

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

IN THE MATTER OF THE WAGE CLAIM)	Case No. 410-2004
OF SCOTT J. OLSON,)	
Claimant,)	
)	FINDINGS OF FACT;
vs.)	CONCLUSIONS OF LAW;
)	AND ORDER
FINE GRADE EXCAVATION, INC.,)	
)	
Respondent.)	

I. FINDINGS OF FACT

1. Fine Grade Excavation, Inc. (appellant) has appealed from a Wage and Hour Unit determination and redetermination that found it owed unpaid wages to Scott Olsen in the amount of \$784.00 plus penalty. The hearing in this matter was set for March 31, 2004 at 9:00 a.m. Both parties were properly notified of the time and date of the hearing by a scheduling order issued on February 19, 2004. The scheduling order also specifically apprised the parties that the appellant's failure to appear at the hearing would result in the hearing officer affirming the determination and redetermination of the Wage and Hour Unit.

2. At that time and on the date set for the hearing, the hearing officer contacted the appellant's representative, Melissa Fortuna, at her business telephone number but received only a facsimile tone. The hearing officer then contacted Fortuna on her cellular phone. That call was met with an answering machine that directed the caller to leave a message. The hearing officer left a message indicating that Fortuna must contact the hearing officer within 15 minutes or the proceeding would continue without her presence. The hearing officer then waited 20 minutes, but received no return call from any representative of the appellant. Accordingly, the matter proceeded without the appellant's representative.

3. The hearing officer reviewed and admitted into evidence the determination and redetermination of the Wage and Hour Unit (Documents 000009 through 000012 and Documents 000031 through 000033).

4. The Wage and Hour Unit determination and redetermination directed that the appellant pay the wages owed to Olson no later than December 29, 2003 or face an aggravated penalty of 55%. The appellant failed to make any payment of wages owed by that date and has not yet paid any portion of the wages owed to Olson. 55% of the wages owed to Olson amounts to a penalty of \$431.20 (\$784.00 x 55%=\$431.20).

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* (1978), 176 Mont. 31, 575 P.2d 925.

2. The appellant failed to appear at hearing and, by failing to appear, has shown no reason why the order issued by the Wage and Hour Unit should not be affirmed.

3. A review of the determination and redetermination shows no legal cause why the order should not be affirmed.

4. The appellant did not pay any sum of the wages owed to Olson within the time frame directed by the Wage and Hour Unit determination and redetermination and has paid no part of the wages due as of the time of the hearing. Accordingly, Admin. R. Mont. 24.16.7566 requires payment of a 55% penalty.

III. ORDER

Based upon the foregoing, the determination and redetermination of the Wage and Hour Unit are affirmed. Fine Grade Excavating, Inc., is hereby ORDERED to tender a cashier's check or money order in the amount of \$1,215.20, representing \$784.00 in wages and \$431.20 in penalty, made payable to Scott J. Olson, and mailed to the Employment Relations Division, P.O. Box 6518, Helena, Montana 59624-6518, no later than 30 days after service of this decision.

DATED this 5th day of April, 2004.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Officer

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

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 Mont. Code Ann. § 39-3-212. Such an application is not a review of the validity of this Order.