STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM OF DERALD W. HERBERT, Claimant, vs. STAR WEST SATELLITE, INC., a Montana corporation, Respondent.	)	Case No. 69-2007 **FINDINGS OF FACT; CONCLUSIONS OF LAW; AND ORDER**

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I. INTRODUCTION

On July 14, 2006, Derald W. Herbert filed a claim with the Department of Labor and Industry contending that Star West Satellite, Inc., owed him $4,614.95 in overtime premium pay. On July 24, 2006, Star West filed a response to the charge, contending that Herbert's claim was barred by *res judicata* and collateral estoppel.

On September 19, 2006, the Department's Wage and Hour Unit issued a determination finding that Star West owed Herbert $4,614.95 in overtime premium pay pursuant to the Fair Labor Standards Act (FLSA). The determination also held that Herbert was not entitled to liquidated damages because there was no evidence that Star West failed to act in good faith. On October 10, 2006, Star West filed a request for redetermination.

On November 6, 2006, the Wage and Hour Unit issued a redetermination upholding the previous determination. On November 27, 2006, Star West appealed the redetermination. Following mediation efforts, the Wage and Hour Unit transferred the case to the Department's Hearings Bureau on February 26, 2007.

Hearing Officer Anne L. MacIntyre conducted a hearing in the case by telephone on June 20, 2007. The claimant, Derald W. Herbert, was present and represented himself. Trent M. Gardner, Attorney at Law, represented the respondent, Star West Satellite, Inc. Its president, Peter Sobrepena, was present as Star West's representative. The parties stipulated to proceeding by telephone. Herbert and Sobrepena testified. Documents from the Wage and Hour Unit's investigative file numbered 1, 5, 7 - 9, 31 - 34, 38 - 43, 68 - 75, 98 - 101, and 119 - 259 were admitted into evidence without objection. Documents 116 - 117 from the investigative file and Exhibit A that had been attached to Star West's response to Herbert's

motion for summary judgment were also admitted into evidence without objection. The Hearing Officer took official notice of the fact that, during the period of Herbert's claim, the minimum hourly rate set forth under section 206 of the FLSA was $5.15 per hour.

The Hearing Officer set a deadline of July 20, 2007, for post-hearing briefs. Star West filed its post-hearing brief on July 19, 2007. Herbert did not file a post-hearing brief. The case was then deemed submitted for decision.

II. ISSUE

The issue in this case is whether Star West Satellite, Inc., owes wages for work performed, specifically overtime premium pay, as alleged in the claim filed by Derald W. Herbert, and owes penalties or liquidated damages, as provided by law.

III. FINDINGS OF FACT

1. Star West Satellite, Inc., is an enterprise engaged in commerce, as that term is used in federal Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 *et seq*.

2. The work week for employees of Star West Satellite, Inc., commenced at 12:01 a.m. each Monday.

3. Derald W. Herbert worked for Star West as a piece rate installer of satellite television systems from October 2003 through September 2006. Star West paid Herbert a fixed amount for each installation, regardless of the time required to perform the service.

4. In March 2005, Herbert filed a claim with the Department seeking overtime premium pay from November, 2003, through March 2005. In a decision that became final on December 2, 2005, the Department determined that Herbert's employment was exempt from the requirement of overtime premium pay based on the motor private carrier exemptions set forth at 29 U.S.C. §213(b)(1) and Mont. Code Ann. § 39-3-406(2)(a).

5. Effective August 10, 2005, Congress amended the federal motor private carrier exemption.

6. After learning of the change in the law, Herbert filed this claim with the Department on July 14, 2006, seeking overtime premium pay for the period August 15, 2005, through May 28, 2006.

