

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.”

On October 15, 2024, the Hearing Officer was present at 9:00 a.m., MDT, to conduct a scheduling conference in this matter via Zoom conference. Trebas did not appear. Lewis also did not appear. The Hearing Officer waited ten minutes for the parties to join the scheduling conference, but neither party appeared after ten minutes. Neither party contacted OAH regarding a reason for non-appearance.

On October 17, 2024, the Hearing Officer issued an Order Rescheduling Scheduling Conference and Notice to Parties. In that order, the Hearing Officer rescheduled the scheduling conference to occur on October 31, 2024, at 10:00 a.m., MDT, via Zoom conference. The order also placed the parties on notice that “a failure to appear at the rescheduled scheduling conference may result in sanctions, which can include entry of default, dismissal of an appeal, dismissal of the complaint, imposition of liability or other appropriate sanctions.”

On October 31, 2024, the Hearing Officer was present at 10:00 a.m., MDT, to conduct a scheduling conference in this matter via Zoom conference. Trebas did not appear. Lewis also did not appear. The Hearing Officer waited ten minutes for the parties to join the scheduling conference, but neither party appeared after ten minutes. Neither party contacted OAH regarding a reason for non-appearance.

On November 4, 2024, the Hearing Officer issued a Notice of Intent to Dismiss. In the notice, the Hearing Officer explained that Lewis, individually and/or d/b/a NGL Construction, was the appellant in this matter and that he had a duty to move his appeal forward, which he failed to do by not appearing at two scheduling conferences. The Hearing Officer gave Lewis notice that if he failed to show good cause regarding the non-appearances by November 12, 2024, the appeal in this case would be dismissed and the Wage and Hour Unit’s determination, including penalties, would be affirmed.

Lewis failed to file anything with OAH on or before November 12, 2024.

II. ISSUE

Whether Lewis is in default and therefore owes wages to Trebas for work performed and owes penalties as provided by law.

III. FINDINGS OF FACT

1. Lewis received notice regarding the need for him to show good cause for his non-appearances at scheduling conferences on October 15, 2024, and on October 31, 2024. Lewis' deadline for showing good cause for the non-appearances was November 12, 2024.

2. Lewis failed to comply with the November 12, 2024, deadline by filing anything explaining his good cause for the non-appearances.

3. Lewis failed to abide by the orders of this tribunal.

4. Due to his failure, Lewis failed to show Trebas 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 of Labor and Industry has also 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).

Lewis, individually and/or d/b/a NGL Construction, is the appellant in this matter. Lewis has a duty to move his appeal forward or face dismissal. See Mont. R. Civ. P. 41. To date, Lewis has failed to do so. In particular, Lewis failed to appear at the October 15, 2024 scheduling conference or at the October 31, 2024 scheduling conference. On November 4, 2024, the Hearing Officer gave proper notice to Lewis of the intent to dismiss Lewis' appeal and affirm the Wage and Hour Unit's determination, including penalties, in this matter. The Hearing Officer also gave notice to Lewis that he had until November 12, 2024, to show good cause for his non-appearances by filing a notice of good cause explaining the good cause that existed. Lewis failed to file anything on or before November 12, 2024. The Hearing Officer therefore determines that Lewis 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. Lewis has failed to follow the orders of this tribunal. Lewis is in default. Mont. Code Ann. § 2-4-603(1)(a).

VI. ORDER

Based on the foregoing, Lewis is determined to be in default. Therefore, Lewis' appeal is dismissed with prejudice. The Wage and Hour Unit's determination finding Trebas is owed \$2,240.00 in unpaid wages and a total penalty in the amount of \$1,232.00 is affirmed.

DATED this 15th day of November, 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.