

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM OF KENNETH R. WARRENDER,)	Case No. 1366-2007
)	
Claimant,)	FINDINGS OF FACT;
)	CONCLUSIONS OF LAW;
vs.)	AND ORDER
)	
TRUCKERS EXPRESS, INC. A MONTANA CORPORATION,)	
)	
Respondent.)	

* * * * *

I. FINDINGS OF FACT

1. Truckers Express, Inc., appealed from a Wage and Hour Unit determination and redetermination that found it owed unpaid wages to Kenneth Warrender of \$3,395.15 plus 110% penalty amounting to an additional \$3,734.66 resulting in a total amount due to Warrender of \$7,129.81. Hearing Examiner Gregory L. Hanchett held a pre-hearing conference in this matter on June 4, 2007 for the purpose of setting a hearing date and pre-hearing schedule. Warrender appeared by telephone but no representative for the respondent could be reached because the respondent company was not taking telephone calls.

2. As a result of the pre-hearing conference, the hearing officer issued a scheduling order on June 5, 2007 setting the matter for hearing on August 3, 2007. Copies of the scheduling order were provided to both parties by regular U.S. Mail at their respective mailing addresses. Neither copy was returned to the hearings bureau. The scheduling order notified 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.

3. At the time and date set for the hearing, Warrender appeared by telephone and indicated he was ready to proceed. The hearing officer attempted to contact the appellant's representative at the appellant's number but received only a voice message indicating that the respondent was continuing to process creditor's claims. There was no way to contact any representative of the respondent or to leave a voice message. The hearing officer waited 20 minutes, but received no call from any representative of the appellant. The hearing officer then called the respondent's number again and again received the voice message indicating that respondent was continuing to process creditors claims. In conformity with the scheduling order, the hearing officer then closed the record in this matter.

4. The appellant has failed to make any payment of wages owed and has not yet paid any portion of the wages owed to Warrender. The initial determination by the Wage and Hour Unit was accurate in the amount of the unpaid wages owed and the amount of penalty due to Warrender.

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 shows no legal cause why it should not be affirmed.

III. ORDER

Based upon the foregoing, the initial determination of the Wage and Hour Unit is affirmed. Truckers Express, Inc., is hereby ORDERED to tender a cashier's check or money order in the amount of \$7,129.81, representing \$3,395.15 in wages and \$3,734.66 in penalty, made payable to Kenneth Warrender, 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. Truckers Express, Inc. may deduct applicable withholding from the wage portion but not the penalty portion.

DATED this 7th day of August, 2007.

DEPARTMENT OF LABOR AND INDUSTRY

By: /s/ GREGORY L. HANCHETT
Gregory L. Hanchett
Hearings Bureau

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.

1366-2007.FOF