



Hearing Officer David Scrimm convened a telephone scheduling conference in this matter on September 27, 2016. Respondent's counsel did not appear for the conference. At the conference, a December 27, 2016 hearing date was set.

The Scheduling Order specifically states:

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 appeal, dismissal of the complaint, imposition of liability or other appropriate sanctions.

On December 23, 2016, Schroeder informed OAH that due to some sickness in her office she would not be able to participate in the December 27, 2016 hearing. On January 4, 2017, the hearing was rescheduled for February 1, 2017. On January 30, 2017, Mr. Harper notified OAH that due to an illness he would not be able to participate in the hearing scheduled for February 1, 2017. After considerable wrangling with the parties, the hearing was rescheduled for February 27, 2017. On February 2, 2017, Schroeder indicated that the February 27, 2017 hearing date would not work for her.

After additional wrangling with the parties, the hearing date was moved once again to March 20, 2017. During the communication with the parties, each was asked whether mediation might work in lieu of a hearing that was challenging to schedule. Mr. Harper responded that while his client was open to the idea, he stated that he was leery that it would bring the parties to settlement. Accordingly, on March 3, 2017, the Hearing Officer reset the hearing for March 20, 2017 at the Butte Job Service offices.

On March 20, 2017, the Hearing Officer and Ms. Schroeder were at the Butte Job Service at the time set for the hearing, 9:30 a.m. After a few minutes passed, the Hearing Officer called Mr. Harper to see if he and his client were on their way. Mr. Harper did not answer. The Hearing Officer left a message for Mr. Harper to contact him immediately. He did not. At 9:45 a.m., the Hearing Officer went on the record. DDC Ventures was not in attendance. At 9:50 a.m., the Hearing Officer closed the evidentiary record after noting DDC was not present.

## II. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over Schroeder's claim for unpaid wages under

Mont. Code Ann. § 39-3-201 et seq. State v. Holman Aviation, 176 Mont. 31, 575 P.2d 925 (1978).

2. Dismissal is appropriate when the appealing party fails to appear for hearing.

### III. ORDER

**THEREFORE, IT IS HEREBY ORDERED:**

1. **Respondent's appeal is DISMISSED.**

2. The determination of the Wage and Hour Unit which found that DDC Ventures, LLC owes the claimant \$766.95 in unpaid regular wages and \$854.33 in unpaid overtime wages is final. In addition, DDC Ventures, LLC owes penalties on the regular wages in the amount of \$421.82 and liquidated damages pursuant to the Fair Labor Standards Act of \$854.33. DDC Ventures, LLC is hereby ORDERED to tender a cashier's check or money order in the amount of \$2,897.43 representing \$1,621.28 in wages and \$1,276.15 in penalty, made payable to Pamela S. Schroeder. DDC Ventures, LLC may deduct applicable withholding from the wage portion but not the penalty portion.

**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 22nd day of March, 2017.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ DAVID A. SCRIMM  
DAVID A. SCRIMM  
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.