

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re: ROGER E. RUDD DDS,
Citation and Notice of Assessment No.
55506
OAH Docket No. 12-2015-LI-00275

NO. 2016-012-WPA
DIRECTOR'S ORDER
RCW 49.48.084(4); RCW 34.05

This Order supersedes the previous Director's Order that was served on September 27, 2016, and is issued in response to Roger E. Rudd DDS (the Appellant)'s "Reply to Department's Response on Administrative Review and Appeal for Reconsideration to Premature Director's Order" (Appeal for Reconsideration) that was filed on October 5, 2016.

In addition to considering the Appellant's aforementioned Appeal for Reconsideration, Joel Sacks, Director of the Washington State Department of Labor & Industries, issues this Director's Order having considered the Initial Order served on June 8, 2016, having considered the petition for review filed by the Appellant with the Director's Office on July 8, 2016, all briefing submitted to the Director's Office, and having reviewed the record created at hearing and the records and files herein. The parties in this matter are the Department and the Appellant. This Order intends to resolve the contested issue of whether the Appellant failed to pay all wages due to Cherry Goodridge in violation of the wage payment and minimum wage laws. **The Appellant is ordered to pay wages to Cherry Goodridge in the amount of \$1,080.32. The**

Employer is also ordered to pay interest in the amount of one percent per month under RCW 49.48.083(2) for these wages except for the time period of June 8, 2016, to the date this Order is served. The Employer is ordered to pay the Department a penalty in the amount of \$1,000.

I make the following Findings of Fact, Conclusions of Law, and Final Decision and Order.

I. FINDINGS OF FACT

1. The Office of Administrative Hearings issued and served the Initial Order on June 8, 2016, following an administrative hearing on April 15, 2015. The Initial Order affirmed the Department's August 21, 2015 Citation and Notice of Assessment No. 55506.

2. On July 8, 2016, the Appellant timely filed a petition for review with the Director's Office.

3. On September 12, 2016, the Department filed a response to the Appellant's petition for review.

4. On September 27, 2016, I issued an Order affirming the Initial Order.

5. On October 5, 2016, the Appellant filed an Appeal for Reconsideration.

6. Having found no material errors of inclusion or omission, I adopt and incorporate all the Initial Order's Findings of Fact.

7. I also adopt and incorporate the Initial Order's "Issue Presented," the "Order Summary" and the "Hearing" summary.

II. CONCLUSIONS OF LAW

1. Based on the Appellant's timely filed petition for review, there is authority to review and decide this matter under RCW 49.48.084 and RCW 34.05.

2. When an employee ceases to work for an employer, whether by discharge or voluntary withdrawal, the employer must pay the employee the wages due to him or her at the end of the established pay period. RCW 49.48.010. Wage is defined as “compensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules of the director.” RCW 49.46.010(7).

3. An employer may not deduct or withhold final wages unless it is specifically agreed upon orally or in writing between the employer and employee. RCW 49.48.010; WAC 296-126-025. It is the employer’s responsibility to prove the existence of any agreement. WAC 296-126-025.

4. The Appellant does not raise any material issues to controvert the Initial Order or the Department’s citation in this case. He claims that he was not required to pay Goodridge her final wages based on a purported vacation policy under which vacation hours accrue over the calendar year based on hours worked (rather than all at once on January 1); and he argues that his calculation of Goodridge’s used vacation hours versus her worked hours was correct thereby entitling him to deduct or withhold her final wages. But the facts presented here show there was no such agreement, written or otherwise, with regard to the Appellant’s purported vacation policy.

5. The existence and nature of the parties’ agreement with regard to the vacation policy is primarily based on my credibility assessment and the credibility assessment of the Administrative Law Judge (ALJ) since there was no written agreement. I must give due regard to determinations of witness credibility by the ALJ. RCW 34.05.464(4). In ten years of employment, the Appellant never prohibited Goodridge from using her full allotted vacation hours at any time throughout the year, and the Appellant never prohibited Goodridge from using

vacation hours based on a lack of accrual. My determination is based not only on this undisputed track record that supports Goodridge's claim, but also on the ALJ's observation of each witness's demeanor and motivation at the hearing. Goodridge's testimony that she was allotted vacation hours as a lump sum on January 1 of each year which she could use as needed at any time throughout the year is consistent with the actions of the parties. Based upon my review of the entire record, and giving due regard to the ALJ's credibility assessments as described in the Initial Order, I conclude that the totality of the evidence established that Goodridge was allotted 120 vacation hours as a lump sum on January 1, 2015, which did not require accrual based on worked hours before she was entitled to use it.

