

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

IN THE MATTER OF THE WAGE CLAIM) Case No. 544-2002
OF BRYCE W. LAWRENCE,)
Claimant,)

vs.) FINDINGS OF FACT;
) CONCLUSIONS OF LAW;
) AND ORDER

CRAIG JONES AND STEVE DELMERE)
individually and/or as partners d/b/a NEW)
FRONTIER CONSTRUCTION,)
Respondent.)

I. INTRODUCTION

On September 25, 2001, the Claimant, Bryce W. Lawrence, filed a wage claim with the Wage and Hour Unit of the Montana Department of Labor and Industry. The Claimant contended that he was owed wages for services performed during the period from April 10 to May 31, 2001.

After conducting an investigation of the claim, the Department issued a determination on December 4, 2001. The Department held that the Claimant was entitled to \$2,460.00 in wages for services performed as an employee for the Respondents during the period of April 10 to May 31, 2001. In addition, the Department assessed a penalty in the amount of \$369.00 (15% of total wages owed) pursuant to § 39-3-206, MCA.

The Respondents appealed the Department's determination and denied that the Claimant was entitled to those wages. On April 24, 2002, the Department Hearings Bureau issued a Notice of Hearing and Telephone Conference to all parties, setting a telephone pre-hearing conference for May 21, 2002. The Notice informed the parties that if the appellant failed to appear at the hearing, the Hearing Officer would invoke a presumption that the Department's determination was correct.

On May 1, 2002, the notice sent to the Respondents was returned to the Hearings Bureau as undeliverable. On May 2, 2002, the Hearings Bureau contacted Craig Jones by telephone and asked for the Respondents' correct address to mail the notice and file documents package to. Jones indicated that he had recently moved and did not have the new address available. He said he would call back later that day to give the new mailing address.

When he failed to call the department, the Hearings Bureau called Jones again on May 6, 2002 at which time he gave the Respondents' new mailing address of 110 Kings Loop, Apt. 1, Kalispell, MT 59901. The Hearings Bureau remailed the notice and file packet to the new address that same day (5/6/2002). On May 9, 2002, the notice and file packet was returned to the Hearings Bureau marked as "no such address" and no forwarding address was given. The Hearings Bureau again attempted to contact Jones on May 9, 2002 to obtain a correct address. A voice message was left for Jones that the Hearings Bureau needed a correct mailing address, and he was informed of the date and time of the scheduled pre-hearing. Jones did not return the call. The Hearings Bureau again attempted to contact Jones at the phone number of record. The answering party indicated that Jones did not work there anymore and he did not know where he was.

The Claimant appeared for the pre-hearing telephone conference on May 21, 2002. The Respondents did not appear and did not request a continuance. At the pre-hearing conference, the Hearing Officer set a hearing for July 23, 2002 at 9:00 a.m. by telephone.

The hearing notice was sent to the parties at their current mailing addresses listed with the Department. On June 3, 2002, the notice sent to the Respondents' two addresses of record were returned to the Hearings Bureau as undeliverable with no forwarding address.

At the time and date set for the hearing, the Claimant was present and was represented by C. David Gorton, Attorney at Law. The Respondents failed to appear for the hearing. The Claimant, through his attorney, wished to stand on the determination issued by the Department. Based upon the determination, the Hearing Officer makes the following:

II. FINDINGS OF FACT

1. Bryce Lawrence was employed by Craig Jones and Steve Delmere individually and/or as partners d/b/a New Frontier Construction during the period from April 10 to May 31, 2001.
2. Jones and Delmere failed to pay Lawrence \$2,460.00 in wages for services performed during the period from April 10 to May 31, 2001.

III. DISCUSSION

The Respondents failed to participate in the administrative hearing process set forth by the Hearing Officer concerning the wage claim of Bryce W. Lawrence.

Here, because the appealing party failed to appear at the hearing, a presumption of 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 Claimant.

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 only after an investigative determination, then appealed for the sole purpose of delaying the process and ultimate payment to the Claimant.

IV. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of Labor and Industry have jurisdiction over this wage claim pursuant to § 39-3-201 et seq., MCA. State v. Holman Aviation, 176 Mont. 31, 575 P.2d 925 (1978).
2. Craig Jones and Steve Delmere individually and/or as partners d/b/a New Frontier Construction failed to appear at the hearing in this matter and the Department's determination finding that the Respondents owe the Claimant wages and penalty is affirmed.
3. Craig Jones and Steve Delmere individually and/or as partners d/b/a New Frontier Construction owe Bryce W. Lawrence 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) in the amount of \$2,706.00.

V. ORDER

Respondents Craig Jones and Steve Delmere individually and/or as partners d/b/a New Frontier Construction is hereby Ordered to tender a cashier check or money order made payable to Bryce W. Lawrence in the amount of \$5,166.00 (\$2,460.00 wages plus \$2,706.00 statutory penalty), 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 1st day of August, 2002.

DEPARTMENT OF LABOR & INDUSTRY

HEARINGS BUREAU

By: /s/ MICHAEL T. FURLONG

MICHAEL T. FURLONG
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.