

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

IN THE MATTER OF THE WAGE CLAIM)	Case No. 955-2017
OF STEPHEN C. LINDSEY,)	
)	
Claimant,)	
)	
vs.)	FINAL AGENCY DECISION
)	
STRATNOR (STRATEGIC NORTHERN),)	
INC., a Montana corporation,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION AND FINDINGS OF FACT

On December 27, 2016, Stephen C. Lindsey filed a wage and hour claim with the Wage & Hour Unit of the Montana Department of Labor.

After receiving no response from the Respondent, on January 24, 2017, the Commissioner of Labor and Industry, acting through the Wage and Hour Unit of the Employment Relations Division, served a determination of the claim upon the Respondent, from which any appeal or request for redetermination was due by February 8, 2017. The determination found that Stratnor, Inc. (Stratnor) owed the claimant \$7,100.00 in unpaid regular wages and \$7,810.00 in penalties based on the Respondent's failure to respond to the claim.

On February 16, 2017, Stratnor filed what could be considered an appeal of the determination. On March 3, 2017, the matter was transferred to the Office of Administrative Hearings (OAH) for a contested case hearing. The appeal was not timely filed.

On March 8, 2017, OAH issued a Notice of Hearing which appointed the undersigned as Hearing Officer and set a telephone scheduling conference for March 16, 2017. The Notice of Hearing included the following language:

5. **RIGHT TO LEGAL COUNSEL.** Each party has the right to be represented by an attorney. Individuals are not required to be represented by an attorney. Corporations, partnerships, limited liability companies (LLCs),

and similar entities are required to be represented by an attorney pursuant to Admin. R. Mont. 1.3.231(2). Any party that is represented by an attorney must hire and pay for that counsel.

On March 16, 2017, Hearing Officer David Scrimm convened a telephone scheduling conference in this matter. Lindsey appeared on his own behalf and Bruce Anugwom appeared for Stratnor. Anugwom was advised that Stratnor, as a corporation, had to be represented by an attorney licensed to practice law in the State of Montana. At the conference, an April 18, 2017 hearing date was set.

On March 21, 2017, the hearing officer issued a Scheduling Order that stated specifically:

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 April 11, 2017, the hearing officer held a final pre-hearing conference. Both Lindsey and Anugwom appeared by telephone. The hearing officer once again reminded Anugwom that Stratnor had to be represented by an attorney licensed to practice law in Montana.

On April 18, 2017, the hearing officer issued an order postponing the hearing for one day as Anugwom was "surprised that he had to have an attorney represent Stratnor."

On April 19, 2017, the hearing officer convened the hearing by telephone at 11:00 a.m., MDT. Stratnor did not appear through an attorney licensed to practice law in Montana. Anugwom requested a postponement so he could obtain an attorney but his further statements indicated he would not do so because Stratnor was dissolving in Montana. The Hearing Officer denied the motion.

II. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over Lindsey'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

IT IS HEREBY ORDERED THAT:

1. Respondent's appeal is DISMISSED.
2. The determination of the Wage and Hour Unit that found Stratnor, Inc. owes the claimant, Stephen C. Lindsey, \$7,100.00 in unpaid regular wages and \$7,810.00 in penalties on those unpaid wages is final.
3. Stratnor, Inc. is hereby ORDERED to tender a cashier's check or money order in the amount of \$14,910.00 representing \$7,100.00 in wages and \$7,810.00 in penalty, made payable to Stephen C. Lindsey. Stratnor, Inc. may deduct applicable withholding from the wage portion but not the penalty portion. An itemized statement of any deductions must accompany payment.

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 5th day of May, 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.