6. Having concluded that there was no agreement authorizing the Appellant to deduct wages based on un-accrued vacation time, there is no question that Goodridge was owed wages for her final week of work. Specifically, she was owed wages in the amount of \$1,080.32 based on the annual salary of \$51,855.36. This amount was based on one-half the regular pay period amount of \$2,160.64.

7. The Appellant also raises numerous factual contentions in the Petition for Review and Appeal for Reconsideration that are immaterial to the legal issue in this case. As indicated above, the dispositive question is whether there was an agreement between the Appellant and Goodridge authorizing the Appellant to deduct wages based on un-accrued vacation time. None of the Appellant's additional contentions are relevant to this question, nor are they otherwise consequential for purposes of my review.

8. In particular, the Appellant claims that the Initial Order incorrectly states that Goodridge began working in 2005, rather than November 2004. This is immaterial because it does not affect the parties' agreement with regard to the amount or accrual of vacation hours. The Appellant also claims that the Initial Order incorrectly states Goodridge was paid salary on a

bi-weekly basis, rather than a bi-monthly basis. This is immaterial because, regardless of the terminology, the parties agree Goodridge was paid a salary based on a two-week pay period. The Appellant also claims that the Initial Order incorrectly states Goodridge worked 40 hours during her last pay period, rather than 30 hours. This is immaterial because all parties agree that Goodridge worked her normal weekly hours. And based on the annual salary and structured pay period, Goodridge was entitled to \$1,080.32 for her last work week. The Appellant also claims that the Initial Order incorrectly describes the reason for Goodridge's decision to terminate her employment with the Appellant. This is immaterial because it does not affect whether the Appellant was entitled to withhold final wages. Finally, the Appellant claims that the Initial Order incorrectly states that Goodridge was allotted 120 vacation hours for each year of her employment, rather than reflecting the fact that her vacation hours were less in prior years. This is immaterial because the parties agree that Goodridge was allotted 120 vacation hours for the calendar year of 2015, which is the only year in question. All other contentions within the Appellant's Petition for Review and Appeal for Reconsideration are resolved by the conclusions above at paragraphs two through six.

9. I adopt and incorporate the Initial Order's Conclusions of Law and Initial Order.

III. DECISION AND ORDER

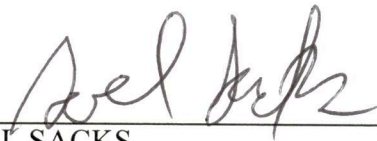
Consistent with the above Findings of Fact and Conclusion of Law, the Citation and Notice of Assessment No. 55506 is AFFIRMED and the Initial Order of June 8, 2016, is incorporated by reference herein.

1. Payment of wages. See Citation and Notice of Assessment for payment information and the effect of the failure to pay wages and interest. The Appellant is ordered to pay wages to Cherry Goodridge in the amount of \$1,080.32. The Appellant is also ordered to pay interest in the amount of one percent per month under RCW 49.48.083(2) for these wages

(except for the time period of June 8, 2016, to the date this order is served.) The Appellant is ordered to make these payments within thirty days of the date of service of this final Director's Order.

2. Payment of Civil Penalty: The Appellant is ordered to pay the Department a penalty in the amount of \$1,000. *See* Citation and Notice of Assessment for payment information.

DATED at Tumwater this 7 day of November, 2016.