7. Herbert worked more than 40 hours per week during many of the weeks between August 15, 2005, and May 28, 2006. The hours he worked, his total earnings for each week, his regular rate, and the overtime premium due for each week,[1] were:

Week Ending	Total Hours	Overtime Hours	Total Earnings	Regular Rate	Overtime Premium
8/21/05	79.5	39.5	$1,375.00	$17.30	$341.68
8/28/05	48.5	8.5	685.00	14.13	60.05
9/4/05	79.5	39.5	1,570.00	19.75	390.06
9/11/05	68.0	28.0	1,365.90	20.09	281.26
9/18/05	61.0	21.0	965.30	15.82	166.11
9/25/05	62.0	22.0	1,145.00	18.47	203.17
10/2/05	71.0	31.0	1,180.00	16.62	257.61
10/9/05	71.0	31.0	1,235.60	17.40	269.70
10/23/05	67.0	27.0	875.00	13.06	176.31
10/30/05	42.0	2.0	980.00	23.33	23.33
11/6/05	53.0	13.0	1,102.36	20.80	135.20
11/13/05	58.3	18.3	820.00	14.07	128.74
11/20/05	67.0	27.0	1,295.00	19.33	260.96
12/4/05	74.0	34.0	1,090.00	14.73	250.41
12/18/05	70.3	30.3	1,610.00	22.90	346.94
1/8/06	66.0	26.0	860.00	13.06	169.78
1/15/06	60.5	20.5	635.00	10.50	107.63
1/22/06	46.0	6.0	775.00	16.85	50.55
1/29/06	45.5	5.5	645.00	14.18	39.00
4/2/06	55.5	15.5	1,015.00	18.29	141.75

[1]Herbert did not work more than 40 hours per week in the weeks ending November 27, 2005, December 11, 2005, December 25, 2005, January 1, 2006, February 5, 2006 through March 26, 2006, April 9, 2006, April 16, 2006, and April 30, 2006. Those weeks are not included in the table.

Week Ending	Total Hours	Overtime Hours	Total Earnings	Regular Rate	Overtime Premium
4/23/06	54.0	14.0	850.00	15.74	110.18
5/7/06	48.0	8.0	865.00	18.02	72.08
5/14/06	63.5	23.5	1,075.00	16.93	198.93
5/21/06	65.8	25.8	1,483.18	22.56	291.02
5/28/06	57.0	17.0	965.00	16.93	143.91
Total		1533.9			$4,616.33

8. Star West installs satellite television systems for a company called Dish Network in several states. In Montana, it installs approximately 600 systems per month. Of those, between 25 and 50 systems are sold to customers by representatives of Star West. The remainder are sold to customers by other retailers such as Best Buy and Sears. The customer pays Dish Network, which in turn pays Star West.

9. Prior to July 14, 2006, the management of Star West believed in good faith and based on reasonable grounds that it was not required to pay overtime premium pay to Herbert.

IV. DISCUSSION AND ANALYSIS[2]

Both Montana law and the Fair Labor Standards Act (FLSA) prohibit employers from employing their employees in excess of 40 hours in a single work week unless the employee is compensated at a rate not less than one and one-half times the regular rate at which the employee is employed. Mont. Code Ann. § 39-3-405 and 29 U.S.C. § 207(a)(1). Both laws exempt certain employees from the requirement for overtime premium pay. Mont. Code Ann. § 39-3-406(2)(a) and (t) and 29 U.S.C. §§207(I) and 213(b)(1). Montana law allows employees owed wages, including wages due under the FLSA, to file a claim with the Department of Labor and Industry to recover wages due. Mont. Code Ann. § 39-3-207; *Hoehne v. Sherrodd, Inc.* (1983), 205 Mont. 365, 668 P.2d 232.

Herbert contends that Star West owes him overtime premium pay for 1,533.9 hours worked in excess of 40 per week. Star West contends that Herbert is an exempt employee, under a motor private carrier theory as well as a retail establishment theory. It also contends

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

Herbert's claim is barred by *res judicata* or collateral estoppel. Finally, Star West contends that Herbert's claim should be stayed, pending some possible federal resolution.[3]

A. Exempt Employee Status under the FLSA

The question of whether Herbert was an exempt employee not entitled to overtime premium pay is the key question in this case and, because Star West is an entity covered by the FLSA, implicates both state and federal law. If Herbert is not exempt under the FLSA, then the remedies available under the FLSA govern his claim. Mont. Code Ann. § 39-3-408. If he is exempt under the FLSA, further analysis is necessary to determine if he is exempt under Montana law. *Babinecz v. Montana Highway Patrol*, 2003 MT, 315 Mont. 325, 68 P.3d 715. Thus, his claim must first be analyzed under the FLSA.

