

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

IN THE MATTER OF THE WAGE CLAIM)	Case No. 1262-2016
OF RYAN REDDICK,)	
)	
Claimant,)	
)	
vs.)	FINAL AGENCY DECISION
)	
DON WALTERS, individually,)	
d/b/a IRRIGATION PARTS HOUSE,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

1. On January 19, 2016, Ryan Reddick filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit) alleging the respondent, Don Walters, d/b/a Irrigation Parts House (Walters), owed him a total of \$1,555.00 in unpaid wages for work performed July 13 through 25, 2015. On February 9, 2016, Walters submitted a response to Reddick’s claim.

2. On March 14, 2016, the Wage and Hour Unit issued a decision that Walters owed Reddick wages and penalties. Walters made a timely request for a redetermination on March 29, 2016.

3. On April 20, the Wage and Hour Unit issued a redetermination finding Walters owed Reddick \$1,088.32 in commission wages. The determination also imposed a 15% penalty for regular wages pursuant to Mont. Code Ann. § 39-3-206 which amounted to \$163.25, or a 55% penalty totaling \$598.58, if Walters failed to pay the amount owed to Reddick by May 5, 2016.

4. On May 6, 2016, Walters filed a Notice of Appeal and Request for Contested Hearing. There is no evidence showing Walters paid the amount owed to Reddick by May 5, 2016.

5. Following unsuccessful mediation efforts, on August 8, 2016, the Wage and Hour Unit transferred the case to the Office of Administrative Hearings (OAH).

6. On August 9, 2016, OAH issued a Notice of Hearing and Telephone Conference informing the parties a scheduling conference to set dates for the proceedings would be held on August 22, 2016.

7. On August 22, 2016, Reddick and Walters participated at the scheduling conference. In addition to other deadlines, the parties also agreed to a November 7, 2016 final pre-hearing conference and a November 16, 2016 telephone hearing.

II. ISSUE

Whether Don Walters, individually, d/b/a Irrigation Parts House, the appellant, owes wages for work performed, as alleged in Ryan Reddick's complaint, and owes any penalties.

III. FINDINGS OF FACT

1. On August 9, 2016, the Office of Administrative Hearings issued a Notice of Hearing and Telephone Conference. The notice informed the parties that a failure to appear for any conference or hearing could result in default.

2. On August 22, 2016, both Reddick and Walters participated at the scheduling conference.

3. An August 23, 2016 Scheduling Order informed the parties this matter was set for a telephone hearing on November 16, 2016. The Order also stated:

A party's failure to appear for any conference, and/or failure to obey orders issued by the Hearing Officer, may result in sanctions against that party that can include entry of default, dismissal of an appeal, dismissal of the complaint, imposition of liability or other appropriate sanctions.

4. Walters did not submit any witness list, additional documents, or pre-hearing filings.

5. On November 7, 2016, Reddick participated at the final pre-hearing conference. Walters was called twice for the final pre-hearing conference. When Walters did not answer his phone, the Hearing Officer left messages both times that

reminded Walters there was a telephone hearing on November 16, 2016, at 8:30 a.m., MST.

6. On November 16, 2016, Reddick participated at the scheduled hearing. Walters was called for the hearing, but did not answer his phone. The Hearing Officer waited five minutes and called Walters a second time. When Walters was not available the second time, the Hearing Officer closed the record in this matter.

7. Without good cause, the appellant, Walters, failed to appear at the hearing in this matter.

8. Walters failed to present a prima facie case showing he is entitled to any relief. There is nothing in the administrative record or the Wage and Hour determination that shows any error of fact or law that would question the propriety of the Wage and Hour Unit's determination.

9. Walters owes Reddick \$1,088.32 in unpaid commission wages.

10. Walters is assessed penalties in the total amount of \$598.58 (a 55% penalty for regular wages pursuant to Mont. Code Ann. § 39-3-206). Admin. R. Mont. 24.16.7561(1)(a)(b).

IV. DISCUSSION AND ANALYSIS¹

Walters, the appellant, is in default because he failed to appear for the scheduled hearing in accordance with Montana law.

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.

¹Statements of fact in this discussion and analysis are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

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).

Walters, the appealing party, was unavailable and did not participate at the November 16, 2016 scheduled hearing. As of the date of this decision, Walters has not contacted the Hearing Officer or OAH about this matter. Walters failed to follow the orders issued by the Hearing Officer. Therefore, Walters is found in default.

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. Walters failed to follow the August 23, 2016 Scheduling Order; failed to participate at the November 7, 2016 final pre-hearing conference; and failed to participate at the November 16, 2016 scheduled hearing.

3. By failing to appear at the hearing, Walters, the appellant, has shown no basis to set aside the Wage and Hour Unit's determination. Reddick is due a total of \$1,686.90 in unpaid commission wages and penalties as described in Findings of Fact 9 and 10.

VI. ORDER

It is ORDERED that the respondent's appeal is DISMISSED. The Department's determination is final. Don Walters, individually, d/b/a Irrigation Parts House, owes Ryan Reddick \$1,088.32 in unpaid commission wages and a penalty of \$598.58. Don Walters is ORDERED to tender a cashier's check or money order in the amount of \$1,686.90 made payable to Ryan Reddick 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. Don Walters may deduct applicable withholding from the wage portion, but not the penalty portion.

DATED this 23rd day of November, 2016.

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.

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.