

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

IN THE MATTER OF THE WAGE CLAIM)	Case No. 327-2017
OF CHRISTOPHER E. ALLEN,)	
)	
Claimant,)	
)	
vs.)	FINAL AGENCY DECISION
)	
LAZY SR RANCH, LLC, a Delaware)	
limited liability company, registered with)	
the Montana Secretary of State,)	
)	
Respondent.)	

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I. INTRODUCTION AND FINDINGS OF FACT

On August 25, 2016, Christopher E. Allen filed a wage and hour claim with the Wage & Hour Unit of the Montana Department of Labor & Industry (Wage & Hour Unit) alleging he was owed \$1,798.72 in unpaid wages for work performed from June 7, 2016 through August 8, 2016.

On September 26, 2016, the Wage & Hour Unit issued a determination concluding that the Lazy SR Ranch, LLC owed Allen \$741.94, which included \$541.94 in unpaid wages and \$200.00 for improper withholdings. A 15% penalty of \$119.29 was also imposed pursuant to Mont. Code Ann. § 39-3-206. The determination included notice that a 55% penalty of \$408.07 would be imposed if Lazy SR Ranch, LLC did not pay the amount of wages found to be owed by the deadline noted in the determination. The determination also included notice that any appeal of the determination had to be filed no later than October 11, 2016. The Lazy SR Ranch, LLC timely appealed the determination.

Following mediation efforts, the Wage & Hour Unit transferred the case to the Office of Administrative Hearings (OAH) on March 24, 2017. On March 31, 2017, OAH issued a Notice of Hearing and Telephone Conference.

On April 10, 2017, Hearing Officer David A. Scrimm conducted a telephone scheduling conference in this matter. Allen appeared, as did Dirk Adams, who represented the respondent. Hearing Officer Scrimm advised Adams that the Lazy SR Ranch, LLC must be represented by an attorney licensed to practice law in Montana. A schedule of proceedings was also set in this matter including the date and time for the telephone hearing. OAH mailed a Scheduling Order setting forth those dates to the parties on April 11, 2017. Neither mailing was returned as undeliverable.

On June 5, 2017, the matter was transferred to Hearing Officer Caroline A. Holien. Hearing Officer Holien attempted to convene a final pre-hearing telephone conference on June 30, 2017 pursuant to the April 11, 2017 Scheduling Order. Hearing Officer Holien was unable to reach Adams at the telephone number of record and left a message requesting he contact OAH. Adams had no contact with OAH.

On June 19, 2017, OAH received a copy of a check in the amount of \$853.23 written to Allen from Lazy SR Ranch, LLC. OAH staff contacted Adams to inquire about the payment and was told that the payment was not as a result of settlement between the parties.

On July 7, 2017, Hearing Officer Holien attempted to convene a telephone hearing in this matter. At the appropriate time and on the appropriate date, Hearing Officer Holien tried calling Adams at the telephone number of record. Hearing Officer Holien spoke with a woman who answered at that number and was told that Adams was “out there somewhere” and she would try to locate him. Hearing Officer Holien advised her that she would reattempt in 15 minutes. Hearing Officer Holien tried calling Adams again at the same number and received a recorded voice mail message. Hearing Officer Holien left a message advising Adams that the matter would be dismissed based upon his failure to appear at the hearing he had requested.

At approximately 9:15 a.m., MDT, Hearing Officer Holien contacted Allen and notified him the matter would be dismissed based upon Adams’ failure to appear.

II. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over Allen’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.

3. A penalty of 55% is appropriate in this case given Respondent's failure to pay the wages found to be owed by the deadline set forth in the Wage & Hour Unit's determination issued on September 26, 2016.

III. ORDER

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

2. The determination of the Wage and Hour Unit which found that Lazy SR Ranch, LLC owes Christopher E. Allen \$541.94 in unpaid regular wages and \$200.00 in improper withholdings is **AFFIRMED**.

3. Lazy SR Ranch, LLC owes penalty in the amount of \$296.78, the difference of the check issued by Lazy SR Ranch, LLC and the amount found to be owed by the Wage & Hour Unit with a 55% penalty imposed ($(\$741.94 \times 55\%) - \853.23).

4. Lazy SR Ranch, LLC is **ORDERED** to tender a cashier's check or money order in the amount of \$296.78 representing the difference of the check issued by Lazy SR Ranch, LLC and the amount found to be owed by the Wage & Hour Unit with a 55% penalty.

5. 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 10th day of July, 2017.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ CAROLINEN 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. 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.