

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM )	Case No. 2697-2004
OF ROCHELLE CHRISTENSEN, )	
)	
Claimant, )	<b>FINDINGS OF FACT;</b>
)	<b>CONCLUSIONS OF LAW;</b>
vs. )	<b>AND ORDER</b>
)	
EARLENE PECK d/b/a WHITNEYS, )	
PLAYHOUSE, )	
Respondent. )	

\* \* \* \* \*

**I. FINDINGS OF FACT**

1. Earlene Peck, d/b/a Whitneys Playhouse(appellant) has appealed from a Wage and Hour Unit determination and redetermination that found it owed unpaid wages to Rochelle Christensen in the amount of \$143.60 plus penalty. A pre-hearing conference was scheduled for March 22, 2005, at 12:30 p.m. The telephone numbers provided by each party were no longer in service. No other numbers could be found in the public domain. The hearing in this matter was set for April 7, 2005 at 12:30 p.m. Both parties were properly notified of the time and date of the hearing by an order on pre-hearing conference issued on March 24, 2005. The order on pre-hearing conference notified 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. After the order on pre-hearing conference was mailed to the parties, Kelly Phillips called the Hearings Bureau to advise that she was in contact with the appellant and would notify it of the date and time of the hearing. The claimant responded to the order on pre-hearing conference by providing her current phone number. At the time and date set for the hearing, the Hearing Officer attempted to contact the appellant's representative, Kelly Phillips, at her telephone number but received only a voice mail message. The hearing officer left a message advising the representative that its failure to appear would result in a default order. The claimant was not available at the telephone number she had provided. The hearing officer

waited 20 minutes, but received no return call from any representative of the appellant or from the claimant.

3. The hearing officer reviewed and admitted into evidence Documents 1 through 42. The initial determination by the Wage and Hour Unit dated July 13, 2004, directed the appellant to pay wages owed in the amount of \$401.25 by August 2, 2004, or face an aggravated penalty of 110%. The appellant responded on July 29, 2004, with a request for redetermination and a check in the amount of \$257.65 for unpaid wages. On November 8, 2004, the Wage and Hour Unit issued a redetermination directing the appellant to pay wages owed in the amount of \$143.60 by November 26, 2004 and a penalty of 15%. The decision advised the appellant that an aggravated penalty of 55% would be due if not paid by November 26, 2004. The claimant responded on December 16, 2004, with a copy of the check for \$257.65 which had not been paid because the account was closed.

4. The appellant has failed to make any payment of wages owed and has not yet paid any portion of the wages owed to Christensen. Further, the appellant has paid a portion of the wages with a check returned for insufficient funds. The initial determination by the Wage and Hour Unit was accurate in the amount of the unpaid wages owed. The appellant owes unpaid wages to Christensen in the amount of \$401.25, to which a penalty must be applied. Mont. Code Ann. § 39-51-2302. Because the employer has paid only a portion of the wages with a check which was returned for insufficient funds, the maximum penalty of 110% is required. Admin. R. Mont. 24.16.7556(1)(d)(3). 110% of the wages owed to Christensen amounts to a penalty of \$441.38 ( $\$401.25 \times 110\% = \$441.38$ ).

## 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 original 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 initial determination should not be affirmed.

4. The appellant did not pay any sum of the wages owed to Christensen 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. 24.16.7556(1)(d)(3) requires payment of a 110% penalty.

### III. ORDER

Based upon the foregoing, the initial determination of the Wage and Hour Unit is affirmed. Earlene Peck, d/b/a Whitney's Playhouse is hereby ORDERED to tender a cashier's check or money order in the amount of \$842.63, representing \$401.25 in wages and \$441.38 in penalty, made payable to Rochelle Christensen, 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. Peck may deduct applicable withholding from the wage portion but not the penalty portion.

DATED this 19th day of April, 2005.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

By: /s/ DAVID H. FRAZIER  
David H. Frazier  
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.