

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

IN THE MATTER OF THE WAGE CLAIM	)	Case No. 181-2026
OF MARK FREITAG,	)	
	)	
Claimant,	)	
	)	FINAL AGENCY DECISION
vs.	)	
	)	
BISHOP, INC.,	)	
	)	
Respondent.	)	

* * * * *

I. PROCEDURAL BACKGROUND

On June 17, 2024, Claimant Mark Freitag (Freitag) filed a wage claim with the Montana Department of Labor and Industry, Employment Relations Division, alleging Respondent Bishop, Inc. owed him an unidentified value in unpaid prevailing wages for work performed as a truck driver between April 15, 2019, through April 10, 2024.

On July 9, 2025, the Wage and Hour Unit issued its determination after investigation into Freitag's wage claim. It determined that the agency did not have authority to investigate Freitag's wage claim.

On July 9, 2025, Freitag indicated that he desired to appeal the Wage and Hour Unit's determination. Mandatory mediation occurred thereafter. The mediator indicated on August 8, 2025, that mediation was unsuccessful.

On August 15, 2025, Freitag appealed the determination. The matter was transferred to the Office of Administrative Hearings (OAH) on August 19, 2025.

On August 20, 2025, a Notice of Hearing and Scheduling Conference was sent to the parties. That notice indicated a scheduling conference would occur in this matter on September 2, 2025, at 11:00 a.m., Mountain Time, via Zoom conference. The parties were placed on notice that 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."

On August 28, 2025, Attorney Dawn Gray (Gray) filed a notice of appearance of counsel on behalf of Bishop, Inc.

On September 2, 2025, the Hearing Officer was present at 11:00 a.m., Mountain Time, to conduct a scheduling conference in this matter via Zoom conference. Freitag did not appear. The Hearing Officer waited ten minutes for the parties to join the scheduling conference. After waiting ten minutes postponement time, Freitag did not appear. Gray appeared on behalf of Bishop, Inc., indicating that she did not have Zoom conference connection information, so she was delayed while she obtained that information. Gray also indicated that she did not object to rescheduling the scheduling conference so both she and Freitag could be present.

On September 3, 2025, OAH staff forwarded to the Hearing Officer an email from Freitag that Freitag sent on August 30, 2025. In the email, Freitag requested assistance and indicated that he would not participate in the September 2, 2025 scheduling conference. Freitag further indicated that he could not continue or participate in the wage claim matter.

On September 4, 2025, OAH contacted both parties, indicating to Freitag that if he desired to withdraw his appeal of the wage claim and he consented to electronic service, he may send written notice in the form of an email expressing his desire to withdraw his appeal of the wage claim. OAH also indicated to Freitag that he may send written notice in the form of a letter expressing his desire to withdraw his appeal of the wage claim if he did not consent to electronic service. OAH provided him the address. Finally, OAH indicated to Freitag that if he did not desire to withdraw his appeal of the wage claim, to contact OAH expressing that desire as well so a new scheduling conference could be set.

On September 4, 2025, Freitag emailed OAH, indicating that he would call OAH the next day. OAH did not receive further communication from Freitag.

On September 24, 2025, the Hearing Officer issued a Notice of Intent to Dismiss, relaying the background of the matter as above-indicated and also indicating that Freitag has a duty to move his appeal forward or face dismissal. See Mont. R. Civ. P. 41. The Hearing Officer ordered that notice was given of the Hearing Officer's intent to dismiss Freitag's appeal if Freitag failed to contact OAH regarding his intent to proceed in this matter on or before October 1, 2025.

Freitag failed to contact OAH regarding his intent to proceed in this matter on or before October 1, 2025.

II. ISSUE

Whether Freitag's appeal of his wage claim should be dismissed?

III. FINDINGS OF FACT

1. Freitag received notice about the need for him to contact OAH regarding his intent to proceed in this matter on or before October 1, 2025.
2. Freitag failed to comply with the October 1, 2025 deadline by contacting OAH of his intent to proceed in this matter.
3. Freitag failed to abide by the orders of this tribunal.

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).

Freitag is the appellant in this matter. Freitag has a duty to move his appeal forward or face dismissal. See Mont. R. Civ. P. 41. A court is accorded broad discretion in determining whether a cause of action should be dismissed for failure of the party seeking relief to prosecute. *Becky v. Norwest Bank Dillon, N.A.*, 245 Mont. 1, 7, 798 P.2d 1011 (1990). To date, Freitag has failed to move his appeal forward. Freitag did not appear at the September 2, 2025 scheduling conference, indicating in an email that he could not continue or participate in the wage claim matter. On September 4, 2025, Freitag was provided an opportunity to clarify his position on whether he intended to dismiss the appeal of his wage claim. On September 4, 2025, Freitag indicated that he would contact OAH regarding the appeal. Freitag did not contact OAH regarding his appeal, again, after indicating that he could not continue or participate in the wage claim matter. As a result, the Hearing Officer gave notice to Freitag that he had until October 1, 2025, to contact OAH regarding his intent to proceed in this matter. Freitag failed to contact OAH. Therefore, the Hearing Officer determines that Freitag is in default and his appeal in this matter 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. Freitag has failed to follow the orders of this tribunal. Freitag's claim is dismissed. Mont. Code Ann. § 2-4-603(1)(a).

VI. ORDER

Based on the foregoing, Freitag's appeal of his wage claim against Bishop, Inc. is dismissed with prejudice. The determination made by the Wage and Hour Unit indicating that the Wage and Hour Unit did not have authority to investigate Freitag's wage claim is final.

DATED this 10th day of October, 2025.

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