JOEL SACKS
Director

SERVICE

This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

APPEAL RIGHTS

Reconsideration. Any party may file a petition for reconsideration. RCW 34.05.470. Any petition for reconsideration must be filed within 10 days of service of this Order and must state the specific grounds on which relief is requested. No matter will be reconsidered unless it clearly appears from the petition for reconsideration that (a) there is material clerical error in the order **or** (b) there is specific material error of fact or law. A petition for reconsideration, together with any argument in support thereof, should be filed by mailing, or by emailing to DirectorAppeal@LNI.WA.GOV, or delivering it directly to Joel Sacks, Director of the Department of Labor and Industries, P. O. Box 44001 Olympia, Washington 98504-4001, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Director's Office. RCW 34.05.010(6).

NOTE: A petition for reconsideration is not required before seeking judicial review. If a petition for reconsideration is filed, however, the 30-day period will begin to run upon the resolution of that petition. A timely filed petition for reconsideration is deemed to be denied if, within twenty (20) days from the date the petition is filed, the Director does not (a) dispose of the petition **or** (b) serve the parties with a written notice specifying the date by which it will act on the petition. RCW 34.05.470(3).

Judicial Review. Any petition for judicial review must be filed with the appropriate court and served within 30 days after service of this Order. RCW 34.05.542. RCW 49.48.084(5) provides, "Orders that are not appealed within the time period specified in this section and Chapter 34.05 RCW are final and binding, and not subject to further appeal." Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement.

DECLARATION OF MAILING

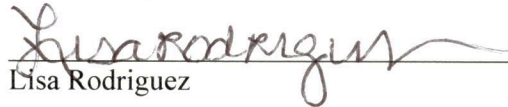
I, Lisa Rodriguez, hereby declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 7 day of November 2016, via certified mail, postage prepaid, and by regular mail to the following:

Roger E. Rudd, DDS
12 East Rowan Suite 4
Spokane, WA 99207

Angela R. Zurlini
Assistant Attorney General
1116 W Riverside Ave
Spokane, WA 99201

Cherry Goodridge
P.O. Box 48235
Spokane, WA 99228

DATED this 7 day of November, 2016, at Tumwater, Washington.



Lisa Rodriguez

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Roger E Rudd DDS,

Appellant.

Docket No. 12-2015-LI-00275

INITIAL ORDER

Agency: Labor and Industries
Program: Wage Payments
Agency No. W-074-16

1. ISSUES PRESENTED

1. Whether the Department's August 21, 2015, Citation and Notice of Assessment, alleging that Roger E. Rudd, DDS, violated RCW 49.48.010, by failing to pay \$1,080.32 in final wages, plus interest, to Cherry Goodridge for work performed between May 4, 2015 and May 7, 2015, should be affirmed.
2. Whether Roger E. Rudd, DDS, is liable for a penalty of \$1,000.00, for willfully failing to pay the Cherry Goodridge final wages, as per RCW 49.48.083.

2. ORDER SUMMARY

1. The Department's August 21, 2015, Citation and Notice of Assessment, alleging that Roger E. Rudd, DDS, violated RCW 49.48.010, by failing to pay \$1,080.32 in final wages, plus interest, to Cherry Goodridge for work performed between May 4, 2015 and May 7, 2015, is AFFIRMED.
2. Roger E. Rudd, DDS, is liable for a penalty of \$1,000.00, for willfully failing to pay wage claimant Cherry Goodridge final wages, as per RCW 49.48.083.

3. HEARING

1. Hearing Date: April 15, 2016
2. Administrative Law Judge: Courtney Beebe
3. Appellant: Roger E Rudd, DDS
4. Agency: Department of Labor and Industries
 1. Representative: Angela R Zurlini, Assistant Attorney General
 2. Witnesses: Sylvia Cardenas, Industrial Relations Agent; Cherry Good ridge, wage claimant.
5. Exhibits: The Department's Exhibits 1 through16 were admitted. The Appellant's Exhibits A through M were admitted (cumulative exhibits noted on audio record).

