

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM)	Case No. 782-2008
OF BRANDON J. NEAL,)	
)	
Claimant,)	FINDINGS OF FACT;
)	CONCLUSIONS OF LAW;
vs.)	AND ORDER
)	
LUCKY'S AUTO SALES INCORPORATED,)	
a Montana corporation,)	
)	
Respondent.)	

I. INTRODUCTION

Lucky's Auto Sales Incorporated (appellant) appealed a Wage and Hour Unit determination that found it owed Brandon J. Neal additional wages and penalty.

The hearing in this matter was set for May 12, 2008 at 9:00 a.m. Both parties were properly notified of the time and date of the hearing by a scheduling order issued on April 17, 2008. The scheduling order also specifically apprised 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.

At that time and on the date set for the hearing, the hearing officer contacted the appellant at the only telephone number provided to the Hearings Bureau. The hearing officer reached the appellant's message machine but the message machine would not permit the hearing officer to leave a message. The hearing officer then waited 20 minutes for the appellant to call the Hearings Bureau, but received no call. The hearing officer then closed the record in this matter and entered the appellant's default.

II. FINDINGS OF FACT

1. The appellant was properly notified of the time and date of the hearing in this matter.
2. Without good cause, the appellant failed to appear at the hearing in this matter.
3. Because the appellant did not appear, it failed to present a prima facie case showing that it was entitled to any relief. Moreover, there is nothing in the record or the Wage and Hour Determination that shows any error of fact or law that would call into question the propriety of the determination of the Wage and Hour Unit.
4. In conformity with the determination of the Wage and Hour Unit, Neal is found to be due \$1,600.00 in unpaid wages plus 55% penalty amounting to \$880.00 ($\$1,600.00 \times .55 = \880.00).

III. 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. A review of the Wage and Hour Unit's determination shows no legal cause why the determination should not be affirmed.
3. By failing to appear at the hearing, the appellant has shown no basis for setting aside the determination of the Wage and Hour Unit. Neal is due an additional \$1,600.00 in unpaid wages and \$880.00 in penalty.

IV. ORDER

Based upon the foregoing, the determination of the Wage and Hour Unit is affirmed. Lucky's Auto Sales, Inc., is hereby ORDERED to tender a cashier's check or money order in the amount of \$2,480.00, representing \$1,600.00 in unpaid wages and \$880.00 in penalty made payable to Brandon J. Neal 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. Lucky's Auto Sales, Inc., may deduct applicable withholding from the wage portion but not the penalty portion.

DATED this 12th day of May, 2008.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
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.