

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM	)	Case No. 1453-2007
OF MICHAEL C. LEISHMAN,	)	
	)	
Claimant,	)	
	)	
vs.	)	<b>FINAL AGENCY</b>
	)	<b>DECISION</b>
ROBERT ANDERSON AND FREDERICK	)	
STYLER, a partnership, d/b/a A&S	)	
LOGGING, an Assumed Business Name	)	
registered in Montana,	)	
	)	
Respondent.	)	

**I. INTRODUCTION**

In this matter, Leishman appeals from a dismissal of his wage and hour claim.

On March 14, 2007, Leishman filed a claim for unpaid wages with the Wage and Hour Unit. He alleged that he was owed a total of \$4,800.00 in unpaid wages for services provided to the employer from July 16, 2006 through April 15, 2007.

On March 25, 2007, the employer responded to Leishman's claim, indicating that Leishman had been paid for all loads he had hauled through February 28, 2007, and that the employer had no knowledge of any loads he had hauled from March 1, 2007 through April 15, 2007, in the future. The employer indicated that it could not pay Leishman for loads he might haul in the future and has not yet hauled.

On March 30, 2007, Leishman responded, indicating that other drivers were paid more than he was. By letter dated April 11, 2007, the respondent replied that Leishman was paid less because he did not own the truck he was driving and the owner paid for the fuel instead of reimbursing him for it, resulting in a lower wage.

On April 17, 2007, the Wage and Hour Unit issued a determination dismissing Leishman's claim on the basis that he had failed to show that the employer owed him unpaid wages and that the employer had shown that he had been overpaid.

On April 30, 2007, the Wage and Hour Unit issued an amended decision because the first determination was mailed to Leishman at an incorrect address. The determination on the merits was the same.

By letter dated April 18, 2007, received by the Wage and Hour Unit on May 21, 2007, Leishman appealed the dismissal of his claim, indicating that he had no real clue of the amount that he was not paid and could only guess.

On May 22, 2007, the Wage and Hour Unit issued a redetermination dismissing Leishman's claim on the basis that he had filed a claim based upon estimated unpaid wages, under the apparent impression that the Wage and Hour Unit would prove his claim for him.

By letter dated June 13, 2007, Leishman filed an appeal and request for hearing, indicating that he was the only party which had submitted any information and that the information showed that the employer was "skimming".

The matter was transferred to the Hearings Bureau for a contested case hearing.

All notices and correspondence from the Hearings Bureau were mailed to Leishman at his address of record. Following appropriate notice, Hearing Officer David H. Frazier held a scheduling conference on September 6, 2007. Leishman was not available at the telephone number he had provided. The telephone conference was delayed for 15 minutes, but Leishman was still not available.

During the scheduling conference, Exhibits 1 through 76, provided to the Hearings Bureau from the Wage and Hour Unit's investigative file, and thereafter provided to the parties, were admitted into the record without objection. A hearing was set for September 24, 2007, at 8:30 a.m., to be held by telephone.

A Scheduling Order dated September 6, 2007 was mailed to each party at their respective addresses of record.

At 8:30 a.m. on September 24, 2007, the Hearing Officer attempted to contact the parties to proceed with the hearing. Robert Anderson was available to represent the respondent. Leishman was not available at the telephone number he had provided. The hearing was delayed for 15 minutes, but Leishman was still not available.

## II. DISCUSSION

Leishman has made no effort to prosecute his appeal since he wrote his June 13, 2007 letter to the Wage and Hour Unit over three months ago. He has not shown any sufficient reason to justify the total abandonment of this matter. If the Hearings Bureau does not have his correct address or phone number, Leishman has made no effort to correct that situation. Had he made any attempt to pursue his appeal or to inform the Hearings Bureau how to reach him or of any difficulties he may be dealing with, the outcome at this time may have been different. Unfortunately, Leishman has taken no action to pursue his appeal in this matter and he has not shown that he exercised reasonable diligence to overcome any circumstances which created any barrier to pursuing his claim.

## III. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over Leishman'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 Redetermination issued in this matter was properly issued.
3. Leishman has failed to pursue his claim and has not shown good cause for failing to pursue his claim.

## IV. ORDER

### **THEREFORE, IT IS HEREBY ORDERED:**

**The claimant's appeal is DISMISSED.** The Redetermination by the Wage and Hour Unit is affirmed. This dismissal is a final agency decision.

DATED this 1st day of October, 2007.

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.