: Conventional

Electronically signed by Heidi A Clark on behalf of Jeffrey Todd Sealey

Dated: 04-03-2024