

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE WAGE CLAIM) Case No. 1290-2014
OF STEVE P. REIDY,)
)
Claimant,)
)
vs.) **DISMISSAL ORDER**
)
QUALITY TIME CONSTRUCTION, INC.,)
a Montana corporation,)
)
Respondent.)

* * * * *

I. INTRODUCTION

On February 3, 2014, Steve P. Reidy filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit) alleging the respondent, Quality Time Construction, Inc., a Montana corporation (Quality Time), owed him a total of \$2,160.00 for unpaid wages for work performed during the period of December 11, 2013 through January 23, 2014. On February 12, 2014, Eric Spear, President of Quality Time, submitted a response to Reidy's claim.

On May 22, 2014, the Wage and Hour Unit issued a determination finding Quality Time owed Reidy \$1,066.00 in unpaid wages. Spear had submitted payment in the amount of \$104.40 prior to the determination, which reduced the total owed to \$961.60. The determination also imposed a penalty on the unpaid amount of 15% pursuant to Mont. Code Ann. § 39-3-206, which amounted to \$144.24, for a total of \$1,105.84 (\$961.60 + \$144.24). On June 6, 2014, Reidy filed a timely request for redetermination.

On June 9, 2014, Spear filed a timely appeal on behalf of Quality Time. The Wage and Hour Unit proceeded to issue a redetermination based upon its receipt of new information.

On August 4, 2014, the Wage and Hour Unit issued a redetermination finding Quality Time owed Reidy \$1,521.60 in unpaid wages. The Wage and Hour Unit also imposed a 15% penalty on the amount owed for a total of \$1,749.84 (\$1,521.60 x 15% = \$228.24 + \$1,521.60 = \$1,749.84). The redetermination further stated a

penalty of 55% in the amount of \$836.88 would be imposed if Quality Time failed to pay the amount found to be owed to Reidy by August 19, 2014. On August 21, 2014, Spear filed a timely appeal to a contested case hearing on behalf of Quality Time. There is no evidence showing Quality Time paid the amount found to be owed within the time required.

Following mediation efforts, the Wage and Hour Unit transferred the case to the Office of Administrative Hearings (OAH) on October 16, 2014. On October 23, 2014, OAH issued a Notice of Hearing and Telephone Conference that stated:

Each party has the right to be represented by an attorney. Individuals are not required to be represented by an attorney. Corporations, partnerships, limited liability companies (LLCs), and similar entities are required to be represented by an attorney. Any party that is represented by an attorney must hire and pay for that counsel.

On November 7, 2014, the Hearing Officer issued a Scheduling Order setting a final pre-hearing conference for January 20, 2015. Both Reidy and Spear appeared at the final pre-hearing conference. The Hearing Officer advised Spear that he was required to have legal counsel represent Quality Time at the hearing. Spear indicated he had spoken with an attorney, who suggested it was not necessary for him to engage legal counsel due to the amount of the claim.

On January 21, 2015, the Hearing Officer issued an order advising the respondent that it would not be allowed to proceed with the hearing without legal counsel being present.

On January 27, 2015, the Hearing Officer convened a hearing in this matter. Spear again stated he had not engaged legal counsel for the hearing and did not intend to do so. Spear indicated he is currently licensed to practice law in Utah.

The Hearing Officer hereby dismisses the respondent's appeal on the basis that Spear appeared on behalf of the corporation without legal representation as required by the State of Montana and the orders of the Hearing Officer. Spear is not authorized to practice law in the State of Montana and, therefore, cannot represent the corporation in a legal proceeding.

II. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint under Mont. Code Ann. § 39-3-201 et seq. *State v. Holman Aviation* (1978), 176 Mont. 31, 575 P.2d 925.

2. A corporation can only appear in a legal proceeding through a licensed attorney. *Audit Services, Inc. v. Frontier West, Inc.*, (1992), 252 Mont. 142, 148, 827 P.2d 1241, 1246. A corporation is a separate legal entity and cannot appear on its own behalf through an agent other than an attorney. *Weaver v. Graybill*, (1990), 246 Mont. 175, 178, 803 P.2d 1089, 1091, quoting Annotation, Propriety and Effect of Corporation's Appearance Pro Se, Through Agent Who is Not Attorney, 19 A.L.R. 3d 1073 (1968). Only licensed attorneys may practice law or represent others in legal proceedings. *Traders State Bank v. Mann*, (1993), 258 Mont. 226, 852 P.2d 604 (overruled on other grounds).

3. Quality Time failed to pay the amount found to be owed to Reidy by August 19, 2014 as ordered in the redetermination dated August 4, 2014. Therefore, a 55% penalty in the amount of \$836.88 shall be imposed pursuant to Admin. R. Mont. 24.16.756(1)(a), (b).

III. ORDER

Based on the foregoing, the respondent's appeal is DISMISSED. The department's redetermination is final. The redetermination of the Wage and Hour Unit finding Quality Time owed Reidy \$1,521.60 in unpaid wages and imposing a penalty of \$836.88 are affirmed. Quality Time Construction, Inc. is hereby ORDERED to tender a cashier's check or money order in the amount of \$2,358.48.

All payments required above shall be mailed to the Employment Relations Division, P.O. Box 201503, Helena, MT 59620-1503, no later than 30 days after service of this decision. This dismissal is a final agency decision.

DATED this 5th day of February, 2015.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ CAROLINE A. HOLIEN
CAROLINE A. HOLIEN
Hearing Officer

NOTICE: You are entitled to judicial review of this final agency decision in accordance with Mont. Code Ann. § 39-3-216(4), by filing a petition for judicial review in an appropriate district court within 30 days of the date of mailing of the hearing officer's decision. See also Mont. Code Ann. § 2-4-702.

If there is no appeal filed and no payment is made pursuant to this Order, the Commissioner of the Department of Labor and Industry will apply to the District Court for a judgment to enforce this Order pursuant to Mont. Code Ann. § 39-3-212. Such an application is not a review of the validity of this Order.