

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

**IN THE MATTER OF THE WAGE CLAIM    ) Case No. 1952-2002**  
**OF JOEL V. DRAKE,                            )**

**Claimant,**                                    )

**vs.**    )

**BRETZ, INC., a Montana corporation    )**  
**d/b/a BRETZ RV & MARINE,                )**

**Respondent.**                                )

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

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**I. INTRODUCTION**

The claimant Joel Drake appealed a determination of the Wage and Hour Unit of the Employment Relations Division which dismissed his claim for allegedly unpaid wages. In that wage claim, the claimant alleged that the respondent Bretz, Inc. owed him commissions totaling \$10,000.00.

By order dated October 7, 2002, this matter was set for telephonic hearing on December 19, 2002 at 9:00 a.m. Both the date and mode (telephonic) of the hearing were set with the input and consent of each of the parties at a scheduling conference that occurred on October 4, 2002. A copy of the October 7, 2002 order was provided to both parties on October 7, 2002.

At the time and on the date set for the hearing, the claimant was contacted at the only telephone number he had provided to the Hearings Bureau, a cellular phone number, (406) 550-1153. The telephone number was disconnected. The hearing was then delayed fifteen minutes to see if the Claimant might nonetheless contact the Hearings Bureau. After the fifteen minute period had expired, the record was closed as the claimant had failed to appear and present any evidence.

**II. FINDINGS OF FACT**

1. By failing to appear and present evidence at the hearing, the claimant has failed to show that the determination of the Wage and Hour Unit was in error either as a matter of fact or law.

2. Because the claimant has failed to present any evidence to show that the determination of the Wage and Hour Unit was in error, he has failed to meet his burden of proof in this case.

### **III. CONCLUSIONS OF LAW**

1. The burden of proof in this matter is upon the claimant.

2. Because the claimant has failed to carry that burden of proof, no merit can be found in his claim. Accordingly, his appeal must be dismissed. Admin R. Mont. 24.16.7541(3).

### **IV. ORDER**

Based on the claimant's failure to appear and present evidence to substantiate

DATED this 27th day of January, 2003.

DEPARTMENT OF LABOR & INDUSTRY

HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT

GREGORY L. HANCHETT

Hearing Examiner