

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM ) Case No. 1984-2010  
OF LING JUN WANG, a/k/a LILY J. WANG, )

Claimant, )

vs. )

PHONG YANG, a/k/a/ ZIYUN Y. ZHUANG, )  
d/b/a FOUR SEASONS CHINESE )  
RESTAURANT, )

Respondent. )

**FINDINGS OF FACT;  
CONCLUSIONS OF LAW;  
AND ORDER**

\* \* \* \* \*

**I. INTRODUCTION**

Claimant Lily J. Wang filed a late appeal of an amended determination by the Wage and Hour Unit of the Department of Labor and Industry finding the respondent owed Wang \$57.13 in unpaid wages and imposing a 15-percent penalty for a total amount of \$65.70. Hearing Officer Caroline A. Holien held a contested case hearing in this matter on February 28, 2011. At the hearing, the claimant represented herself, and the respondent, Four Seasons Chinese Restaurant, was represented by Hung Banh. Chuyan Wang served as an interpreter at hearing.

Wang and Banh testified under oath. John Phong Yang, manager, and his wife, Huang Yan-Ong, attended the hearing but did not provide sworn testimony. Documents 1 through 88 were admitted into the hearing record. Exhibit 89, submitted by the claimant, was admitted without objection. A document submitted by the employer but not provided to the claimant was excluded from evidence. Based on the evidence and argument presented at hearing, the hearing officer makes the following findings of fact, conclusions of law, and final agency decision.

**II. ISSUE**

Whether Lily J. Wang filed a timely appeal to the Wage and Hour determination dated August 23, 2010.

### III. FINDINGS OF FACT

1. Lily Wang worked as a restaurant worker for Four Seasons Chinese Restaurant in Butte, Montana, from July 11, 2009 through July 19, 2009.

2. On August 25, 2009, Wang filed her wage claim with the Wage and Hour Unit of the Montana Department of Labor and Industry. Her claim is subject to the Fair Labor Standards Act because Four Seasons Chinese Restaurant is an employer pursuant to 29 U.S.C. § 205(e).

3. Wang originally sought unpaid wages in the amount of \$1,292.09 for the time period of July 11, 2009 through July 19, 2009.

4. On August 12, 2010, the Wage and Hour Unit issued a determination finding the employer owed Wang \$57.13 in unpaid wages and imposed a 15-percent penalty, for a total amount of \$65.70.

5. On August 23, 2010, Renee Crawford, Compliance Specialist, spoke with Wang on the telephone. Crawford and Wang discussed discrepancies between the dates noted in the determination and information provided by the employer. Crawford advised Wang that she would issue an Amended Determination and mail it to the parties.

6. On August 23, 2010, Crawford issued an Amended Determination. She mailed the Amended Determination to Wang at the address she provided to the Wage and Hour Unit, 7910 Amestoy Street, Van Nuys, California 91406. Wang received mail at this address.

7. The Amended Determination stated, in part:

“The Respondent or Claimant may either appeal this Determination or request a Redetermination. Either request must be in writing, to the attention of Pam McDaniel, Supervisor, Wage & Hour Unit, Labor Standards Bureau, Employment Relations Division, PO Box 201503, Helena, MT 59620-1503. The Appeal (Hearing), or request for Redetermination must be postmarked by September 20, 2010. You must set out the reasons for the request including any new or additional information that would alter or affect this original Determination.

If an appeal or request for redetermination is not filed, or payment is not made by the above stated date, this Determination will be final to the Wage and

Hour Unit and an Order on Default will be issued in the amount of this Determination.”

8. Wang received the Amended Determination several days after its mailing date of August 23, 2010. Wang read and understood the Amended Determination.

9. On August 30, 2010, the Wage and Hour Unit received a money order in the amount of \$65.70 from the employer.

10. On September 30, 2010, the Wage and Hour Unit issued a Dismissal and mailed the money order to Wang at her last known mailing address in Van Nuys, California.

