

DIRECTOR OF THE DEPARTMENT OF LABOR & INDUSTRIES
STATE OF WASHINGTON

In re:	2021-018-WPA
REGENT CHINESE RESTAURANT,	DIRECTOR'S ORDER
Appellant,	RCW 49.48.084(4); RCW 34.05
Citation and Notice of Assessment Nos. W-431-20 & W-432-20,	
<u>OAH Docket No. 08-2020-LI-01487</u>	

Joel Sacks, Director of the Washington State Department of Labor & Industries, having considered the Order Denying Petition to Vacate Order Dismissing Appeal (Order) served on August 17, 2021, having considered the petition for review filed by the Appellants 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. The Findings of Fact of the Order are adopted and incorporated by reference.

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. The Conclusions of Law of the Order and adopted and incorporated by reference.

III. DECISION AND ORDER

Consistent with the above Findings of Fact and Conclusion of Law, the Citation and Notice of Assessment is AFFIRMED.

DATED at Tumwater, Washington this 16 day of December, 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 16th day of December 2021, to the following via U.S. mail, postage prepaid.

L C International Corporation dba
Regent Chinese Restaurant
23739 SE Bonnie Lure Dr
Eagle Creek, OR 97022

Rebecca A. Watkins
Sather, Byerly & Holloway LLP
1200 SW Main Street
Portland, OR 97205

L C International Corporation dba
Regent Chinese Restaurant
3353 Washington Way
Longview, WA 98632

Peter Chu
L C International Corporation dba
Regent Chinese Restaurant
17110 SE Powell Blvd
Portland, OR 97236

Christina K. Dallen, AAG
Office of the Attorney General
PO Box 40121
Olympia, WA 98504

Brian Milam
203 Ostrander Rd.
Kelso, WA 98626

Michelle Kruse
203 Ostrander Rd
Kelso, WA 98626

DATED this 16 day of December, 2021, at Tumwater, Washington.



LISA DECK

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Docket No. 08-2020-LI-01487

Regent Chinese Restaurant, Peter
Chu, and Kelly Shuman,

**ORDER DENYING PETITION TO VACATE
ORDER DISMISSING APPEAL**

Appellants/Employer.

Agency: Labor and Industries
Program: Wage Payments
Agency Nos. W-431-20 & W-432-20

1. ISSUE

- 1.1. Should the Order Dismissing Appeal issued July 2, 2021 be vacated under RCW 34.05.440(3)?

2. ORDER SUMMARY

- 2.1. No. Appellant Peter Chu has presented insufficient grounds for vacating the July 2, 2021 Order Dismissing Appeal.

3. MOTION HEARING

- 3.1. Motion Hearing Date: July 28, 2021 and August 9, 2021
- 3.2. Administrative Law Judge: Travis Dupree
- 3.3. Appellant: Peter Chu
- 3.3.1. Representative: Peter Chu, *pro se*
- 3.4. Agency: Department of Labor and Industries
("Labor and Industries")
- 3.4.1. Representative: Christina Dallen, Assistant Attorney General
- 3.5. Record relied upon: Presentation by the parties at the motion hearing; the Appellants' petition to vacate; and the pleadings and documents filed to date.

4. FINDINGS OF FACT AS A MATTER OF LAW

The documents establish the following facts as a matter of law:

- 4.1. On February 5, 2021, the Office of Administrative Hearings (OAH) sent the Appellant Peter Chu, a notice of hearing by webinar (Notice), providing the date and time of the hearing (June 29, 2021 at 9:00 a.m. and June 30, 2021 at 9:00 a.m.), and instructions for participation.

- 4.2. Below the call-in information on the front page, in bold-face type, the Notice stated: **“You must call or log in to the hearing. If you fail to call or log in, the administrative law judge may hold you in default and dismiss your appeal. RCW 34.05.440(2)”**
- 4.3. On June 29, 2021 at 9:00 a.m., counsel for Labor and Industries appeared for the Hearing. The Appellant Peter Chu was not present. When the Appellant Peter Chu had not yet appeared by 9:30 a.m., Labor and Industries moved for a default order, which was granted on the record and issued in writing on July 2, 2021. [Note that Labor and Industries reached a settlement agreement with the remaining two Appellants, Regent Chinese Restaurant and Kelly Shuman.]
- 4.4. On July 8, 2021, OAH received Appellant Peter Chu’s Petition to Vacate Order (Petition).
- 4.5. In the Petition, Appellant Peter Chu argued that the prior proceedings had been conducted remotely but the state of Oregon, where he resides, has not lifted restrictions on personal contact meetings. Additionally, Mr. Chu argued that he has not received any notice that the hearing was going to be held in person.
- 4.6. At the motion hearing, Mr. Chu restated the arguments in his Petition and further argued that he had previously received a reminder from the Department of Labor and Industries regarding any upcoming proceeding.
- 4.7. The current COVID-19 pandemic restrictions limit in-person gatherings, due to the health and safety concerns of its participants, especially for those persons at increased, health risks.
- 4.8. Currently, the Office of Administrative Hearings is not holding any in-person, evidentiary hearings. However, OAH is holding telephonic and video evidentiary hearings, allowing parties to fully participate effectively, including the presentation of evidence and to conduct cross-examination of opposing parties.