Star West contends that Herbert is an exempt employee, both as an employee of a retail or service establishment, and as an employee subject to the motor private carrier exemption. Star West has the burden of proof to establish that Herbert falls under any of the claimed exemptions. ***See*** *Arnold v. Ben Kanowsky, Inc.* (1960), 361 U.S. 388, 392. "These exemptions are to be narrowly construed against the employers seeking to assert them and their application limited to those establishments plainly and unmistakably within their terms and spirit." ***Id.***

1. Commissioned employee of a retail or service establishment.

The FLSA provides:

> No employer shall be deemed to have violated subsection (a) [requiring overtime premium pay] by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 6, and (2) more than half his compensation for a representative period . . . represents commissions on goods and services.

29 U.S.C. § 207(I).

Thus, in order to claim this exception, the respondent must demonstrate the following three elements: (1) that Star West paid Herbert a regular rate of more than $ 7.73, or one and one-half times the federal minimum wage in effect at the time of his employment, for each hour he worked; (2) that Herbert received more than half of his compensation in the form of

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[3]Although Star West raised these defenses in its prehearing contentions, its post-hearing brief addressed only the retail establishment theory, and the issue of liquidated damages. It is unclear whether Star West has abandoned the other issues it raised, such as the motor private carrier exemption and the questions of *res judicata* and collateral estoppel.

commissions earned from the sale of goods or services; and (3) that Herbert worked in a "retail or service establishment." See 29 U.S.C. § 207(I); 29 C.F.R. § 779.412.

The first element is not in dispute. Herbert's regular rate of pay always exceeded $7.73, which is one and one-half the federal minimum wage of $5.15 that was in effect during the period of his claim.

Whether Herbert received more than half his compensation from commissions on goods and services is less clear, and depends on the interpretation of the term "commissions." The testimony established that Herbert was paid on a "piece rate" basis. Piece rate compensation is addressed specifically in the FLSA at 29 U.S.C. § 207(g). The regulations promulgated by the USDOL for piece rate work require that an employee be paid an overtime premium in the manner claimed by Herbert. Star West, however, contends that because the piece rate was set at a certain portion of what Star West receives for each service, the piece rate is clearly a commission pay system. Star West further contends that such a compensation system is squarely within the purpose of a compensation pay system, citing *Erichs v. Venator Group, Inc.* (N.D. Cal. 2001), 128 F. Supp. 2d 1255, 1260.

"The essence of a commission is that it bases compensation on sales, for example a percentage of the sales price, as when a real estate broker receives as his compensation a percentage of the price at which the property he brokers is sold." *Dong Yi v. Sterling Collision Centers, Inc.* (7th Cir. 2007), 480 F. 3rd 505, 508. Herbert, however, was an installation technician, not responsible for sales in the ordinary course of his employment. The issue presented is whether, in order to be considered "commissions," the sales in question must be those of the employee for whom the exemption is claimed.

Various cases from federal courts of appeal, most notably the Court of Appeals for the Seventh Circuit, have held that the employee at issue need not generate the sale of the good or service in order for the compensation of that employee to represent "commissions on goods and services." ***See, e.g.,*** *Mechmet v. Four Seasons Hotels, Ltd.* (7th Cir. 1987), 825 F.2d 1173, 1177 (service charges added by hotels and restaurants to banquet bills to compensate waiters over and above their standard hourly wage were commissions within the FLSA, such that the waiters were exempt from overtime pay). ***See also*** *Stahl v. Delicor of Puget Sound, Inc.* (2003), 148 Wn.2d 876; 64 P.3d 10.

