

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

IN THE MATTER OF THE WAGE CLAIM	)	Case No. 1165-2017
OF ALISON K. BASTA,	)	
	)	
Claimant,	)	
	)	
vs.	)	FINAL AGENCY DECISION
	)	
CASPIAN, LLC, a Montana	)	
limited liability company,	)	
	)	
Respondent.	)	

\* \* \* \* \*

I. INTRODUCTION

1. On February 6, 2017, Alison K. Basta filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit) alleging the respondent, Caspian, LLC, improperly withheld \$71.00 from her tips on January 25, 2017, because she had not correctly entered two orders.

2. Caspian, LLC denied withholding any of Basta’s tips and/or wages.

3. On April 13, 2017, the Wage and Hour Unit issued a redetermination finding Caspian, LLC owed Basta \$71.00 in regular wages. The determination imposed a penalty of 15% on the regular wages, or \$10.65, if the wages were paid by April 28, 2017. If the wages and penalty were not paid by April 28, a penalty of 55% would be imposed totaling \$39.05.

4. On April 26, 2017, the Wage and Hour Unit received Caspian, LLC’s timely appeal from the April 13, 2017 redetermination.

5. On July 24, 2017, following unsuccessful mediation efforts, the Wage and Hour Unit transferred the issue of whether Caspian, LLC owed Basta wages and penalties to the Office of Administrative Hearings (OAH).

6. On July 28, 2017, OAH issued a Notice of Hearing and Telephone Conference informing the parties that a scheduling conference would be held on August 7, 2017. The Notice stated the issue was “Whether Caspian, LLC, a Montana limited liability company, owes wages for work performed, as alleged in the

complaint filed by Basta, and owes penalties or liquidated damages, as provided by law.”

7. On August 7, 2017, Basta participated at the scheduling conference. Caspian, LLC was called at the phone number of record, but no one answered the phone. An August 10, 2017 Scheduling Order was mailed to Basta and Amirhossein Pazouki, the named representative of Caspian, LLC, at the parties’ address of record. The scheduling order mailed to Caspian, LLC was not returned to OAH.

8. The final pre-hearing conference call was held on September 15, 2017. Basta was not available for the conference. The Hearing Officer left Basta a message reminding her the hearing was scheduled on September 26, 2017, at 8:30 a.m., MDT. The Hearing Officer called Caspian, LLC at the phone number of record. The Hearing Officer was unable to leave any message for Caspian, LLC.

9. On September 26, 2017, Basta was not available either time she was called for the scheduled hearing. The Hearing Officer called Caspian, LLC’s phone number of record. The phone number for Caspian, LLC is the phone number for a new business. The Hearing Officer learned Caspian, LLC is no longer in business. No one on Caspian, LLC’s behalf participated at the scheduled hearing.

## II. ISSUE

Whether Caspian, LLC owes Alison Basta wages for work performed, as alleged in the complaint filed by Basta, and owes penalties or liquidated damages, as provided by law.

## III. FINDINGS OF FACT

1. On July 28, 2017, the Office of Administrative Hearings (OAH) issued a Notice of Hearing and Telephone Conference. The notice informed the parties, Alison Basta and Caspian, LLC, that a failure to appear for any conference or hearing could result in default or dismissal of the appeal.

2. After the August 7, 2017 telephone conference, an August 10, 2017 Scheduling Order informed the parties about (1) the date and time of the hearing, (2) the method for conducting the hearing, (3) the consequence of not participating in the hearing, and (4) the requirement of setting aside four hours to be available for the hearing. The Order also stated that if the appellant, Caspian, LLC, failed to appear at the hearing, OAH would issue an order affirming the Wage and Hour Unit’s redetermination.

3. The August 10, 2017 Scheduling Order was mailed to Caspian, LLC's address of record. OAH did not receive any returned mail from Caspian, LLC.

4. Caspian, LLC did not participate at the August 7 scheduling conference, the September 15 final pre-hearing conference, or the September 26, 2017 hearing.

5. Caspian, LLC owes Basta \$71.00 in wages.

6. Caspian, LLC also owes a 55% penalty of \$39.05--for a total amount owed of \$110.05.

#### IV. DISCUSSION AND ANALYSIS

Caspian, LLC, the appellant, is in default because the employer failed to participate in the scheduled hearing.

This is a contested case proceeding subject to the Montana Administrative Procedures Act (MAPA) pursuant to Mont. Code Ann. § 2-4-601 et. seq and § 39-3-302. MAPA specifically provides that informal disposition may be made of any contested case by, among other things, a default unless such disposition is precluded by law. Mont. Code Ann. § 2-4-603(1)(a). Nothing in Title 39 or Title 2 prohibits imposition of a default where a party fails to comport with any facet of a scheduling order, fails to respond to a tribunal's direct order, or fails to appear for a scheduled hearing.

The Department has adopted the Attorney General's model rules, which provide in pertinent part, "[I]n a contested case, if a party does not appear to contest an intended agency action, the agency may enter a default order. If a default is entered, pursuant to Mont. Code. Ann. § 2-4-623, the order must be in writing and include findings of fact and conclusions of law" (emphasis added). Admin. R. Mont. 1-3-213(1) and 24-2-101(1).

Caspian, LLC, the appealing party, received an August 10 Scheduling Order with notification about (1) the date and time of the hearing, (2) the method for conducting the hearing, (3) the consequence of not participating in the hearing, and (4) the requirement of setting aside four hours to be available for the hearing. Even though the OAH did not receive any returned mail, Caspian, LLC failed to provide the Hearing Officer with a current phone number. As a result, Caspian, LLC did not participate in the September 26 scheduled hearing. Because "a party is responsible for developing legal analysis that supports its position. . ." (Wohl v. City of Missoula, 2013 MT 46, ¶ 48, 369 Mont. 108, 300 P.3d 1119), the Hearing Officer will not undertake that effort for the respondent/appellant. Caspian, LLC failed to participate

in a scheduled hearing and failed to follow orders issued by the Hearing Officer. Therefore, Caspian, LLC is in default in this case.

V. CONCLUSIONS OF LAW

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

2. Caspian, LLC failed to participate at the August 7, 2017 telephone conference and the scheduled September 26, 2017 hearing. As a result, Caspian, LLC is in default and has failed to meet its burden of proof.

3. Caspian, LLC, the appellant, has shown no basis to set aside the Wage and Hour Unit's April 13, 2017 redetermination. Alison Basta is due a total of \$110.05 in unpaid wages and liquidated damages.

VI. ORDER

It is ORDERED that the respondent's appeal is DISMISSED. The Department's April 13, 2017 redetermination is final. Caspian, LLC owes Alison Basta \$110.05 in unpaid wages and liquidated damages. Caspian, LLC is ORDERED to tender a cashier's check or money order in the amount of \$110.05 made payable to Alison Basta and mailed to the Employment Relations Division, P.O. Box 201503, Helena, MT 59620-1503, no later than 30 days after service of this decision. The employer may deduct applicable withholding from the wage portion, but not the penalty portion.

DATED this 29th day of September, 2017.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ DEBRA L. WISE  
DEBRA L. WISE  
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. Please send a copy of your filing with the district court to:

Department of Labor & Industry  
Wage & Hour Unit  
P.O. Box 201503  
Helena, MT 59624-1503

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.