

STATE OF MONTANA
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF CLASSIFICATION APPEAL NO. 1-2016:

GARY L. QUIGG, LEGAL SECRETARY,)	Case No. 1496-2016
OFFICE OF PUBLIC DEFENDER,)	
CLASSIFICATION CODE 436213,)	
POSITION NUMBER 61800924,)	
)	
Appellant,)	
)	
vs.)	
)	
STATE PERSONNEL DIVISION,)	
DEPARTMENT OF ADMINISTRATION,)	
)	
Respondent.)	

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**ORDER ENTERING DEFAULT AND RECOMMENDING
DISMISSAL OF GRIEVANCE**

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I. INTRODUCTION

On July 1, 2015, Gary L. Quigg filed an Employee Classification Appeal with the Board of Personnel Appeals (BOPA) alleging the position he had been hired for as a Paralegal (Payband 4) had been incorrectly allocated to a position of a Legal Secretary (Payband 3) and that he was never correctly classified and paid as a Paralegal, despite performing the work of a Paralegal.

On September 21, 2015, Barb Kain, OPD human resources officer, entered findings on Quigg’s Step 1 classification appeal that determined his position was correctly classified as Legal Secretary (Payband 3).

Quigg requested a Step 2 appeal on December 22, 2015. On February 3, 2016, Bonnie Shoemaker, classification/compensation program manager, entered findings on the Step 2 grievance that also determined his position was correctly classified as Legal Secretary (Payband 3).

On March 2, 2016, BOPA accepted Quigg's appeal at Step 3, and transferred the case to the Department of Labor and Industry, Office of Administrative Hearings (OAH) for a hearing.

II. FINDINGS OF FACT

1. On March 7, 2016, the OAH issued a Notice of Hearing on behalf of BOPA, which appointed Steven Wise as the Hearing Officer and notified the parties of a scheduling conference to be held by telephone on March 21, 2016. The conference was rescheduled for March 23, 2016, with notice to the parties.

2. When Quigg filed his Step 3 appeal, he was lodged at Crossroad Correctional Center (CCC) in Shelby, Montana, and listed CCC as his mailing address. The notices were sent to that address. The Notice of Hearing advised the parties to update their phone numbers for the hearing if the number listed was incorrect. Quigg had a case manager at CCC call on his behalf and provide (406)434-7483 as the number to call for the scheduling conference.

3. A scheduling conference was held on March 23, 2016, with Quigg and counsel for the Respondent, Marjorie Thomas. The scheduling conference was continued to March 31 based on Quigg's representation that he was going to be represented by an attorney in the matter. Quigg appeared without counsel for the scheduling conference on March 31, along with Thomas. Quigg stated that he still hoped to be represented by counsel but would be handling the scheduling conference by himself.

4. During the scheduling conference, the date of the contested case hearing was set as July 6, 2016, at 9:00 a.m., MDT, with the agreement of the parties. The issues of whether the contested case hearing would be held in person or over the phone and the location for any in-person hearing were discussed. Quigg stated that he expected to be released from CCC by July 6, 2016. Both parties agreed to an in-person hearing to be held in Helena, Montana. Quigg was informed that if he wished to change the location of the hearing or change the type of hearing to telephone, he would need to file a motion to request such a change.

5. A Scheduling Order was mailed to Quigg and Thomas setting forth the dates for (1) completing discovery; (2) filing motions and responses to motions; (3) filing and exchanging requests for relief, final contentions, list of exhibits and

witnesses, requests for subpoenas, and stipulated facts; (4) the final pre-hearing telephone conference; and (5) the contested case hearing.

6. The Scheduling Order stated that “If the Appellant fails to appear at the hearing, the Office of Administrative Hearings will issue an order affirming the Board’s determination if the opposing party does not seek additional relief.”

7. On April 22, 2016, the Respondent filed a Motion to Dismiss or for Summary Judgment. When Quigg failed to respond to the motion within 14 days as required by the Scheduling Order, the Hearing Officer gave him a deadline of May 23, 2016 to respond to the motion. He filed objections to the motion on May 23.

