

6. On June 19, 2017, the Wage and Hour Unit received Appel Auto Sales, LP's appeal from the June 2, 2017 redetermination.

7. On July 25, 2017, following unsuccessful mediation efforts, the Wage and Hour Unit transferred the issue of whether Appel Auto Sales, LP owed Adams wages and penalties to the Office of Administrative Hearings (OAH).

8. On July 28, 2017, OAH issued a Notice of Hearing and Telephone Conference informing the parties that a telephone scheduling conference would be held on August 7, 2017. The Notice stated the issue was "Whether Appel Auto Sales, LP, a Montana limited partnership, owes wages for work performed, as alleged in the complaint filed by Adams, and owes penalties, as provided by law."

9. On August 7, 2017, Martin Appelhaus participated at the scheduling conference as Appel Auto Sales, LP's representative. John Adams did not participate at the scheduling conference. An August 10, 2017 Scheduling Order was mailed to Adams and Martin Appelhaus at the parties' addresses of record. Neither scheduling order was returned to OAH.

10. The final pre-hearing conference was held on October 12, 2017. Neither Adams nor Martin Appelhaus were available for the conference. The Hearing Officer left Adams two messages reminding him the hearing was scheduled on October 17 at 8:30 a.m., MDT. The Hearing Officer called Martin Appelhaus twice at the phone number of record. The Hearing Officer was unable to leave any message at this number.

11. On October 17, Adams was not available either time he was called for the scheduled hearing. The Hearing Officer left Adams a message that if he wanted to participate at the hearing, he was to call OAH immediately. The Hearing Officer called Martin Appelhaus at his phone number of record, which was the same phone number he had been contacted at on August 7, 2017. The Hearing Officer could not reach Martin Appelhaus at this phone number or leave any messages at this phone number. No one on Appel Auto Sales' behalf participated at the scheduled October 17, 2017 hearing.

II. ISSUE

Whether Appel Auto Sales, LP owes John Adams wages for work performed, as alleged in the complaint filed by Adams, and owes penalties, 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, John Adams and Appel Auto Sales, LP, 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 was mailed which 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, Appel Auto Sales, LP, 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 Martin Appelhaus, the representative, at his address of record. OAH did not receive any returned mail from Martin Appelhaus.

4. Martin Appelhaus participated at the August 7 scheduling conference as the representative for Appel Auto Sales, LP. The Hearing Officer was unable to contact Martin Appelhaus for the October 12, 2017 final pre-hearing conference, or the October 17, 2017 hearing at the same number. Martin Appelhaus did not provide another phone number at which to contact him.

5. Appel Auto Sales, LP owes Adams \$940.00 in wages.

6. Appel Auto Sales, LP also owes a 55% penalty of \$528.00--for a total amount owed of \$1,468.00.

IV. DISCUSSION AND ANALYSIS

Appel Auto Sales, LP, 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).

Appel Auto Sales, LP, 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. OAH did not receive any returned mail from Martin Appelhaus, Appel Auto Sales, LP's representative. After reaching Martin Appelhaus on August 7 at his phone number of record, he did not provide OAH with any phone number at which to contact him. When the Hearing Officer was unable to contact Martin Appelhaus at his phone number of record, no one appeared on Appel Auto Sales, LP's behalf at the October 17 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. Appel Auto Sales, LP failed to participate in a scheduled hearing and failed to follow orders issued by the Hearing Officer. Therefore, Appel Auto Sales, LP 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. Appel Auto Sales, LP failed to participate at the scheduled October 12 final pre-hearing conference and the scheduled October 17, 2017 hearing. As a result, Appel Auto Sales, LP is in default and has failed to meet its burden of proof.

3. Appel Auto Sales, LP, the appellant, has shown no basis to set aside the Wage and Hour Unit's June 2, 2017 redetermination. John Adams is due a total of \$1,468.00 in unpaid wages and penalties.

VI. ORDER

It is ORDERED that the respondent's appeal is DISMISSED. The Department's June 2, 2017 redetermination is final. Appel Auto Sales, LP owes John Adams \$1,468.00 in unpaid wages and penalties. Appel Auto Sales, LP is ORDERED to tender a cashier's check or money order in the amount of \$1,468.00

made payable to John Adams 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, \$940.00, but not the penalty portion, \$548.00.

DATED this 27th day of October, 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.