A better reasoned analysis of the commission question is found in *Keyes Motors, Inc. v. Div. of Labor Standards Enforcement* (1987), 197 Cal. App. 3d 557, 242 Cal. Rptr. 873, in which the court interpreted California's statute exempting from overtime premium to an employee if more than half the employee's compensation represents commissions. The court held that, in order to be considered "commission employees," the employees must be involved principally in selling a product or service, not making the product or rendering the service. Herbert is not principally involved in selling the service provided by Star West. Thus, under the holding of *Keyes Motors*, his compensation cannot be considered commissions.

Even if Herbert's compensation could be considered "commissions," Star West has not established that it is a "retail or service establishment" for purposes of the statute. A retail or service establishment means "an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry." 29 C.F.R. § 779.312. Although this definition of "retail or service establishment" was found in 29 U.S.C. § 213(a)(2), which has been repealed, this definition still remains in effect for purposes of § 207(I). See 29 C.F.R. § 779.411; ***see also*** *Reich v. Delcorp, Inc.* (8th Cir. 1993), 3 F.3d 1181, 1183 ("Any construction of the term as defined in § 213(a)(2) became a part of the definition of the term as found in § 207(I). Nothing in the 1990 amendment changed § 207(I)."). "Typically a retail or service establishment is one which sells goods or services to the general public." 29 C.F.R. § 779.318(1).

Star West did not establish that 75% of its annual dollar volume of sales of services consisted of retail sales. The record in fact contains no evidence respecting Star West's annual dollar volume of sales. This is no doubt due to Star West's position that **all** of its services were retail in nature because the ultimate service provided by Star West was to an end user. However, the testimony of Sobrepena established that less than 10% of its installations in Montana were performed for end users to whom Star West sold the service. Most of its services were provided in fact to Dish Network, a commercial customer, not to the general public. The customers in fact paid Dish Network, not Star West. Star West's sales to Dish Network do not constitute retail activity as required to fall within the retail or service establishment exception. Absent evidence showing the actual dollar volume of sales to members of the general public, as opposed to a commercial customer, Star West has failed in its burden to prove that it is a retail or service establishment.

2. Employee of a motor private carrier

The FLSA provides:

> The provisions of section 7 [29 U.S.C. § 207] shall not apply with respect to--
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> (1) any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act, 1935 [49 U.S.C. § 31502] . . . .

29 U.S.C. § 213(b)(1).

The Motor Carrier Act provides:

> The Secretary of Transportation may prescribe requirements for--
>
> (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and

(2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.

49 U.S.C. § 31502(b).

Thus, for the Secretary of Transportation to have the power to establish qualifications and maximum hours of service, the employee must be either a "motor carrier" or a "motor private carrier." These terms are defined at 49 U.S.C. § 13102, which states:

> In this part [49 U.S.C. §§ 13101 *et seq.*], the following definitions shall apply:
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> . . .
>
> (14) Motor carrier. The term "motor carrier" means a person providing commercial motor vehicle (as defined in section 31132 [49 U.S.C. § 31132]) transportation for compensation.
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> (15) Motor private carrier. The term "motor private carrier" means a person, other than a motor carrier, transporting property by commercial motor vehicle (as defined in section 31132 [49 U.S.C. § 31132]) when--
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> (A) the transportation is as provided in section 13501 of this title [49 U.S.C. § 13501];
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> (B) the person is the owner, lessee, or bailee of the property being transported; and
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> (C) the property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise. . . .

Congress amended the 49 U.S.C. § 13102 effective August 10, 2005, as part of the Safe, Accountable, Flexible, Efficient Transportation Equity Act (SAFETEA). In an apparent effort to ease regulatory burdens on some businesses, Congress amended the definitions of "motor carrier" and "motor private carrier" to replace the phrase "motor vehicle" with the phrase "commercial motor vehicle." Therefore, for the Secretary of Transportation to have the power to regulate, the transportation must be via "commercial motor vehicle." This term is defined at 49 U.S.C. § 31132, as follows:

> "[C]ommercial motor vehicle" means a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle–
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> (A) has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater;
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> (B) is designed or used to transport more than 8 passengers (including the driver) for compensation;
>
> (C) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(D) is used in transporting material found by the Secretary of Transportation to be hazardous. . . .