8. On June 28, 2016, the Hearing Officer issued an Order Denying the Motion to Dismiss or for Summary Judgment and Granting Partial Summary Judgment. The Order stated that a hearing was necessary to properly decide the case in light of disputed issues of material fact. The Partial Summary Judgment narrowed the legal issues for the case.

9. Quigg did not file and exchange any requests for relief, final contentions, list of exhibits and witnesses, request for subpoenas, or stipulated facts by June 17, 2016, the date set in the Scheduling Order.

10. On June 29, 2016, at 8:30 a.m., the date and time scheduled for the final pre-hearing conference, the Hearing Officer called (406)434-7483, which was the number listed for Quigg on the Scheduling Order for the final pre-hearing conference. No one answered the phone. A message was left for Quigg or CCC staff explaining the purpose of the call and asking Quigg or CCC staff to contact OAH. No return call was made.

11. Quigg failed to appear for the in-person hearing, which was held pursuant to the Scheduling Order on July 6, 2016, at 9:00 a.m., MDT, at the Department of Labor and Industry Building, 1315 E. Lockey, Helena, Montana. Marjorie Thomas appeared for the Respondent.

12. Quigg had not filed any request for a change in the location of the hearing or change the type of the hearing to telephone. He had not requested a postponement of the hearing. He had not updated his contact information. Despite all this, the Hearing Officer attempted to reach Quigg at (406)434-7483, the number

he had provided for the scheduling conference and final pre-hearing conference. A case manager answered the phone. She stated that Quigg was lodged at CCC but had not reserved the phone for the hearing and the phone for inmates was reserved for someone else. She stated that Quigg had talked to her earlier that morning about using the phone and had been told that the phone was not available.

13. Marjorie Thomas made a motion for Quigg to be found in default and his appeal be dismissed based on his failure to appear for the scheduled contested case hearing.

14. As of the date of this proposed Order, Quigg has had no contact with the OAH to explain his failure to participate in the hearing at its scheduled date, time, and location.

III. CONCLUSIONS OF LAW

1. Hearings and appeals before the Board of Personnel Appeals are governed by the Montana Administrative Procedure Act (MAPA). Mont. Code Ann. § 39-31-105. In addition, the specific rule for hearing classification appeals states that “the board or its designee shall conduct a hearing in accordance with Title 2, chapter 4, MCA,” which is the legal citation for MAPA. Admin. R. Mont. 24.26.508(4)(d).

2. MAPA specifically provides that informal disposition may be made of any contested case by default, unless such disposition is precluded by law. Mont. Code Ann. § 2-4-603(1)(a). Nothing in the law precludes an informal disposition by a default where a party fails to appear for a scheduled contested case hearing after receiving proper notice.

3. In this case, a recommendation of an entry of default is proper. Quigg was notified in the Scheduling Order about the date, time, and location of the hearing and had previously agreed to it. The Scheduling Order warned Quigg of the consequence of his failure to appear for the hearing.

IT IS THEREFORE ORDERED THAT:

Gary Quigg’s default is hereby entered.

IT IS THEREFORE RECOMMENDED THAT:

Gary Quigg's grievance be dismissed. The findings on the Step 2 Classification Appeal be confirmed.

DATED this 19th day of July, 2016.

BOARD OF PERSONNEL APPEALS

By: STEVEN A. WISE
STEVEN A. WISE
Hearing Officer

NOTICE: Pursuant to Admin. R. Mont. 24.26.222, the above RECOMMENDED ORDER shall become the Final Order of this Board unless written exceptions are postmarked no later than August 11, 2016. This time period includes the 20 days provided for in Admin. R. Mont. 24.26.222, and the additional 3 days mandated by Rule 6(e), M.R.Civ.P., as service of this Order is by mail.

The notice of appeal shall consist of a written appeal of the decision of the hearing officer which sets forth the specific errors of the hearing officer and the issues to be raised on appeal. Notice of appeal must be mailed to:

Board of Personnel Appeals
Department of Labor and Industry
P.O. Box 201503
Helena, MT 59620-1503