

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

IN THE MATTER OF THE WAGE CLAIMS)	Case No. 549, 550, 551-2001
OF ZACHARY J. BODDICKER, GREGORY)	
C. EVANS, AND ERIC C. TESTERMAN)	
Claimant,)	FINDINGS OF FACT;
))	CONCLUSIONS OF LAW;
vs.)	AND ORDER
))	
WALLY STEVENS AND JANNA GEIER)	
d/b/a PRO DETAIL)	
Respondent.)	

I. INTRODUCTION

On October 2, 2000, Claimants Zachary J. Boddicker, Gregory C. Evans, and Eric C. Testerman filed separate wage claims with the Wage and Hour Unit of the Montana Department of Labor and Industry. The Claimants contended they were owed the following wages for services performed as employees for the Respondents:

Boddicker - \$400.00; Evans - \$750.00; Testerman - \$1,380.00.

After conducting an investigation of the claims, the Department issued a determination in each of the respective cases on November 1, 2000. The Department held that Boddicker was entitled to \$400.00 in wages for services performed as an employee for the Respondents during the period of September 9, 2000 to September 23, 2000. In addition, the Department assessed a penalty in the amount of \$440.00. The Department also held Evans was entitled to \$750.00 in wages for services performed as an employee for the Respondents during the period of August 31, 2000 to September 23, 2000. In addition, the Department assessed a penalty in the amount of \$825.00. Finally, the Department held Testerman was entitled to \$1,380.00 in wages for services performed as an employee for the Respondents during the period of August 28, 2000 to September 20, 2000. In addition, the Department assessed a penalty in the amount of \$1,518.00.

The Respondents appealed the Department's determinations on December 20, 2000. Subsequently, the Department Hearings Bureau issued a Notice of Hearing and Telephone Conference to all parties, setting a telephone pre-hearing conference for February 14, 2001. The Notice informed the parties that if the appellants failed to appear at the hearing, the Hearing Officer would invoke a presumption that the Department's determination was correct.

The Respondents requested a continuance, and one Claimant was also unable to attend, so the Hearing Officer reset the conference for February 22, 2001. The Respondents failed to attend the conference and failed to respond to the Order on Hearing issued February 26, 2001. The Claimants agreed to be joined in this matter for hearing purposes and the hearing was set for April 17, 2001.

At the time and date set for the hearing, Claimants Boddicker, Evans, and Testerman appeared to represent themselves. The Respondents failed to appear for the hearing. The Claimants wished to stand on the determinations issued by the Department in their respective cases. Based upon the determinations, the Hearing Officer makes the following:

II. FINDINGS OF FACT

1. Wally Stevens and Janna Geier d/b/a Pro Detail failed to pay Zachary J. Boddicker \$400.00 in wages during September 2000.
2. Stevens and Geier failed to pay Gregory C. Evans \$750.00 in wages during August and September 2000.
3. Stevens and Geier failed to pay Eric C. Testerman \$1,380.00 in wages during August and September 2000.

III. DISCUSSION

The Respondents failed to participate in the administrative hearing process set forth by the Hearing Officer concerning the Boddicker, Evans, and Testerman wage claims. The Respondents failed to appear at the pre-hearing conference, failed to comply with the pre-hearing order, and failed to appear at the hearing.

Here, because the appealing Respondents failed to appear at the hearing, a presumption of the correctness of the Department's determination is appropriate.

Montana law requires employers to pay employees when due, and in no event more than 15 days following termination of employment. §§ 39-3-204 and 39-3-205, MCA. The record establishes that the Respondents failed to pay wages to the Claimants.

When an employer fails to pay the wages due, the employees are entitled to recover the wages, plus a penalty of up to 110%. § 39-3-206, MCA. In this case, the full penalty is appropriate because of the Respondents' failure to cooperate in the investigative process. ARM 24.16.7556(1)(a). The Respondents responded only after an investigative determination, then appealed only to delay the process.

IV. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of Labor and Industry have jurisdiction over these wage claims pursuant to § 39-3-201 et seq., MCA. *State v. Holman Aviation*, 176 Mont. 31, 575 P.2d 925 (1978).

2. Wally Stevens and Janna Geier d/b/a Pro Detail failed to appear at the hearing in this matter and the Department's determinations finding that the Respondents owe the Claimants wages and penalties is affirmed.

3. Wally Stevens and Janna Geier d/b/a Pro Detail owe the Claimants wages pursuant to §§ 39-3-204 and 39-3-205, MCA, and 110% in penalties pursuant to § 39-3-206, MCA, and ARM 24.16.7556(1)(a) as follows:

Zachary J. Boddicker - \$840.00
(\$400.00 wages plus \$440.00 penalty)

Gregory C. Evans - \$1,575.00
(\$750.00 wages plus \$825.00 penalty)

Eric C. Testerman - \$2,898.00
(\$1,380.00 wages plus \$1,518.00 penalty)

V. ORDER

Respondents Wally Stevens and Janna Geier d/b/a Pro Detail are hereby Ordered to tender cashier checks or money orders made payable respectively to Zachary J. Boddicker in the amount of \$840.00; Gregory C. Evans in the amount of \$1,575.00; and Eric C. Testerman in the amount of \$2,898.00, and mailed to the Employment Relations Division, P.O. Box 6518, Helena, Montana 59624-6518 no later than 30 days from the date of this Order.

DATED this 30th day of May, 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.

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 § 39-3-212, MCA. Such an application is not a review of the validity of this Order.