5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions:

Jurisdiction

- 5.1. I have jurisdiction over the persons and subject matter of this case under chapters 34.05 RCW, and 10-08 WAC.

Appellant Has Shown Insufficient Basis for Vacating the Default Order.

- 5.2. Under the Administrative Procedures Act (APA), chapter 34.05 RCW, an appellant subject to a default and dismissal order may petition the issuing tribunal for an order vacating the default and dismissal order. RCW 34.05.440(3). The APA, though, is silent as to the basis for granting or denying petition to vacate a default order. The

Model Rules of Procedure, chapter 10-08 WAC, are equally silent. Therefore, I refer to Civil Rule (“CR”) 60(b)(1), CR 55(c)(1), and the court’s analysis in *White v. Holm*, 73 Wn.2d 348, 438 P.2d 581 (1968), for guidance.

5.3. Each of those authorities requires the petitioning appellant to demonstrate good cause for failing to appear. CR 55(c) provides for the setting aside of a default judgment “for good cause shown”, “upon such terms as the court deems just”, and “in accordance with rule 60(b).” CR 60(b) provides: “[T]he court may relieve a party or the party’s legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order.” The *White* court provides substantial discussion and detail. However, there is a common theme: Good cause for failing to appear implies a circumstance reasonably beyond the control of the appellant who failed to appear.

5.4. RCW 34.05.449(3) provides:

In the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of the hearing may be conducted by telephone, television, or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and, if technically and economically feasible, to see the entire proceeding while it is taking place.

5.5. In this case, the Appellant Peter Chu failed to appear at the evidentiary hearing because he believed he should receive notice from the Office of Administrative Hearings regarding converting the evidentiary hearing to be held in person. The Appellant argues that failing to appear was a mistake because he believed he was going to receive notice that the webinar hearing would be held in person and a reminder from the Department of Labor and Industries regarding the hearing time. However, the Appellant did not contact anyone at the Office of Administrative Hearings prior to the scheduled hearing to inquire about holding the hearing in person. Mr. Chu’s belief, though, is not a circumstance reasonably beyond his control and does not establish good cause for the failure to appear. Appellant Peter Chu has provided insufficient cause to vacate the order of dismissal. The Appellant Peter Chu’s petition to vacate is DENIED.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

6.1. The Appellant’s Petition to Vacate Default Order is DENIED.

6.2. The Order Dismissing Appeal issued July 2, 2021 remains in full force and effect.

Issued from Tacoma, Washington on the date of mailing.



Travis Dupree
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE ATTACHED

PETITION FOR REVIEW

Under RCW 49.48.084 and RCW 34.05.464, any party that disputes this Initial Order may file a Petition for Review with the Director of the Department of Labor and Industries. 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 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:

7273 Linderson Way SW
Tumwater, WA 98501

Whether you e-mail, mail or deliver the Petition for Review, the Director must actually receive the Petition for 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 Order of Default, it shall become final with no further right to appeal.¹ If you timely file a Petition for Administrative Review, the Director will conduct an administrative review in accordance with chapter 34.05 RCW.

¹ RCW 49.48.084 and Chapter 34.05 RCW.

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 08-2020-LI-01487

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

<p>L C International Corporation dba Regent Chinese Restaurant 23739 SE Bonnie Lure Dr Eagle Creek, OR 97022 Appellant</p>	<p><input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt: 9489 0090 0027 6102 1673 95 <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>L C International Corporation dba Regent Chinese Restaurant 3353 Washington Way Longview, WA 98632 Appellant</p>	<p><input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt: 9489 0090 0027 6102 1674 01 <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Peter Chu L C International Corporation dba Regent Chinese Restaurant 17110 SE Powell Blvd Portland, OR 97236 Appellant</p>	<p><input checked="" type="checkbox"/> First Class Mail <input checked="" type="checkbox"/> Certified Mail, Return Receipt: 9489 0090 0027 6102 1674 18 <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Rebecca A. Watkins Sather, Byerly & Holloway LLP 1200 SW Main Street Portland, OR, 97205 Appellant Representative</p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Christina K. Dallen, AAG Office of the Attorney General MS: 40121 PO Box 40121 Olympia, WA 98504 Agency Representative</p>	<p><input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail: Christina.Dallen@atg.wa.gov jennifer.gonzalez@atg.wa.gov lniolyeservice@atg.wa.gov</p>

<p>Brian Milam 203 Ostrander Rd. Kelso, WA 98626 <i>Intervenor/Wage Claimant</i></p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>
<p>Michelle Kruse 203 Ostrander Rd Kelso, WA 98626 <i>Intervenor/Wage Claimant</i></p>	<p><input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail</p>

Date: Tuesday, August 17, 2021

OFFICE OF ADMINISTRATIVE HEARINGS



Amber Guarnacci
Legal Assistant 3