

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM)	Case No. 2085-2009
OF DWIGHT B. BARNHART,)	
)	
Claimant,)	
)	
vs.)	FINDINGS OF FACT;
)	CONCLUSIONS OF LAW;
)	AND ORDER
BRADLEY K. BOE, BRIAN BOE, AND)	
CHRIS BOE, individually and as a)	
partnership, d/b/a BOE FARMS,)	
)	
Respondent.)	

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I. INTRODUCTION

Hearing Officer Gregory L. Hanchett convened a contested case hearing in this matter on March 21, 2011. Claimant Dwight B. Barnhart appeared on his own behalf and announced that he was ready to proceed. Neither Bradley, Brian, nor Chris Boe appeared for the hearing even though they had been properly advised of the time of hearing and that the hearing would be held by telephone. When the hearing officer called the only number for Bradley, Brian, and Chris Boe, their answering machine indicated that the machine was full and that it could not take any messages. As a result, the hearing officer waited 15 minutes but received no contact from anyone representing the respondents. As a result of Bradley, Brian, and Chris Boe's failure to appear, this matter proceeded in their absence.

II. FINDINGS OF FACT

1. Barnhart filed a wage and hour claim under the Montana Wage and Hour Act with the Montana Department of Labor and Industry on June 16, 2009. The wages were earned and should have been paid to Barnhart no later than June 12, 2009.

2. After investigation, the Wage and Hour Unit issued a determination on October 29, 2009 finding that Bradley, Brian, and Chris Boe owed Barnhart wages in the amount of \$1,791.49 and penalty in the amount of \$985.31 (a total of \$2,776.80).

3. Bradley Boe appealed the Wage and Hour determination to this tribunal on November 17, 2009. Integral to this tribunal's determination was the question of whether Barnhart was or was not an employee of Boe Farms and Bradley Boe. Boe appealed that issue to the Montana Workers' Compensation Court (which has exclusive jurisdiction over that issue). Due to Boe's appeal to the Workers' Compensation Court, this tribunal was compelled to stay this wage and hour appeal until the Workers' Compensation Court resolved the issue of Barnhart's employee status.

4. On October 18, 2010, Bradley and Brian Boe d/b/a Boe Farms filed a Chapter 13 reorganization petition in bankruptcy in the U.S. Bankruptcy Court for the District of Montana, listing the Montana Department of Labor and Industry on the creditors' matrix.

5. On October 29, 2010, the Montana Department of Labor and Industry through legal counsel Patricia Bik filed a proof of claim with the bankruptcy court.

6. On February 23, 2011, the Workers' Compensation Court issued a minute entry dismissing Boe's appeal regarding Barnhart's status as an employee. The effect was to uphold the determination that Barnhart was Boe's employee and not an independent contractor.

7. On March 2, 2011, the bankruptcy court dismissed Boe's Chapter 13 petition and the trustee entered his final report allowing the wage claim sought in the matter before this tribunal.

8. On February 25, 2011, this tribunal noticed Boe's appeal for hearing. Boe was properly notified of the time and date for hearing but failed without good cause to appear.

9. Because neither Bradley, Brian, nor Chris Boe appeared, they failed to demonstrate that the determination by the Wage and Hour Unit was in error. In accordance with this tribunal's earlier order, the Boes' failure to appear constitutes good cause to default them and to affirm the determination of the Wage and Hour Unit.

10. Both the regular and overtime wages in the amount determined in the Wage and Hour Unit's determination are due to Barnhart but remain unpaid. Montana law assesses a penalty when an employer fails to pay wages when they are due. Mont. Code Ann. § 39-3-206. For claims involving compensation other than minimum wage and overtime compensation, a penalty of 55% must be imposed. Admin. R. Mont. 24.16.7566. Applying this regulation, Bradley, Brian, and Chris

Boe owe a penalty in the amount of \$985.32 (.55% x \$1,791.49=\$985.32) for the unpaid regular wages due to Barnhart.

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 respondents 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 determination shows no legal cause why the order should not be affirmed.

4. Bradley, Brian, and Chris Boe, individually and as a partnership, owe Barnhart regular wages totaling \$1,791.49. In addition, Bradley, Brian, and Chris Boe, individually and as a partnership, owe Barnhart \$985.32 in penalty.

IV. ORDER

Based upon the foregoing, the determination of the Wage and Hour Unit that Bradley, Brian, and Chris Boe, individually and as a partnership, owe additional wages to Dwight B. Barnhart is AFFIRMED. Bradley Boe, Brian Boe, and Chris Boe, d/b/a Boe Farms are hereby ORDERED to tender a cashier's check or money order in the amount of \$2,776.81, representing \$1,791.49 in unpaid wages and \$985.32 in penalty, made payable to Dwight B. Barnhart 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. The respondents may deduct applicable withholding from the wage portion but not the penalty portion of the amount due.

DATED this 20th day of April, 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.