

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM)	Case No. 1337-2007
OF DANIEL F. WILLIAMS,)	
)	
Claimant,)	
)	
vs.)	ORDER AFFIRMING AGENCY
)	DETERMINATION
ROY SMITH individually and/or d/b/a)	
NORTHWEST METALS, a business not)	
registered in the state of Montana,)	
)	
Respondent.)	

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INTRODUCTION AND FINDINGS OF FACT

On February 26, 2007, Daniel F. Williams filed a wage and hour claim with the Wage and Hour Unit of the Montana Department of Labor. The department sent a letter to the respondent, Roy Smith, on that same date asking for his response to the claim and gave him until March 6, 2007 to provide it. Mr. Smith was also informed that if he failed to respond, the department would assume the claim is correct.

On March 13, 2007, after performing an audit with available records, the Commissioner of Labor and Industry, acting through the Wage and Hour Unit of the Employment Relations Division, served a determination of the claim upon the respondent, from which any appeal or request for redetermination was due by April 2, 2007. The determination found that Mr. Smith owed the claimant \$695.00 in unpaid wages and a penalty in the amount of \$764.50.

On April 9, 2007, the department issued a default order upholding the previous determination based in part on the fact that Smith had not appealed the determination. On April 22, 2007, the department received a letter from Smith claiming that he had not received notice of the matter until he received the default order.

The department sent the matter to mediation that proved unsuccessful (the hearing officer is unaware of whether the parties actually participated in the mediation or whether they simply failed to respond).

On May 10, 2007, the Wage and Hour Unit transferred the case to the Hearings Bureau for further proceedings. On May 14, 2007, the Hearings Bureau issued a Notice of Hearing

which appointed the undersigned as hearing officer and set a telephone scheduling conference for May 31, 2007.

Hearing Officer David Scrimm convened a telephone scheduling conference in this matter on May 31, 2007. At that conference, both parties agreed to a schedule for the proceedings that included an August 17, 2007 date for submission of contentions, lists of exhibits and witnesses and stipulated facts; a pre-hearing conference to be held on August 23, 2007 at 11:00 a.m.; and an in-person hearing at 9:00 a.m. on August 29, 2007.

Neither party submitted the required contentions or witness and exhibit lists. Smith was unavailable when the hearing officer attempted to contact him for the August 23, 2007 pre-hearing conference. Mr. Smith's cell phone appeared to be disconnected and a message was left on his office phone number requesting that he contact the hearing officer as soon as possible. Mr. Smith did not contact the hearing officer in response to the August 23 message. At the pre-hearing conference, Mr. Williams informed the hearing officer that he would be unavailable for the hearing on August 29 as he was out of town caring for an ill relative. He was informed that he could submit a written motion for continuance and the hearing officer would consider it. Prior to the August 29, 2007 hearing, no motion for continuance was filed.

At the time set for the hearing, neither party was present at the Missoula Job Service. The hearing officer attempted to reach the parties. Mr. Williams as described above was unavailable. Mr. Smith could not be reached by phone and another message was left for him.

Smith, by his disregard for these proceedings, has shown no interest in pursuing his appeal. He has failed to meet his burden to show that the default order was issued in error and that the department's determination of wages and penalties is incorrect.

The May 14, 2007 Notice of Hearing informed Smith that should he fail to appear at the hearing, the Hearings Bureau would issue an order affirming the Wage and Hour Unit's determination. As of the date of this Order, Mr. Smith has done nothing to dispute the factual basis for the claim or to support his basis for appeal. He has also failed to appear at either the pre-hearing conference or the hearing scheduled in this matter.

CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over Williams's claim for unpaid wages under § 39-3-201 et seq. MCA. State v. Holman Aviation, 176 Mont. 31, 575 P.2d 925 (1978).

2. The default order issued in this matter was properly issued because Smith failed to respond to the determination or to appear at the hearing in this matter. Admin. R. Mont. 24.16.7541.

THEREFORE, IT IS HEREBY ORDERED:

Respondent's request for administrative relief IS DISMISSED. The department's Order on Default is final. The determinations of the Wage and Hour Unit which found that the claimant was due \$695.00 in unpaid wages and a penalty in the amount of \$764.50 are affirmed. This dismissal is a final agency decision.

DATED this 30th day of August, 2007.

DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

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 § 39-3-216(4), MCA, by filing a petition for judicial review in an appropriate district court within 30 days of service of the decision. See also § 2-4-702, MCA.