4. FINDINGS OF FACT

The Administrative Law Judge finds the following facts by a preponderance of the evidence:

Undisputed Facts

1. Roger E. Rudd, DDS, ("Appellant") owns a dental practice in the Spokane, WA area. Cherry Goodridge ("Wage Claimant") began working for Appellant in 2005, as a dental hygienist.
2. It is undisputed that the Appellant and Wage Claimant agreed on the Wage Claimant's salary at the beginning of each year. For the year of 2015, the Appellant agreed to pay the Wage Claimant \$51,853.36 for the year for thirty (30) hours of work per week, and that salary payments would occur bi-weekly in the amount of \$2,160.64. The Appellant also agreed that the Wage Claimant would receive 120 hours of paid leave time per year.
3. It is also undisputed that in the years prior to 2015 if the Wage Claimant did not use all of the paid leave time, the unused paid vacation hours would be rolled over to the following year for the Wage Claimant to use. However, if the Wage Claimant used all of the allotted paid leave time, then the Wage Claimant would receive 120 hours of leave time beginning at the start of the next year (in January). If the Wage Claimant took time off of work after using all the allotted 120 hours of paid leave time prior to the end of December, then the Wage Claimant would not receive any pay for the time off or the hours used would be deducted from the 120 hours of paid leave time allotted the following year.
4. It is undisputed that if the Wage Claimant desired to take time off and use paid leave time, she would coordinate with the other members of the office and use the paid leave time at her discretion. It is also undisputed that if the Appellant closed his office and there was no work for Wage Claimant to perform, the Wage Claimant could use paid leave time for the times the office was closed, or she could choose to not be paid for the time that the office was closed and retain the paid leave time.
5. Between January 1, 2015 and May 7, 2015, the Wage Claimant used all 120 hours of paid leave time allotted for the 2015 year. The Appellant deducted nine (9) hours of paid leave time from the allotted 120 hours at the beginning of January because the Wage Claimant took nine (9) hours of additional paid leave in 2014.

6. The Appellant was aware of the Wage Claimant's use of the paid leave time from January 1, 2015 and May 7, 2015, and she reported the use of the paid leave time to the Appellant in the same manner she had in the past. The Appellant did not prohibit the Wage Claimant from using all of the allotted leave time between January 1, 2015 and May 7, 2015. The Appellant paid the Wage Claimant for each hour of leave time taken between January 1, 2015 and May 7, 2015.
7. The Wage Claimant informed the Appellant throughout the period of January 1, 2015 and May 7, 2015, that she was burning out and was taking classes to change her profession.
8. The Wage Claimant gave the Appellant notice on April 30, 2015, that she would quit her position on May 15, 2015.
9. The Wage Claimant received \$2,160.64 on May 1, 2015 for work performed between April 20, 2015 and May 1, 2015.
10. The Wage Claimant worked her normal schedule of 8 hours per day on May 4, 5, 6, and 7, 2015.
11. The Appellant informed the Wage Claimant on May 7 and 8, 2015, that he did not intend to pay her for working her last two weeks of employment, May 4-15, 2015, because he believed that she should "repay vacation time that you hadn't earned yet." (Department's Exhibit 2, p.3.)
12. The Wage Claimant quit her position on May 8, 2015 when she was informed by the Appellant that she would not receive final wages for working the period of May 4 through 15, 2015.
13. The Appellant did not pay the Wage Claimant final wages for working May 4, 5, 6, and 7, 2015.
14. The one-half the Wage Claimant's bi-weekly salary is \$1,080.32.

Findings on Disputed Facts

15. Over the course of the Wage Claimant's ten years of employment, the Wage Claimant used the annually allotted 120 hours of paid leave time at her discretion. The Wage Claimant used as much or as little of the paid leave time as she desired, regardless of the time of year.

16. The Appellant did not communicate to the Wage Claimant that the 120 hours of paid leave time would accrue at a rate of ten (10) hours per month, and that the Appellant could only use the vacation time she accrued.

Jurisdiction

17. The Department issued the Appellant a Citation and Notice of Assessment on August 21, 2015, alleging that the Appellant violated RCW 49.48.010 by failing to pay the Wage Claimant final wages in the amount of \$1,080.32 for work performed between May 4, 2015 and May 7, 2015. The Department also assessed a penalty of \$1,000.00 and interest as per RCW 49.48.083.
18. The Appellant filed a request for hearing on September 2, 2015.
19. The matter was referred to the Office of Administrative Hearings on December 4, 2015.

