

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

IN THE MATTER OF THE WAGE CLAIM OF SHELLEY WOOD,	)	Case No. 90-2024
	)	
Claimant,	)	
	)	
vs.	)	<b>FINAL AGENCY DECISION</b>
	)	
EAT HERE MT, LLC,	)	
	)	
Respondent.	)	

\* \* \* \* \*

**I. PROCEDURAL BACKGROUND**

On April 3, 2023, Claimant Shelley Wood (Wood) filed a claim with the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit) alleging Respondent Eat Here MT, LLC (Eat Here MT) owed her \$380.00 in unpaid wages for work performed from March 5-6, 9-12, 20, 2023. Jakob Krug (Krug) is the owner of Eat Here MT.

On June 2, 2023, the Wage and Hour Unit issued a determination finding Eat Here MT owed Wood a total of \$380.00 in unpaid wages, with a total penalty amount of \$418.00.

On June 8, 2023, Krug requested to appeal any claim against Eat Here MT. Mandatory mediation occurred thereafter. The mediator indicated on July 26, 2023, that mediation was unsuccessful.

On August 2, 2023, Krug appealed the determination. Wood did not appeal the determination. The matter was transferred to the Office of Administrative Hearings on August 7, 2023.

On August 10, 2023, a Notice of Hearing and Scheduling Conference was issued, assigning Joslyn Hunt 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 Eat Here MT, LLC appealed from a determination of the Department’s Wage and Hour Unit that found wages are due Shelley Wood. If Eat Here MT, LLC 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 scheduling conference for August 21, 2023.

Krug appeared at the scheduling conference on August 21, 2023. Wood did not appear. At the scheduling conference, the Hearing Officer informed Krug that as a corporation, Eat Here MT needed to be represented by an attorney licensed to practice in Montana.

The Hearing Officer issued a Scheduling Order on August 22, 2023. 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 2, 2023, the Hearing Officer issued an Order on Request for Extension, indicating that Krug emailed a request to extend the January 17, 2024, hearing date in this matter because he was still attempting to locate an attorney to represent Eat Here MT. The Hearing Officer granted Krug's request and also set a deadline of December 15, 2023, for an attorney to file a Notice of Appearance for Eat Here MT. Also in the Order on Request for Extension, the Hearing Officer indicated that Eat Here MT's failure to abide by the Notice of Appearance deadline may result in sanctions against Eat Here MT, including entry of default and dismissal of the appeal.

On December 13, 2023, Krug indicated via an email that he was unable to locate an attorney to represent Eat Here MT. To date, the Hearing Officer has not received a Notice of Appearance for an attorney representing Eat Here MT.

## **II. ISSUE**

Whether Eat Here MT owes wages for work performed, as alleged in the complaint filed by Wood, and owes penalties as provided by law.

## **III. FINDINGS OF FACT**

1. Eat Here MT received notice regarding the need for an attorney to appear on its behalf. Eat Here MT also received notice regarding the December 15, 2023, deadline by which an attorney must have filed a Notice of Appearance on Eat Here MT's behalf.

2. Eat Here MT failed to comply with the December 15, 2023, deadline by not having an attorney file a Notice of Appearance on its behalf.

3. Eat Here MT failed to abide by the orders of this tribunal.

4. Due to its failure to appear, Eat Here MT failed to show Wood is not owed monies for unpaid wages.

#### **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 2 or Title 39 prohibits imposition of a default where a party fails to comport with any facet of a scheduling order or fails to respond to a tribunal's direct order.

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).

Eat Here MT is the appellant in this matter. It received proper notice with the Notice of Hearing and Scheduling Conference, Scheduling Order, and Order on Request for Extension that it must be represented by an attorney licensed to practice in Montana and that its appeal may be dismissed if it failed to abide by the orders of this tribunal. Eat Here MT failed to have an attorney representing the company file a Notice of Appearance by the requested deadline in the Order on Request for Extension. The Hearing Officer therefore determines Eat Here MT 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 Co.*, 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. Eat Here MT has failed to follow the orders of this tribunal. Eat Here MT is in default. Mont. Code Ann. § 2-4-603(1)(a).

**VI. ORDER**

Based on the foregoing, Eat Here MT is found to be in default. Therefore, the appeal of Eat Here MT is dismissed with prejudice. The Department's determination finding Wood is owed \$380.00 in unpaid wages and a total penalty in the amount of \$418.00 is affirmed.

DATED this 2nd day of January, 2024.

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.