11. On October 21, 2010, Wang sent the money order and a handwritten letter to the Wage and Hour Unit indicating she wished to continue with her claim.

12. On October 29, 2010, Pam McDaniel, Supervisor with the Wage and Hour Unit, sent the parties a letter acknowledging receipt of Wang’s letter and the returned money order. McDaniel advised Wang that she had failed to file an appeal on or before September 20, 2010, as set forth in the Amended Determination. McDaniel advised Wang that her letter dated October 21, 2010 and the returned money order would be treated as an appeal of the Amended Determination. McDaniel transferred the case for mediation by employment law mediator Joe Maronick.

13. On January 6, 2011, Maronick forwarded the file to the Hearings Bureau for hearing after attempts at mediation were unsuccessful.

#### **IV. DISCUSSION**

Montana Code Annotated Section 39-3-216(3) states:

“When the department determines that a wage claim is valid, the department shall mail the determination to the parties at the last-known address of each party. If a party appeals the department’s determination within 15 days after the determination is mailed by the department, a hearing must be conducted according to contested case procedures under Title 2, chapter 4, part 6, except that service need not be made as prescribed for civil actions in the district court and the hearings officer is not bound by statutory or common-law rules of evidence. The hearing may be conducted by telephone or by video conference. The department shall by rule provide relief for a person who does not receive the determination by mail.”

On August 23, 2010, Crawford spoke with Wang by telephone and advised Wang that an Amended Determination would be issued to address discrepancies in the dates used in the initial determination and the information provided by the employer. Crawford issued the Amended Determination that same day and mailed it to the parties at their last known addresses. Wang did not submit a written request for appeal or redetermination until October 21, 2010.

Wang initially testified she received the Amended Determination after speaking with Crawford on August 23, 2010. Wang testified she read and understood the Amended Determination. Wang later changed her testimony and indicated she could not recall receiving the Amended Determination after speaking with Crawford. Wang argued she had complied with all directives she received from the Wage and Hour Unit and responded to all other mailings in a timely manner.

Wang's testimony was contradictory and generally non-responsive. Wang routinely responded to questions about specific documents by arguing the employer manufactured several documents it submitted during the course of the Wage and Hour Unit's investigation. When asked why she did not mention in her letter dated October 21, 2010 that she had not received the August 23, 2010 Amended Determination or the September 30, 2010 Dismissal, Wang's answer was rambling and focused on the employer's behavior during her employment and during the Wage and Hour Unit's investigation. Wang's testimony was neither credible nor persuasive.

The evidence adduced at hearing shows the Wage and Hour Unit mailed the Amended Determination to the parties at their last known addresses. The evidence shows Wang received the Amended Determination several days after its mailing date of August 23, 2010 and before September 20, 2010. Wang's argument to the contrary is not credible given her testimony she received the money order and other mailings from the Wage and Hour Unit at the same mailing address with little or no difficulty. The evidence shows Wang failed to file a timely appeal. Therefore, the Amended Determination dated August 23, 2010 is final. The Wage and Hour Unit properly dismissed the matter on September 30, 2010 after receiving the employer's money order for \$65.70 and after not receiving a written request for an appeal or redetermination from Wang.

## V. 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. Wang failed to file a timely appeal as required under Mont. Code Ann. § 39-3-216(3). Therefore, the Amended Determination issued on August 23, 2010 is final and Wang's wage claim was properly dismissed on September 30, 2010.

**VI. ORDER**

The dismissal of the wage claim of Lily J. Wang is hereby affirmed. The employer has complied with the terms set forth in the determination of the Wage and Hour Unit by submitting a money order in the amount of \$65.70, representing \$57.13 in wages and \$8.57 in penalty.

DATED this 4th day of March, 2011.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

By: /s/ CAROLINE A. HOLIEN  
CAROLINE A. HOLIEN  
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.