

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM)	Case No. 332-2007
OF MEGAN M. CLARK,)	
)	
Claimant,)	
)	
vs.)	FINDINGS OF FACT;
)	CONCLUSIONS OF LAW;
)	AND ORDER
ALANA STRANGWARD AND BARRY))	
STRANGWARD d/b/a COFFEE BARN,))	
an Assumed Business Name registered in))	
Montana,)	
)	
Respondent.)	

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I. INTRODUCTION

Alana Strangward, Terri McAllister's daughter, d/b/a Coffee Barn appealed from a Wage and Hour Unit determination and subsequent Order on Default which found it owed unpaid wages to Megan Clark in the amount of \$257.50 plus penalty.

Both the original determination and the subsequent Order on Default in this matter indicated that Terri McAllister was the respondent in this matter. A pre-hearing conference was scheduled for January 8, 2007, at 10:00 a.m. Terri McAllister was not available at the telephone number provided. The scheduling conference proceeded in the respondent's absence. The hearing in this matter was set for February 5, 2007 at 10:00 a.m.

After the scheduling conference was concluded, Terri McAllister called the Hearings Bureau and advised that she was not the proper respondent in this matter. As a result, she moved that her name be removed from the record and advised that her daughter, Alana Strangward, and Alana's father, Barry Strangward, were the correct respondents.

On January 16, 2007, the Hearing Officer issued an order dismissing McAllister as respondent and indicating that Alana Strangward and Barry Strangward were the correct respondents.

On January 16, 2007, the Hearing Officer wrote an order vacating the hearing set for February 5, 2007, and setting a date of February 1, 2007, 10:30 a.m., for a second scheduling conference. The notice was mailed to Alana and Barry Strangward, individually.

On February 1, 2007, the Hearing Officer attempted to contact the parties for a second scheduling conference. Clark was available. Alana Strangward was not available at the telephone number she provided. Barry Strangward was available but advised that he could not represent the respondent because he had no information. He requested that his name be removed as respondent in this matter and stated that he had advised Alana to pay Clark the wages which were due. His name cannot be removed as respondent in this matter because he has not shown that he is not an owner or co-owner of the business. The scheduling conference proceeded in the respondent's absence. The hearing in this matter was set for February 28, 2007 at 10:00 a.m.

Both parties were properly notified of the time and date of the hearing by a scheduling order issued on February 1, 2007. The order 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.

Clark was again available to proceed on February 28, 2007, at 10:00 a.m. Alana Strangward was again not available at the telephone number she provided. The Hearing Officer's call was referred to her voice mail, which was full and would not accept a message.

The Hearing Officer reviewed and admitted into evidence Documents 1 through 25. The Hearing Officer also reviewed and admitted into evidence Documents 26 through 35, offered by Clark and provided to Strangward by Clark.

II. ISSUE

Do Alana Strangward and Barry Strangward owe unpaid wages to Megan Clark?

III. FINDINGS OF FACT

1. On August 23, 2006, Clark filed a claim with the Wage and Hour Unit, maintaining that the respondent had failed to pay her \$257.50 in wages.

2. On August 24, 2006, Alana Strangward called the compliance specialist in the Wage and Hour Unit and advised that Clark's wages had been withheld because she had caught Clark stealing money from the till. The compliance officer advised Strangward of the requirements of the law: that the agreement to withhold the payment of wages be in writing and signed by the claimant or charges promptly filed.

3. Strangward has not provided a copy of such an agreement and has not filed charges against Clark.

4. The original determination by the Wage and Hour Unit dated September 11, 2006, directed the respondent to pay wages owed in the amount of \$257.50 plus a penalty of 110%, amounting to \$283.25. That determination advised the respondent that it could file an appeal in writing no later than October 2, 2006.

5. Neither Alana nor Barry Strangward filed an appeal. On October 10, 2006, the Wage and Hour Unit issued an Order on Default directing the respondent to pay withheld wages owed in the amount of \$257.50 plus a penalty of 110%, amounting to \$283.25. The order advised the respondent of its right to an administrative review and that the appeal must be filed in writing by October 30, 2006. On October 30, 2006, Alana Strangward filed an appeal in writing.

