

**STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU**

IN THE MATTER OF THE WAGE CLAIM) Case No. 1316-2001
OF DAVID C. SCHWARTZ,)

Claimant,)

vs.)

MIKE VETTER)

d/b/a VETTER TRUCKING,)

Respondent.)

**FINDINGS OF FACT;
CONCLUSIONS OF LAW;
AND DEFAULT ORDER**

I. FINDINGS OF FACT

1. On March 23, 2001, David C. Schwartz filed a wage claim with the Wage and Hour Unit of the Montana Department of Labor and Industry (Department). The Claimant alleged the Respondent owed him wages for work he performed as an employee during the period of December 20, 2000 to January 7, 2001.

2. On February 20, 2001, the Wage and Hour Unit issued a determination finding that the Respondent owed the Claimant wages in the amount of \$1,040.99. The Respondent failed to timely appeal the determination and the Department issued a Default Order and an Amended Default Order on March 20, 2001. The Respondent filed a timely appeal from the Default Order and the Department transferred the case to the Hearings Bureau on April 30, 2001.

3. Hearing Officer Gordon D. Bruce held a pre-hearing conference on June 13, 2001. Both the Claimant and the Respondent were present. At the conference, the Respondent indicated he was obtaining legal counsel, but agreed to a hearing date of July 17, 2001. The Hearing Officer issued an order setting the hearing for that date. On July 11, 2001, the Respondent's attorney, Daniel W. Lias, indicated he was representing the Respondent and requested a continuance of the hearing to prepare his case. The Hearing Officer granted the continuance. Lias shortly thereafter withdrew as counsel for the Respondent because he was not licensed in the state of Montana. The Hearing Officer gave the Respondent an additional opportunity to obtain counsel by order dated July 19, 2001, which also set the time and date for hearing. The hearing order was sent to both parties at their addresses on record with the Hearings Bureau.

4. The telephone hearing was held on August 14, 2001. The Claimant was present, but the Respondent failed to appear. Further, the Respondent failed to notify the Hearing Officer at any time after notice of hearing was sent to the parties that he was requesting a continuance or for

any reason could not be present at the hearing. Claimant's Exhibits 1 through 5 were admitted into the record. Exhibits 000001 through 000023 and J-1 through J-6 were also admitted into the record.

5. The Respondent has not established any cause to set aside the default order in this case.

II. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over this complaint under § 39-3-201 et seq. MCA. State v. Holman Aviation, 176 Mont. 31, 575 P.2d 925 (1978).

2. The Respondent failed to appear at hearing and failed to show good cause why the Default Order issued by the Department pursuant to §§ 39-3-201(1) and 39-3-216(1), MCA, should not remain in full force and effect.

III. ORDER

Respondent Mike Vetter d/b/a Vetter Trucking is in **Default** in this matter. Pursuant to the Default Order issued by the Department, the Respondent is hereby **Ordered** to tender a cashier's check or money order in the amount of \$1,040.99, representing wages and penalty, made payable to David C. Schwartz, and mailed to the Employment Relations Division, P.O. Box 6518, Helena, Montana 59604-6518, no later than 30 days after service of this decision.

DATED this 5th day of September, 2001.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GORDON D. BRUCE

GORDON D. BRUCE
Hearing Officer

NOTICE: You are entitled to judicial review of this final agency decision in accordance with § 39-3-216(4), MCA, by filing a petition for judicial review in an appropriate district court within 30 days of service of the decision. See also § 2-4-702, MCA.