Credibility Finding

20. The testimony of the parties and the documentation presented conflicted primarily on the material point of the parties' agreement regarding the Wage Claimant's use of leave and whether the Wage Claimant was entitled to payment for hours worked between May 4, 2015, and May 7, 2015. Based upon the evidence presented, and having carefully considered and weighed all the evidence, including the demeanor and motivations of the parties, the reasonableness of the testimony and the totality of the circumstances presented, the Administrative Law Judge finds that the Appellant's testimony regarding the parties' agreement and whether the Wage Claimant was entitled to payment for the hours worked lacks credibility.
21. The Administrative Law Judge makes this finding based primarily on the fact that the Appellant's convoluted and nearly incomprehensible narrative testimony not only lacked any corroboration, but actually conflicts with the parties course of performance over the ten years of employment. There is no evidence that over the ten year period of employment that the Wage Claimant's paid leave time accrued per month; instead, the parties behaved as if the Wage Claimant's paid leave time was allotted at the beginning of the year for her use throughout the year, and the parties acted consistent with this tradition between January 1, 2015 and May 7, 2015, whenever the Wage Claimant took leave.
22. Additionally, the Appellant's testimony under oath conflicts with his own written statements. The Appellant stated on the record under oath that he "never said he

would not pay Cherry the wages.” This statement directly contradicts the Appellant’s own written statement in Exhibit A, p.3, which reads “I had not planned to pay you [Cherry] for these weeks.”

23. On the other hand, the Wage Claimant testified consistently throughout the hearing about how she used the allotted leave time over the ten year period of employment and provided documentation to support her testimony regarding her use of the paid leave time between January 1, 2015 and May 7, 2015. Therefore, the Administrative Law Judge finds the Wage Claimant’s testimony to be more credible than the Appellant’s.

5. CONCLUSIONS OF LAW

Based on the facts above, the Administrative Law Judge makes the following conclusions:

Jurisdiction

1. The Office of Administrative Hearings has jurisdiction over the persons and subject matter of this case under RCW 34.05, RCW 49.48, and RCW 49.56.

Burden of Proof

2. Under the WPA, the wage claimant has the initial burden of showing *prima facie* evidence of a wage payment law violation. See, *Anderson v. Mt. Clemens Pottery Co.*, 328 US. 680, 687-688, S.Ct. 1187, 90 L.Ed. 1515 (1946) (federal minimum wage law under Fair Labor & Standards Act); *MacSuga v. County of Spokane*, 97 Wn.App. 435, 445-446, 983 P.2d 1167 (1999). The *prima facie* showing must be supported by a preponderance of the evidence.
3. A preponderance of the evidence is that evidence which, when fairly considered, produces the stronger impression, has the greater weight, and is the more convincing as to its truth when weighed against the evidence in opposition thereto. *Yamamoto v. Puget Sound Lbr. Co.*, 84 Wash. 411, 146 Pac. 861 (1915).
4. Substantial evidence must be presented and must be “sufficient to persuade a fair-minded person of the truth or correctness of the matter.” *Ongom v. Dept. of Health*, 124 Wn App. 935, 948-49, 104 P.3d 29 (2005), *reviewed on other grounds*, 155 Wn.2d 1001, 122 P.3d 185 (2005).