6. By the time of the hearing, the respondent had not yet paid the specified portion of the wages owed to Clark.

7. The initial determination and subsequent Order on Default by the Wage and Hour Unit indicate that the respondent owes unpaid wages to Clark in the amount of \$257.50, to which a penalty must be applied. 110% of the wages owed to Clark amounts to a penalty of \$283.25 ($\$257.50 \times 110\% = \283.25).

IV. DISCUSSION AND ANALYSIS¹

Montana law requires employers to pay wages when due, and in no event later than 15 days following termination of employment. Mont. Code Ann. §§ 39-3-204 and 39-3-205. An employee seeking unpaid wages has the initial burden of proving work performed without proper compensation. *Anderson v. Mt. Clemens Pottery Co.* (1946), 328 U.S. 680, *Garsjo v. Department of Labor and Industry* (1977), 172 Mont. 182, 562 P.2d 473. To meet this burden, the employee must produce evidence to “show the extent and amount of work as a matter of just and reasonable inference.” *Id.* at 189, 562 P.2d at 476-77, **citing** *Anderson*, 328 U.S. at 687, **and** *Purcell v. Keegan* (1960), 359 Mich. 571, 103 N.W. 2d 494, 497; **see also**, *Marias Health Care Srv. v. Turenne*, 2001 MT 127, ¶¶13-14, 305 Mont. 419, 422, 28 P.3d 494, 495 (holding that lower court properly concluded that the plaintiff’s wage claim failed because the plaintiff failed to meet her burden of proof to show that she was not compensated in accordance with her employment contract).

Once an employee has shown as a matter of just and reasonable inference that he or she is owed wages, “the burden shifts to the employer to come forward with evidence of the precise amount of the work performed or with evidence to negate the reasonableness of the inference to be drawn from the evidence of the employee. And if the employer fails to produce such evidence, it is the duty of the court to enter judgment for the employee, even though the amount be only a reasonable approximation.” *Garsjo*, 172 Mont. at 189, 562 P.2d at 477, **quoting** *Purcell, supra*, 359 Mich. at 576, 103 N.W. 2d at 497.

Montana law gives the Department of Labor and Industry authority to adjudicate and enforce claims made by employees for unpaid wages. Mont. Code Ann. §§ 39-3-201 to 39-3-216. When the Department determines that a wage claim is valid, if the employer does not

¹Statements of fact in this discussion and analysis are hereby incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

appeal the determination, the Department may issue a default order against the employer for the amount of wages due and penalty assessed. Mont. Code Ann. § 39-3-216.

In this matter, the respondent filed an appeal of the subsequent default order but has failed to appear to pursue its appeal and has presented no evidence to show that the original determination and default order made by the Wage and Hour Unit should be set aside. Further, the respondent has not denied that Clark worked the hours she claims to have worked nor that it has failed to pay her for those hours of service.

There is no question that the correct respondent had proper notice of the claim and proper notice that it has the burden of presenting evidence to negate the reasonableness of the inference to be drawn from the evidence of the employee. The respondent failed to appear and failed, therefore, to meet their burden in this case. Accordingly, there is no basis to set aside the default or the finding of the Wage and Hour Unit that additional wages and penalty are due to Clark.

V. 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 respondent has failed to pursue its appeal, and has not shown good cause for not paying the claimant the wages she earned. By failing to appear, the respondent has shown no reason why the original order and subsequent Order on Default issued by the Wage and Hour Unit should not be affirmed.

3. A review of the original determination and subsequent Order on Default shows no legal cause why those determinations should not be affirmed.

4. The respondent has not paid any portion of the wages withheld and owed to Clark as of the time set for the hearing. The respondent has not responded to subsequent requests for information by the Wage and Hour Unit and has not shown good cause for withholding the wages due. Accordingly, Admin. R. Mont. 24.16.7566 requires payment of a 110% penalty.

VI. ORDER

Based upon the foregoing, the initial determination and subsequent Order on Default of the Wage and Hour Unit is affirmed. Alana Strangward and Barry Strangward d/b/a Coffee Barn is hereby ORDERED to tender a cashier's check or money order in the amount of \$540.75, representing \$257.50 in wages and \$283.25 in penalty, made payable to Megan Clark, 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.

DATED this 7th day of March, 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.

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.