

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

IN THE MATTER OF THE WAGE CLAIM)	Case No. 1987-2018
OF STEVE W. CAMP,)	
)	
Claimant,)	
)	
vs.)	FINAL AGENCY DECISION
)	
COWLES MONTANA MEDIA COMPANY,)	
a Washington corporation registered with)	
the Montana Secretary of State,)	
)	
Respondent.)	

* * * * *

I. PROCEDURAL BACKGROUND

1. On May 23, 2018, Steve W. Camp filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry alleging Cowles Montana Media Company, a Washington corporation registered with the Montana Secretary of State (Cowles), owed him \$2,000.00 in wages for work performed during the period of December 1, 2017 through February 28, 2018. Docs. 120-23.

2. On September 24, 2018, the Wage and Hour Unit issued a redetermination dismissing Camp's claim after determining he had failed to show Cowles had improperly reduced his salary.

3. On October 9, 2018, Camp filed a timely appeal.

4. On April 30, 2019, the matter was transferred to the Office of Administrative Hearings (OAH) after mediation efforts were unsuccessful.

5. On May 6, 2019, OAH issued a Notice of Hearing and Telephone Conference setting the matter for a telephone conference on May 15, 2019. The notice provided:

The purpose of the conference is to set the dates for the hearing and establish a schedule for hearing preparation. If a party does not attend the conference, the hearing schedule will be set without that party's participation. 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 an appeal, dismissal of the complaint, imposition of liability or other appropriate sanctions.

The notice was sent to both parties at the addresses of record. Neither mailing was returned as undeliverable.

6. On May 15, 2019, Hearing Officer Caroline A. Holien attempted to convene a telephone conference in this matter at the appropriate date and time. Camp was not available. The Hearing Officer left him a message advising him that the matter would be dismissed if he did not contact OAH by the end of the business day and state good cause for his failure to appear.

7. Pamela Combs, Attorney at Law, appeared on behalf of Cowles at the telephone conference. The Hearing Officer informed Combs that she would be issuing a Notice of Intent to Dismiss if Camp failed to contact OAH by the end of the business day.

8. Camp contacted OAH that afternoon and indicated he had not received the notice and hearing packet. The telephone conference was subsequently rescheduled to June 3, 2019 at 10:00 a.m., MDT. OAH staff emailed the new notice and hearing packet to the email address Camp had provided.

9. On June 3, 2019, the Hearing Officer attempted to reconvene the telephone conference in this matter. Again, Camp was not available. The Hearing Officer left Camp a message advising him the matter would be dismissed based upon his failure to appear.

10. On June 4, 2019, the Hearing Officer issued the Notice of Intent to Dismiss Claimant's Appeal. The notice provided that the matter would be dismissed if Camp failed to file and serve a written argument as to why the matter should not be dismissed no later than June 17, 2019. The notice was mailed to the parties at the addresses of record. Neither mailing was returned as undeliverable. To date, nothing has been received from Camp and he has had no contact with OAH.

II. ISSUE

Whether Cowles Montana Media Company, a Washington corporation registered with the Montana Secretary of State, owes regular and overtime wages for work performed, as alleged in the complaint filed by Steve W. Camp, and owes penalties or liquidated damages, as provided by law.

III. FINDINGS OF FACT

1. Steve W. Camp received proper notice regarding the scheduling conference originally scheduled for May 15, 2019 and subsequently rescheduled to June 3, 2019.

2. Camp has been personally aware that a contested case proceeding was pending with OAH.

3. Camp has failed without good cause to participate in the proceedings initiated as a result of his appeal.

4. Due to his failure to appear, Camp has failed to show that Cowles Montana Media Company, a Washington corporation registered with the Montana Secretary of State, owes him any additional wages for work performed during the period of December 1, 2017 through February 28, 2018.

IV. DISCUSSION

This is a contested case proceeding subject to the Montana Administrative Procedures Act (MAPA) pursuant to Mont. Code Ann. § 2-4-601 et. seq and § 39-3-302. MAPA specifically provides that informal disposition may be made of any contested case by, among other things, a default unless such disposition is precluded by law. Mont. Code Ann. § 2-4-603(1)(a). Nothing in Title 39 or Title 2 prohibits imposition of a default where a party fails to comport with any facet of a scheduling order, fails to respond to a tribunal's direct order, or fails to appear for a scheduled hearing.

The Department has adopted the Attorney General's model rules, which provide in pertinent part, "[I]n a contested case, if a party does not appear to contest an intended agency action, the agency may enter a default order. If a default is entered, pursuant to Mont. Code. Ann. § 2-4-623, the order must be in writing and include findings of fact and conclusions of law" (emphasis added). Admin. R. Mont. 1-3-213(1) and 24-2-101(1).

Camp is the appellant in this matter. Camp has been warned on at least two occasions that the matter would be dismissed if he failed to participate in the telephone conferences. Despite receiving these warnings, Camp has continued to fail to appear and has failed to state good cause for his failure to participate in the June 3, 2019 telephone conference. Camp's apparent indifference suggests to the Hearing Officer that he does not intend to pursue his appeal in this matter. It is therefore determined that Camp is in default and his appeal is hereby dismissed.

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. Steve W. Camp has failed to follow the orders of this tribunal as set forth in the Notice of Intent to Dismiss. Camp has failed to state good cause as to why his appeal should not be dismissed.

3. There has been no showing that the Wage and Hour Unit's dismissal of Camp's claim should be set aside.

VI. ORDER

Based on the foregoing, the appeal of Steve W. Camp is DISMISSED. The Department's redetermination is final.

The redetermination of the Wage and Hour Unit dismissing Camp's claim is affirmed.

DATED this 19th day of June, 2019.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

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 the date of mailing of the hearing officer's decision. See also Mont. Code Ann. § 2-4-702. Please send a copy of your filing with the district court to:

Department of Labor & Industry
Wage & Hour Unit
P.O. Box 201503
Helena, MT 59620-1503