

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

IN THE MATTER OF THE WAGE CLAIM) Case No. 202-2024
OF ANDREW REAL,)
Claimant,)
vs.) **FINAL AGENCY DECISION**
EAT HERE MT, LLC,)
Respondent.)

* * * * *

I. PROCEDURAL BACKGROUND

On April 26, 2023, Claimant Andrew Real (Real) 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 him \$11,032.00 in unpaid wages for work performed from January 8, 2023, through April 1, 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 Real a total of \$11,032.00 in unpaid wages, with a total penalty amount of \$12,135.20.

Krug requested to appeal the determination. Mandatory mediation occurred thereafter. The mediator indicated on September 13, 2023, that mediation was unsuccessful.

On September 17, 2023, Krug appealed the determination. Real did not appeal the determination. The matter was transferred to the Office of Administrative Hearings on September 19, 2023.

On September 21, 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 Andrew Real. 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 September 29, 2023.

Krug appeared at the scheduling conference on September 29, 2023. Real did not appear. At the hearing, 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 October 2, 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 December 13, 2023, Krug indicated via an email that he was unable to locate an attorney to represent Eat Here MT. On December 15, 2023, the Hearing Officer issued an Order Setting Attorney Notice of Appearance Deadline, indicating that Eat Here MT had until January 16, 2024, for an attorney to file a Notice of Appearance on behalf of 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 Real, 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 January 16, 2024, 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 January 16, 2024, 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, Eat Here MT failed to show Real 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 Setting Attorney Notice of Appearance Deadline 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 Setting Attorney Notice of Appearance Deadline. 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 Real is owed \$11,032.00 in unpaid wages and a total penalty in the amount of \$12,135.20 is affirmed.

DATED this 26th 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.