

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM ) Case No. 1117-2011  
OF ERIC J. LARSON, )  
                                       )  
                                       )  
Claimant, )  
                                       )  
                                       )      **FINAL AGENCY DECISION**  
vs.                                 )      **DISMISSING CLAIM**  
                                       )  
                                       )  
PHRE SOLUTIONS, LLC, )  
                                       )  
                                       )  
Respondent. )

\* \* \* \* \*

## I. INTRODUCTION

On January 4, 2011, Eric J. Larson filed a wage and hour claim with the Wage and Hour Unit of the Montana Department of Labor. The Wage and Hour Unit sent a letter to the respondent, PHRE Solutions, LLC (PHRE), asking for its response to the claim. The respondent was given until January 14, 2011 to submit its response. The respondent did not respond to this request.

On January 28, 2011, the Wage and Hour Unit served a determination of the claim upon the respondent finding PHRE owed the claimant \$13,638.75 in unpaid wages and a penalty in the amount of \$15,002.62. The determination stated that the Request for Redetermination must be postmarked by February 15, 2011.

On February 15, 2011, PHRE, through its owner, Tucker Hayes, filed a timely request for redetermination.

On February 18, 2011, the Wage and Hour Unit issued a redetermination and dismissal of the claimant's wage and hour claim based upon its finding that the claim was not filed within the time prescribed by Montana Code Annotated § 39-3-207(1).

On March 8, 2011, the Department received Larson's appeal.

On April 4, 2011, the Wage and Hour Unit transferred the case to the Hearings Bureau for further proceedings. On April 5, 2011, the Hearings Bureau issued a Notice of Hearing, which appointed the undersigned as Hearing Officer, and set a telephone scheduling conference for April 19, 2011 at 10:00 a.m., MDT.

The Notice of Hearing and Telephone Conference dated April 5, 2011 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 the complaint, imposition of liability or other appropriate sanctions ... If Eric J. Larson fails to appear at the hearing, the Hearings Bureau will issue an order affirming the Wage and Hour Unit's determination, unless the opposing party seeks additional relief.

On April 19, 2011, Hearing Officer Caroline Holien convened a telephone scheduling conference in this matter. The Hearing Officer was unable to reach either party at the telephone numbers provided. The Hearing Officer scheduled a telephone hearing to be held on June 6, 2011 at 9:00 a.m., MDT.

The Scheduling Order dated April 20, 2011 states:

If the appellant fails to appear at the hearing, the Hearings Bureau will issue an order affirming the Wage and Hour Unit's determination if the opposing party does not seek additional relief. If the opposing party has timely requested relief beyond that requested in the complaint, the hearing will proceed on that basis.

Neither party submitted the required requests for relief; final contentions; lists of exhibits and witnesses; requests for the issuance of subpoenas; or stipulated facts by May 20, 2011, as outlined in the Scheduling Order.

On June 6, 2011, the Hearing Officer convened a telephone hearing in this matter. The appellant was not available when the Hearing Officer attempted to contact him at 9:00 a.m., 9:05 a.m., and 9:20 a.m. The Hearing Officer left the appellant a voice mail message advising him of the date and time for hearing and directing him to contact the Hearings Bureau. The appellant did not contact the Hearings Bureau within 20 minutes of the scheduled start of hearing or at any time thereafter.

The appellant has made no effort to contact the Hearings Bureau since the matter was transferred on April 4, 2011. The appellant failed to participate in the telephone conference on April 19, 2011 and failed to make himself available for hearing on June 6, 2011. None of the mailings from the Hearings Bureau have been returned as undeliverable. Further, the appellant has failed to file any contentions, notify the Hearing Officer or the respondent of the witnesses and exhibits he intended to use at hearing, or whether he intended to appear at the hearing at all. Therefore, it is appropriate that Larson's appeal be dismissed.

## II. CONCLUSIONS OF LAW

The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction over Larson'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:**

**Claimant's appeal is DISMISSED.** The Department's Redetermination is final.

DATED this 13th day of June, 2011.

DEPARTMENT OF LABOR AND INDUSTRY

By: /s/ CAROLINE A. HOLIEN  
Caroline A. Holien, 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.