The 2005 amendment substantially changed the applicability of the FLSA exemption. Prior to the amendment, an employee like Herbert, who drove a motor vehicle in the course of employment, was considered exempt. In the prehearing proceedings, Star West argued that Congress, in amending the Motor Vehicle Act, did not intend to change the application of the FLSA, and that the proceedings should be stayed in order to give the federal government an opportunity to rectify the inadvertent change. Regardless of Congressional intent, the law affecting Herbert's employment was amended in August 2005, and it is difficult to see how it could be amended retroactively to affect this wage claim. Further, it appears that in easing the regulatory burden for businesses not using commercial motor vehicles, Congress has eliminated the reason for the exemption, which was to prevent conflicting regulation regarding maximum hours of employment. The reason for the exemption having been eliminated, it stands to reason that the exemption should be also eliminated.

Star West did not attempt to prove at hearing that Herbert was the driver of a commercial motor vehicle pursuant to this definition. Therefore, his employment does not qualify for the motor carrier exemption.

B. Exempt Employee under Montana Law

As noted above, because Herbert is not exempt under the FLSA, the federal law governs his claim, and it is not necessary to analyze whether he is exempt under Montana law. It bears noting, however, Montana law contains exemptions that are substantially identical to those contained in the FLSA that are at issue in this case. Mont. Code Ann. § 39-3-406(2)(a) and (t). The only difference is that Mont. Code Ann. § 39-3-406(2)(t) is limited to employees of retail establishments; there is no reference to service establishments. However, because it is not necessary to address whether Herbert is exempt under Montana law, it also unnecessary to analyze this statutory difference.

C. Computation of Overtime Premium Due

Since Herbert was paid on a piece rate for each installation he performed, his overtime premium is properly calculated in accordance with a USDOL regulation found at 29 C.F.R. § 778.111:

When an employee is employed on a piece-rate basis, his regular hourly rate of pay is computed by adding together his total earnings for the workweek from piece rates and all other sources (such as production bonuses) and any sums paid for waiting time or other hours worked (except statutory exclusions): This sum is then divided by the number of hours worked in the week for which such compensation was paid, to yield the pieceworker's "regular rate" for that week. For his overtime work the piece-worker is entitled to be paid, in addition to his

> total weekly earnings at this regular rate for all hours worked, a sum equivalent to one-half this regular rate of pay multiplied by the number of hours worked in excess of 40 in the week.

The calculations set forth in paragraph 7 of the findings of fact reflect the computation of the regular rate and overtime premium provided for in this regulation. Applying this calculation, Star West owes Herbert $4,616.33 in overtime premium pay.

D. Liquidated Damages

Because Herbert is owed overtime premium pay pursuant to the FLSA, the liquidated damages provision of the FLSA, not the statutory penalty provisions of the state Minimum Wage and Overtime Act, apply to his claim. Mont. Code Ann. § 39-3-408. The FLSA has a liquidated damages provision which states:

> Any employer who violates the provisions of Section 206 or Section 207 of this title shall be liable to the employee or employees affected in the amount of their unpaid . . . wages . . . and in an additional equal amount as liquidated damages.

29 U.S.C. § 216.

However, the Portal to Portal Act alters the liquidated damages provision of the FLSA.

> In any action commenced prior to or on or after the date of the enactment of this Act to recover unpaid minimum wages, unpaid overtime compensation, or liquidated damages, under the Fair Labor Standards Act of 1938, as amended, if the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and he had reasonable grounds for believing that his act or omission was not a violation of the Fair Labor Standards Act of 1938, as amended, the court may, in its sound discretion, award no liquidated damages or award any amount thereof not to exceed the amount specified in section 16 of such Act.

29 U.S.C. § 260. Thus, the Department may refuse to award liquidated damages if the employer demonstrates it acted reasonably and in good faith.

