

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM)	Case No. 813-2009
OF SCOTT M. BENNET,))
))
Claimant,)	FINDINGS OF FACT
)	CONCLUSIONS OF LAW
vs.)	AND ORDER
))
JESSEN MASONRY, INC.,))
))
Respondent.))

* * * * *

I. INTRODUCTION

Jessen Masonry, Inc.(Jessen), appealed from a Wage and Hour Unit determination and redetermination that found it owed unpaid wages to Scott M. Bennet of \$5,427.40 plus penalty.

Hearing Officer David Scrimm held a scheduling conference in this matter on August 12, 2009. Orin Jessen and Bennet appeared by telephone and the parties agreed to a hold a telephonic hearing on November 10, 2009 at 9:00 a.m. The parties also agreed to participate in a final pre-hearing telephone conference on November 4, 2009. Jessen called in to the scheduling conference and agreed to provide a number for the hearing officer by October 26, 2009, so Jessen could be reached for the scheduled conferences and hearing. Jessen did not provide a phone number. A scheduling order with the above times and dates was issued on August 18, 2009 and was sent to Bennet and to Jessen at the address he provided at the scheduling conference. 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.

Prior to the pre-hearing conference the hearing officer searched the case file and the internet in an attempt to find a working number for Jessen, no such number was located. Jessen did not appear for the pre-hearing conference. Jessen also failed to submit any required pre-hearing filings identifying his witnesses, proposed exhibits, contentions or proposed stipulated facts. On November 10, 2009, the hearing officer held the hearing as scheduled. Jessen did not appear as he had still not provided the

hearing officer with a telephone number where he could be reached. Bennet provided sworn testimony and Exhibits 1-30 and 32-94 were admitted into the record. The hearing officer then closed the record in this matter and entered the appellant's default.

II. FINDINGS OF FACT

1. The appellant, Jessen Masonry, Inc., 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,
Bennet is found to be due \$5,427.40 in
unpaid wages plus 55% penalty
amounting to \$2,985.07($\$5,427.40 \times$
 $.55 = \$2,985.07$)¹.

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 redetermination should not be affirmed.
3. By failing to appear at the hearing, the appellant has shown no basis for setting aside the redetermination of the Wage and Hour Unit. Bennet is due \$5,427.40 in unpaid wages and \$2,985.07 in penalty.

¹ The department's redetermination erroneously indicated the 55% penalty would amount to \$3,432.83.

IV. ORDER

Based upon the foregoing, with the exception of the amount of penalty owed, the redetermination of the Wage and Hour Unit is affirmed. Jessen Masonry, Inc., is hereby ORDERED to tender a cashier's check or money order in the amount of \$8,412.47, representing \$5,427.40 in unpaid wages and \$2,985.07 in penalty made payable to Scott M. Bennet 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. Jessen Masonry, Inc., may deduct applicable withholding from the wage portion but not the penalty portion.

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.

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.

Bennet.FOF.dsp