

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM )	Case No. 485-2006
OF KEITH GARRICK, )	)
)	)
Claimant, )	<b>FINDINGS OF FACT</b>
)	<b>CONCLUSIONS OF LAW</b>
vs. )	<b>AND ORDER</b>
)	)
DOUG OHREN, DOUG OHREN )	)
CONTRACTING, )	)
)	)
Respondent. )	)

\* \* \* \* \*

**I. FINDINGS OF FACT**

1. On February 8, 2006, Doug Ohren d/b/a Doug Ohren Construction (Ohren) (appellant) appealed from a Wage and Hour Unit determination that found it owed unpaid wages to Keith Garrick in the amount of \$6,207.50 plus penalty.
  
2. The Notice of Hearing of this matter was issued on April 7, 2006. That notice set a telephone scheduling conference for 10:30 a.m. on April 20, 2006. After repeated attempts to contact Ohren by telephone, the scheduling conference went forth in his absence.
  
3. On April 21, 2006, the hearing officer issued a Scheduling Order that set a May 31, 2006 date for hearing and a May 29, 2006 time for a pre-hearing conference. The scheduling order also directed the parties to provide working telephone numbers for future proceedings. 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 of the Wage and Hour Unit. The order further required the parties to submit lists of exhibits and witnesses, requests for subpoenas and stipulated facts no later than May 19, 2006. Ohren did not submit any exhibit or witness lists, requests for subpoenas or stipulated facts.
  
4. Prior to the May 29, 2006 pre-hearing conference, the hearing officer became aware that neither party submitted any working telephone numbers for the pending conference. Consequently, he issued an Order vacating the conference and

hearing date. The prehearing conference was rescheduled for May 31, 2006 and the hearing for June 27, 2006 at 9:00 a.m. The Order once again directed the parties to provide working telephone numbers for subsequent proceedings.

5. At the time of the May 31, 2006 pre-hearing conference, Garrick was available by telephone at the number he had previously provided. Once again, Ohren did not appear despite repeated attempts to contact him. Some of the telephone numbers were apparently disconnected. At others, messages were left to which no response has been forthcoming.

6. At the time of the June 27, 2006 hearing, neither party was available at the numbers they had provided for hearing purposes.<sup>1</sup> A message was left on Ohren's voicemail directing him to contact the hearing officer within 15 minutes or risk dismissal of his appeal. No response to that message has been received.

7. The hearing officer reviewed and admitted into evidence the determination of the Wage and Hour Unit (Documents 20 through 23).

8. The Wage and Hour Unit determination directed that the appellant pay the wages owed to Garrick in the amount of \$6,207.50 no later than February 13, 2006 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 Garrick. Fifty-five percent (55%) of the wages owed to Garrick amounts to a penalty of \$3,414.13 ( $\$6,207.50 \times 55\% = \$3,414.13$ ).

## 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 shows no legal cause why the order should not be affirmed.

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<sup>1</sup>Garrick later called the Hearings Bureau and asked why he was not called at a cell phone number he had previously listed. A third party also later responded to the hearing officer's phone message that Mr. Garrick no longer was allowed to use the number that Garrick had provided the Hearing Officer. Mr. Garrick did not inform the Hearing Officer that a different number should be used for the hearing.

4. The appellant did not pay any sum of the wages owed to Garrick within the time frame directed by the Wage and Hour Unit determination 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 of the Wage and Hour Unit is affirmed. Doug Ohren d/b/a Ohren Construction is hereby ORDERED to tender a cashier's check or money order in the amount of \$9,621.63, representing \$6,207.50 in wages and \$3,414.13 in penalty, made payable to Keith A. Garrick, 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. Ohren may deduct applicable withholding from the wage portion but not the penalty portion.

DATED this 28th day of June, 2006.

DEPARTMENT OF LABOR AND INDUSTRY

By: /s/ DAVID A. SCRIMM  
David A. Scrimm  
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.

Garrick FOF dsp