

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM) Case No. 1840-2005
OF DERALD W. HERBERT,)

Claimant,)

vs.)

STAR WEST SATELLITE, INC., a Montana)
corporation,)

Respondent.)

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

* * * * *

I. INTRODUCTION

Derald Herbert appealed a Wage and Hour Unit determination that dismissed his claim for additional overtime wages because he was an exempt employee.

The hearing in this matter was set for November 14, 2005 at 9:00 a.m. The parties had agreed that the hearing could be conducted by telephone. Both parties were properly notified of the time and date of the hearing by a scheduling order issued on September 6, 2005. 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.

On November 3, 2005, the hearing officer held a final pre-hearing conference in this matter which both parties attended by telephone. At that time, the hearing officer reiterated that the hearing would begin at 9:00 a.m. and both parties would be contacted by telephone at that time and on that date for purposes of holding the hearing. Herbert acknowledged that he would be available by telephone at the time of the hearing.

At that time and on the date set for the hearing, the hearing officer contacted the appellant at the only telephone number he had provided to the Hearings Bureau. The appellant did not answer the phone. Counsel for the respondent was available by

telephone. The hearing officer then waited 20 minutes, but received no call from the appellant. The case then proceeded in the appellant's absence.

II. FINDINGS OF FACT

1. Without good cause, Herbert failed to appear at the hearing in this matter.

2. Because Herbert did not appear, he failed to present a prima facie case showing that he was entitled to any additional wages. In the absence of such a prima facie showing, Herbert failed to sustain his burden of proof in this matter.

III. 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 without good cause failed to appear at hearing and, by failing to appear, failed to sustain his prima facie burden of proof to show that he was owed additional wages.

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

IV. ORDER

Based upon the foregoing, the determination of the Wage and Hour Unit that Derald Herbert is not due additional wages is affirmed and his complaint is dismissed.

DATED this 2nd day of December, 2005.

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.