To demonstrate "good faith" under this exception, an employer must show "the act or omission giving rise to [the violation] was in good faith and that [it] had reasonable ground for believing that [its] act or omission was not a violation of the [FLSA]." *Brock v. Shirk* (9th Cir. 1987), 833 F.2d 1326, 1330. This test has both subjective and objective components. *Id.* Good faith requires an honest intention and no knowledge of circumstances which might have put the employer on notice of FLSA problems. *Id.* ***See also*** *Key West, Inc. v. Winkler*, 2004 MT 186, ¶¶ 29-32, 322 Mont. 184, 191, 95 P.3d 666, 671.

Star West's failure to pay its installation technicians overtime premium pay was lawful prior to the August 2005 change in the Motor Carrier Act. It received a determination from this Department to that effect in December 2005, relative to Herbert's claim for the period November 2003 through March 2005. There is no evidence that Star West had any knowledge of the obscure change in the Motor Carrier Act until Herbert raised the issue in this claim. Therefore, Star West demonstrated the requisite good faith and reasonable grounds for believing its failure to pay overtime premium was not a violation of the FLSA. Herbert is not entitled to liquidated damages.

E. *Res Judicata* and Collateral Estoppel

Star West contended that because of the December 2005 Department determination that Herbert was an exempt employee, this claim is barred by *res judicata* or collateral estoppel, citing *Baltrusch v. Baltrusch*, 2006 MT 51, ¶15, 331 Mont. 281, 289-90, 130 P.3d 1267, 1273. However, both *res judicata* and collateral estoppel require identity of subject matter and identity of issues related to the subject matter. Neither element is present in this case. The subject matter of the earlier claim was payment for work performed during a different period of time than the instant claim -- November 2003 through March 2005 versus August 2005 through July 2006. Further, the issues related to the subject matter are not identical because Congress amended the law affecting the employment in August 2005. Finally, for collateral estoppel to apply, the party against whom preclusion is asserted must have been afforded a full and fair opportunity to litigate any issues which may be barred. *Id.* at ¶18, 331 Mont. at 290, 130 P.3d at 1274. Herbert was not afforded a full and fair opportunity to litigate the issue of his entitlement to overtime premium after August 10, 2005, because of a substantial change in the applicable statute. Even had he been aware of the change in the law, it would not have affected his earlier claim. These claim preclusion theories therefore do not bar Herbert's claim.

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 Mont. Code Ann. § 39-3-201 et seq. *State v. Holman Aviation* (1978), 176 Mont. 31, 575 P.2d 925.

2. Derald W. Herbert did not receive more than half his compensation in his employment by Star West Satellite, Inc., from commissions on goods and services.

3. Star West Satellite, Inc., is not a retail or service establishment.

4. After August 10, 2005, Derald W. Herbert was not an employee with respect to whom the Secretary of Transportation had power to establish qualifications and maximum hours of service pursuant to 49 U.S.C. § 31502.

5. Derald W. Herbert's claims for overtime premium compensation for the period August 15, 2005 through July 28, 2006, are not barred by *res judicata* or collateral estoppel.

6. Star West Satellite, Inc. owes Derald W. Herbert $4,616.33 in overtime premium compensation for the period August 15, 2005 through July 28, 2006, under 29 U.S.C. § 207(a)(1).

7. Star West Satellite, Inc., acted reasonably and in good faith when it failed to pay Derald W. Herbert overtime premium compensation. Herbert is therefore not entitled to liquidated damages. 29 U.S.C. §§ 216 and 260.

8. Star West Satellite, Inc., has established no basis for a stay of these proceedings.

VI. ORDER

Star West Satellite, Inc. IS HEREBY ORDERED to tender a cashier's check or money order in the amount of $4,616.33, representing overtime premium pay, less any applicable withholding. The check or money order must be payable to the claimant, Derald W. Herbert, and delivered to the Wage and Hour Unit, Employment Relations Division, P.O. Box 6518, Helena, Montana 59604-6518 no later than September 27, 2007.

DATED this 28th day of August, 2007.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ ANNE L. MACINTYRE
Anne L. MacIntyre
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.

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