

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

IN THE MATTER OF THE WAGE CLAIM)	Case No. 1433-2020
OF LAURIE L. LITTLE DOG,)	
)	
Claimant,)	FINAL AGENCY DECISION
)	FINDING CLAIMANT IN
vs.)	DEFAULT AND DISMISSING
)	CLAIMANT'S APPEAL
FIRST STUDENT MANAGEMENT, LLC,)	
)	
Respondent.)	

* * * * *

I. PROCEDURAL BACKGROUND

1. On May 17, 2019, the Claimant, Laurie L. Little Dog, filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit) alleging the Respondent, First Student Management, LLC (First Student), owed her \$4,262.24 in unpaid wages for work performed during the period of February 25, 2019, and June 26, 2019.

2. On May 12, 2020, the Wage and Hour Unit issued a determination finding First Student owed Little Dog \$304.88 in unpaid wages and imposed a penalty of 15% if paid by May 27, 2020. If no payment was made by First Student within that time frame, the penalty increased to 55%, or \$167.68.

3. Little Dog timely appealed the determination. First Student did not appeal the determination. Following mediation efforts, the matter was transferred to the Office of Administrative Hearings (OAH) on June 29, 2020.

4. On July 17, 2020, OAH issued a Notice of Hearing and Telephone Conference setting the matter for a telephone conference on July 27, 2020. 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.

5. On July 27, 2020, the Hearing Officer attempted to convene a telephone conference in this matter. The Hearing Officer was unable to reach Little Dog at the telephone number of record; nor was she able to leave a message for Little Dog. The Hearing Officer was similarly unable to reach a First Student representative.

6. Little Dog contacted OAH a day or two after the scheduling conference was scheduled to be held. Little Dog indicated she had not received the Notice of Hearing. Little Dog was advised that a Notice of Intent to Dismiss would be issued.

7. On July 29, 2020, the Hearing Officer issued a Notice of Intent to Dismiss. The notice advised the parties that Little Dog's appeal would be dismissed if she failed to file and serve a written argument as to why the matter should not be dismissed no later than August 17, 2020. 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 Little Dog, and she has had no further contact with OAH.

II. ISSUE

Whether First Student Management, LLC owes wages for work performed, as alleged in the complaint filed by Laurie L. Little Dog, and owes penalties or liquidated damages, as provided by law.

III. FINDINGS OF FACT

1. Laurie L. Little Dog received proper notice regarding the scheduling conference attempted on July 27, 2020, as well as the Notice of Intent to Dismiss issued on July 29, 2020. *See* Mont. Code Ann. § 26-1-602(24) (establishing a disputable presumption that a letter duly directed and mailed was received in the regular course of the mail).

2. Little Dog failed without good cause to participate in the proceedings initiated as a result of her appeal.

3. Little Dog is in default based upon her failure to participate in the proceedings and to abide by the orders of this tribunal, including responding to the

Notice of Intent to Dismiss commanding her to file a written response as to why the matter should not be dismissed.

4. Due to her failure to actively prosecute her claim, Little Dog failed to show that First Student Management, LLC owes her any unpaid wages for work performed during the period of her wage claim.

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).

Little Dog is the appellant in this matter. Little Dog received proper notice with the Notice of Hearing and Telephone Conference that her appeal may be dismissed if she failed to actively prosecute her claim or otherwise abide by the orders of this tribunal. Little Dog failed to appear for any telephone conference, and she failed to file a response to the Notice of Intent to Dismiss. It is therefore determined Little Dog is in default and her 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. The Office of Administrative Hearings properly served the Notice of Hearing and Telephone Conference by mailing the notice to the parties at their addresses of record.

3. Both Laurie L. Little Dog and First Student Management, LLC received proper notice of the scheduling conference and the Notice of Intent to Dismiss. *See* Mont. Code Ann. § 26-1-602(24).

4. Laurie L. Little Dog has failed to follow the orders of this tribunal as set forth in the Notice of Intent to Dismiss. Laurie L. Little Dog is in default. Mont. Code Ann. § 2-4-603(1)(a).

5. Laurie L. Little Dog has failed to state good cause as to why her appeal should not be dismissed.

6. There has been no showing that the Wage and Hour Unit's determination that Laurie L. Little Dog is owed \$304.88 in unpaid wages is factually or legally incorrect.

7. First Student Management, LLC has not submitted payment for the amount found owing by the Wage and Hour Unit by the deadline of May 27, 2020. Therefore, a penalty of 55%, or \$167.68, is appropriate. *See* Admin. R. Mont. 24.16.756(1)(a), (b).

VI. ORDER

Based on the foregoing, Laurie L. Little Dog is found to be in default. Therefore, the appeal of Laurie L. Little Dog is dismissed with prejudice. The Department's determination finding she is owed \$304.88 in unpaid wages is final. A penalty of 55% is hereby imposed due to Respondent's failure to pay the amount found to be owed within the period set in the Wage and Hour Unit's determination.

DATED this 4th day of September, 2020.

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

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.