

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

IN THE MATTER OF THE WAGE  
CLAIM OF TRAVIS SANDS,

Claimant,

vs.

AK BUILT CONSTRUCTION, LLC,

Respondent.

Case No. 207-2024

**FINAL AGENCY DECISION**

**I. INTRODUCTION**

On January 28, 2022, Claimant, Travis Sands (Sands), filed a wage claim with the Wage and Hour Unit of the Montana Department of Labor and Industry (Wage and Hour Unit) alleging that he was owed wages in the amount of \$2,550.00 for work performed on behalf of Respondent, AK Built Construction, LLC (AKBC), during the period of August 20, 2021 through December 10, 2021. Jessie Berg (Berg) is the owner of AKBC. On July 7, 2023, the Wage and Hour Unit issued a redetermination that AKBC owed Sands regular and overtime wages in the amount of \$1,515.20 and assessed penalties in the amount of \$801.03. Berg, on behalf of AKBC, appealed, and this matter was transferred to the Office of Administrative Hearing (OAH) on September 19, 2023.

On September 22, 2023, OAH issued a Notice of Hearing and Scheduling Conference (Notice). The Notice contained the following provision, “[c]orporations, partnerships, limited liability companies (LLCs), and similar entities are required to be represented by an attorney pursuant to Admin. R. Mont. 1.3.231(2). . . . If you intend to find an attorney to represent you, begin your search today.”

Pursuant to the Notice, on October 3, 2023, the Hearing Officer convened a scheduling conference. At the conference, Berg personally appeared on behalf of AKBC. The Hearing Officer allowed Berg to participate to set the schedule. However, the Hearing Officer specifically advised Berg that legal counsel would be required to appear at any future conferences on behalf of AKBC because Berg could not represent AKBC, as it constituted the unauthorized practice of law. The Hearing Officer also advised Berg that if counsel did not appear on behalf of AKBC at any future conference or hearings, it would be deemed a failure to appear by AKBC, thereby subjecting AKBC to a potential default.

Following the scheduling conference, the Hearing Officer issued a Scheduling Order. The Scheduling Order contained the following provisions: “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, imposition of liability or other appropriate sanctions. If any member of the Respondent corporation attempts to appear on behalf of the corporation, such shall be considered a failure to appear.” The Scheduling Order also set a deadline by which the parties had to identify a suitable location for the hearing.

On March 5, 2024, OAH sent an inquiry to the parties because neither had complied with the requirement to identify a hearing location. In that same inquiry, Berg was asked whether counsel was being obtained to represent AKBC. Berg responded by requesting the authority that required him to retain counsel on behalf of AKBC. OAH provided him with that authority, and warned of the potential of default if Berg attempted to appear on behalf of KABC at the final pre-hearing conference.

On March 20, 2024, Berg contacted OAH and moved to have the final pre-hearing conference and contested case hearing vacated. Berg so moved on the basis that he was meeting with an attorney on March 27, 2024 who may represent AKBC, but that additional time was needed for counsel to review this matter and make a determination.

Having established good cause, the Hearing Officer granted AKBC’s motion and vacated both the final pre-hearing conference and contested case hearing via an order issued on March 21, 2024. The Hearing Officer set a status conference on April 3, 2024 at 9:00 a.m. The purpose of the status conference was to discuss the status of AKBC’s efforts to obtain counsel. On that time and date, the Hearing Officer convened the status conference. Neither party appeared. The Hearing Officer allowed an additional five minutes for the parties to appear; however, neither party appeared within that additional five minutes and the Hearing Officer concluded the conference. Further, OAH has not received a Notice of Appearance or any other communication from an attorney representing AKBC.

## **II. ISSUE**

Whether AKBC owes wages for work performed, as alleged in the complaint filed by Sands, and owes penalties as provided by law.

### **III. FINDINGS OF FACT**

1. AKBC received notice regarding the need for an attorney to appear on its behalf. AKBC was specifically advised that it needed to retain counsel or that it could be found in default for failing to appear.

2. AKBC failed to comply with the requirement that it retain counsel as no counsel has appeared on behalf of AKBC in this matter.

3. AKBC failed to appear at the status conference which was set for the purpose of discussing AKBC's efforts to retain counsel.

4. AKBC has failed to abide by the orders of this tribunal, and, therefore, is in default.

5. Due to its failure to appear, AKBC failed to establish that Sands 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, "[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 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).

AKBC is the appellant in this matter. It received proper notice with the Notice of Hearing and Scheduling Conference, Scheduling Order, and in communications with OAH 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. Furthermore, AKBC was notified of the status conference set by the Hearing Officer for April 3, 2024. AKBC failed to have an attorney representing the company file a Notice of Appearance and failed to appear at the status conference. The Hearing Officer therefore determines AKBC 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. AKBC has failed to follow the orders of this tribunal and has failed to appear. AKBC is in default. Mont. Code Ann. § 2-4-603(1)(a).

**VI. ORDER**

Based on the foregoing, AKBC is determined to be in default. Therefore, the appeal of AKBC is dismissed with prejudice. The Wage and Hour Unit’s redetermination finding Sands is owed \$1,515.20 in unpaid wages and a total penalty in the amount of \$801.03 remains in place in the event of a default.

DATED this 4th day of April, 2024.

DEPARTMENT OF LABOR & INDUSTRY  
OFFICE OF ADMINISTRATIVE HEARINGS

By: /s/ JEFFREY M. DOUD  
JEFFREY M. DOUD  
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