

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

IN THE MATTER OF THE WAGE CLAIM	)	Case No. 1872-2022
OF NATASHA J. BAKER,	)	
	)	
Claimant,	)	
	)	
vs.	)	<b>FINAL AGENCY DECISION</b>
	)	
ALOHA ACCOUNTING, INC.,	)	
	)	
Respondent.	)	

\* \* \* \* \*

**I. PROCEDURAL BACKGROUND**

On December 1, 2021, Claimant Natasha J. Baker (Baker) filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit) alleging Respondent Aloha Accounting, Inc. (Aloha Accounting) owed her \$7,493.04 in unpaid wages for work performed during July 3, 2021 through November 22, 2021. Ilima Cameron (Cameron) is President, Director, and Registered Agent of Aloha Accounting.

On May 12, 2022, the Wage and Hour Unit issued a determination finding Aloha Accounting owed Baker a total of \$8,077.05 in unpaid wages and overtime, with a total penalty amount of \$1,645.61, if paid by May 27, 2022. If no payment was made by Aloha Accounting within that time frame, the total penalty increased to \$5,039.20.

On June 9, 2022, the Wage and Hour Unit issued a redetermination finding Aloha Accounting owed Baker a total of \$8,077.05 in unpaid wages and overtime, with a total penalty amount of \$1,645.61, if paid by June 24, 2022. If no payment was made by Aloha Accounting within that time frame, the total penalty increased to \$5,039.20.

On June 24, 2022, Aloha Accounting requested mediation in the case, which the mediator indicated on August 24, 2022, was unsuccessful.

On September 2, 2022, Aloha Accounting timely appealed the redetermination. Baker did not appeal the redetermination. The matter was transferred to the Office of Administrative Hearings (OAH) on September 20, 2022.

On September 21, 2022, a Notice of Hearing and Telephone Conference was issued, assigning Chad R. Vanisko to hear and decide the case. In that notice, the parties were advised “[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.” That notice also indicated the hearing was being held “because Aloha Accounting, Inc. appealed from a determination of the Department’s Wage and Hour Unit that found wages are due Natasha J. Baker. If Aloha Accounting, Inc. fails to appear at the hearing, the Office of Administrative Hearings will issue an order affirming the Wage and Hour Unit’s determination, unless the opposing party seeks additional relief.” The Hearing Officer delineated that corporations are required to be represented by an attorney and set a telephone scheduling conference for September 30, 2022.

Thereafter, the Hearing Officer issued an Order on October 3, 2022, resetting the telephone conference due to Baker’s unavailability and to allow Aloha Accounting additional time to obtain counsel since Cameron appeared on behalf of the company. A telephone conference was rescheduled to occur on October 14, 2022.

Baker and Cameron appeared at the scheduling conference on October 14, 2022.

The Hearing Officer issued a Scheduling Order on October 17, 2022. In that order, the Hearing Officer reiterated to Cameron she must find an attorney licensed to practice law in the State of Montana to represent Aloha Accounting because Cameron indicated she was still in the process of obtaining counsel. The Hearing Officer set dates and deadlines for expert disclosure, discovery completion, motions, motion responses, motion replies, final exchange, final pre-hearing conference, and hearing. The Hearing Officer again placed the parties on notice that a party’s failure to appear and/or failure to obey orders issued by the Hearing Officer may result in sanctions against the party to include entry of default, dismissal of an appeal, imposition of liability or other appropriate sanctions.

On November 22, 2022, a Notice of Reassignment of Hearing Officer was issued, indicating this matter had been reassigned to Joslyn Hunt.

On January 20, 2023, a Notice of Change regarding Final Pre-Hearing Conference Information was issued, notifying the parties that the final pre-hearing conference would be held on February 3, 2023, at 9:00 a.m., MST, via Zoom.

At no time between the parties’ appearance for the scheduling conference held on October 14, 2022, to the final pre-hearing conference on February 3, 2023, did the Hearing Officer receive any filings in this case.

Per the Notice issued January 20, 2023, a final pre-hearing conference was held on February 3, 2023, at 9:00 a.m., MST, by Zoom. Baker appeared on behalf of herself. Neither an attorney for Aloha Accounting nor Cameron as President of Aloha Accounting appeared. No reason for Cameron's failure to appear was provided nor did the OAH hear from Cameron before the final pre-hearing conference regarding cause for her failure to appear. The Hearing Officer vacated the scheduled contested case hearing in this matter that was set to occur on February 8-9, 2023, at the final pre-hearing conference.

Right after the final pre-hearing conference on February 3, 2023, the OAH received an email from Cameron. In that email, she indicated a hardship in locating an attorney and a lack of understanding on how to proceed.

On February 6, 2022, the Hearing Officer issued a Notice of Intent to Dismiss. The notice advised the parties that Aloha Accounting's appeal would be dismissed if it failed to enter a notice of appearance for its attorney representative by February 16, 2022. The notice was emailed to the parties at the emails provided. To date, nothing has been received from Aloha Accounting, and it has had no further contact with the OAH.

## **II. ISSUE**

Whether Aloha Accounting owes wages for work performed, as alleged in the complaint filed by Baker, and owes penalties, as provided by law.

## **III. FINDINGS OF FACT**

1. Aloha Accounting received proper notice regarding the final pre-hearing conference scheduled on February 3, 2023, as well as the Notice of Intent to Dismiss issued on February 6, 2023.

2. Aloha Accounting failed without good cause to participate in the proceedings initiated as a result of its appeal.

3. Aloha Accounting is in default based upon its failure to participate in the proceedings and to abide by the orders of this tribunal, including providing documentation as directed in the Notice of Intent to Dismiss by the deadline indicated.

4. Due to its failure to actively prosecute its claim, Aloha Accounting failed to show Baker is not owed monies for unpaid wages and overtime.

## **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 § 39-3-216. 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 "In 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 2-4-623, MCA, the order must be in writing and include findings of fact and conclusions of law." Admin. R. Mont. 1.3.214 and 24.2.101(1).

Aloha Accounting is the appellant in this matter. It received proper notice with the Notice of Hearing and Telephone Conference that its appeal may be dismissed if it failed to actively prosecute its claim or otherwise abide by the orders of this tribunal. Aloha Accounting failed to appear for the final pre-hearing conference, and it failed to file documentation requested in the Notice of Intent to Dismiss. The Hearing Officer therefore determines Aloha Accounting is in default and the 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*, 176 Mont. 31, 575 P.2d 923 (1978).

2. The Office of Administrative Hearings properly served notices to the parties at their addresses of record.

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

4. There has been no showing that the Wage and Hour Unit's determination that Baker is owed \$8,077.05 in unpaid wages and overtime is factually or legally incorrect.

5. Aloha Accounting has not submitted payment for the amount found by the Wage and Hour Unit by the deadline of June 24, 2022. Therefore, a total penalty of \$5,039.20 is appropriate. See Admin. R. Mont. 24.16.7556(1)(a).

## VI. ORDER

Based on the foregoing, Aloha Accounting is found to be in default. Therefore, the appeal of Aloha Accounting is dismissed with prejudice. The Department's determination finding Baker is owed \$8,077.05 in unpaid wages and overtime is final. A total penalty in the amount of \$5,039.20 is hereby imposed due to Aloha Accounting's failure to pay the amount found to be owed within the period set in the Wage and Hour Unit's determination.

DATED this 22nd day of February, 2023.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ JOSLYN HUNT  
JOSLYN HUNT  
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.