

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM)	Case No. 1277-2011
OF JOHN J. KNEIFEL,)	
)	
Claimant,)	
)	
vs.)	
)	FINAL AGENCY DECISION
THOMAS DEAN GEER, an individual)	
d/b/a THE HORNY MOOSE and)	
RESTORATION INDUSTRIES, INC.,)	
a Montana corporation d/b/a KODIAK)	
RESTORATION,)	
)	
Respondents.)	

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I. INTRODUCTION

Hearing Officer Gregory L. Hanchett convened a contested case hearing in this matter on August 8, 2011. Claimant John J. Kneifel appeared on his own behalf and announced that he was ready to proceed. Respondent Thomas Geer failed to appear even though he had timely notice of the time and date of the hearing. As a result of Geer's failure to appear, this matter proceeded in his absence.

II. FINDINGS OF FACT

1. Thomas Geer d/b/a The Horny Moose and Restoration Industries, Inc., d/b/a Kodiak Restoration, failed without good cause to appear at the hearing in this matter.

2. Because Thomas Geer d/b/a The Horny Moose and Restoration Industries, Inc., d/b/a Kodiak Restoration, did not appear, it failed to demonstrate that the Wage and Hour Unit's determination was erroneous. In accordance with this tribunal's earlier order, Thomas Geer d/b/a The Horny Moose and Restoration Industries, Inc., d/b/a Kodiak Restoration's failure to appear constitutes good cause to default Thomas

Geer d/b/a The Horny Moose and Restoration Industries, Inc., d/b/a Kodiak Restoration, and to affirm the determination below. The determination below found that Thomas Geer d/b/a The Horny Moose and Restoration Industries, Inc., d/b/a Kodiak Restoration, owed Kneifel additional wages in the amount \$813.75 and a 55% penalty in the amount of \$447.56.

3. The record provided to the Hearings Bureau (Documents 1 through 94) fully supports the finding that Kneifel is owed \$813.75 in unpaid wages and a 55% penalty in the amount of \$447.56 for a total due to Kneifel of \$1,261.31.

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* 176 Mont. 31, 575 P.2d 925 (1978).

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 Wage and Hour Unit determination shows no legal cause why the order should not be affirmed.

4. Thomas Geer d/b/a The Horny Moose and Restoration Industries, Inc., d/b/a Kodiak Restoration, jointly and severally owe Kneifel wages totaling \$813.75. In addition, Thomas Geer d/b/a The Horny Moose and Restoration Industries, Inc., d/b/a Kodiak Restoration, jointly and severally owe Kneifel \$447.56 in penalty.

IV. ORDER

Based upon the foregoing, the determination of the Wage and Hour Unit that Thomas Geer d/b/a The Horny Moose and Restoration Industries, Inc., d/b/a Kodiak Restoration, jointly and severally owe wages and penalty to John Kneifel is **AFFIRMED**. Thomas Geer d/b/a The Horny Moose and Restoration Industries, Inc., d/b/a Kodiak Restoration, is hereby **ORDERED** to tender a cashier's check or money order in the amount of \$1,261.31, representing \$813.75 in unpaid wages and \$447.56 in penalty, made payable to John J. Kneifel, and mailed to the Employment Relations Division, P.O. Box 201503, Helena, Montana 59620-1503, no later than 30 days after service of this decision. Thomas Geer d/b/a The Horny Moose and Restoration

Industries, Inc., d/b/a Kodiak Restoration, may deduct applicable withholding from the wage portion but not the penalty portion of the amount due.

DATED this 9th day of August, 2011.

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.