

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

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|---------------------------------|---|-------------------|
| IN THE MATTER OF THE WAGE CLAIM |) | Case No. 905-2009 |
| OF CHARLOTTE C. EASON, |) | |
| |) | |
| Claimant, |) | |
| |) | DISMISSAL ORDER |
| vs. |) | |
| |) | |
| M. DAVIDENE TAIT D/B/A |) | |
| TRIPLE CROWN MOTOR INN, |) | |
| |) | |
| Respondent. |) | |

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I. INTRODUCTION AND FINDINGS OF FACT

On December 1, 2008, Charlotte C. Eason filed a wage and hour claim with the Wage & Hour Unit of the Montana Department of Labor. The department sent a letter to the Respondent M. Davidene Tait asking for her response to the claim and gave her until December 11, 2008 to provide it.

On January 2, 2009, after performing an audit with available records, the Commissioner of Labor and Industry, acting through the Wage and Hour Unit of the Employment Relations Division, served a determination of the claim upon the respondent, from which any appeal or request for redetermination was due by January 20, 2009. The determination found that Ms. Tait owed the claimant \$869.85 in unpaid wages and a penalty in the amount of \$956.84.

On January 26, 2009 the department issued a default order upholding the previous determination based in part on the fact that Tait had not appealed the determination. On February 11, 2009, the Department set aside the default after the appellant provided good cause for its failure to respond to the administrative inquiry.

On March 19, 2009, the Department issue a redetermination finding that Tait owed Eason \$700.00 in unpaid regular wages, \$41.13 in unpaid overtime wages and penalties in the amount of \$385.00 on the regular wages and \$45.24 on the overtime wages.

On April 9, 2009 the Department received Tait's appeal and on April 24, 2009 the Wage & Hour Unit transferred the case to the Hearings Bureau for further proceedings. On April 28, 2009, the Hearings Bureau issued a Notice of Hearing which appointed the undersigned as Hearing Officer and set a telephone scheduling conference for May 12, 2009.

Hearing Officer David Scrimm convened a telephone scheduling conference in this matter on May 12, 2009. At that conference both parties agreed to a schedule for the proceedings that included a July 17, 2009 date for submission of contentions, lists of exhibits and witnesses and stipulated facts; a prehearing conference to be held on August 6, 2009 at 10:00 a.m.; and an in-person hearing to be held on August 12, 2009 in Helena, Montana.

The May 14th Scheduling Order specifically states:

A party's failure to appear for any conference, and/or failure to obey orders issued by the Hearing Officer, may result in sanctions against that party that can include entry of default, dismissal of appeal, dismissal of the complaint, imposition of liability or other appropriate sanctions.

Neither party submitted the required contentions or witness and exhibit lists. The appellant was not available when the hearing officer attempted to contact her for the August 6, 2009 prehearing conference. A message was left with hotel staff to have Ms. Tait contact the Hearings Bureau within 15 minutes so that we could reconvene the conference. Ms. Tait neither called within that time frame nor at any other time on the 6th.

Tait has failed to file any contentions, inform this tribunal or the claimant of what witnesses or exhibits she intends to use at hearing, whether she intends to appear at the hearing at all, or to allow the claimant to respond to her contentions. It is therefore appropriate that her appeal be dismissed.

II. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over Eason's claim for unpaid wages under § 39-3-201 et seq. MCA. State v. Holman Aviation, 176 Mont. 31, 575 P.2d 925 (1978).

III. ORDER

THEREFORE, IT IS HEREBY ORDERED:

Respondent's appeal is DISMISSED. The department's Redetermination is final. The determinations of the Wage and Hour Unit which found that the claimant was due \$741.13 in unpaid wages and a penalty in the amount of \$430.24 are affirmed. M. Davidene Tait is hereby ORDERED to tender a cashier's check or money order in the amount of \$1,171.37, representing \$741.13 in wages and \$430.24 in penalty, made payable to Charlotte C. Eason. Tait may deduct applicable withholding from the wage portion but not the penalty portion.

All payments required above shall be mailed to the Employment Relations Division, P.O. Box 201503, Helena, MT 59620-1503, no later than 30 days after service of this decision. This dismissal is a final agency decision.

DATED this 7th day of August, 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.

Eason.Dismissal Order.dsp