Applicable Law

5. The Fair Labor Standards Act of 1938 ("FLSA") deals with overtime and minimum wage requirements for employees. The Washington Minimum Wage Act ("WMWA"), RCW 49.46 and the Wage Payment Act, RCW 49.48 ("WPA") are based on the FLSA. The Wage Claimant seeks wages as per the WMWA and WPA.
6. Wage Payment Act, RCW 49.48 (WPA) authorizes administrative enforcement of wage payment requirements. Upon receipt of a wage complaint that alleges a violation of a wage payment requirement, the Department "shall investigate" and, unless otherwise resolved, "shall" issue either a citation (when finding a wage law violation) or a determination of compliance (when finding no violation) within sixty days. RCW 49.48.083. The Department may extend the time period by providing advance written notice to the employee and the employer setting forth good cause for an extension of the time period. (Id.)
7. Wage payment requirements are those "set forth in RCW 49.46.020, 49.46.130, 49.48.010, 49.52.050, or 49.52.060, and any related rules adopted by the department." RCW 49.48.082(10). These wage payment requirements include, but are not limited to, requirements to pay minimum wages, overtime wages, agreed wages, and wages for final pay periods. RCW 49.48.082(12).
8. RCW 49.52.050(2) provides that it is unlawful to willfully withhold an agreed wage, which includes any wage an "employer is obligated to pay such employee by any statute, ordinance, or contract." The provisions of RCW 49.52.050(2) include oral or written agreements for hourly wages in excess of the minimum wage.
9. RCW 49.46.010(7) defines "wage" as:

[C]ompensation due to an employee by reason of employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such deductions, charges, or allowances as may be permitted by rules by director.

RCW 49.46.010(7).
10. "When any employee shall cease to work for an employer, whether by discharge or by voluntary withdrawal, the wages due him or her on account of his or her employment shall be paid to him or her at the end of the established pay period . . . It shall be unlawful for any employer to withhold or divert any portion of an employee's wages unless" the deduction meets the requirements of RCW 49.48.010 and WAC 269-126-025.
11. RCW 49.48.010 allows for withholding or diverting portions of an employee's

wages if the deduction is:

- (1) Required by state or federal law; or
- (2) Specifically agreed upon orally or in writing by the employee and employer; or
- (3) For medical, surgical, or hospital care or service, pursuant to any rule or regulation: PROVIDED, HOWEVER, That the deduction is openly, clearly, and in due course recorded in the employer's books and records.

12. WAC 269-126-025(2) and (3) allow for the withholding or diversion of an employee's final wages:

- a) For pension, medical, dental, or other benefit plans when such agreements have been specifically agreed upon orally or in writing in advance by the employee and employer.
- b) For a payment to a creditor or third party if the employee authorizes it orally or in writing in advance to pay a sum for the benefit of the employee. The creditor or third party can be the employer of the employee.

...

(a) For acceptance of a bad check or credit card, if it can be shown that the employee accepted the check or credit card in violation of procedures previously made known to the employee by the employer; or

(b) For any cash shortage from a cash register, drawer or portable depository provided for that purpose, if it can be shown that the employee has sole access to the cash and has participated in the cash accounting at the beginning of the employee's shift and again at the end of said shift; or

(c) For any cash shortage, walkout (failure of customer to pay), breakage, or loss of equipment, if it can be shown that the shortage, walkout, breakage or loss was caused by a dishonest or willful act of the employee; or

(d) Deductions taken due to alleged employee theft are permissible only if it can be shown that the employee's intent was to deprive and that the employer filed a police report.

Analysis

13. The Appellant has provided no credible evidence that the Wage Claimant was not entitled to use the 120 hours of paid leave time allotted to her at on January 1, 2015. The Appellant has provided no evidence that the parties intended the Wage Claimant's paid leave time to accrue at a rate of ten hours per month.

14. Moreover, the Appellant has provided no evidence that the Wage Claimant's final pay check for the period of May 4, 2015 through May 7, 2015, can be withheld by the amount of the paid leave time taken because neither RCW 49.48.010 or WAC 296-126-025 provide that such a deduction from the Wage Claimant's final wages is lawful without an agreement by the parties. Certainly, given the dispute presented, the Appellant has provided no evidence that the parties agreed to any such a deduction from the Wage Claimant's final wages.
15. The Department's substantial and credible evidence as corroborated by the documentary evidence, when fairly considered, produces the stronger impression, has the greater weight, and is the more convincing that the Wage Claimant is entitled to payment of final wages in the amount of \$1,80.32 for work performed between May 4, 2015 through May 7, 2015. The August 21, 2015, Department's Citation and Notice of Assessment must be affirmed.

