

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

IN THE MATTER OF THE WAGE CLAIM)	Case No. 1185-2020
OF DANIEL W. BRUSARD,)	
)
Claimant,)	
)
vs.)	FINAL AGENCY DECISION
	DISMISSING APPEAL
)
BEST PEST CONTROL OF WYOMING,)	
INC.,)	
)
Respondent.)	

* * * * *

I. INTRODUCTION

On July 1, 2019, Daniel W. Brusard (Brusard) filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit) alleging the respondent, Best Pest Control of Wyoming, Inc., a Wyoming corporation (Best Pest Control), owed him a total of \$5,790.00 for unpaid wages and commissions for work performed during the period of May 8, 2019, through June 24, 2019.

On February 3, 2020, the Wage and Hour Unit issued a determination finding Best Pest Control owed Brusard \$55.77 in unpaid overtime wages. The determination also imposed a penalty on the unpaid amount of 100% pursuant to Mont. Code Ann. § 39-3-206, for a total of \$111.54 (\$55.77 + \$55.77). On February 10, 2020, Best Pest Control issued a check to Brusard for \$111.54. On February 18, 2020, Brusard filed an appeal of the determination.

Following mediation efforts, the Wage and Hour Unit transferred the case to the Office of Administrative Hearings (OAH) on April 22, 2020.¹ On April 24, 2020, OAH issued a Notice of Hearing and Telephone Conference which set a scheduling conference for May 5, 2020. At the May 5, 2020, scheduling conference, Best Pest Control had not yet obtained legal counsel, and so the conference was rescheduled for May 18, 2020, as set forth in a second Notice of Hearing and Telephone Conference sent out on May 7, 2020. Both the April 24, 2020, and May 7, 2020, Notices of Hearing and Telephone Conference stated in relevant part:

¹ The date on the Transfer Document is erroneously shown as April 22, 2019.

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.

On May 18, 2020, the Hearing Officer held a scheduling conference at which both Brusard and counsel for Best Pest Control appeared. On May 19, 2020, the Hearing Officer issued a Scheduling Order setting a final pre-hearing conference for September 8, 2020, and a telephonic hearing beginning September 15, 2020. The Scheduling Order also included the following language on the first page:

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 Scheduling Order required the parties to submit final contentions, lists of exhibits and witnesses, requests for the issuance of subpoenas, and stipulated facts by September 4, 2020. Brusard failed to make any such submissions. Only counsel for Best Pest Control was available for the final pre-hearing conference. Brusard did not return any messages left for him by the Hearing Officer when attempting to contact him for the final pre-hearing conference.

On September 15, 2020, the Hearing Officer convened a telephonic hearing in this matter. Brusard was not available, and the Hearing Officer left a message on his voicemail. Brusard returned the call to OAH's staff and stated he was at work and forgot about the hearing. The Hearing Officer immediately attempted to contact Brusard again, but Brusard did not answer. The Hearing Officer left another voicemail, waited several minutes, and called again with no answer, and left another voicemail. In total, the Hearing Officer called and left voicemails for Brusard three times over the course of approximately 20 minutes. Due to Brusard's absence, no hearing was held.

Approximately two hours after the scheduled start of the hearing, Brusard called OAH staff again and informed them he was so busy he forgot about the hearing. He did not explain his failure to answer his phone after calling back previously, nor why he failed to make any pre-hearing filings, failed to appear at the final pre-hearing conference, and failed to follow-up regarding his absence.

In light of the foregoing, the Hearing Officer hereby dismisses Brusard's appeal on the basis of his failure to participate in these proceedings.

II. 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. Brusard failed to participate in these proceedings without good cause.

3. Best Pest Control already paid Brusard \$111.54 in unpaid overtime wages and penalties on February 10, 2020, and Brusard is not due any additional monies from Best Pest Control in connection with this claim.

III. ORDER

Based on the foregoing, Brusard's appeal is DISMISSED. The Department's determination is final. The determination of the Wage and Hour Unit finding Best Pest Control owed Brusard \$55.77 in unpaid overtime wages and imposing a penalty of \$55.77 is affirmed. Because Best Pest Control already issued a check in this amount to Brusard, no additional monies are due in connection with this claim.

This dismissal is a final agency decision.

DATED this 18th day of September, 2020.

DEPARTMENT OF LABOR & INDUSTRY
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ CHAD R. VANISKO
CHAD R. VANISKO
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