

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re:	2021-011-WPA
ADDIE SMITH,	DIRECTOR'S ORDER
APPELLANT,	RCW 49.48.084(4); RCW 34.05
Citation and Notice of Assessment No. DOC-058-21,	
<u>OAH Docket No. 01-2021-LI-01601</u>	

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the Order Dismissing Appeal (Order) served on June 16, 2021, having considered the petition for review filed by Addie Smith. with the Director's Office, and briefing submitted to the Director's Office, and having reviewed the record, issues this Director's Order.

The Director makes the following Findings of Fact, Conclusions of Law, and Final Decision and Order.

I. FINDINGS OF FACT

1. On October 2, 2020, the Department of Labor and Industries Employment Standards' Program issued a Determination of Compliance resolving a complaint filed by the Appellant.

2. A prehearing conference was scheduled for February 5, 2021, which the Appellant attended.

3. A motion hearing was scheduled for May 20, 2021. On May 19, 2021, the Appellant requested a continuance because of illness. This continuance was granted and it was agreed by the parties that the rescheduled hearing would be for June 11, 2021.

4. On May 21, 2021, the Office of Administrative Hearings sent notice of a motion hearing for June 11, 2021, at 2:00 pm. The notice advised the Appellant “If you fail to call in, the administrative law judge may hold you in default and dismiss your appeal. RCW 34.05.440(2).” (emphasis omitted). Order Granting Continuance and Notice of Motion Hearing. The notice was mailed and emailed to her.

4. On June 11, 2021, the Appellant failed to appear.

5. The Office of Administrative Hearings issued and served the Order dismissing the appeal on June 16, 2021.

6. On June 25, 2021, the Director received a timely filed petition for administrative review from Appellant.

7. Smith has not denied receiving the notice about the motion hearing. Smith indicated she missed the hearing because she believed the hearing was for June 15, 2021. She also indicates that she suffers from PTSD, which she reports causes her “sleeplessness, forgetfulness, emotional and physical duress, stress, anxiety and more.” Reply to Department’s Response. She also says she had a doctor’s appointment on June 11, 2021.

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.

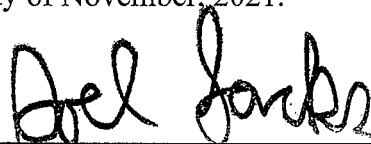
2. RCW 34.05.440(2) provides: “If a party fails to attend or participate in a hearing or other stage of an adjudicative proceeding . . . , the presiding officer may serve upon all parties a default or other dispositive order, which shall include a statement of the grounds for the order.”

3. The Director will vacate a default order on a showing of good cause. A party’s mishandling of the party’s calendar is not good cause for missing an event. *See Graves v. Dep’t of Emp’t Sec.*, 144 Wn. App. 302, 311, 182 P.3d 1004 (2008). The Appellant thought that the hearing date was on a different date than scheduled. But this is no more than calendar mismanagement and is not good cause to miss the hearing date or request a hearing date if other matters were scheduled for that date. Although she notes that she has symptoms of PTSD this has not prevented her from appearing at other matters in this case or timely requesting continuances for dates.

III. DECISION AND ORDER

Consistent with the above, the Determination of Compliance is AFFIRMED.

DATED at Tumwater, Washington this 9 day of November, 2021.



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 emailing it to directorappeal@lni.wa.gov or by mailing 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 Deck, hereby declare under penalty of perjury under the laws of the State of Washington, that the DIRECTOR'S ORDER was mailed on the 9 day of November 2021, to the following via U.S. Mail, postage prepaid, and e-mail, to the following:

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DATED this 9 day of November, 2021, at Tumwater, Washington.



Lisa Deck