

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM) Case No. 1970-2008
OF BRYAN D. STEEBER,)

Claimant,

vs.

WOLF CONSTRUCTORS, INC., a Montana)
corporation,

Respondent.

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

* * * * *

I. INTRODUCTION

Hearing Officer Gregory L. Hanchett convened a contested case hearing in this matter on April 24, 2009. Claimant Bryan Steeber appeared on his own behalf and announced that he was ready to proceed. Wolf Constructors, Inc., failed to appear even though Wolf Constructors had been properly advised of the time and place of hearing. In addition, although advised of the necessity to do so, Wolf Constructors never retained counsel to appear in this matter. As a result of Wolf Constructors' failure to appear, this matter proceeded in the absence of Wolf Constructors.

II. FINDINGS OF FACT

1. Wolf Constructors, Inc., failed without good cause to either obtain counsel to represent it or to appear at the hearing in this matter.

2. Because Wolf Constructors Inc., did not appear, it failed to demonstrate that the determination below was in error. In accordance with this tribunal's earlier order, Wolf Constructors, Inc., failure to appear constitutes good cause to default Wolf Constructors, Inc., and to affirm the determination below. The determination below found that Wolf Constructors, Inc., owed Steeber additional overtime wages in the amount of \$210.00, additional regular wages in the amount of \$165.00 and penalty as prescribed by law.

3. Both the regular and overtime wages in the amount determined in the Wage and Hour Unit's determination are due to Steeber but remain unpaid. Montana law assesses a penalty when an employer fails to pay wages when they are due. Mont. Code Ann. §39-3-206. For cases involving overtime claims, a penalty of 110% must be imposed. Admin. R. Mont.

24.16.7561. For claims involving compensation other than minimum wage and overtime compensation, a penalty of 55% must be imposed. Admin. R. Mont. 24.16.7566. Where a claim involves a failure to pay both overtime and regular wages, the penalties to be assessed must be calculated by applying the appropriate penalty to each component of the claim. Admin. R. Mont. 24.16.7569.

Applying these three regulations, Wolf Constructors, Inc., owes penalty in the amount of \$ 231.00 (110% of \$210.00=\$231.00) for the unpaid overtime wages due to Steeber. Wolf Constructors, Inc., also owes penalty in the amount of \$90.75 (55% of \$165.00) for the unpaid regular wages due to Steeber. Wolf Constructors, Inc., thus owes total penalty of \$321.75 (\$231.00 + \$90.75=\$321.75).

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

2. The appellant without good cause failed to appear at hearing and, by failing to appear and prosecute its appeal, has shown no basis for reversing the determination below.

3. A review of the determination shows no legal cause why the order should not be affirmed.

4. Wolf Constructors, Inc., owes Steeber regular and overtime wages totaling \$375.00. In addition, Wolf Constructors, Inc., owes Steeber \$321.75 in penalty.

IV. ORDER

Based upon the foregoing, the determination of the Wage and Hour Unit that Wolf Constructors, Inc., owes additional regular and overtime wages to Bryan Steeber is AFFIRMED. Wolf Constructors, Inc., is hereby ORDERED to tender a cashier's check or money order in the amount of \$696.75, representing \$375.00 in unpaid regular and overtime wages and \$321.75 in penalty, made payable to Bryan D. Steeber, 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. Wolf Constructors, Inc., may deduct applicable withholding from the wage portion but not the penalty portion of the amount due.

DATED this 24th day of April, 2009.

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.

Steeber FOF ghp