

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

IN THE MATTER OF THE WAGE CLAIM) Case No. 668-2002
OF JOHN E. MEINERT,)
Claimant,)
)
vs.) FINDINGS OF FACT;
) CONCLUSIONS OF LAW;
) AND ORDER
ENGINEERING INTERNATIONAL ,)
CORPORATION, a Montana corporation)
Respondent.)

I. INTRODUCTION

On October 22, 2001, the Claimant, John E. Meinert, filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry. The Claimant alleged that he was owed wages for services performed during the period from August 1, 2001 to October 2, 2001 in the amount of \$13,386.00.

After conducting an investigation of the claim, the Department issued a determination on December 5, 2001. The Department held that the Claimant was entitled to \$13,386.00 in wages for services performed as an employee for the Respondent during the period of April 16 to August 1, 2001. In addition, the Department assessed a penalty in the amount of \$2,007.90 (15% of total wages owed) pursuant to § 39-3-206, MCA.

The Respondent appealed the Department's determination, indicating that Meinert is owed some wages but not in the amount he alleges on his wage and hour claim. On April 24, 2002, the Department's Hearings Bureau issued a Notice of Hearing and Telephone Conference to all parties, setting a telephone pre-hearing conference for June 4, 2002. The notice informed the parties that if they failed to appear at the hearing, the hearing officer would invoke a presumption that the Department's determination was correct.

The Claimant appeared for the pre-hearing as scheduled by telephone conference on June 4, 2002. The Respondent did not appear at the scheduled time but later that same day called and informed the Hearing Officer that he did not participate due to circumstances beyond his control. As a result, he participated separately in the pre-hearing. At the pre-hearing conferences, both parties agreed for the hearing officer to set a hearing for August 27, 2002 at 9:00 a.m. by telephone. Both parties also agreed to continue negotiations through Joseph Maronick, mediator, with the Department's Employment Relations Division.

At the time and date set for the hearing, the Claimant was present by telephone. The hearing officer called the Respondent and initially left a message on the answering machine that they were being called for the hearing. The hearing officer again called the Respondent's business telephone number at 9:20 a.m. at which time a non-corporate officer employee answered and said that no one was available for the hearing.

The Claimant informed the hearing officer on June 4, 2002 that efforts to negotiate a settlement through the Department mediator were unsuccessful. The Claimant advised the hearing officer that he 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. John E. Meinert was employed by Engineering International Corporation, a Montana corporation, during the period from April 15, 2001 to October 2, 2001.
2. Engineering International Corporation failed to pay Meinert \$13,386.00 in wages for services performed during the period from August 1, 2001 to October 2, 2001.

III. DISCUSSION

Engineering International Corporation failed to participate in the administrative hearing process or request a continuance set forth by the hearing officer concerning the wage claim of John E. Meinert.

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 Respondent 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 Respondent's failure to cooperate in the wage claim process. ARM 24.16.7556(1)(a). It appears the Respondent appealed for the sole purpose of frustrating the process and delaying 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. Engineering International Corporation, a Montana corporation, failed to appear at the hearing in this matter and the Department's determination finding that the Respondent owes the Claimant wages and penalty is affirmed.

3. Engineering International Corporation, a Montana corporation, owes John E. Meinert 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 \$28,110.60.

V. ORDER

Respondent Engineering International Corporation, a Montana corporation, is hereby ordered to tender a cashier check or money order made payable to John E. Meinert in the amount of \$28,110.60 (\$13,386.00 wages plus \$14,724.60 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 12th day of September, 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.