

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM ) Case No. 1397-2009  
OF MELISSA D. AZURE, )

Claimant, )

vs. )

SKY MOTEL OF MONTANA, INC., )

Respondent. )

**FINDINGS OF FACT;  
CONCLUSIONS OF LAW;  
AND ORDER**

\* \* \* \* \*

**I. INTRODUCTION**

Melissa Azure (Azure) appealed from the Wage and Hour Unit’s dismissal of her claim for unpaid wages from the respondent, Sky Motel of Montana, Inc.

Hearing Officer David Scrimm held a scheduling conference in this matter on June 17, 2009. Azure and respondent’s counsel, William Wagner, attorney at law, appeared by telephone and the parties agreed to hold an in-person hearing on October 7, 2009. Azure then requested an indefinite continuance based on her relocation to Jackson, Wyoming. Respondent objected to the postponement. Ultimately, the hearing was rescheduled for November 12, 2009 and set for a telephonic hearing to begin at 11:00 a.m. The parties also agreed to participate in a final pre-hearing telephone conference on November 4, 2009. A scheduling order with the revised dates was issued September 16, 2009 and was sent to the respondent and to Azure at her address in Wyoming. The scheduling order also specifically apprised the parties that the appellant’s failure to appear at the hearing could result in the hearing officer dismissing her appeal.

At the time and date of the final pre-hearing conference, the hearing officer attempted to reach Azure at her last known telephone number, but was only able to reach a recording that said that the number was no longer working. Azure also failed to submit any required pre-hearing filings identifying her witnesses, proposed exhibits, contentions, or proposed stipulated facts. On November 12, 2009, the hearing officer held the hearing as scheduled. Azure did not appear, as calls to her telephone number, which now appeared to be working, went unanswered when the

hearing officer called at 11:00 a.m., and again at 11:15 a.m. The hearing officer did leave a message indicating that if Azure did not appear, her appeal would be dismissed. Counsel for the respondent was informed that Azure was not available and that based on her failure to appear or to otherwise prosecute her appeal, it would be dismissed. The hearing officer then closed the record in this matter and entered the appellant's dismissal.

## II. FINDINGS OF FACT

1. The appellant, Melissa D. Azure, 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, she failed to show she was owed any unpaid wages.

## 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. By failing to appear at the hearing, the appellant has shown no basis for her appeal of the department's dismissal of her wage claim.

## IV. ORDER

Based upon the foregoing, it is hereby ordered that the appeal of Melissa D. Azure is DISMISSED.

DATED this 13th day of November, 2009.

DEPARTMENT OF LABOR AND INDUSTRY

By: /s/ DAVID A. SCRIMM  
David A. Scrimm, Hearing Officer  
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.