

further informed the parties in bolded capital letters that a party must immediately notify the Hearings Bureau if any listed “telephone number is incorrect, has been changed or is listed as unknown.”

On April 17, 2007, the Hearing Officer called the listed telephone numbers for the parties, but was only able to reach the Claimant. The Hearing Officer left a message for Mr. Gillispie informing him that he should immediately contact the Hearings Bureau so that he could participate in the telephone conference. After waiting 15 minutes and not hearing from Mr. Gillispie, the scheduling conference, consistent with the Notice of Hearing, was reconvened without him. At the conference, a hearing date of June 20th was selected. Also selected was a date and time of June 18 at 2:00 p.m. for a pre-hearing conference. The Scheduling Order also required the parties to complete discovery by May 18, 2007; to file any motions by May 25, 2007; to file requests for relief, final contentions, lists of exhibits and witnesses; to file requests for subpoenas and to file stipulated facts on or before June 6, 2007. No discovery was undertaken by either party. Nor did either party file any final contentions; exchange witness and exhibit lists; or stipulated facts.

The Scheduling Order also required the respondent to show good cause for failing to appear at the scheduling conference by May 1, 2007. The order further required Gillispie to indicate that he intended to pursue his appeal. The respondent did not comply with this part of the order.

On June 18, 2007, the Hearing Officer attempted to contact the parties for the final prehearing conference. Mr. Ashcraft was unavailable due to an orientation meeting that he was called into on short notice, but his wife was available to assist with the conference. Mr. Gillispie did not answer his phone and a message was left informing him that the conference would be delayed for 15 minutes in hopes that he would call in to let the Hearing Officer know he was then available. The telephone message also informed Mr. Gillispie that his appeal would be dismissed if he did not appear at the pre-hearing conference. Mr. Gillispie did not call back at all on June 18 and the prehearing conference was essentially ended except to clarify that the hearing on June 20, 2007 would go forward in a limited fashion due to the fact that Mr. Gillispie had not appeared and would be defaulted.

On the afternoon of June 19, 2007, Gillispie contacted the Hearings Bureau to say that he has been dealing with the death of his father and the illness of his stepfather. He was informed that he was in default and that at the hearing scheduled for the next day he would have an opportunity to show cause as to why he should not be considered in default.

On June 20, 2007, the hearing of this matter was held. Present by telephone were George Ashcraft and Larry Gillispie. Documents 1-33 provided to the parties with the Notice of Hearing were admitted into the record. The Hearing Officer explained to the parties that the hearing on the facts of the case would go forward only if Gillispie showed good cause for his failure to participate in either pre-hearing conference or to comply with the Scheduling Order.

Gillispie was tending to his father who recently died in California and is currently helping his step-father through his cancer treatment.

Gillispie had someone collecting his mail while he was away from Missoula, but did not ask that person to open that mail to identify any important papers. Gillispie had someone checking his telephone messages, but did not ask that person to inform him of any important messages he had received. Gillispie made no efforts to contact the Hearings Bureau to inform the Hearing Officer of his circumstances, to ask for a continuance or for any other relief. Gillispie conducted no discovery in this matter, filed no contentions, lists of exhibits or witnesses.

Eagle Crest Electric's payment of \$547.10 to Ashcraft was returned for lack of sufficient funds. (Document 3). Eagle Crest Electric owes wage in the amount of \$975.00, plus a 110% penalty in the amount of \$1,072.50.

II. DISCUSSION

Gillispie made no effort to prosecute his appeal once he wrote his February 27, 2007, letter to the Wage & Hour Unit. While dealing with the needs of dying parents is a very difficult and trying time, it is not sufficient in and of itself to justify the total abandonment of one's affairs, especially when the rights of other people are involved. Had Gillispie made any attempt to pursue his appeal or to inform this office and the Claimant of his difficulties, the outcome here may have been different. Unfortunately, Gillispie took no action to pursue his appeal in this matter and he has not shown that he exercised reasonable diligence in trying to overcome the circumstances he found himself in dealing with his parents' illnesses.

III. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over Ashcraft'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, but must be modified to reflect the return of the \$547.10 payment for lack of sufficient funds.

3. Gillispie failed to show good cause for setting aside his default in this matter.

IV. ORDER

THEREFORE, IT IS HEREBY ORDERED:

Respondent's request for administrative relief IS DISMISSED. The Department's Redetermination is modified to reflect that the payment of \$547.10 was not actually paid. The determination of the Wage and Hour Unit which found that the claimant was due \$375.00 in

unpaid wages and a penalty in the amount of \$412.50 shall be modified to show that respondent owes unpaid wages in the amount of \$975.00 and a penalty in the amount of \$1,072.50. This dismissal is a final agency decision.

DATED this 26th day of June, 2007.

DEPARTMENT OF LABOR AND INDUSTRY

By: /s/ DAVID A. SCRIMM
David A. Scrimm, Chief
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.

Ashcraft Order Dismissing Appeal and Modifying Redetermination.dsp