Interest

16. Unpaid wages may accrue interest at the rate of 1% of the unpaid wage amount until payment is received by the Department, calculated from the first date wages were owed to the employee. RCW 49.48.083.
17. The final wages were owed to the Wage Claimant as of May 15, 2015. The Appellant is liable for interest at a rate of 1% of the unpaid wage amount until payment is received by the Department, calculated from May 15, 2015.

Penalties

18. The Department has the authority to issue a civil penalty to employers who unlawfully withhold an employee's wages. RCW 49.48.083(3)(a). The statute provides:

(3) If the department determines that the violation of the wage payment requirement was a willful violation, the department also may order the employer to pay the department a civil penalty as specified in (a) of this subsection.

(a) A civil penalty for a willful violation of a wage payment requirement shall be not less than one thousand dollars or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. The maximum civil penalty for a willful violation of a wage payment requirement shall be twenty thousand dollars.

19. A willful violation is defined in RCW 49.48.082(13) as a "knowing and intentional action that is neither accidental nor the result of a bona fide dispute, as evaluated under the standards applicable to wage payment violations under RCW 49.53.050(2)." RCW 49.48.082(13).
20. Given the complete failure and patent refusal of the Appellant to pay the Wage Claimant's final wages, it must be concluded that the Appellant acted willfully and a penalty is appropriate.
21. Consistent with the Department's August 21, 2015, Citation and Notice of Assessment, the Appellant is liable for a penalty of \$1,000.00 as per RCW 49.48.083.

6. INITIAL ORDER

1. The Department of Labor and Industries' August 21, 2015, Citation and Notice of Assessment is AFFIRMED.

Issued from Tacoma, Washington on date of mailing.



Courtney Beebe
Administrative Law Judge
Office of Administrative Hearings

PETITION FOR REVIEW

Any party that disputes this Initial Order may file a Petition for Administrative Review with the Director of the Department of Labor and Industries.¹ You may e-mail your Petition for Administrative Review to the Director at directorappeal@lni.wa.gov. You may also mail or deliver your Petition for Administrative Review to the Director at the Department's physical address listed below.

Mailing Address:

Director
Department of Labor and Industries
PO Box 44001
Olympia, WA 98504-4001

Physical Address:

Director
Department of Labor and Industries
7273 Linderson Way SW
Tumwater, WA 98501

If you e-mail your Petition for Administrative Review, please do not mail or deliver a paper copy to the Director.

Whether you e-mail, mail or deliver the Petition for Administrative Review, the Director *must actually receive* the Petition for Administrative Review during office hours at the Director's office within 30 days of the date this Initial Order was mailed to the parties. You must also provide a copy of your Petition for Administrative Review to the other parties at the same time.

If the Director does not receive a Petition for Administrative Review within 30 days from the date of the Initial Order, the Initial Order shall become final with no further right to appeal.²

If you timely file a Petition for Administrative Review, the Director will conduct an administrative review under chapter 34.05 RCW.

CERTIFICATE OF SERVICE ATTACHED

¹ RCW 49.48.084 and RCW 34.05.464.

² RCW 49.48.084 and Chapter 34.05 RCW.

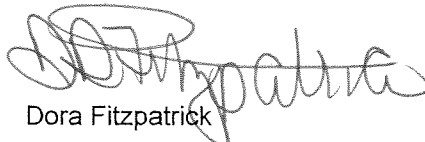
CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 12-2015-LI-00275

I certify that true copies of this document were served from Tacoma, Washington upon the following as indicated:

| | |
|--|---|
| Roger E. Rudd, DDS 12 East Rowan Suite 4 Spokane, WA 99207 Appellant | <input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail |
| Angela R Zurlini, AAG Department of Labor and Industries 1116 W Riverside Ave Spokane, WA 99201 Agency Representative | <input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail |
| Cherry Goodridge PO Box 48235 Spokane, WA 99228 Wage Claimant | <input checked="" type="checkbox"/> First Class Mail, Postage Prepaid <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail |

Date: Wednesday, June 08, 2016

OFFICE OF ADMINISTRATIVE HEARINGS


Dora Fitzpatrick
Legal Assistant