

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM)	Case No. 1437-2011
OF STEPHEN J. TIMROTH,)	
)	
Claimant,)	
)	
vs.)	FINAL AGENCY DECISION
)	
MARTINA M. WEBER, d/b/a SMOKEHAUS)	
GRILL & DELI,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

Hearing Officer Gregory L. Hanchett convened a contested case hearing in this matter on October 25, 2011. The appeal in this matter was filed by Respondent Martina Weber d/b/a Smokehaus Grill & Deli. Claimant Stephen Timroth appeared on his own behalf and announced that he was ready to proceed. Martina Weber failed to appear even though she had timely notice of the time and date of the hearing and specifically agreed at the time of the scheduling conference to be available on the date scheduled for hearing. As a result of Weber's failure to appear, this matter proceeded in her absence.

II. FINDINGS OF FACT

1. Martina Weber failed without good cause to appear at the hearing in this matter.

2. Because Weber did not appear, she failed to demonstrate that the Wage and Hour Unit's determination was erroneous. In accordance with this tribunal's earlier order, Weber's failure to appear constitutes good cause to default Weber and to affirm the determination below. The determination below found that Weber owed Timroth additional regular hourly wages in the amount of \$4,121.20 and additional overtime wages in the amount of \$247.50, for a total in unpaid wages due of \$4,368.70. The determination further found that Weber owed a penalty of 55% on the unpaid hourly wages amounting to \$2,266.66 and a penalty of 110% of the unpaid overtime wages amounting to \$272.25.

3. The record provided to the Hearings Bureau (Documents 1 through 86) fully supports the findings of the Wage and Hour Unit.

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

4. Weber owes Timroth additional wages totaling \$4,368.70 (\$4,121.20 regular wages plus \$247.50 overtime wages equals \$4,368.70). In addition, Weber owes Timroth \$2,538.91 in penalty (\$2,266.66 penalty on regular wages plus \$272.25 penalty on overtime wages equals \$2,538.91 penalty).

IV. ORDER

Based upon the foregoing, the determination of the Wage and Hour Unit that Martina Weber d/b/a Smokehaus Grill & Deli owes wages and penalty to Stephen Timroth is AFFIRMED. Martina Weber is hereby ORDERED to tender a cashier's check or money order in the amount of \$6,907.61, representing \$4,368.70 in unpaid wages and \$2,538.91 in penalty, made payable to Stephen J. Timroth, 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. Martina Weber may deduct applicable withholding from the wage portion but not the penalty portion of the amount due.

DATED this 26th day of October, 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.